



## Compliance Update

by Exude, Inc.

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### Challenges to the CMS and Federal Contractor Vaccine Mandates

The various legal challenges to the Biden Administration's vaccine mandate agenda continue to work their way through the legal process. So far this week, both the vaccine mandate of the Centers for Medicare and Medicaid Services ("CMS") applicable to healthcare providers receiving Medicare funds and the federal contractor mandate implemented under Executive Order 14042, have been halted by federal courts. If developments regarding either the CMS vaccine mandate or federal contractor vaccine mandate do not concern you or your business, you can disregard the remainder of this message.

#### CMS Vaccine Mandate

- On November 29, 2021, a federal court in Missouri issued a preliminary injunction prohibiting CMS from implementing or enforcing its vaccine mandate for healthcare employers located in ten states: Arkansas, Alaska, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. Here is a copy of that preliminary injunction order: [https://ago.mo.gov/docs/default-source/press-releases/cms-injunction.pdf?sfvrsn=ed822d9d\\_2](https://ago.mo.gov/docs/default-source/press-releases/cms-injunction.pdf?sfvrsn=ed822d9d_2)
- On November 30, 2021, a federal court in Louisiana went a step further and issued a nationwide preliminary injunction against the CMS vaccine mandate. A copy of that preliminary injunction order is found here: <https://www.alabamagov/Documents/news/CMS%20Nationwide%20Injunction.pdf>

Although an order applicable to ten states poses a significant equal protection issue for CMS enforcement of its vaccine mandate nationally, the nationwide injunction issued by the federal court in Louisiana now makes clear that CMS cannot continue to implement or enforce its vaccine mandate anywhere, relieving employers from compliance obligations while

the litigation moves forward. At this time, CMS has issued no public comment on the court orders, nor has it updated its guidance to healthcare employers.

### **Federal Contractor Vaccine Mandate**

- Also on November 30, 2021, a federal court in Kentucky issued a preliminary injunction against the enforcement of the federal contractor vaccine mandate subject to the guidance of the Safer Federal Workforce Task Force as implemented under Executive Order 14042. The result of the court's order is that the federal government is enjoined from enforcing the vaccine mandate against federal contractors and subcontractors in Kentucky, Ohio, and Tennessee. A copy of that order is located here: <https://htv-prod-media.s3.amazonaws.com/files/dn-50-opinion-and-order-granting-pi-1638314388.pdf>

Like the preliminary injunctions issued in the CMS cases referenced above, the court deciding the federal contractor injunction must necessarily find that the plaintiffs are likely to prevail in proving, upon the conclusion of the litigation, that the federal government overstepped its constitutional or statutorily-delegated authority in issuing the mandate. At this time, neither the Safer Federal Workforce Task Force nor the White House have issued any public comment on this ruling or otherwise signaled how they intend to comply with the court's order.

While the developments in the CMS cases clearly provide healthcare employers with good reason to pause their compliance efforts with regard to the CMS vaccine mandate, we cannot say the same for federal contractors and subcontractors looking for relief from the federal contractor vaccine mandate. A preliminary injunction limited to protecting the employees of employers in Kentucky, Ohio, and Tennessee presents significant legal issues, including equal protection concerns, should the federal government seek to enforce the federal contractor vaccine mandate against federal contractors and subcontractors located outside those states, but absent court order that explicitly applies nationwide or an indication from the federal government that it will halt enforcement nationwide, the relief provided by the federal court in Kentucky remains limited to protecting the employees of employers in Kentucky, Ohio, and Tennessee.

Ultimately, we expect both CMS and either the Safer Federal Workforce Task Force or the White House, itself, will have to issue a public comment as to their compliance with these court orders and their intentions with regard to employers in states not explicitly protected by the current order.

*This alert was prepared for Exude, Inc. by Maynard Cooper & Gale, a national law firm. The information in this alert is not intended to create and does not create an attorney-client relationship.*

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