

United States District Court for the Eastern District of Missouri Enjoins CMS Vaccine Mandate

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On November 29, 2021, in a 32-page order, United States District Judge Matthew T. Schelp preliminarily struck down the implementation and enforcement of a federal COVID-19 vaccine mandate for health care facilities recently issued by the Centers for Medicare and Medicaid Services (“CMS”).

On November 5, 2021, CMS had finalized an interim rule that required most health care facilities to mandate COVID-19 vaccination for their workforces in order to participate in Medicare and Medicaid programs. Under this rule, the first vaccine shot deadline was December 6, 2021. The estimated cost for compliance with the rule exceeded a billion dollars. However, five (5) days after the rule was finalized, ten (10) states—including Missouri—sued to stop it from going into effect.

After some expedited briefing, the Court agreed with the States and paused implementation and enforcement of the new CMS rule. While the Court’s order addressed only a request for a preliminary injunction, the Court made clear its view that the States are likely to succeed in their arguments against the validity of the rule.

Among other things, the Court found that Congress has not provided CMS the necessary, specific authority to enact the new CMS rule, given (1) “the vast economic and political significance” of the new rule; and (2) its significant alteration of the balance between federal and state power. In unpacking its federalism concerns, the Court noted doubt as to whether Congress itself even had the authority to mandate vaccines.

Throughout its order, the Court also stressed its views that: (1) CMS did not have good cause to bypass the formal and full notice and comment procedures required by the Administrative Procedure Act, which it noted were “even more important than usual” in this case; and (2) the new CMS rule itself was “arbitrary and capricious” for several reasons.

On the latter point, the Court took issue with CMS’s reliance on data from long-term care facilities alone to make rules for many other health care facilities, as well as the new rule’s rejection of alternatives to mandatory vaccines (such as periodic testing).

Finally, the Court emphasized the States had made a compelling showing of irreparable harm and concluded the equities weighed in favor of the States' requested injunction: "the scale falls clearly in favor of healthcare facilities operating with some unvaccinated employees...rather than the swift, irremediable impact of requiring healthcare facilities to choose between two undesirable choices—providing substandard care of providing no healthcare at all."

In the end, the Court's order effectively stops the implementation and enforcement of the new CMS rule in the ten (10) states that sued: Missouri, Arkansas, Iowa, Kansas, Nebraska, Alaska, New Hampshire, North Dakota, South Dakota, and Wyoming. If appealed, the Eighth Circuit will decide the rule's fate at least in these States. Stay tuned for further developments.