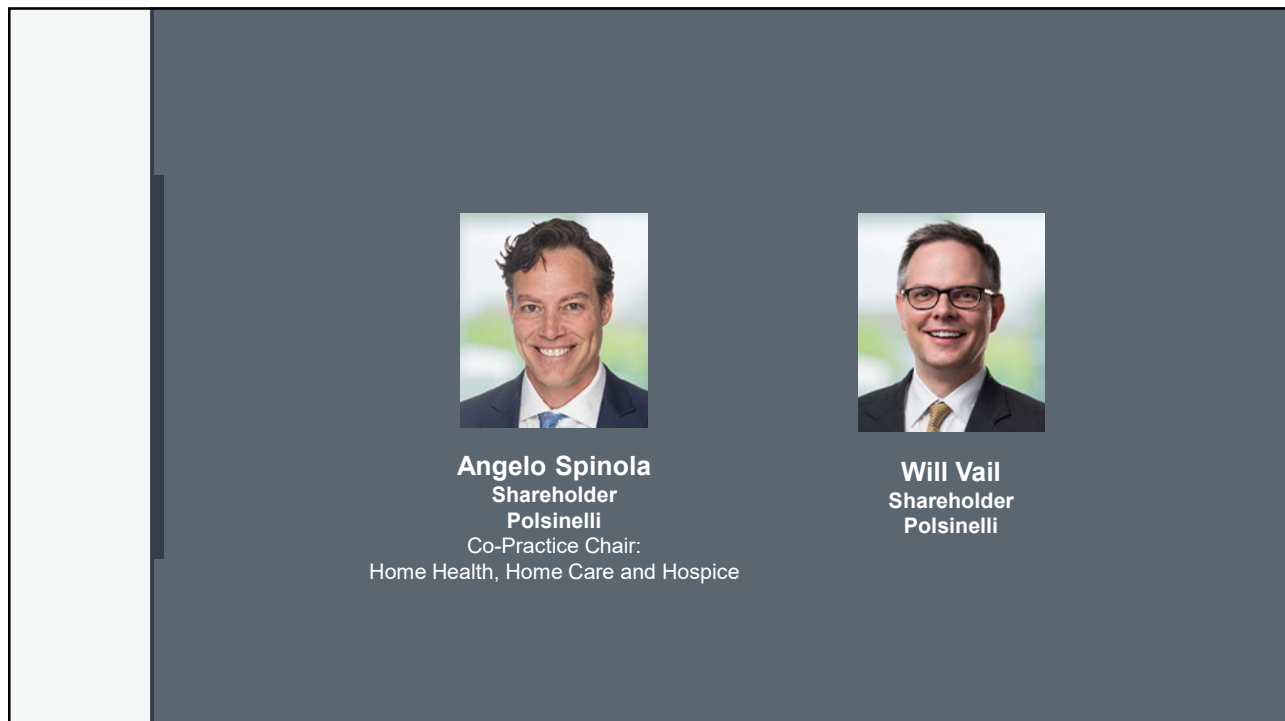




The banner features a red background with a faint city skyline pattern. On the left, the **HomeCare & Hospice** logo is displayed, which includes an American flag motif and the text "National Association for Home Care & Hospice". On the right, the **POLSINELLI** logo is shown. In the center, a photograph depicts a female caregiver with dark curly hair, wearing a light blue shirt and a stethoscope, smiling as she interacts with an elderly man with white hair. Below the photo, the words **TOWN HALL** are written in large, white, sans-serif capital letters.

1

1



This section introduces the speakers for the Town Hall. It features two headshots side-by-side against a dark grey background. The left headshot is of Angelo Spinola, a man with dark hair, wearing a dark suit, white shirt, and blue tie. Below his photo, his name and title are listed: **Angelo Spinola**, **Shareholder**, **Polsinelli**, followed by **Co-Practice Chair:** and **Home Health, Home Care and Hospice**. The right headshot is of Will Vail, a man with glasses, wearing a dark suit, white shirt, and yellow tie. Below his photo, his name and title are listed: **Will Vail**, **Shareholder**, **Polsinelli**.

