



## Alerts

### SCOTUS Confirms Enforcement of CMS Emergency Regulation Mandating Workforce COVID-19 Vaccinations

January 14, 2022  
*Health Care Alert*

On January 13, 2021, the United States Supreme Court (the court), in a 5-4 *per curiam* decision, issued stays on injunctions issued by the Western District of Louisiana and the Eastern District of Missouri against enforcement of the Centers for Medicare & Medicaid Services' (CMS) interim final rule (the Rule) requiring that providers participating in the Medicare and Medicaid programs ensure that their covered staff are vaccinated against COVID-19. The court reasoned that Congress has authorized the Secretary of Health and Human Services (the Secretary), in the interest of the health and safety of patients, to impose conditions on participation in the Medicaid and Medicare programs and receipt of funds for services rendered in the programs. The court held that the Secretary's finding that the Rule's vaccine mandate is "necessary to promote and protect patient health and safety" because the COVID-19 vaccination "substantially reduce[s] the likelihood that healthcare workers will contract the virus and transmit it to their patients," fit well within CMS' purpose and authorization.

Moreover, the court recognized that CMS already imposes infection control measures on healthcare workers, including requiring hospital personnel to learn about infection control and wear personal protective equipment. Since the states which have traditionally regulated vaccination requirements for healthcare workers have not required COVID-19 vaccination, the court found it appropriate for CMS to take action.

In addressing arguments against the mandate such as natural immunity and a testing alternative, the court explained that it was not the judiciary's duty to evaluate the nature of the data provided by CMS; rather, the judiciary should only be evaluating the reasonableness of the data provided.

Finding that the CMS acted within its authority in issuing the Rule, the court issued stays on the injunctions against enforcement of the Rule pending the outcome of CMS' appeals in the Eighth and Fifth Circuits. As a result of the decision, [subject providers](#) should continue preparation to comply with the Rule, as CMS will begin enforcement of the Rule on January 27, 2022. Providers should consult with their Hinshaw attorneys in ensuring compliance with the Rule.

#### Attorneys

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