



Written by [Veronika Kyrylenko](#) on November 11, 2021

States Slap Biden Admin With Lawsuit Over Vax Mandate for Healthcare Workers

The Biden administration was hit with another lawsuit from a number of states over a COVID vaccine mandate — this time challenging the president’s order that more than 17 million healthcare workers in about 76,000 healthcare facilities and home healthcare providers that get funding from the government health programs get inoculated.

Ten states, including one led by a Democratic governor, filed the [lawsuit](#) on Wednesday in the U.S. District Court in St. Louis, contending that the vaccine requirement “threatens with job loss millions of healthcare workers” and could “exacerbate an alarming shortage” in healthcare fields, particularly in rural areas that have “already reached a boiling point.”

Per the lawsuit,

Plaintiffs, the States of Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire bring this action to challenge the Centers for Medicare and Medicaid Services’ (“CMS”) Interim Final Rule with Comment Period (“IFC”) entitled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination.” 86 Fed. Reg. 61,555 (Nov. 5, 2021). That IFC, also referred to as the “CMS vaccine mandate,” imposes an unprecedented federal vaccine mandate on nearly every full-time employee, part-time employee, volunteer, and contractor working at a wide range of healthcare facilities receiving Medicaid or Medicaid funding.

The plaintiffs argue that the vaccination requirements are matters that depend on local factors and conditions and should only be decided by the local jurisdictions. Vaccine hesitancy among Americans, including medics, living in the rural areas has been high.

The healthcare industry had been struggling with significant staff shortages even in the pre-pandemic times. When COVID hit, the problem was exacerbated as burned-out doctors and nurses have been departing their positions. In such dreadful labor conditions, forcing remaining medical professionals to get a job in order to keep a job would lead to a disaster, the suit warns.

Further, the suit indicates CMS is fully aware of the situation since it admitted that “currently there are endemic staff shortages for almost all categories of employees at almost all kinds of healthcare providers and supplier[s]:”



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“1 in 5 hospitals,” CMS noted, “report that they are currently experiencing a critical staffing shortage.” In addition, “approximately 23 percent of [long-term-care] facilities report[] a shortage in nursing aides; 21 percent report[] a shortage of nurses; and 10 to 12 percent report[] shortages in other clinical and non-clinical staff categories.” *Id.* It is thus not surprising, CMS relayed, that “[o]ver half (58 percent) of nursing homes participating in a recent survey ... indicated that they are limiting new admissions due to staffing shortages.”

Despite the numerous warnings from hospitals and other healthcare facilities, CMS expressed its belief that “nearly all” healthcare workers will comply with the rule over the “fear of a job loss,” effectively admitting a coercive nature of the requirement.

The suit also argues that the “one-size-fits-all” approach to vaccination does not make medical sense. For example, both psychiatric and residential treatment facilities that serve individuals under 21 years of age, who are at low risk of getting COVID, are subject to the same rules as long-term-care facilities that serve mostly elderly and often immunocompromised patients at a much higher risk from the virus. Similarly, all staff and even contractors working at the facilities must get jabbed “regardless of their patient contact.”

The suit argues the rule violates the Administration Procedures Act, the Social Security Act, the Anti-commandeering Doctrine, and the 10th Amendment.

The challenged [IFC](#) follows a September [announcement](#) from CMS made in collaboration with the Centers for Disease Control and Prevention (CDC) that expanded an existing emergency regulation requiring COVID vaccinations for nursing-home staff to include hospitals, dialysis facilities, ambulatory surgery centers, and home-health agencies, among other settings, as a condition for participation in Medicare and Medicaid.

The rule became effective on November 5, 2021, the day it was published. Covered providers must implement the CMS vaccine mandate in two 30-day phases: Phase 1 requires that staff receive the first dose of the shot or request a medical or religious exemption by December 5, 2021. Phase 2 mandates that non-exempt staff be fully vaccinated by January 4, 2022.

CMS also proves that the mandate “remain relevant for some time beyond the end” of the formal public-health emergency and become “a permanent requirement for facilities.”

The mandate for healthcare workers provides no testing option for the unvaccinated, since the Biden administration set a “higher bar for health-care workers given their critical role in ensuring the health and safety of their patients,” as cited by [Bloomberg](#).

Missouri Attorney General Eric Schmitt, who leads the lawsuit, [said](#) that the mandate from the Biden administration will turn “last year’s healthcare heroes into this year’s unemployed.” He added that requiring healthcare workers to get a vaccination or face termination is unconstitutional and unlawful and vowed to push back against the “unprecedented federal overreach.”

States and businesses have filed multiple lawsuits against the federal government over the vaccine mandates. The U.S. Court of Appeals last week [temporarily froze](#) the mandate covering large private employers, citing “grave statutory and constitutional issues.” However, the White House on Monday [called on](#) businesses to ignore the legal ruling and move forward with the mandate.



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COUNTERING COVID-19 Overreach

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