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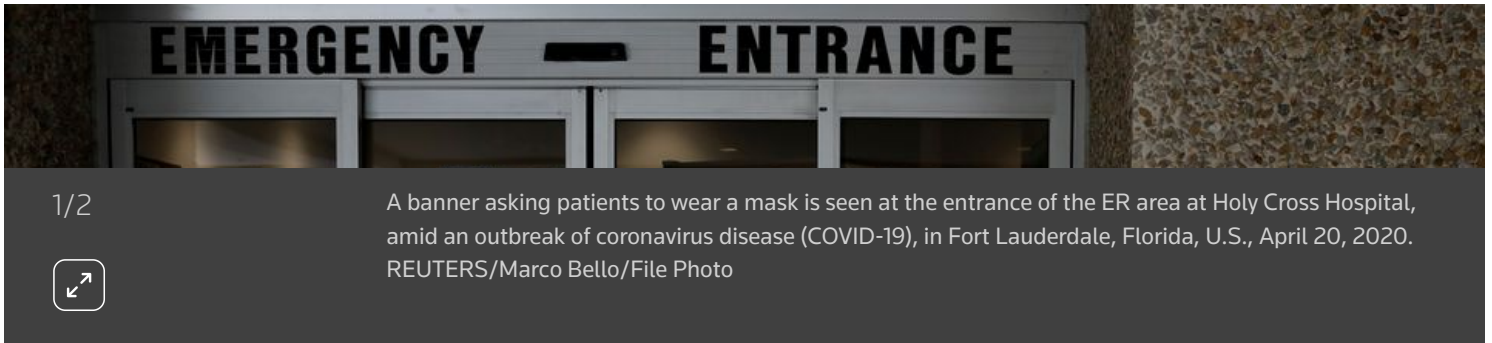
United States

Whistleblowers and fears of losing funds key to enforcing U.S. vaccine rules

By Ahmed Aboulenein and Diane Bartz

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A banner asking patients to wear a mask is seen at the entrance of the ER area at Holy Cross Hospital, amid an outbreak of coronavirus disease (COVID-19), in Fort Lauderdale, Florida, U.S., April 20, 2020. REUTERS/Marco Bello/File Photo

WASHINGTON, Nov 8 (Reuters) - Workplace whistleblowers and a fear of losing federal funds are expected to play vital roles in ensuring compliance with COVID-19 vaccine mandates ordered by President Joe Biden's administration for U.S. businesses, nursing homes and hospitals, according to experts.

Biden announced last Thursday that his administration will enforce the vaccine mandates starting on Jan. 4. The rules apply to employers with at least 100 workers, federal contractors and employees of nursing homes and other healthcare facilities that receive reimbursements under the Medicare and Medicaid government healthcare programs.

On Saturday, a federal appeals court suspended the new vaccine and testing requirement for private companies while the court considers it in more depth. It gave the Justice Department until late Monday to respond. The portion of the mandate for the healthcare sector is not affected by Saturday's ruling.

If the rule goes into effect, the U.S. Occupational Safety and Health Administration (OSHA), which enforces work safety rules, is not likely to immediately swoop in to ensure that vaccination and testing rules are being followed, experts said.

The Centers for Medicare & Medicaid Services (CMS), the regulator for the two federal health programs, does not typically survey accredited healthcare providers unless there is a complaint or a need for recertification, according to Sandy DiVarco, a partner at the firm McDermott Will & Emery who represents healthcare providers.

Since patients and clients do not have access to staff vaccination records, those complaints would likely come from another staff member, DiVarco added.

"On a stakeholder call, CMS reiterated their desire to work with providers to come into compliance and not to sort of send SWAT teams to go out and look for problems," DiVarco said.

Healthcare facilities could lose their access to Medicare and Medicaid funds if they fail to heed the vaccine requirements. Medicare serves people aged 65 and older and the disabled while Medicaid serves the poor.

"For most hospitals across the country not being able to participate in Medicare would be crippling," said Akin Demehin, the American Hospital Association's director of policy.

The healthcare workers mandate applies to more than 10 million employees, around 70% of whom already have been vaccinated. It covers around 76,000 healthcare providers that receive Medicare or Medicaid reimbursements including hospitals, nursing homes, dialysis centers, ambulatory surgical settings and home-health agencies.

For the private employer rules, OSHA has an estimated 800 safety and compliance inspectors to cover more than 100,000 companies covered by the mandate. The agency likely will rely on whistleblowers concerned about unvaccinated co-workers or that unvaccinated people are not being tested as required, said James Hermon, a labor and employment expert with the firm Dykema Gossett.

Hermon predicted that OSHA will hit a couple of big employers with major fines soon after the mandate takes effect.

"That will be done intentionally to put some virtual heads on spikes," Hermon said. Each violation can bring a fine of nearly \$14,000.

The financial threat from a federal law called the False Claims Act, which rewards whistleblowers for reports of fraud that results in losses for the government, might ensure compliance with the vaccine rules better than OSHA's penalties, according to one expert.

"We're interested in these cases and we've been looking at them," said Reuben Guttman, a whistleblower lawyer with the firm Guttman, Buschner & Brooks, who said he has been talking to unions. "The idea of using the False Claims Act to enforce health and safety standards is not novel."

Reporting by Diane Bartz, Ahmed Aboulenein and Tom Hals; Editing by Will Dunham

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