

Publications

Federal Court Issues National injunction blocking CMS Vaccine Mandate

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On November 30, 2021, the United States District Court for the Western District of Louisiana issued an **order** and **decision** granting a nationwide preliminary injunction of the COVID-19 Centers for Medicare & Medicaid Services ("CMS") vaccine mandate ("CMS Mandate") following a lawsuit filed by 14 states, including Ohio. The injunction does not apply to Alaska, Arkansas, Iowa, Kansas, Missouri, New Hampshire, Nebraska, Wyoming, North Dakota, or South Dakota because they are already under a different preliminary injunction from the United States District Court for the Eastern District of Missouri Eastern Division issued on November 29, 2021. The injunction will remain in effect "pending the final resolution of this case, or until further orders from [the district court], the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court."

The court provided several reasons why it believed a preliminary injunction was proper. Notably, it found that the mandate failed to follow the statutorily required notice and comment process, is beyond the authority of CMS because the ability to issue standards for providers and suppliers does not include the authority to issue a vaccine mandate, is contrary to law because CMS failed to consult state agencies prior to changing conditions of participation, and was arbitrary and capricious because of the potential loss of healthcare staff and the rejection of testing alternatives. The court said it considered limiting the injunction to the 14 states that brought the lawsuit, but said that "there are unvaccinated healthcare workers in other states who also need protection."

The federal government will likely appeal the two decisions from the Louisiana and Missouri district courts. For now, the December 6th effective date of the CMS Mandate will likely pass without the rule going into effect. CMS has not commented on the court's decision or voluntarily suspended the CMS Mandate. However, that may still occur. In the meantime, health care organizations subject to the CMS Mandate should prepare to have policies and procedures that comply with the mandate requirements that can be implemented quickly if the CMS Mandate does go into effect.

We are continuing to watch this closely and will keep you updated on further developments. For further questions about these decisions or other related COVID-19 legal questions, please contact Robin Amicon, Liam Gruz, or your regular Vorys attorney.