

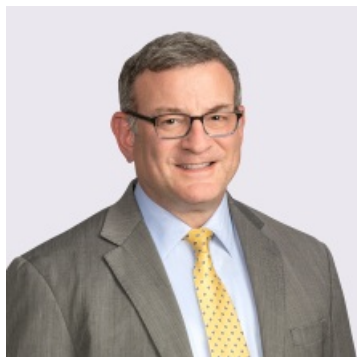
Legal Update Article

# **10 States Sue Centers for Medicare & Medicaid Over COVID-19 Vaccine Mandate for Healthcare Workers**

By Michael R. Bertoncini & Sarah R. Skubas

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## Meet the Authors

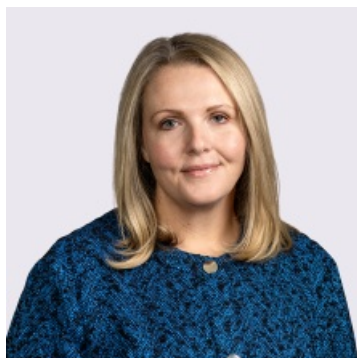


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A group of states has sued President Joe Biden and his administration challenging the [Centers for Medicare and Medicaid Services' \(CMS\) Interim Final Rule \(IFR\)](#) setting COVID-19 vaccination requirements for a range of employees working at Medicare- and Medicaid-certified providers and suppliers.

On November 10, 2021, 10 states led by Eric S. Schmitt, the attorney general of the State of Missouri, filed a lawsuit in the U.S. District Court for the Eastern District of Missouri seeking a declaratory ruling, as well as preliminary and permanent injunctions enjoining CMS from imposing the IFR's mandate. Alaska, Arkansas, Iowa, Kansas, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming are the other states in the suit. This lawsuit is similar to ones challenging new Biden Administration COVID-19 vaccination requirements for federal contractors and employers with a total of 100 or more employees.

In part, the states claim that:

- CMS failed to comply with the Administrative Procedure Act (APA). They claim that the IFR was arbitrary, capricious, and an abuse of discretion, especially because, the states allege, the vaccination requirement will cause healthcare workers to leave their employers at a time when hospitals and other healthcare providers already are struggling with substantial staffing shortages.
- The IFR's broad scope (covered are employees, as well as volunteers and contractors performing services for the covered provider or supplier) is too removed from the rationale of protecting patient safety. Therefore, it is arbitrary and capricious under the APA.
- CMS failed to comply with the APA's notice-and-comment requirements.
- The mandate exceeds the rulemaking power of CMS and violates the U.S. Constitution's Tenth Amendment by encroaching on a state's authority to regulate public health.

The lawsuit also alleges violations of the Social Security Act, failure to consult with appropriate state agencies under 42 U.S.C. Section 1395z, failure to prepare the requisite regulatory impact analysis, unlawful use of the federal government's spending power, and unlawfully compelling states to implement this program in violation of the Anti-Commandeering Doctrine.

Employers (or third parties indirectly covered by the IFR) should continue planning for IFR compliance, absent further rulings from the court. Key compliance dates are December 5 and January 4.

Please contact a Jackson Lewis attorney with any questions.

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