

**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



December 2021

Second Court Halts Vaccine Mandate Nationwide

This GT Alert covers the following:

- Second court enjoins CMS COVID-19 vaccine mandate
- Prevents CMS from enforcing rule in all 50 states
- Cites delay in adopting rule

A second district court, within a day of a [previously reported ruling](#), enjoined enforcement of the Centers for Medicare & Medicaid Services (CMS) COVID-19 Vaccine Mandate on a nationwide level. On Nov. 30, 2021, the Honorable Terry A. Doughty [ruled](#) in favor of 17 plaintiff-states who argued that the CMS mandate violated the Administrative Procedure Act and the Social Security Act. *See Louisiana v. Becerra*, Docket No. 3:21-CV-03970 (U.S. Dist. Ct., W. Dist LA, Nov. 30, 2021). The lawsuit was brought by the states of Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio.

Judge Doughty's ruling is similar to the ruling by the Missouri district court issued a day earlier. The primary basis for the *Louisiana* decision was the failure of CMS to comply with the notice and comment period required under the Administrative Procedure Act. Like the Missouri court, Judge Doughty rejected

CMS's claim of good cause, finding instead that CMS took too long to promulgate the regulations and citing President Biden's previous statements that a vaccine mandate would not be adopted. Similarly, the court rejected the argument that COVID-19 cases would increase during the winter months and opined that the Delta variant was immune to the vaccines. Further, the court ruled that CMS exceeded its authority in issuing the mandate, as any such mandate could only emanate from Congress. Even if mandated by Congress, Judge Doughty doubted that such a mandate could survive constitutional scrutiny.

The opinion also found that the mandate was arbitrary and capricious in that it would not result in the protection of patients, as unvaccinated workers would quit or be fired. Like Judge Schelp, Judge Doughty cited that the CMS rule failed to take into account the concept of natural immunity and rejected CMS's basis for failing to adopt natural immunity, testing, or other precautions as alternatives to vaccination.

Finally, because of the nationwide scope of the mandate, Judge Doughty issued a nationwide injunction. The opinion did not address whether states that were not parties to the lawsuit would concur in the nationwide application, nor did it address the Nov. 20, 2021 decision from the Northern District of Florida that refused to enjoin the CMS mandate.

Given that the ruling enjoins the vaccine mandate on a national level, the matter may be taken up by the U.S. Court of Appeals and potentially the U.S. Supreme Court.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

Author

This GT Alert was prepared by:

- [Mark L. Mattioli](#) | +1 215.988.7884 | mattiolim@gtlaw.com

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