2

2

Agenda

- ✓ Vaccine Mandate Updates
 - ✓ Federal Mandates
 - ✓ State and Municipal Mandates
- ✓ Status of Employer Vaccine Mandates
- ✓ Political Update
- ✓ Q&A



3

Federal Mandates

4

Biden Requires Federal Employees to Attest to their Vaccination Status

- July 29: President Biden mandated
 - All federal employees and
 - All on-site federal contractor employees
- Either be vaccinated against COVID-19 or regularly test



5

Nursing Home Mandate

- August 18, President Biden announces that all nursing home staff must get vaccinated
- Applies to 15,000+ Medicare and Medicaid-participating nursing homes

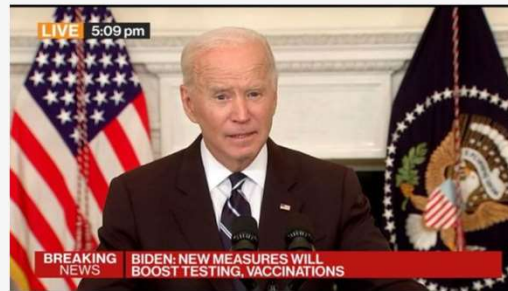


6

CR [2]1

Biden's Recent Expansion on Vaccination Mandate

- On September 9, President Biden announced broad vaccine mandates
- The vaccine requirements are described on a dedicated webpage entitled "Path Out Of The Pandemic"
(www.whitehouse.gov/covidplan/)

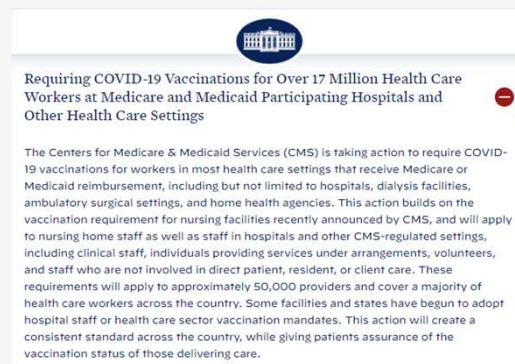


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New Mandate Applies to Health Care

- The health care related mandate will be issued through a CMS interim final rule
- Expectation: it will apply to health care companies that are subject to Medicare Conditions of Participation



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Slide 7

CR [2]1 Note to Angelo/Will: Content for slides 5 - 9 is from BGOV article sent to me from Will.

<https://news.bloomberglaw.com/health-law-and-business/biden-va>
Christopher Razo, 9/16/2021

Does This Cover Home-Based Care Providers?

- Will this cover home-based care providers?
- Based on the current understanding (that the mandate will be tied to CoPs):
 - Medicare Certified Home Health Agencies = Yes
 - Hospice agencies = Yes
 - Home-based care providers enrolled in Medicaid = It Depends
 - Private duty home-based care providers = No
- Home-based care providers enrolled in Medicaid:
 - Does your state require you to follow Medicare CoPs?



9

CMS Final Rule Coming in October

- CMS is developing an Interim Final Rule with Comment Period that will be issued in October
- NAHC will be raising its concerns in the coming weeks with HHS and CMS



10

Potential Unintended Consequences

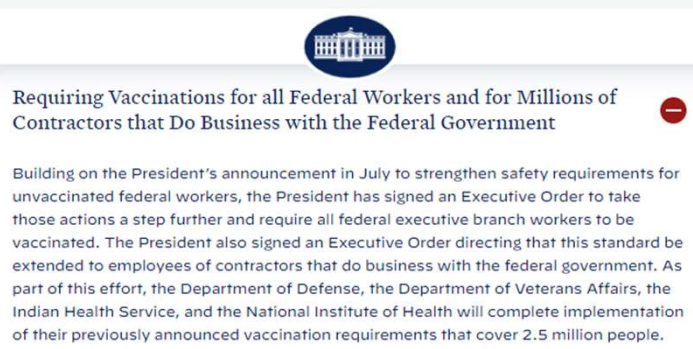
- Home-based workers who don't want the vaccine may move to providers that aren't covered by the mandate
- This would further exacerbate the staffing shortage and employee turnover



11

COVID-19 Vaccine Mandate on Federal Contractor Employers

- New measures build on the administration's recent mandate for vaccination or testing of contractor employees who work on-site at federal locations



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Basics of the Federal Contractor Executive Order

- New government contracts and contract-like instruments must include a clause requiring the contractor and any subcontractors (at any tier) to comply with all guidance issued by the Safer Federal Workforce Task Force
- Task Force will issue guidance by September 24, 2021
- There will be exceptions to the mandate “as required by applicable law.”
 - Medical
 - Religious
 - Pregnancy
 - State laws?



