

Former Secretaries of Health and Human Services and the Centers for Medicare and Medicaid Services File Brief Before SCOTUS: CMS Can and Must Protect Patients From COVID-19

Former Secretaries of Health and Human Services, Centers for Medicare and Medicaid Services Administrators, and FDA Commissioners [filed](#) an amicus brief before the Supreme Court of the United States in support of the CMS's vaccination requirement for health care workers. The Centers for Medicare and Medicaid Services's vaccination requirement is an essential component of America's strategy to end the COVID-19 pandemic by requiring health and medical facility workers to become fully vaccinated. COVID-19 is the single [greatest health crisis](#) in American history, claiming the lives of more than [820,000](#) Americans and continuing to infect more than [400,000](#) individuals each day. CMS's vaccine requirement will protect millions of patients and seniors living in care facilities and create safer communities by preventing the spread of COVID-19.

What Former Secretaries And Officials Are Saying

Vaccination Is Essential To Protect Patients And Vulnerable Americans

- "This disease is particularly severe for older Americans and individuals who suffer from pre-existing conditions. Those are the very groups most likely to seek health care, and therefore interact with employees of health care providers such as hospitals and nursing homes. The Rule seeks to protect the health and safety of these individuals—who receive health care under the Medicare and Medicaid programs—by minimizing the risk that health care workers will contract COVID-19 and infect their patients." [\[12/23/21\]](#)
- "There is a consensus of medical experts that the best way to accomplish this goal is to require health care workers to be vaccinated. That is the recommendation of the Centers for Disease Control and Prevention and it is the position adopted by 60 organizations that together represent virtually the entire health care profession in the United States." [\[12/23/21\]](#)
- "Multiple studies have found that transmission of COVID-19 from health care workers to patients and to fellow workers is more likely when workers are not vaccinated than when they are vaccinated. In addition, vaccinated workers are less likely to become infected and, if they do, suffer shorter and less severe illnesses—reducing absences and therefore increasing the availability of health care services." [\[12/23/21\]](#)
- "...a significant percentage of Americans remain unvaccinated, and unvaccinated individuals face a greater risk of infection, and a greater chance of serious illness. Unvaccinated individuals who become infected also have been found to be more likely to transmit the disease to others" [\[12/23/21\]](#)

- “Health care workers are very likely to come into contact with older Americans and those with preexisting conditions...Multiple studies have found that transmission of COVID-19 from health care workers to patients is more likely when workers are not vaccinated than when they are vaccinated.” [\[12/23/21\]](#)
- “Staff-to-staff transmission has been identified as a significant cause of COVID-19 infection. In addition to the threat to health care workers who become infected, transmission among health care workers increases the risk to patients, and also requires all exposed individuals to quarantine—reducing available staff at a time when health care providers are already stretched to, and often beyond, their capacity to serve patients due to the increase in COVID-19 cases.” [\[12/23/21\]](#)
- “The strong consensus view of expert medical organizations is that best way to protect patients, health care workers, and the nation’s health care system is for health care workers to be vaccinated against COVID-19.” [\[12/23/21\]](#)
- “[Seven organizations representing epidemiologists and others expert in infectious diseases] observed that ‘[h]istorically, the most effective strategies for managing viral illnesses (eg, measles, rubella, and influenza) have been by vaccination.’ But they concluded that ‘[p]rior experience and current information suggest that a sufficient vaccination rate is unlikely to be achieved without making COVID-19 vaccination a condition of employment’...[c]ompliance among those who were required by their employer to receive the vaccination was 94.4%, compared to 69.6% among those without vaccination as a condition of employment.” [\[12/23/21\]](#)
- “An additional 53 organizations—that together represent essentially the entire health care profession in the United States—have reached the same conclusion. They ‘advocate that all health care and long-term care employers require their workers to receive the COVID-19 vaccine. This is the logical fulfillment of the ethical commitment of all health care workers to put patients as well as residents of long-term care facilities first and take all steps necessary to ensure their health and well-being.’” [\[12/23/21\]](#)

CMS Has The Authority To Require COVID-19 Vaccination

- “Providers of health care services are eligible for payment under the Medicare and Medicaid statutes only if they meet the conditions for participation in those programs. 42 U.S.C. § 1395cc(b)(2); 42 U.S.C. § 1396a. The statutes expressly authorize the Secretary to impose conditions to protect the health and safety of patients receiving services paid for by those programs.” [\[12/23/21\]](#)

- “[T]he broad statutory text—authorizing requirements the Secretary ‘finds necessary in the interest of the health and safety’ of patients—plainly encompasses such a requirement...‘vaccination requirements, like other public-health measures, have been common in this nation.’” [\[12/23/21\]](#)
- “The parties challenging the rule also argue that it is arbitrary and capricious. But this Court has made clear that judicial review under this standard is ‘deferential’—‘a court may not substitute its own policy judgment for that of the agency. A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision’...The Secretary’s determinations satisfy that standard.” [\[12/23/21\]](#)
- “[T]he Secretary reasonably determined that COVID-19’s unique threat justifies a vaccination requirement. He based that decision on: The virus’s high transmissibility and the often severe consequences of infection—particularly for the older Americans covered by Medicare and the disabled Americans covered by both Medicare and Medicaid—and the risk posed by new variants...Significant levels of infection among health care workers and patients...The expert consensus supporting vaccination ...Studies showing staff-to-patient transmission is higher when health care workers are not vaccinated...The effectiveness of the vaccine in preventing infection...Low vaccination rates among health care workers, and significant variation of vaccination rates across geographic regions and types of facilities...and The beneficial effect of vaccination in alleviating staff shortages.” [\[12/23/21\]](#)
- “The Secretary also assessed possible alternative approaches...He ‘considered requiring daily or weekly testing of unvaccinated individuals,’ but—after ‘re-view[ing] scientific evidence on testing’—found vaccination a ‘more effective infection control measure’...And he rejected the option of exempting previously-infected health care workers because of ‘uncertainties about...the strength and length of this immunity compared to people who are vaccinated’...These determinations fall well within the ‘zone of reasonableness’ established by the arbitrary-and-capricious standard. That is particularly true because they rest on the assessment of scientific evidence and policy considerations squarely within the Secretary’s expertise.” [\[12/23/21\]](#)
- “...the Missouri district court erred in concluding...that the Secretary did not adequately consider the risk that a vaccination requirement could produce staff shortages. The Secretary specifically addressed that concern, stating that ‘there might a certain number of health care workers who choose to’ leave their jobs rather than be vaccinated...But he explained that ‘many COVID-19 vaccination mandates have already been successfully initiated in a variety of health care settings, systems and states’...And he cited examples of health care systems that had adopted vaccination requirements with 99.5%, 99%, and 95% compliance...The Secretary further stated that ‘COVID-related staff shortages are

occurring absent the rule due to numerous factors, such as infection, quarantine and staff illness,' that would be reduced dramatically as a result of the rule." [\[12/23/21\]](#)

- "The Secretary also explained that '[t]he current patchwork of regulations undermines the efficacy of COVID-19 vaccine mandates [adopted by individual hospital or nursing home systems or States] by encouraging unvaccinated workers to seek employment at providers that do not have such patient protections, exacerbating staffing shortages, and creating disparities in care across populations'...The rule prevents such a 'race to the bottom' by putting all Medicare and Medicaid health care providers on an equal footing. The Secretary concluded that 'the COVID-19 vaccine requirements [imposed by the rule] will result in nearly all health care workers being vaccinated, thereby benefitting all individuals in health care settings.'" [\[12/23/21\]](#)