



Written by [Veronika Kyrylenko](#) on November 30, 2021

Judge Halts Vax Mandate for Healthcare Workers in 10 States

A federal judge in Missouri has halted President Joe Biden's vaccine mandate for healthcare workers at the Medicare- and Medicaid-affiliated facilities in 10 states, saying that it would require approval from the U.S. Congress, which was never received. In addition to that, the government violated the legal procedure when issuing the rule that would likely cause the states "irreparable harm."

U.S. District Court Judge Matthew Schelp issued a [preliminary injunction](#) on Monday, blocking the [Interim Final Rule](#) issued by the Centers for Medicare and Medicaid Services (CMS) and the Department of Health and Human Services (HHS) stating that nearly all workers employed by healthcare facilities must have received at least a first dose of the COVID vaccine by December 6 or face losing their jobs.

Judge Schelp argued that the plaintiffs, namely, the states of Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire are "likely to succeed in their argument that Congress has not provided CMS the authority to enact the regulation at issue here." He wrote,

"[A]n agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it."... While the Court agrees Congress has authorized the Secretary of Health and Human Services general authority to enact regulations for the "administration" of Medicare and Medicaid and the "health and safety" of recipients, the nature and breadth of the CMS mandate requires clear authorization from Congress — and Congress has provided none.

Judge further argued that the CMS violated so-called [notice and comment requirements](#), which also serves as grounds for invalidating the rule.

On that matter, the court documents say that CMS's own delay undermines its "emergency" justification for bypassing notice and comment requirements:

The CMS mandate was announced nearly two months before the agency released it, and the mandate itself prominently features yet another one-month delay.... [S]ince the onset of COVID, CMS has issued five IFC mandates, such as the one here.... One could query how an



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“emergency” could prompt such a slow response; such delay hardly suggests a situation so dire that CMS may dispense with notice and comment requirements.

Second, CMS failed to meet its “good cause” burden, which is a serious violation of legal procedure, “especially in light of the unprecedented, controversial, and health-related nature of the mandate.”

Further, the judge concluded the plaintiffs are likely to succeed in establishing that the mandate is “arbitrary or capricious” for several reasons:

- CMS lacks evidence showing that vaccination status has a direct impact on spreading COVID in the mandate’s covered healthcare facilities — the fact which the agency confirmed itself.
- CMS improperly rejected alternatives to the mandate, such as regular testing, nor did it exclude workers with the natural immunity from the rule.
- The mandate is way too broad in its scope, which renders it arbitrary.
- CMS failed to adequately explain its contradiction to its long-standing practice of encouraging rather than forcing vaccination of healthcare workers. When an agency departs from its regular policy, it must show “good reasons for the new policy,” which CMS failed to do. The agency confirmed that the vaccines’ effectiveness to prevent disease transmission by those vaccinated is not currently known.
- CMS failed to consider or properly weigh necessary reliance interests of the medical facilities, healthcare workers, and patients. If it did, it would see the “evidence showing that the mandate threatens devastating consequences to healthcare providers, staff, and patients throughout the nation,” per the ruling.

If the mandate is not halted, the judge said the plaintiffs will likely suffer irreparable harm: Plaintiffs would be harmed because they could not enforce their duly enacted laws, and because the likely harm of the mandate “would be *harm* in the colloquial sense — pain, suffering, distress,” Schelp wrote.

Schelp agreed with the states that the mandate would lead to staffing shortages in the industry, which, in turn, would have devastating consequences for public health, especially in rural areas. In some cases, “the loss of staffing in many instances will result in *no care at all*, as some facilities will be forced to close altogether.”

Per the order,

No one questions that protecting patients and health care workers from contracting COVID is a laudable objective. But the court cannot, in good faith, allow CMS to enact an unprecedented mandate that lacks a “rational connection between the facts found and the choice made.”

Halting the CMS mandate is in the public interest, concluded Schelp, saying that

the mandate will have a crippling effect on a significant number of healthcare facilities in Plaintiffs’ states, especially in rural areas, create a critical shortage of services ... and jeopardize the lives of numerous vulnerable citizens.

The 10 states, including one led by a Democratic governor, filed a lawsuit against President Joe Biden and key administration officials on November 11, which was covered by *The New American* [here](#).



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The mandate was developed by the CMS and HHS in lieu of President Biden's order issued September 9. The interim rule was released nearly two months later, on November 5.

"We're going to protect vaccinated workers from unvaccinated coworkers," Biden [said](#) when announcing his plans of sweeping mandates for the federal workers and contractors, large employers, and medical workers at the Medicare- and Medicaid-affiliated facilities.





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