Yes, some Americans may be required to get a COVID-19 vaccine. But not by the federal government.

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With two coronavirus vaccines under emergency review by the Food and Drug Administration, the nation's attention is turning to who will get the vaccine first and when.

A big question remains: Will Americans be required to get vaccinated?

For some, the short answer is yes, public health and legal experts say. But a mandate is not likely anytime soon, and likely not to come from the federal government. Instead, employers and states may condition return or access to workplaces, schools and colleges upon getting the vaccine and mandate it once the FDA issues full approval, potentially months later.

"It's much more likely that a private organization or company will require you to be vaccinated to get certain access to places," said Arthur Caplan, a professor of bioethics at the NYU Grossman School of Medicine. "People worry about the president, governor, or county executive telling them what to do. I don’t think that’s going to happen."

At an August town hall hosted by Healthline, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, said the vaccine won't be mandatory in the U.S. "I don’t think you’ll ever see a mandating of vaccine, particularly for the general public," Fauci said. "If someone refuses the vaccine in the general public, then there's nothing you can do about that. You cannot force someone to take a vaccine."

And on Friday, President-elect Joe Biden told reporters that he would not make vaccinations mandatory. "But I would do everything in my power – just like I don’t think masks have to be made mandatory nationwide – I'll do everything in my power as president of the United States to encourage people to do the right thing," Biden said.

Biden on mask mandates: He can't enforce them. Here's what he could do instead.

Historically, states have had the power to mandate vaccinations. In 1905, as smallpox was spreading through Massachusetts, the Supreme Court upheld the authority of states to enforce

"There’s a long history in our constitution that permits the state to act for public health and safety, and that has always included vaccination," said Lawrence Gostin, director of the O’Neill Institute for National and Global Health Law at Georgetown University.

"But although they have the power, I think it will be very unlikely that they will exercise that power," he said. "They would be fearful of causing a backlash and politicizing the vaccine."

It’s more likely that vaccination requirements will play out as they have in the past. Once fully approved by the FDA, a vaccine may eventually be required for children in public and private schools and daycare settings, for college and university students, and for some health care workers and patients, Gostin said.

Is this ethical? Continuing COVID-19 vaccine trials may put some volunteers at unnecessary risk

All 50 states and Washington, D.C., have laws requiring certain vaccines for students, and exemptions vary by state. All states grant exemptions to children for medical reasons, 45 states grant religious exemptions, and 15 allow philosophical exemptions for those who object to immunizations because of personal, moral or other beliefs, according to the National Conference of Legislatures.

Health care facilities across the country are increasingly requiring health care workers to be vaccinated against various diseases, and some facilities are adding these requirements due to mandates in state statutes and regulations, according to the CDC.

When it comes to the flu, 24 states have flu vaccination requirements for long-term care facility health care workers, and 32 have them for long-term care facility patients, according to the CDC. As of 2016, 18 states had flu vaccination requirements for hospital health care workers.

Other employers also require certain vaccinations.

"Will the general public be required to get it? That’s highly unlikely. That’s not the American tradition or culture," said Peter Meyers, professor emeritus at the George Washington University law school and former director of the school’s vaccine injury litigation clinic.

"We recommend it. We make it as easy as possible to get it. We make it free. If enough people take it, we’ll have herd immunity."

Side effects from the COVID-19 vaccine: Means 'your body responded the way it's supposed to,' experts say

But officials have mandated vaccines beyond school and employment settings in the past. Following a 2019 measles outbreak in Brooklyn’s Williamsburg neighborhood fueled by a
growing movement against vaccinations, New York City ordered mandatory measles vaccinations for anyone living, working or going to school in four ZIP codes in the neighborhood. The order required all unvaccinated people who may have been exposed to the virus to get the vaccine, including children over 6 months old, unless immune or medically exempt. The city first threatened civil and criminal repercussions but eventually settled on a $1,000 fine. A Brooklyn judge upheld the order.

That order was for a vaccine that had been fully licensed by the FDA. The two coronavirus vaccines currently under review would be "authorized" by the agency based on early data, at the discretion of FDA scientists. The FDA only ever issued an emergency use authorization, known as an EUA, for a vaccine once before – for an anthrax vaccine in 2005.

If authorized, a coronavirus vaccine's EUA status would make legal questions about theoretical mandates in the immediate future more complicated. There are also logistical issues of supply and distribution. There's no data on how vaccine candidates affect children or pregnant people. And it's still unclear if the vaccines prevent the transmission of the virus, in addition to preventing disease.

"Institutions may require individuals to take an FDA-approved vaccine or apply for an exception. However, EUA products are still considered investigational," FDA Commissioner Stephen Hahn told USA TODAY last week.

Fact check: Neither Biden nor Trump is calling for mandated COVID-19 vaccines

It's unclear whether schools or employers could legally mandate a vaccine under an EUA, said Dorit Reiss, a professor at the University of California Hastings College of Law. She submitted comment to the FDA requesting that the agency's EUA documentation offer guidance on the question of mandates.

In the past, members of the FDA and Centers for Disease Control and Prevention have said that employers cannot require a vaccine under EUA, Reiss said. But the Secretary of Health and Human Services, under the Federal Food, Drug and Cosmetic Act, can establish the conditions of an EUA, including whether people have the option to accept or refuse the vaccine, and the consequences of doing so, if any.

"I'm sure no government will be requiring anything in the short run as long as we're operating under EUA," Caplan said. "It would be very strange to require something that hasn't been licensed or approved. The military could certainly require things, but for civilians, no."

Vaccine mandates: Flu vaccine now required for all Massachusetts students

Should employers force workers to get COVID-19 vaccine? Some experts say they should
When a coronavirus vaccine is first authorized and then eventually approved by the FDA, it may well take years before it becomes a requirement for school children or anyone, said Dr. Howard Koh, a professor at the Harvard T. H. Chan School of Public Health and former Assistant Secretary for Health under Barack Obama.

"For every vaccine that’s new, it takes a while to gain familiarity and general acceptance. Much of that involves assuring the effectiveness of the long-term safety profile. There’s a comfort level that should be reached by everyone – parents, families, employees. That process is going to take time," he said.

Some companies in industries that present a high risk of transmitting the virus – such as restaurants, gyms, salons, meatpacking, pro sports and nursing homes – may also eventually require vaccinations for their employees, Caplan said. The Occupational Safety and Health Administration has previously said employers have the right to mandate flu vaccines, but employees can request medical or religious exemptions.

"You could face a situation where your income is dependent on getting a vaccine," said Robert Field, a law and public health professor at Drexel University.

If employers in service industries required vaccinations for employees, once a vaccine is licensed, they would "have a strong argument that termination would be objectively fair," Field said. For the time being, Field said he expects employers to avoid the legal risks of mandating a vaccine that has not been licensed.

The best strategic approach to promote vaccination is to maximize communication and minimize barriers, said Ross Silverman, a professor at Indiana University’s Richard M. Fairbanks School of Public Health and Robert H. McKinney School of Law.

"What can we do to make this as easy as possible for people to say yes to?" he said. "The best approach to be taking in the near term is engaging communities, answering questions, and letting people know what the benefits and risks are, where they’re going to be able to get access to it and that there are no costs associated with getting the vaccine."

The question for now isn’t who has to be vaccinated but who gets to be, said Michelle Mello, a professor at Stanford Law School.

"Most people will come around, so I’m not even sure that we even need to have a conversation about mandates," Mello said. "If it’s eight months from now and we’ve got ample supply and we’ve run through all the people who wanted to get the vaccine, and we’re still nowhere near herd immunity, it may be a different conversation."

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