



CMS Vaccine Mandate Rule Blocked in 10 States (including Kansas, Missouri, and Nebraska)

A Missouri-based federal judge issued an order today partially blocking the Biden Administration from implementing the emergency regulation issued by the Centers for Medicare & Medicaid Services (CMS) on November 4, 2021, that mandated COVID-19 vaccination by January 4, 2022, for the employees and contractors of covered health care facilities participating in the Medicare and Medicaid programs. The order, known as a preliminary injunction, is temporary in nature, although it could eventually become permanent if the lawsuit is successful.

Today's order blocking the CMS vaccine mandate only applies in the ten states participating in the lawsuit in question, which include Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. It remains unclear whether CMS will take a piecemeal approach by pursuing the implementation of the mandate in all other states, or whether it will follow the lead of the Occupational Safety and Health Administration, which recently halted its implementation and enforcement efforts for its similar Emergency Temporary Standard ("ETS") imposing vaccination mandate and testing requirements on employers with 100 or more employees, following a Federal Circuit Court of Appeals decision blocking the ETS.

In today's decision blocking the CMS rule, Judge Matthew T. Schelp questioned CMS's authority to mandate vaccination without action by Congress, and he cited concerns of significant staffing shortages that health care providers may experience if the CMS emergency regulation is implemented. He wrote, "[W]hat is known based on the evidence before the Court is that the mandate will have a crippling effect on a significant number of healthcare facilities in Plaintiffs' states, especially in rural areas, create a critical shortage of services (resulting in no medical care at all in

some instances), and jeopardize the lives of numerous vulnerable citizens. The prevalent, tangible, and irremediable impact of the mandate tips the balances of equities in favor of a preliminary injunction.”

CMS will undoubtedly challenge today’s ruling, just as OSHA did last week when it filed an emergency motion seeking to dissolve the stay that prohibits implementation and enforcement of its ETS.

KEY TAKEAWAYS

Covered health care facilities located in states within Spencer Fane’s footprint, including Kansas, Missouri, Nebraska, and South Dakota, have—at least temporarily—a reprieve from implementing the CMS vaccine mandate. Spencer Fane will continue to monitor and provide updates with respect to legal challenges to both the CMS emergency rule and the OSHA emergency temporary standard.

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