Healthcare Law Alert: Governor Murphy Signs Executive Order 290, Extending Vaccination Deadlines for Healthcare Workers

March 7, 2022

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In reaction to recent changes in the recommendations of the Centers for Disease Control and Infection (CDC), with respect to the appropriate interval between receiving the first and second dose of the COVID-19 vaccine, Governor Murphy issued Executive Order 290 (EO 290) on March 2, 2022. Under the new EO 290, the vaccination timeframes and deadlines for healthcare workers have been revised to reflect the CDC's recommendations.

Background

On January 21, 2022, we published a Healthcare Law Alert with information about Executive Order 283 (EO 283) issued by Governor Murphy on January 19, 2022. In summary, EO 283 requires healthcare facilities and high-risk congregate settings covered by the EO to adopt and implement policies requiring covered workers at covered settings to be up to date with COVID-19 vaccinations, including having received a booster dose.

Prior to the issuance of EO 283, Executive Order 252 (EO 252), which was issued by Governor Murphy on August 6, 2021, required covered healthcare facilities and high-risk congregate settings to maintain policies that require covered workers to either provide proof that they have been fully vaccinated or be subject to COVID-19 testing, at minimum, one to two times per week. EO 283 eliminated the testing option that was previously allowed and required covered workers to be fully vaccinated, including a booster dose, while leaving intact the ability to grant exemptions for those with disabilities, medical conditions, or sincerely held religious beliefs. Any provisions of EO 252 that are inconsistent with the requirements of EO 283 were overridden by EO 283.

New Deadlines

Under EO 290, the deadlines for covered workers to be up to date with their COVID-19 vaccinations are as follows:

Covered healthcare settings subject to the Centers for Medicare & Medicaid Services (CMS) Omnibus COVID-19 Health Care Staff Vaccination interim final rule (CMS Rule):

- Unvaccinated covered workers must have obtained their primary series of a COVID-19 vaccination according to the timeframes set forth by CMS (first dose of the primary series of COVID-19 vaccination by January 27, 2022 and second dose by February 28, 2022).
- All covered workers must provide adequate proof that they have received a booster dose by April 11, 2022, or within 3 weeks of becoming eligible for a booster dose, whichever is later.

A list of covered healthcare settings under the CMS Rule may be found here: Healthcare Law Alert.

Covered healthcare settings not subject to the CMS Rule and covered high-risk congregate settings:

- Unvaccinated covered workers must have obtained their first dose of the primary series of a COVID-19 vaccination by February 16, 2022.
- All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by May 11,

2022; provided, however, that as to having received a booster dose, covered workers must provide adequate proof that they are up to date with their COVID-19 vaccinations by May 11, 2022, or within 3 weeks of becoming eligible for a booster dose, whichever is later.

First Step Toward Compliance – How to Address the Noncompliant Worker?

EO 283 required covered health care settings and covered high-risk congregate settings to adopt policies to comply with the EO, including a disciplinary process to address non-compliance by covered workers. Under EO 290, each covered setting must take the first step toward bringing a non-compliant covered worker into compliance as part of such disciplinary process within two weeks after the applicable vaccination deadline. Failure to take such action may result in penalties and other corrective actions allowed pursuant to federal or state regulation or statute.

For more information or if you need assistance with your COVID-19 vaccination policies, contact:

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