

CRISIS MANAGEMENT FOR COVID 19

Phase 51: Omicron Continues...

*Presented by:
Hanna Resource Group
and
Morris & Morris, PSC*



INTRODUCTIONS



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President and CEO
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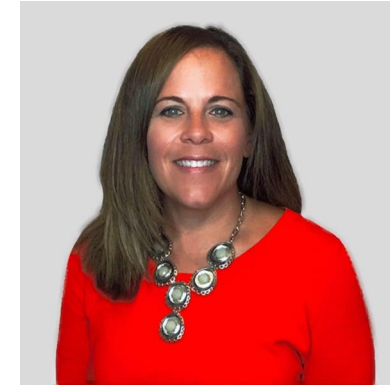
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WHAT WE'LL COVER

- 1 How Businesses are Handling Omicron
- 2 KY COVID Status
- 3 Legal and Regulatory Changes

Don't Forget the Free COVID Supplies Soon Available!

Free Covid Tests – Available Now

<https://www.covidtests.gov/>

Free N95 Masks – Available Soon

- The masks will be available at pharmacies and federal community health centers across the country.
- Most of the pharmacies that have partnered with the federal government to [distribute COVID vaccines](#) will participate in the mask program, [according to The Wall Street Journal](#).
- Major pharmacy chains CVS, Rite Aid, Stop & Shop, and Walgreens have [confirmed](#) that their stores will distribute the free masks



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How Businesses are Handling Omicron



Susan Simmons
Executive Vice
President and Human
Resource Director
Central Bank of
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How Businesses are Handling Omicron



