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CMS VACCINE MANDATE REMAINS UNENFORCEABLE IN NEBRASKA

On November 29, 2021, the U.S. District Court for the Eastern District of Missouri issued an Order granting a preliminary injunction to halt the implementation and enforcement of the Centers for Medicare and Medicaid Services' (CMS) [Interim Final Rule](#) (the Rule) requiring healthcare employers to mandate COVID-19 vaccinations for staff.

This Order prevents CMS and the federal government from implementing and enforcing the Rule against any and all Medicare- and Medicaid-certified providers and suppliers within 10 states, including the States of Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming, pending a trial on the merits of the case. The Federal Government has appealed the preliminary injunction to the U.S. Court of Appeals for the Eighth Circuit. However, the preliminary injunction will remain in effect, and government will be unable to enforce the rule in the previously listed 10 states, at minimum until the Court of Appeals for the Eighth Circuit rules on the Order granting the preliminary injunction.

Meanwhile, 14 states have also brought suit in the U.S. District Court for the Western District of Louisiana to prevent the implementation and enforcement of the Rule. On November 30, 2021, that court issued an Order granting a preliminary injunction to halt the implementation and enforcement of the Rule *nationwide*. However, the court's Order specifically excluded the 10 states already impacted by the Order from the U.S. District Court for the Eastern District of Missouri.

The Federal Government appealed the Order from the U.S. District Court for the Western District of Louisiana to the U.S. Court of Appeals for the Fifth Circuit. On December 15, 2021, the Court of Appeals for the Fifth Circuit issued an Order limiting the preliminary injunction granted by the U.S. District Court for the Western District of Louisiana to the 14 states that had brought the suit, rather than nationwide.

Because the Order from the U.S. District Court for the Western District of Louisiana already excluded the 10 states encompassed by the Order from the U.S. District Court for the Eastern District of Missouri, nothing in the Order from the U.S. Court of Appeals for the Fifth Circuit impacts the preliminary injunction already in effect in those 10 states. Therefore, the CMS and the federal government continue to be unable to implement and enforce the Rule in the States of Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming.

We continue to wait for the U.S. Court of Appeals for the Eighth Circuit to rule on the Order granting the preliminary injunction that impacts the previously listed 10 states. In the meantime, organizations may weigh the costs of continuing to prepare for compliance against challenges that could arise if the Order is reversed.

Cline Williams continues to monitor this developing area of law and may provide additional updates and analysis.

For more information on these issues, please reach out to a member of Cline Williams' [Health Care](#) or [Labor and Employment Law Section](#).

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