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Questions

- Will this apply to VA and TriCare providers?
- Will all employees of a covered provider be subject or just those who work on the contract?
- Will the mandate only apply to direct care workers?



14

OSHA ETS

- President Biden has tasked OSHA with issuing another Emergency Temporary Standard (ETS)
- Would require employers of 100+ employees to mandate the vaccine



Requiring All Employers with 100+ Employees to Ensure their Workers are Vaccinated or Tested Weekly

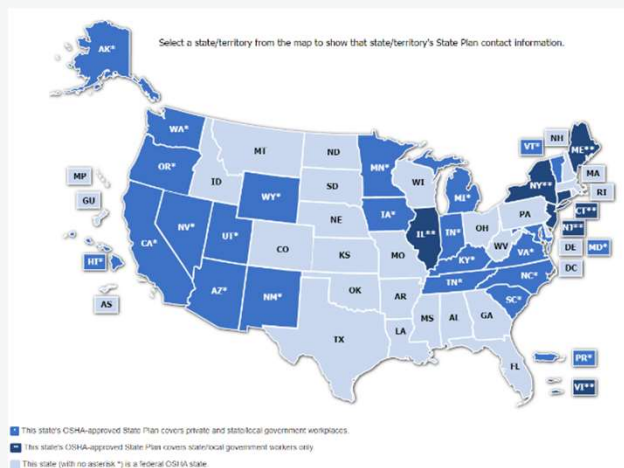
The Department of Labor's Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.



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What about State Plans?

- There are currently 22 State Plans
- State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories
- State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses and deaths



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OSHA ETS

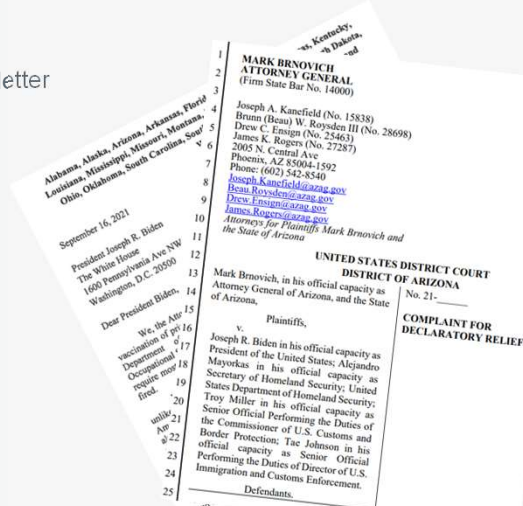
- There will not be an opportunity to comment, as there was for the COVID-19 ETS issued in June
 - Comments will be solicited when OSHA considers converting the ETS into a permanent standard
- The standard should become effective upon publication (expected in October)
- Unclear how the number of employees will be counted
- Unclear how this ETS will jive with the June ETS and state laws
- Unclear if the ETS will apply to remote workers
- Unclear whether there will be a testing option for those without a religious or medical exemption



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Expect Legal Challenges

- Legal challenges have already started
 - A group of Republican state attorneys general sent a letter to President Biden vowing to take legal action
 - Arizona attorney general filed suit on September 14
- Expect more legal challenges!



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Will these challenges prevail?

- OSHA must demonstrate a “grave danger” due to exposure of a “new” hazard such that an emergency standard is needed to protect workers



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State and Municipal Mandates

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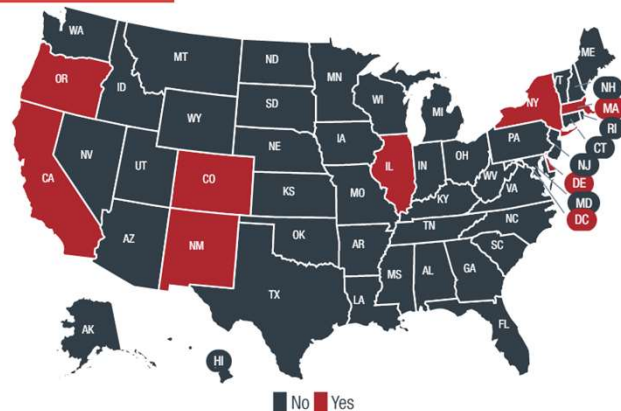
Hospice Mandates

Jurisdictions requiring vaccines for hospice workers:

- Colorado
- California (hospice facilities)
- Delaware
- District of Columbia
- Illinois
- Massachusetts
- New Jersey
- New Mexico (hospice facilities)
- New York
- Oregon
- Washington (hospice care centers)



