

Centers for Medicare & Medicaid Barred From Enforcing Mandatory COVID-19 Vaccine Rule in 10 States

By Michael R. Bertoncini & Sarah R. Skubas

November 30, 2021

Meet the Authors



Michael R. Bertoncini

Principal

(617) 305-1270

Michael.Bertoncini@jacksonlewis.com



Sarah R. Skubas

Principal

(860) 522-0404

Sarah.Skubas@jacksonlewis.com

Related Services

COVID-19

Disability, Leave and Health

Management

Healthcare

Workplace Safety and Health

A federal court has granted 10 states' request for a preliminary injunction precluding the Centers for Medicare and Medicaid Services (CMS) from enforcing its COVID-19 vaccine mandate for healthcare workers in Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. *Missouri et al. v. Biden*, No. 4:21-cv-01329-MTS (E.D. Mo. Nov. 29, 2021).

Ten states [filed a lawsuit](#) challenging CMS' Interim Final Rule (IFR) requiring COVID-19 vaccination amongst a wide range of staff working at Medicare- and Medicaid-certified providers and suppliers. The U.S. District Court for the Eastern District of Missouri granted the states' request for a preliminary injunction, pending a trial on the merits of the claims, but limited the injunction to only the 10 states at issue.

In reaching this decision, the court held that the states were likely to succeed in their arguments that CMS lacked authority to mandate the COVID-19 vaccine. While it recognized that Congress gave the Secretary of Health and Human Services general authority to enact regulations, it determined that the "nature and breadth" of the IFR went too far and that clear Congressional authorization is required, especially since the IFR would preempt state legislation on the issue of vaccinations.

The court found that the plaintiff-states were likely to succeed in establishing that CMS' IFR is arbitrary or capricious under the Administrative Procedures Act. It held that CMS relied on COVID-19 data from Long-Term Care Facilities to justify imposition of a vaccination mandate to 14 other types of covered facilities without supporting comprehensive data and CMS failed to consider other options, such as testing. The court further questioned CMS' rationale, noting the agency only recently mandated the vaccine, while citing the likelihood of success in demonstrating that CMS' motivation is pretext for political efforts to increase vaccination rates.

The court concluded that the 10 states would suffer irreparable harm without preliminary relief, including:

1. Inability to enforce their own state laws around vaccine mandates;
2. Significant harm to the states' citizens by way of staffing shortages;
3. Loss of care and closures of facilities;
4. Harm to economies, especially in rural areas; and
5. Harm to states' own proprietary interests as many states operate healthcare facilities covered by CMS' IFR.

This ruling is a departure from the U.S. District Court for the Northern District of Florida's earlier ruling denying the state of Florida's request for a temporary restraining order or preliminary injunction against CMS' IFR. Similar lawsuits are

pending in the U.S. District Court for Western District of Louisiana and U.S. District Court for the Northern District of Texas (oral argument on a pending preliminary injunction scheduled for December 2).

With the first CMS compliance date (December 5) fast approaching, healthcare employers, and other indirectly affected employers, are scrambling to navigate this patchwork of rules. Employers should review applicable rulings and continue to monitor for developments.

Please contact a Jackson Lewis attorney with any questions.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.