

Missouri District Court Issues Preliminary Injunction Preventing CMS from Enforcing the Vaccine Mandate for Healthcare Facilities in Ten States

Insights

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UPDATE

This evening (November 30, 2021), the United States District Court for the Western District of Louisiana, Monroe Division, ordered a nationwide injunction (with the exception of the ten states included in the Missouri order) of the CMS Vaccination Mandate in a case brought by a number of states (Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio). The case is [Louisiana v. Becerra](#), W.D. La., 3:21-cv-03970 (Nov. 30, 2021).

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On November 29, 2021, the United States District Court for the Eastern District of Missouri, Eastern Division, granted a preliminary injunction to halt the Biden Administration's enforcement of the Centers for Medicare and Medicaid Services' ("CMS") vaccine mandate for health care workers in 10 states. *State of Missouri, et al. v. Biden, et. al*, No. 4:21-cv-01329-MTS, (E.D. Mo., November 29, 2021) (order granting preliminary injunction). The order applies to Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, North Dakota, South Dakota, and New Hampshire.

In its order, the District Court determined as a threshold issue that federal courts have jurisdiction over claims arising under the Medicaid Act, as there are no "claim-channeling and jurisdiction-stripping provisions" in the Medicaid Act as there are in the Medicare and Social Security Acts.

To grant a preliminary injunction, courts must conclude that the plaintiffs are likely to succeed on the merits of their claims, that the plaintiffs will suffer irreparable harm without the injunction, and, on balance, it is more equitable to grant the injunction than to not grant it; the injunction must also be in the public interest. The Court found all of these factors were satisfied.

First, the Court held that the Plaintiffs are likely to succeed on the merits because Congress did not grant CMS the authority to mandate the vaccine. According to the Court, when Congress authorizes an agency to act, it must "speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.'" The Court further held that the mandate "significantly alter[s] the balance between federal and state power" and that it was uncertain if Congress intended CMS to act as it did. Furthermore, the Court determined that CMS failed to comply with the Administrative Procedure Act and Social Security Act as the agency did not have "good cause" to bypass the notice and comment requirements.

The Court also held that the mandate was arbitrary and capricious for a variety of reasons. The Court stated that CMS lacked evidence “showing that vaccination status has a direct impact on spreading COVID in the mandate’s covered healthcare facilities” and CMS rejected any alternatives beyond mandating vaccination. Additionally, the Court found the requirement to be arbitrary and capricious because it applied broadly to numerous types of healthcare facilities. In addition, the Court found that CMS failed to explain its change from its longstanding policy of encouraging vaccination to a policy of “forced” vaccinations. The Court expressed concern about CMS’ failure to consider opposing views, particularly as related to the healthcare shortage and the potential impact the mandate might have on an already stretched workforce.

Second, the Court held that the Plaintiffs demonstrated irreparable harm because the mandate will impact their “sovereign interests” as well as their “quasi-sovereign interests” in protecting the health and well-being, and both the physical and economic interests, of its residents. The Court was particularly concerned with the impacts the mandate would have on staffing shortages, especially in rural settings.

Finally, the Court held that in balancing the “equities,” the balance tips in the Plaintiffs’ favor. While the Court did not deny that the “public has an interest in stopping the spread of COVID” it reasoned that “the public would suffer little, if any, harm from maintaining the ‘status quo.’” According to the Court, maintaining the status quo without the CMS mandate “is still far better than [what] the public faced even just a few months ago” because the effectiveness of vaccines in preventing the transmission of COVID-19 remain unknown, vaccination rates continue to rise, and more treatment options have become available. Both sides agreed that the CMS mandate would disrupt the healthcare industry—though each side took a different position on the magnitude of the disruption—further supporting the Court’s order to maintain the status quo. The Court stated that the preliminary injunction was appropriate especially in light of its view that CMS was not authorized to act as it did when issuing the mandate.

Currently, there are also numerous other legal challenges to CMS’ vaccine mandate. In one of those cases, a Florida District Court judge declined to block the CMS rule, finding the exact opposite of the *Missouri* District Court – i.e., that the state made no showing of irreparable injury, despite asserting similar staff shortage arguments. *State of Florida v. Department of Health and Human Services, et al.*, Case No. 3:21cv2722-MCR-HTC (N.D. FL., November 20, 2021).

This ruling does not impact vaccination policies that providers have instituted on their own.

For further information, please contact [Emily L. Brinkman](#) or [Erin Sclar](#) in San Francisco, [Nina Marsden](#) or [Alicia Macklin](#) in Los Angeles, or any other member of our Hooper, Lundy, and Bookman team.

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