



FAQs on Gov. Abbott's Executive Order GA 40

Prohibiting Vaccine Mandates, Subject to Legislative Action

The Texas Hospital Association offers answers to member hospitals' questions about Gov. Greg Abbott's Executive Order GA 40 issued and effective on October 11, 2021.

1. Where can I find GA 40?

GA 40 may be accessed [here](#).

2. What does GA 40 order?

GA 40 prohibits any entity in Texas from compelling the "receipt of a COVID-19 vaccine by any individual, including an employee or a consumer, who objects to such vaccination for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19."

3. Does GA 40 apply to hospitals?

Yes, GA 40 and the prohibition therein applies to all Texas hospitals.

Further, GA 40 conflicts with President Biden's [plan](#) to require COVID-19 vaccinations in all Medicare and Medicaid certified facilities. GA 40 appears to conflict with [pending rules from the U.S. Department of Labor](#) that will require COVID-19 vaccinations or weekly negative tests for all employers with 100 or more employees. However, CMS and the DOL have yet to implement final rules. Rules setting forth these federal requirements are forthcoming from both CMS and OSHA. THA will update members once these federal rules are published.

4. Should hospitals comply with federal or state requirements regarding COVID-19 vaccine mandates?

Generally, where there is a conflict between state and federal law, the federal law controls. The Supremacy Clause of the federal Constitution is clear that federal statutes constitute "the supreme Law of the Land," in determining whether state or federal law applies in any situation. Currently, there is no Texas statute prohibiting COVID-19 vaccine mandates.

Because of this, GA 40 probably does not supersede the federal requirement, or any related and forthcoming rules. However, this analysis may change if Texas enacts statute that conflicts with the federal requirements. In the event the Texas Legislature enacts such a statute, THA will update members accordingly.

5. How long will GA 40 remain in effect?

GA 40 takes immediate effect and remains in effect and in full force until it is modified, amended, rescinded or superseded by the Governor. Therefore, GA 40 does not have an end date noted in the order, but the Governor did indicate that GA 40 would be rescinded once the Legislature passes statute related to this prohibition of COVID-19 vaccine mandates.

6. Does GA 40 define “personal conscience,” “religious belief,” or “medical reasons”?

No. GA 40 only specifies the novel concept that prior recovery from COVID-19 qualifies as a “medical reason” for purposes of objecting to the COVID-19 vaccine. THA expects any attempted enforcement of GA 40 will impute a very broad definition and scope in favor of upholding the prohibition against vaccine mandates. In the event of attempts to enforce GA 40 against hospitals, THA will update this guidance accordingly.

7. Is there a penalty for violating GA 40?

Yes. Failure to comply with GA 40 may result in a fine of up to \$1,000, pursuant to the Texas Government Code. GA 40 is clear that confinement in jail is not a potential penalty for a violation of GA 40.

8. Which other executive orders remain in effect?

GA 40 explicitly states that [GA 13 \(relating to detention in county and municipal jails\)](#), [GA 37 \(relating to the transportation of migrants\)](#), [GA 38 \(relating to the continued COVID-19 response\)](#), and [GA 39 \(relating to prohibiting vaccine mandates and vaccine passports\)](#) remain in effect.

9. Should hospitals alter policies and procedures in response to GA 40?

THA is reviewing all potential options for members and is available to engage in direct conversation with any member to discuss their particular circumstances or response to GA 40. This guidance will be modified as necessary, and as federal rules are published or if the Texas Legislature enacts statute that aligns with GA 40.

Contact a member of THA’s advocacy & legal teams for additional information:

[Cesar Lopez](#), J.D., associate general counsel, 512/465-1027

[Jennifer Banda](#), J.D., vice president, advocacy, public policy & political strategy, 512/465-1046