Texas Governor Bans State Mask and Vaccine Mandates

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On July 29, 2021, Texas Governor Greg Abbott issued Executive Order GA-38, which prohibits governmental entities from requiring individuals to be vaccinated against COVID-19 or to wear masks in most situations. Executive Order GA-38 also bans so-called "vaccine passports"—documentation of a person's vaccine status—by both public entities and private entities receiving any form of government funds. And the Order lifts all COVID-19-related operating limits from Texas businesses.

No State Required Vaccinations or "Vaccine Passports"

Executive Order GA-38 prohibits local governments from requiring anyone to receive a COVID-19 vaccine. In its preamble, the Order states that "receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government." The Order does, however, "strongly encourage[] … those eligible to receive one."

A. No required vaccines.

Section 2 of Executive Order GA-38 provides that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.

B. No "vaccine passports."

The Order also prohibits Texas governmental entities from requiring an individual to provide, "as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine."

This prohibition applies to any public or private entity that receives or will receive "public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money." So, private companies receiving such funds may not require "a consumer" to provide such documentation as a condition of receiving a service or entering a location. Indeed, the Order

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expressly states that "[n]o consumer may be denied entry to a facility financed in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine."

Nursing homes, state-supported living centers, assisted living centers, and long-term care facilities are exempt from this prohibition.

No COVID-19-Related Operating Limits

Section 3 of the Executive Order states that there "are no COVID-19-related operating limits for any business or other establishment" in Texas. Businesses and legal proceedings "are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials."

Particularly in areas with high rates of COVID-19 transmission, "individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household."

Section 3 contains specific provisions for the following types of establishments:

Private businesses. "In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus."

Nursing homes. "Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by the HHSC."

Schools. "Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of

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higher education are encouraged to establish similar standards."

Jails. "County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations."

No State Required Face Coverings

Section 4 prohibits government-imposed mask mandates. No governmental official or entity, "including a county, city, school district, [or] public health authority," may require a person to wear a mask. A governmental official attempting to impose such a requirement may be fined up to $1,000.

Exempt from Section 4's prohibition on mask requirements are state-supported living centers, government-owned hospitals, and government-operated hospitals, as well as the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails.

Executive Order GA-38 does not prohibit private businesses from requiring masks on their premises. (The Order is silent on the ability of private businesses to do so.) The Order states that individuals may still wear masks "if they choose."

Hospitals Still Required to Make Certain Reports

To ensure that information about COVID-19 testing and hospital bed capacity is available, all licensed hospitals and state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS.

Every public or private entity that is utilizing an FDA-approved COVID-19 test shall submit to DSHS and the local health department, daily reports of all test results, both positive and negative.

Contrary City and Local Orders Are Superseded; No Jail Time for Violators

Executive Order GA-38 identifies statewide uniformity as one of its main purposes. To that end, the Order contains a preemption provision similar to provisions in the Governor's earlier COVID-19-

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related executive orders. Order GA-38 provides that it shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order.

Elsewhere, Executive Order GA-38 expressly provides that it supersedes any orders by local officials that may require individuals to obtain a vaccine, show documentation of vaccine status, or wear a mask, as well as any orders imposing COVID-19-related operating limits on businesses.

No person may be jailed for violating Executive Order GA-38 or any local COVID-19-related order.

Executive Order GA-38 concludes by stating that it supersedes all pre-existing COVID-19-related executive orders, except for GA-13 (Related to County and Municipal Jail Detention) and/or GA-37 (Restricting the Transportation of Migrants due to COVID-19).

For more information, please contact Thomas Allen, Mark Platt, Fred Gaona, or any attorney in the Government Services practice group.

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