

https://www.newsserviceflorida.com/latest/headlines/judge-refuses-to-block-health-care-vaccination-rule/article_4dc0ae54-4b10-11ec-95e9-eb88df514e40.html

Judge Refuses to Block Health Care Vaccination Rule

By Jim Saunders
Nov 21, 2021

©2021 The News Service of Florida. All rights reserved; see terms.

TALLAHASSEE --- A federal judge has quickly rejected Florida's request to block a Biden administration requirement that workers at hospitals, nursing homes and other health-care providers be vaccinated against COVID-19.

U.S. District Judge M. Casey Rodgers issued an 11-page order Saturday denying a motion by Attorney General Ashley Moody for a preliminary injunction or temporary restraining order against the federal rule. Moody's office filed a lawsuit Wednesday challenging the rule and sought an injunction or temporary restraining order before the vaccination requirement takes effect Dec. 6.

Rodgers, however, wrote that Florida had not shown "irreparable harm" to justify an injunction or temporary restraining order. In part, the state contended that rule would affect state-run facilities, such as veterans' nursing homes, and exacerbate health-care staffing shortages.

"On review of the record, the court finds no adequate showing that irreparable injury will occur in the absence of a TRO (temporary restraining order) or preliminary injunction prior to December 6, 2021," Rodgers wrote. "The affidavits (of state officials) in support of the motion include assertions of how the various agencies and institutions anticipate they may be adversely impacted by the mandate. In particular, the affidavits express opinions of agency heads who 'estimate' that they 'may' lose a certain percentage or a number of employees, or speculate as to the consequences they will suffer 'if widespread resignations were to occur.' However, such opinions, absent supporting factual evidence, remain speculative and may be disregarded as conclusory."

The lawsuit came after Florida also challenged other vaccination mandates issued by the Biden administration --- and was filed the same day that the Republican-controlled Legislature passed a law designed to block such mandates.

The rule, issued this month by the federal Centers for Medicare & Medicaid Services, applies to hospitals, nursing homes and other health-care providers that participate in the Medicare and Medicaid programs. Under the rule, health-care workers are required to receive at least one dose of COVID-19 vaccine by Dec. 6 and be fully vaccinated by Jan. 4, with limited exemptions for medical and religious reasons.

In denying the request for an injunction or temporary restraining order, the Pensacola-based Rodgers said the state had not shown irreparable harm related to agencies losing federal money for not complying with the vaccination requirement.

“Moreover, there is no evidence to suggest that the anticipated loss of federal funding from the state agencies’ noncompliance will occur immediately on December 6, 2021, because the asserted loss of staff is speculative, the affidavits fail (to) take into account any impact from the availability of the exemption process provided in the interim final rule, and even if noncompliance occurs, any potential termination of funding would not occur on December 6,” wrote Rodgers, who was appointed to the federal bench by former Republican President George W. Bush.

The order does not end the lawsuit, which was at least the second challenge launched by states against the health-care vaccination requirement. Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota and New Hampshire joined together Nov. 10 to file a lawsuit in federal court in Missouri. That case remains pending.

Moody’s office alleges, in part, that the federal agency known as CMS overstepped its legal authority in issuing the requirement and did not follow proper procedures, such as consulting with states and providing notice. Also, the lawsuit contends that the requirement is “arbitrary and capricious.” Much of the lawsuit is based on alleged violations of the federal Administrative Procedure Act.

“To start, CMS lacks the power to issue an industry-wide vaccination mandate,” the lawsuit said. “The statutes it relies on do not provide it such sweeping authority. In fact, CMS is forbidden from exerting this level of control over the health care industry.”

The requirement is set to affect hundreds of private hospitals, nursing homes and other providers in Florida, in addition to state agencies that provide health-care services. State and industry officials have repeatedly pointed to concerns about staffing shortages.

But in announcing the regulation this month, the Centers for Medicare & Medicaid Services said it would protect health-care workers and patients as the COVID-19 pandemic continues.

“Ensuring patient safety and protection from COVID-19 has been the focus of our efforts in combating the pandemic and the constantly evolving challenges we’re seeing,” Chiquita Brooks-LaSure, administrator of the federal agency, said in a prepared statement at the time “Today’s action addresses the risk of

unvaccinated health care staff to patient safety and provides stability and uniformity across the nation's health care system to strengthen the health of people and the providers who care for them.”

Florida also has filed lawsuits challenging Biden administration vaccination requirements for employees of federal contractors and employees of businesses with 100 or more workers. The federal Occupational Safety and Health Administration announced Wednesday that the requirement for businesses with 100 or more workers is on hold while legal challenges play out.

During a special legislative session, state lawmakers on Wednesday approved providing \$5 million that Moody's office could use, at least in part, to fight federal vaccination mandates. Gov. Ron DeSantis on Thursday signed a bill (HB 1B) that includes the money.