

In age of pandemics, how tough should vaccine mandates get?

MAR 23, 2020

Timothy M. Smith

Senior News Writer

Drug companies are racing to develop a vaccine for COVID-19, and when one is available, health officials in the U.S. face a difficult question: Should Americans be required to receive it?

Experts in health law policy provide guidance on whether, and when exactly, a mandate is ethically justified.

Following are highlights from an article published in the *AMA Journal of Ethics*® (@JournalofEthics) by Carmel Shachar, JD, MPH, executive director of the Petrie-Flom Center for Health Law Policy, Biotechnology and Bioethics at Harvard Law School, and Dorit Rubinstein Reiss, PhD, professor of law at the University of California, Hastings College of the Law, in San Francisco.

The authors argue that mandates are most clearly ethically justifiable when they preserve social stability and trust in government, further therapeutic research opportunities, or diminish disease severity.

The AMA and Centers for Disease Control and Prevention are closely monitoring the outbreak of COVID-19. Learn more at the AMA's continually updated COVID-19 resource center.

Four key criteria

No society protects personal freedoms absolutely, the authors noted, and authorities can enforce vaccine mandates either with criminal sanctions or by limiting violators' access to public services and employment. The following criteria are used by courts to assess the reasonableness of limits on individual freedom with regard to vaccination.

Proportionality. The higher risk posed by a disease and the ease of its transmission can justify more restrictive limits.

Precedent. Prior limitations on individual freedom matter, and “more coercive or restrictive approaches should generally only follow failures of less coercive or restrictive approaches,” the authors wrote. “That is, unless there is an immediate, severe risk, adults should be free to exercise their autonomy to the extent that vaccination rates afford sufficient public protection.”

Context. Authorities must also consider social and cultural context, as coercive measures could undermine state stability and the community’s trust. In these situations, less restrictive and less coercive education-based approaches might be more effective, although they too might suffer from distrust, and they might not adequately protect public safety.

Sufficiency of access. “Restrictive, coercive legal approaches require sufficient access to the good or service being mandated,” the authors wrote. “That is, it is patently unfair and nonsensical to demand compliance with vaccination policies without making vaccines sufficiently available to those subject to a mandate.”

Obstacles to implementation

While mandates may work well to prevent or contain outbreaks, they can also cause resistance and resentment, the authors noted.

“When enforcement capacity is limited or nonexistent, mandates cannot be properly implemented and are thus unlikely to promote public health and safety,” they wrote. “Moreover, mandates can backfire if a population resents being coerced and has not received sufficient education about the safety, efficacy and public health importance of vaccinations.”

Physicians’ obligations

Beyond prevailing legal requirements, physicians have ethical responsibilities to take appropriate measures to prevent the spread of infectious disease in health care settings.

The *AMA Code of Medical Ethics* provides expert advice on the topic, noting that it may extend to immunization in the context of “a highly transmissible disease that poses significant medical risk for vulnerable patients or colleagues or threatens the availability of the health care workforce.”



Read the entire *AMA Code of Medical Ethics* opinion on routine universal immunization of physicians.

The January issue of *AMA Journal of Ethics* further explores, in print and podcast, how health professions should respond to global public health emergencies.