

Modern Healthcare

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Rural hospital employees' vaccination rates continue to lag amid litigation

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While providers await a resolution that's likely to be decided by the Supreme Court, rural hospitals continue to grapple with potentially dire labor shortages.

COVID-19 vaccination rates continue to lag among rural hospital workers as some CEOs opt to wait for the courts to sift through conflicting state laws and federal mandates.

Less than half of 130 rural healthcare executives surveyed in September and October said at least 70% of their employees were fully vaccinated, marking a slight increase from [inoculation rates as of March and April](#), according to a new [poll](#) from the Chartis Center for Rural Health. Some rural hospital CEOs are refusing or delaying vaccination mandates given the contradicting state laws and federal mandates.

Meanwhile, almost half of respondents said that they have had to turn away patients over the past two months because they didn't have enough staff, according to the latest Chartis survey.

"The fact that healthcare executives are not championing what medical science tells us is our greatest chance of defense or defeating the virus is frightening," said Michael Topchik, national leader at Chartis, adding that medical professionals have a lot of influence in tight-knit rural communities. "We know [COVID](#) is disproportionately ravaging rural and politically red areas in numbers that are striking, so it is sad to see that politics have cost people their health and their lives."

States like Missouri, Alabama, Iowa and Florida, among [other Republican-led states](#), argue public health matters should be regulated by the states. State officials have [sued](#) the federal government, claiming their state exemptions supersede vaccine mandates for private employers to be implemented next year by the Centers for Medicare and Medicaid Services interim final rule and the [Occupational Safety and Health Administration](#).

Generally, federal law preempts contrary state law. But there are unresolved questions about whether OSHA and CMS regulations are within the scope of the agencies' statutory authority, said William Horton, partner at Jones Walker.

"CMS is authorized to establish conditions of participation and conditions of payment under federal healthcare programs, like Medicare. However, CMS generally can't impose substantive requirements on the operation of a healthcare facility—that's mostly a function of state licensure laws and other state-law requirements," he said. "Thus, it's at least hypothetically possible for both the CMS mandate and contrary state laws to be valid and not in conflict, even though that would be sort of a disastrous result. In short, it's a real mess."

The [OSHA requirements](#) were designed to override state laws and make things more uniform across the country, but it's unclear how things will shake out in the courts, said Margo Wolf O'Donnell, a partner at Benesch Friedlander Coplan & Aronoff.

"Does OSHA have what it needs to override these state laws? That has been the tension all along with the pandemic," she said.

The conflict is complicated by health systems that have employees across multiple states, O'Donnell added.

The 5th Circuit Court of Appeals [ruled](#) that while OSHA has the authority to draft an emergency temporary standard, it didn't exercise its authority properly. The agency took a one-size-fits-all "sledgehammer" approach rather than a "delicately handled scalpel," the panel said. It did not appropriately differentiate between types of employers nor justify the 100-employee threshold. The case is now headed to the [6th Circuit Court of Appeals](#).

"OSHA has more of an uphill battle in terms of enforcement," said Mark Peters, a partner at Waller Lansden Dortch & Davis. "Clearly CMS has the authority to decide what the conditions of participation are. From a healthcare provider's perspective, I would feel a lot more comfortable enforcing CMS' interim final rule."

If OSHA's emergency temporary standard is deemed enforceable, then federal law will override state law, which is more than likely to happen, Peters said. Regardless of the outcome, healthcare providers can continue to encourage their employees to get vaccinated, he said.

As of September and October, 75% of rural hospital executives said that their facility has not made their workforce get the shots, Chartis' survey found. Of the 12.3% that have required vaccinations, hospitals reported losing up to 5% of their nursing staff.

While hospital leaders await a resolution that's likely to be decided by the Supreme Court, providers continue to grapple with potentially fatal labor shortages.

Nearly 30% of respondents said that nursing-related staffing issues have forced them to suspend services, often surgery.

"If some rural hospitals lose one nurse, that may shut down their ability to provide 24/7 care," Topchik said. "That can be catastrophic."

Inline Play

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