Select Regulatory Element- Vaccination Mandate Applies to Hospice



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Non-Medical Home Care Mandates

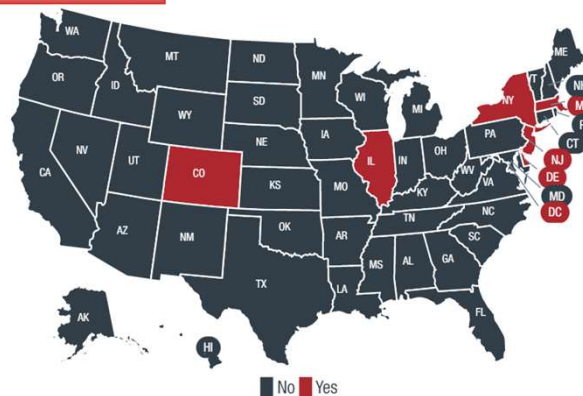
Jurisdictions requiring vaccines for non-medical home care workers:

- Colorado
- Delaware
- District of Columbia
- Illinois
- Los Angeles
- Massachusetts
- New Jersey
- New York
- San Francisco (probably)



Select Regulatory Element-

Vaccination Mandate Applies to Non-Medical Home Care

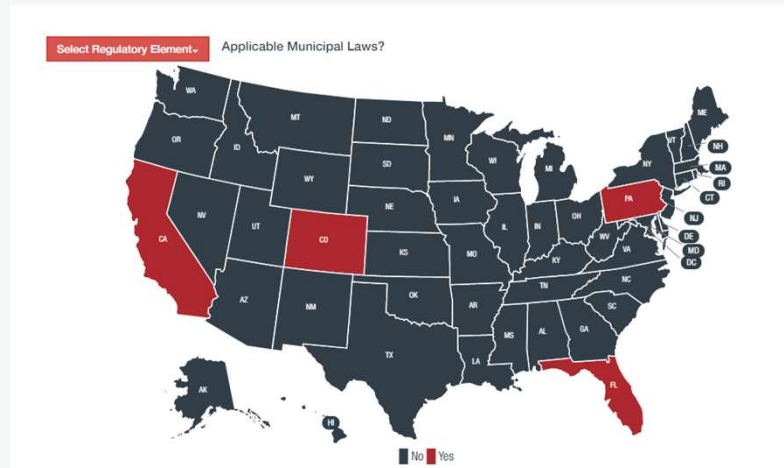


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Applicable Municipal Laws

Cities Requiring Vaccines for Healthcare Workers:

- Denver
- Los Angeles
- San Francisco
- Philadelphia



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Coverage Through Facility-Based Work

- Jurisdictions where mandates apply to home-based case providers who work in covered facilities (to the extent not specifically called out in the governing regulation):

- New Mexico
- Washington
- New Jersey
- Maine
- Connecticut
- Rhode Island
- California



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Legal Challenges

- Lawsuits challenging vaccine mandates:

- Los Angeles
- Maine
- New Mexico
- New York
- Oregon
- Washington
- Others???



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Polsinelli Actively Tracking Mandates



- Polsinelli Attorneys are tracking state and city mandates to help your business stay compliant
- The focus is on whether the particular mandate applies to your type of business AND what the penalties are for non-compliance

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Status of Employer Vaccine Mandates

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Pfizer Vaccine Gets Full Approval from the FDA

- On August 23, Pfizer becomes the first COVID-19 vaccine to receive full FDA approval for 16+ ages
 - Ages 12 - 15 can still receive the vaccine under the existing emergency use authorization
- Now easier for employers to mandate vaccination
- May reassure some hesitant people about the vaccine
- 73% of adults have had at least one dose of a vaccine
 - Pfizer's is the most administered (56%)



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Bridges v. Methodist – 117 Employees v. Hospital

“Texas law only protects employees from being terminated for refusing to commit an act carrying criminal penalties to the worker”

“The injection requirement is consistent with Texas public policy”

“The EEOC said employers can require employees be vaccinated”

117 employees sue hospital employer over its vaccination policy

Federal judge upheld the hospital’s vaccination policy, saying the requirement broke no federal law



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Reasonable Accommodations

Employers requiring vaccines must provide **reasonable accommodations** (e.g., exemption) to employees who are unable to take vaccine due to certain medical or religious reasons.



