

FY2022 NDAA: COVID-19 Vaccination-related Provisions

January 24, 2022

Background

On August 19, 2021, the Secretary of Defense (SECDEF) [issued a memorandum](#) directing the Secretaries of the Military Departments (MILDEPs) to “immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.” Shortly after, [each MILDEP issued directives](#) to establish the vaccination requirement, establish deadlines, clarify the process for requesting an exemption, and describe the procedures for addressing noncompliance. Since implementation of these directives, some [states](#) and [servicemembers](#) have filed lawsuits challenging the vaccination mandate or the MILDEPs’ exemption process. As of January 19, 2022, [DOD reported](#) that 1.6 million servicemembers were fully vaccinated, which is approximately 75% of the total force (active and reserve components). The MILDEPs also continue to review a [number of requests submitted](#) for an administrative, religious, or medical exemption to the vaccination mandate.

The Fiscal Year (FY) 2021 National Defense Authorization Act (NDAA; P.L. 116-283) included a number of COVID-19-related provisions focused on reviewing DOD’s pandemic preparedness, providing health benefits for certain National Guard members supporting the domestic response, and establishing a [registry of Military Health System beneficiaries diagnosed with COVID-19](#).

Table 1 lists the proposed and enacted COVID-19 vaccination-related provisions included in the FY2022 NDAA (P.L. 117-81).

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Table I. FY2022 NDAA Legislative Proposals

House-passed H.R. 4350	Senate Armed Services Committee-Reported S. 2792	Enacted Legislation (P.L. 117-81)
Section 716 would have amended Chapter 55 of Title 10, U.S. Code to include a new section that prohibits the Secretary of a MILDEP from issuing a discharge characterization other than “honorable” to servicemembers separated as a result of noncompliance with the military COVID-19 vaccination mandate.	No related provisions.	Section 736 adopts the House provision with an amendment that allows only an “honorable” discharge or “general discharge under honorable conditions” to be issued for servicemembers separated as a result of noncompliance with the military vaccination mandate. The prohibition applies to discharges from August 24, 2021, through December 27, 2023.
Section 717 would have amended 10 U.S.C. § 1110 to establish a system, no later than January 1, 2023, to track and record vaccine administration information, vaccine adverse reactions, and servicemember refusals.		Section 716 adopts the House provision with an amendment that expands the tracking and recording requirement for vaccines and investigational new drugs.
Section 720 would have required the SECDEF to establish uniform COVID-19 vaccination exemption procedures for servicemembers (i.e., administrative, medical, or religious reasons; or from previous COVID-19 infection).		Section 720 adopts the House provision with an amendment that removes previous COVID-19 infection as a component of the required uniform procedures.
Section 750 would have required the SECDEF to conduct an anonymous survey to determine the effects of the military COVID-19 vaccination mandate on recruitment and reenlistment. The results of the survey would be submitted to Congress and made publicly-available.		Not adopted.

Source: CRS analysis of legislation.

Discussion

Military Vaccination Mandate Compliance

MILDEP policies authorize a range of actions (e.g., administrative discipline, nonjudicial punishment, court-martial) that a commanding officer may take against servicemembers who violate general orders, military regulations, or punitive articles under the [Uniform Code of Military Justice](#). In December 2021, the [Air Force was the first military service to administratively discharge certain servicemembers](#) for noncompliance with the COVID-19 vaccination mandate. Section 736 of the enacted bill adopts House Section 716, which limits the military departments to issuing a service characterization of “honorable discharge” or “general discharge under honorable conditions” to servicemembers administratively discharged for noncompliance with the COVID-19 vaccination mandate. This limitation is retroactive to August 24, 2021, and remains in effect for two years after enactment of the FY2022 NDAA (i.e., until December 27, 2023).

The SECDEF's August 2021 memorandum authorized each MILDEP to use new or "existing policies and procedures" to implement the vaccine mandate. This memorandum did not include a requirement for identical timelines, process requirements, or exemption standards across the MILDEPs. Section 720 of the enacted bill, which adopts House Section 720, requires the SECDEF to establish uniform review standards for administrative, religious, or medical requests for exemption from the COVID-19 vaccination mandate. In the [Joint Explanatory Statement](#) accompanying the FY2022 NDAA, the conferees stated that they expect DOD, in establishing uniform standards for medical exemptions, to "review the scientific literature to determine, to the extent possible, whether a previous COVID-19 infection may induce sustained antibody protection (natural immunity) against SARS-CoV-2, thereby potentially eliminating a requirement for a vaccine."

House Section 750 would have required the SECDEF to conduct an anonymous survey to determine if the military vaccination mandate encouraged, discouraged, or had other effects on servicemember recruitment or retention. Though the provision was not adopted, the [Joint Explanatory Statement](#) stated that the conferees "encourage the Department of Defense to consider an analysis of existing data related to the effect of COVID-19 on recruitment and retention efforts in Armed Forces."

Vaccination Records

Each MILDEP maintains a [medical readiness tracking system](#) that generally includes data on servicemember vaccinations and other health status information. Section 716 of the enacted bill adopts House Section 717, which amends [10 U.S.C. §1110](#) to require the establishment of a record system, no later than January 1, 2023, that tracks and documents certain servicemember vaccination information. The provision requires the SECDEF to consult with the [Defense Health Agency](#) and coordinate with the MILDEPs to establish a record system that documents DOD-administered servicemember vaccinations; adverse reactions to such vaccinations; and, refusals to vaccines or drugs that are [licensed](#), [authorized](#), or deemed "[investigational](#)" by the U.S. Food and Drug Administration. The provision requires a report to the Armed Services Committees, no later than 180 days after enactment, on the status of establishing the record system.

For more on military vaccinations, see CRS In Focus IF11764, *U.S. Agricultural Aid in Response to COVID-19*, and CRS In Focus IF11816, *Defense Health Primer: Military Vaccinations*.

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