



HENRY McMASTER
GOVERNOR

November 8, 2021

The Honorable Alan Wilson
Attorney General of South Carolina
Office of the Attorney General
1000 Assembly Street
Columbia, South Carolina 29201

RE: *Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff
Vaccination*, 86 Fed. Reg. 61555 (Nov. 5, 2021)

Dear General Wilson:

Thank you for your ongoing collaborative efforts to oppose the unwarranted and unprecedented vaccine mandates recently announced by President Biden and his Administration. I appreciate your steadfast leadership and assistance in support of our shared commitment to the Constitution and the Rule of Law. Because it appears the Biden Administration does not adhere to these same principles, it is critical that we continue to coordinate in evaluating, initiating, and pursuing appropriate legal challenges to ensure that the federal government's actions do not unlawfully and adversely impact the State of South Carolina. In furtherance of the foregoing, I write to thank you for agreeing to assist in challenging yet another vaccine mandate recently announced by the Biden Administration.

As you know, on November 5, 2021, the Biden Administration, through the Centers for Medicare & Medicaid Services ("CMS"), published an interim final rule requiring that Medicare- and Medicaid-certified providers and suppliers adopt policies requiring that all eligible staff begin the process of being vaccinated against COVID-19 by December 5, 2021, and that all such individuals be fully vaccinated by January 4, 2022 ("CMS Mandate"). While the CMS Mandate contemplates limited exceptions, it apparently applies to all staff at covered facilities—regardless of whether their positions are clinical or non-clinical and includes employees, students, trainees, and volunteers that may not interact with patients—and does not allow individuals to submit to regular COVID-19 testing as an alternative to the universal vaccination requirement.

Aside from the fact that the CMS Mandate is unprecedented in scope, the Biden Administration has indicated it expects to utilize and weaponize state agencies in attempting to enforce this unwarranted emergency regulation. In announcing the CMS Mandate, the Biden

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Administration threatened “to use its full enforcement authority” against any entity that does not comply. *See Biden-Harris Administration Issues Emergency Regulation Requiring COVID-19 Vaccination for Health Care Workers*, Ctrs. for Medicare & Medicaid Services (Nov. 4, 2021), <https://tinyurl.com/ntvmtpmv>. More specifically, CMS has noted it “expects state survey agencies to conduct onsite compliance reviews of these requirements” on behalf of the federal government. *CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (FAQs)*, at 8, Ctrs. for Medicare & Medicaid Services (Nov. 4, 2021), <https://tinyurl.com/nre9dxpu>. Thus, in seeking to implement the CMS Mandate, it appears the Biden Administration intends to ignore the text of the Tenth Amendment, the Supreme Court’s articulation of the anti-commandeering doctrine, and the fact that the Constitution confers only limited powers on the federal government. Despite the anticipated ramifications of this action, the Biden Administration has boasted that the CMS Mandate applies to more than 17 million individuals working at approximately 76,000 healthcare facilities. *See id.*

In addition to the aforementioned constitutional threat, the CMS Mandate poses an immediate and grave risk to the provision of critical healthcare services in South Carolina. For over a year and a half, healthcare providers across our State have labored under incredibly difficult circumstances to care for their fellow citizens during the pandemic. Without their selfless service, we would not have navigated this pandemic as successfully as we have to date. Yet many healthcare providers have made the personal decision not to be vaccinated. If hospitals are forced by the federal government to terminate those who wish to remain unvaccinated, many providers in South Carolina will face significant staff shortages, which will further strain existing resources. Consequently, I am concerned that if the CMS Mandate goes into effect, the State will lack sufficient healthcare workers to provide the requisite care for any South Carolinian who needs it.

For the foregoing reasons, I am convinced that the CMS Mandate represents yet another overreach by the Biden Administration, which seeks to usurp the sovereign authority that remains constitutionally reserved to the States. Therefore, both to preserve the system of government that has served our Nation so well for centuries and to ensure that the Biden Administration’s actions do not unlawfully and adversely impact the State of South Carolina, we must oppose this latest attempt by the Biden Administration to expand and exceed the federal government’s power. Per our conversation earlier today, I appreciate your willingness to take any and all necessary legal action to challenge the CMS Mandate and to prevent its enforcement in South Carolina.

Thank you for undertaking this important matter on behalf of the State of South Carolina. As always, should you have any questions or concerns, or if my staff and counsel can assist you in any way, please do not hesitate to call.

Yours very truly,



Henry McMaster