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Pregnancy

- **ADA:** Even though pregnancy itself is not a disability, a pregnancy-related medical condition may be.
- **Title VII (as amended by the Pregnancy Discrimination Act):** Women affected by pregnancy, childbirth, and related medical conditions must be treated the same as others who are “similar in their ability or inability to work.”



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Be Wary of Fake Vaccination Cards

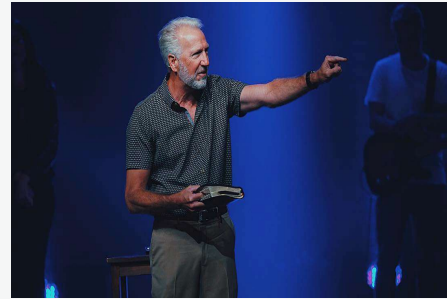
- Phony vaccination cards are easy to find and cheap to acquire
- Typically cost about \$100 each, according Check Point, a Silicon Valley-based cybersecurity firm



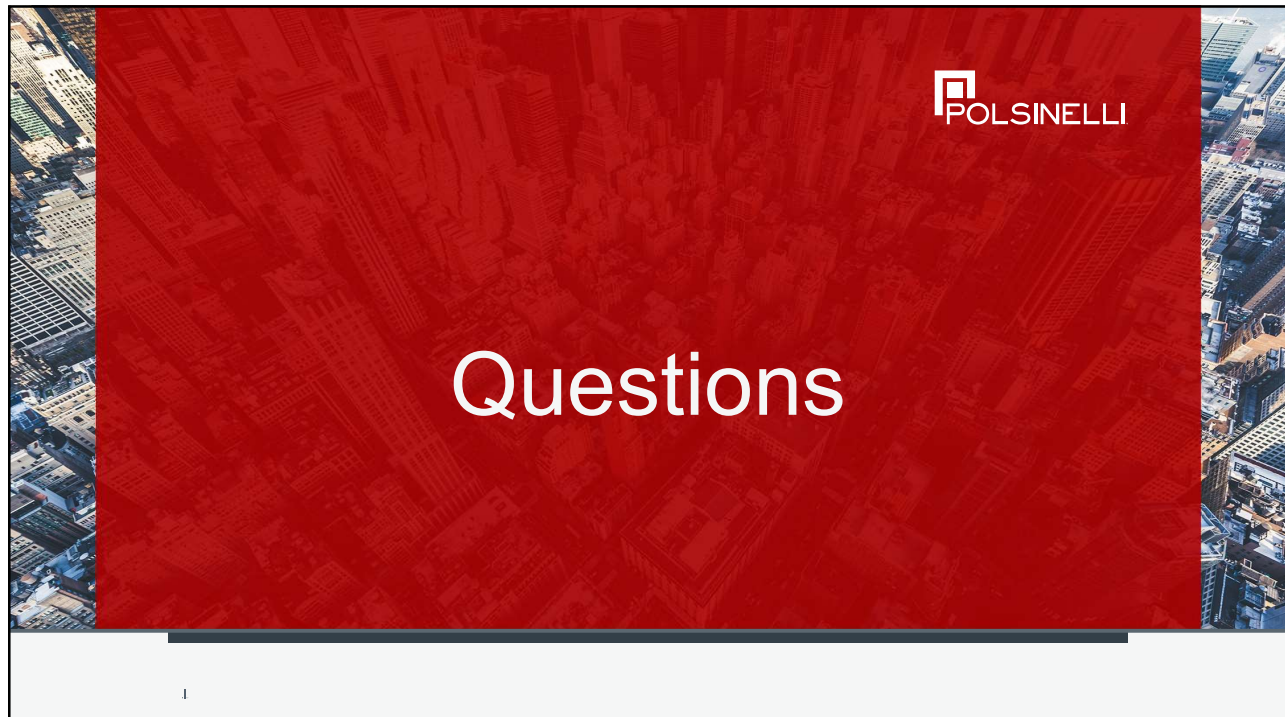
36

Religious Exemption Certifications to the Vaccine

- California Pastor offering “religious exemptions” to anyone who’s reluctant to comply with vaccine mandates.
- Farrington said he has been approached by “hundreds” of people who feel “morally compromised” by mandatory vaccination requirements
- Starting Aug. 15, Farrington said his church will be offering the exemptions
- Farrington and Destiny Church have skirted the rules set by health officials since the start of the pandemic.
 - In December 2020, several church members tested positive to Covid after attending in-person services. Still, Farrington refused to move to virtual services.



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Thank You!

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