



**Physicians Exempt from Special Legislation
COVID-19 Mandate Prohibitions**
November 18, 2021

After extensive study of a new law enacted by the Tennessee General Assembly and signed by Governor Lee on November 12, TMA has concluded that physicians who participate in Medicare or Medicaid (TennCare) are exempt from the definition of “private business” in Public Chapter 6 of the Third Extraordinary Session (SB 9014/HB 9077) based on a fix successfully advocated for by TMA. That means physicians may choose to institute COVID-19 vaccine and mask mandates for their staffs and patients without violating the new state law. It also means that they will not be placed in a position of conflict with laws and regulations mandating COVID-19 vaccines issued by the federal government. Finally, it means that doctors will not have to go through a state application process to become exempt based on the potential loss of federal funds by compliance with the new state law.

“When the new law passed, it was evident to us from our review of the legislative hearings that physicians who participate in Medicare or TennCare were intended to be exempt,” according to TMA general counsel, Yarnell Beatty. “However, due to a drafting anomaly in conference committee, we had to take a closer look. Now it appears all stakeholders are in agreement that those physicians, as well as hospitals, are out from under the COVID-19 vaccine and mask mandate prohibition.”

This conclusion will keep physician practices from being in a “Catch-22” position of having to either be compliant with state law and possibly violate federal mandate or other law or be in compliance with federal law and possibly violate the state vaccine mandate prohibition law.

Two sets of federal COVID-19 OSHA emergency standards were issued in recent months. One, issued this summer, requires health care settings to adopt policies to protect workers from COVID-19 exposure in the workplace. To qualify for an exemption, medical settings have to screen people for the virus and not allow entrance to anyone positive, or believed to be positive, for COVID-19.

The second OSHA ETS, issued earlier this month, would require any employers with 100 or more employees to require its work force to be vaccinated for COVID-19 or be tested. Enforcement of it was immediately stayed by a federal court pending further litigation now in the Sixth Circuit Court of Appeals. In the meantime, the Biden-Harris administration announced on November 17, 2021, that OSHA is suspending enforcement and activities related to the mandate pending the outcome of the Court’s decision.

Additionally in November, CMS issued a COVID-19 vaccine mandate regulation for health care workers in settings such as hospitals that are subject to Medicare or Medicaid Conditions of Participation. This is also being challenged but still in effect as of this communication.

Compliance with any of the above federal regulations would have caused physicians to violate state law had the exemption not been provided to physicians in the state law.

There is general agreement among state legislators that the drafting anomaly will be fixed via legislation during the regular session of 2022. Until then, physicians should be pleased that the exemption was



successfully advocated for by TMA's government affairs team and that a slippery slope of further problems in receiving Medicare and Medicaid reimbursement may be averted.