

CMS Vaccine Mandate CRA Floor Speech – 3/2/22

Mr./Madam President,

Last year I put my sport coats and ties away, broke out some scrubs, found my stethoscope and lab coat, and went to work fighting COVID-19 from the frontlines of hospitals and community health centers in Wyandotte County and Seward County.

Here is a picture of us at Southwest Medical Center in Liberal, Kansas. What I saw from the fellow physicians, to the nurses, the technicians, hospital workers, and everyone in between was nothing short of heroic.

These heroes came to work each day covered from head to toe in personal protective equipment, with each one knowing that they could contract COVID-19 from any one of their patients at any given time.

Despite the risks, they threw themselves into the fire all in an effort to save Kansans from a pandemic that was ravaging our communities.

In those earliest months of the pandemic and still to this day, our health care heroes have displayed sacrifice and dedication to the American people.

It was a reminder to us all how essential these people are in ensuring the safety of our communities, and they weren't left unscathed. Between burnout and suicide, the pandemic took a heavy toll on their physical and mental health.

The resulting exodus of fatigued and demoralized doctors, nurses and other front-line workers is exacerbating a labor shortage we were already experiencing in the health care industry before the pandemic.

Since February 2020, roughly one in five healthcare workers have quit their jobs according to a poll published late last year. In September, the American Nursing Association sent a letter to HHS Secretary Becerra urging the agency to declare the nursing shortage a national crisis and to take immediate action to confront the issue.

Nearly a third of the country's 15,000 nursing homes reported a shortage of nurses or aides. Hospitals have been forced to recruit foreign nurses and National Guardsmen have had to fill in as nursing assistants to ease these problems. These shortages are particularly impactful in rural areas like much of my home state of Kansas.

The Centers for Medicare & Medicaid Services acknowledges that there are currently "endemic staff shortages for all categories of employees at almost all kinds of healthcare providers and suppliers."

Despite this acknowledgment, President Biden and his public health officials went forward with this vaccine mandate knowing it could lead to firings.

Firings like those we saw in New York when 33,000 health care workers were fired, retired, or placed on unpaid leave because they chose not to abide by the state's mandatory inoculation policy.

Labor shortages at health care facilities will impede access for the elderly and poor, those who are supposed to be cared for under Medicare and Medicaid.

In addition to the impact this would have on the health care workforce, this mandate puts additional burdens on hospitals and state surveyors. The rule requires covered entities to comply with red tape by requiring them to develop and implement policies to ensure compliance with the mandate.

CMS estimated that the cost of this mandate on private sector entities would exceed \$158 million. Follow-on guidance issued by CMS recently also requires state surveyors to enforce the federal government's vaccine mandate by verifying compliance at healthcare facilities.

This will take away limited resources at the state level and prevent them from fulfilling their traditional surveying and certification duties. Not to mention, multiple states have laws on their books prohibiting vaccination as a condition of employment for state agencies.

As a physician, I'm confident the vaccine has saved lives. However, whether to receive it is a personal choice between individuals and their doctor – not mandated via unconstitutional executive actions.

Make no mistake, this federal vaccine mandate is not about public health or science and fails to account for changes in data and the circumstances of the virus.

If it were, we'd recognize natural immunity as a highly effective way to combat the virus. Mountains of evidence shows those who achieved immunity through natural infection – many of them being our frontline health care heroes – are highly protected against reinfection.

The mandate was also crafted when the Delta variant was the dominant strain in the United States. Omicron is now the dominant strain. It is much milder and has a 91 percent lower risk of death than Delta. Additionally, research shows the traditional COVID-19 vaccine dosing regimen provides little protection against transmission of the Omicron variant.

As noted by Dr. Fauci, "Omicron, with its extraordinary, unprecedented degree of . . . transmissibility, will ultimately find just about everybody" and even those who have received the initial vaccine and subsequent booster "will still get infected."

Most absurdly, in late January, the CDC issued guidance that allows COVID positive health care workers to return to work, even if they are still testing positive. These examples show just how flawed the science is behind the CMS vaccine mandate.

As previously stated, that's because this vaccine mandate is not about public health or science.

The Biden Administration's mandate is about fulfilling their desire to control every aspect of our lives, and it's a slap in the face to the hard-working men and women who never took a day off in the frontline fight of the COVID-19 battle.

These are real people with real families they are working to feed and mortgages they are working to pay. And, these are smart people who have thoughtfully considered the vaccine and in the end decided it was not best for them.

Each day we hear from Kansans faced with the difficult decision of taking the job or losing their job. We've even surveyed dozens of health care providers across the state that are already citing shortages and other staffing issues due to the mandate.

In fact, 87 percent of those surveyed oppose the mandate or cited numerous concerns with it. These jobs can't be replaced overnight and with the March 15 deadline for nearly all healthcare workers to have received two doses looming, we are about to witness a government-induced labor shortage and in turn a health crisis we can't afford.

One respondent put it best when he told us, "... we are concerned that the execution [of the mandate] will exacerbate an already dire workforce crisis in long term care. A hard deadline with no resources for providers or glide path for unvaccinated workers is likely to push too many out the door and ultimately, threaten residents' access to long term care."

Now, I know some will say the Supreme Court ruled to uphold this mandate earlier this year, this is settled. That's not the full picture. The Supreme Court opinion which lifted the stay on the rule focused primarily on the Secretary of HHS' statutory authority to impose conditions upon health care facilities participating in Medicare and Medicaid.

That does not mean it is a good rule or a beneficial condition to place on these facilities given everything I have laid out here today. As such, the fight against this harmful rule continues here on the Senate Floor but also throughout our nation's federal judicial system.

16 states joined together in a new filing last month to once again block the federal government from enforcing the mandate in their respective states. Additionally, the Attorney General in my home state of Kansas, Derek Schmidt, and nine other Attorneys General have asked a separate federal court to reopen litigation.

It's been an incredibly tough time these past couple of years. We've lost over 950,000 Americans to COVID-19, seen mental health issues skyrocket, suicides on the rise, and substance abuse increase.

If there is one thing that is for sure though, it's that Americans will keep fighting to get through this. Front line workers in hospitals, doctor's offices, community health centers, and beyond will fight even harder – that is if we remove the burden of the vaccine mandate and our healthcare heroes aren't forced to leave their jobs.

Just this week, England terminated their COVID vaccination requirement for all health and social services. We must do the same.

I urge my colleagues to support this resolution of disapproval to invalidate President Biden's overreaching and harmful vaccine mandate for our health care workers. This is a major element of the federal government's overreaching COVID-19 response that we must begin to scale back.

Not only is it coercive and unconstitutional, the mandate does not take into account the fact that natural immunity is as effective as the vaccines and that the vaccines do not prevent transmission of the Omicron variant.

Additionally, we have a massive labor shortage in our health care industry and must do everything in our power to fight for Americans who ran to the sound of the battle – for these are the true heroes of the pandemic and deserve our best fight and utmost respect. Thank you Mr./Madam President. I yield back.

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