Karen Venis
CEO
Sayre Christian Village

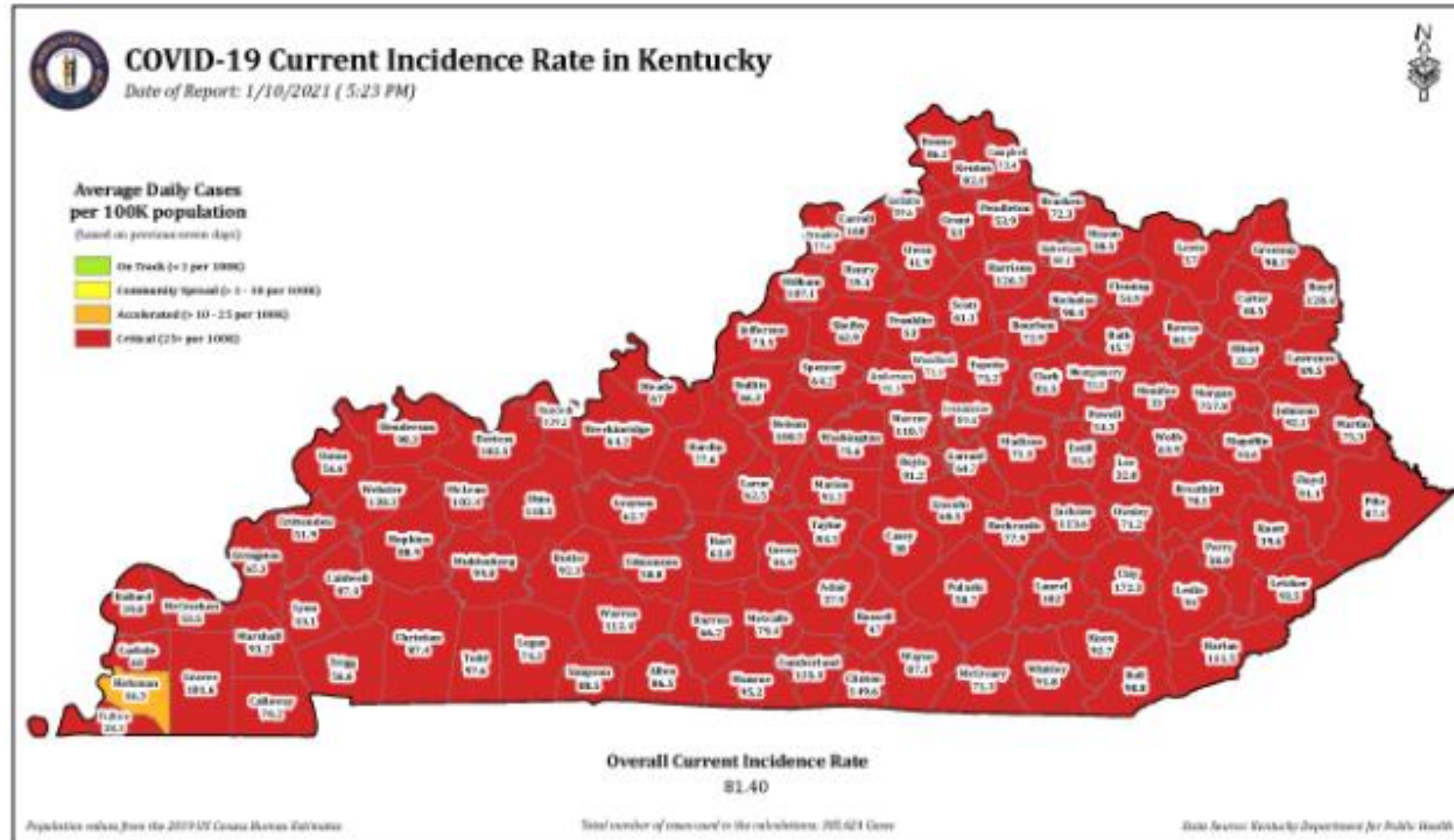


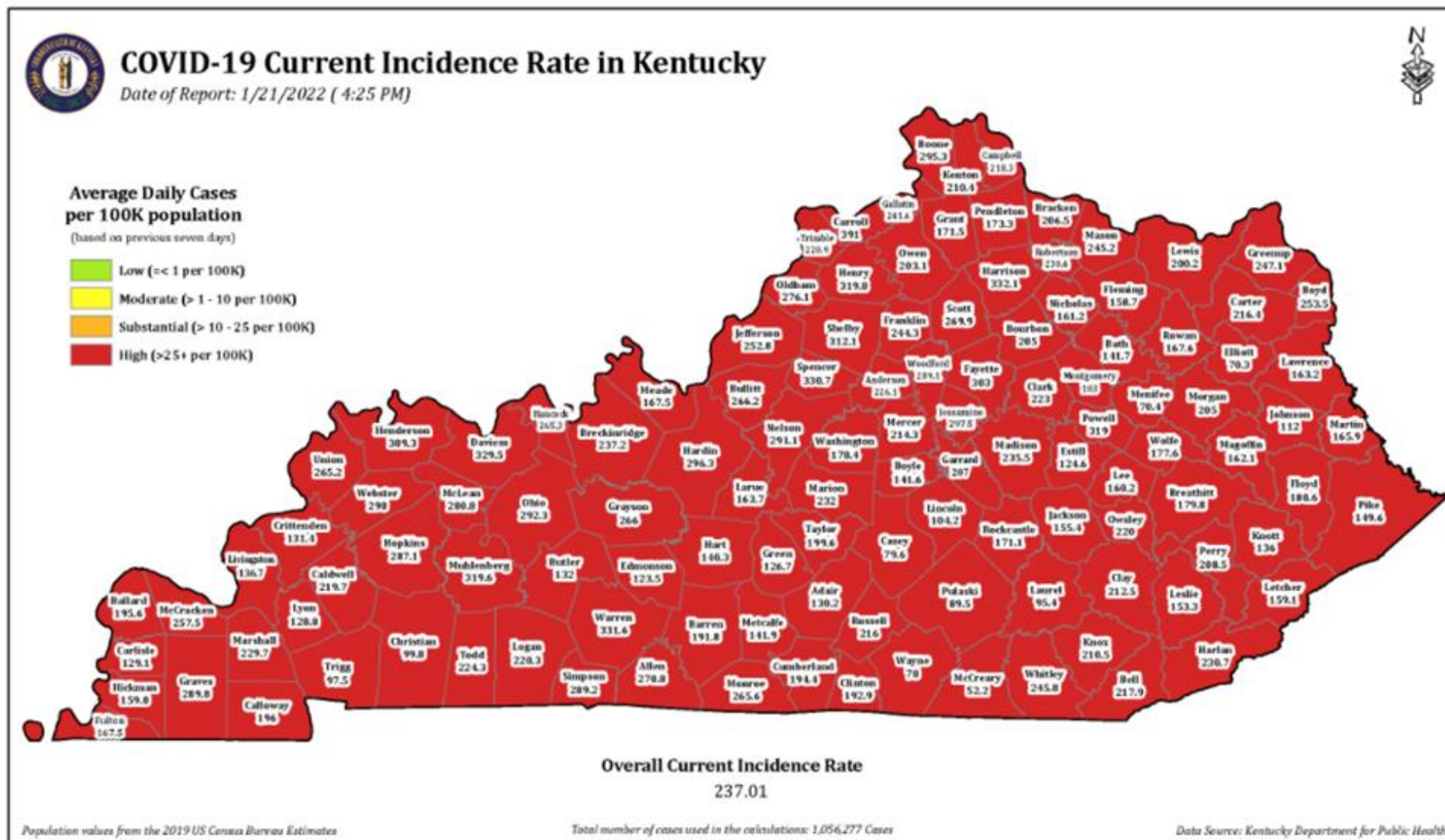
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Kentucky COVID Status



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2 Kentucky Update

Kentucky's State-Wide COVID-19 shocking numbers!

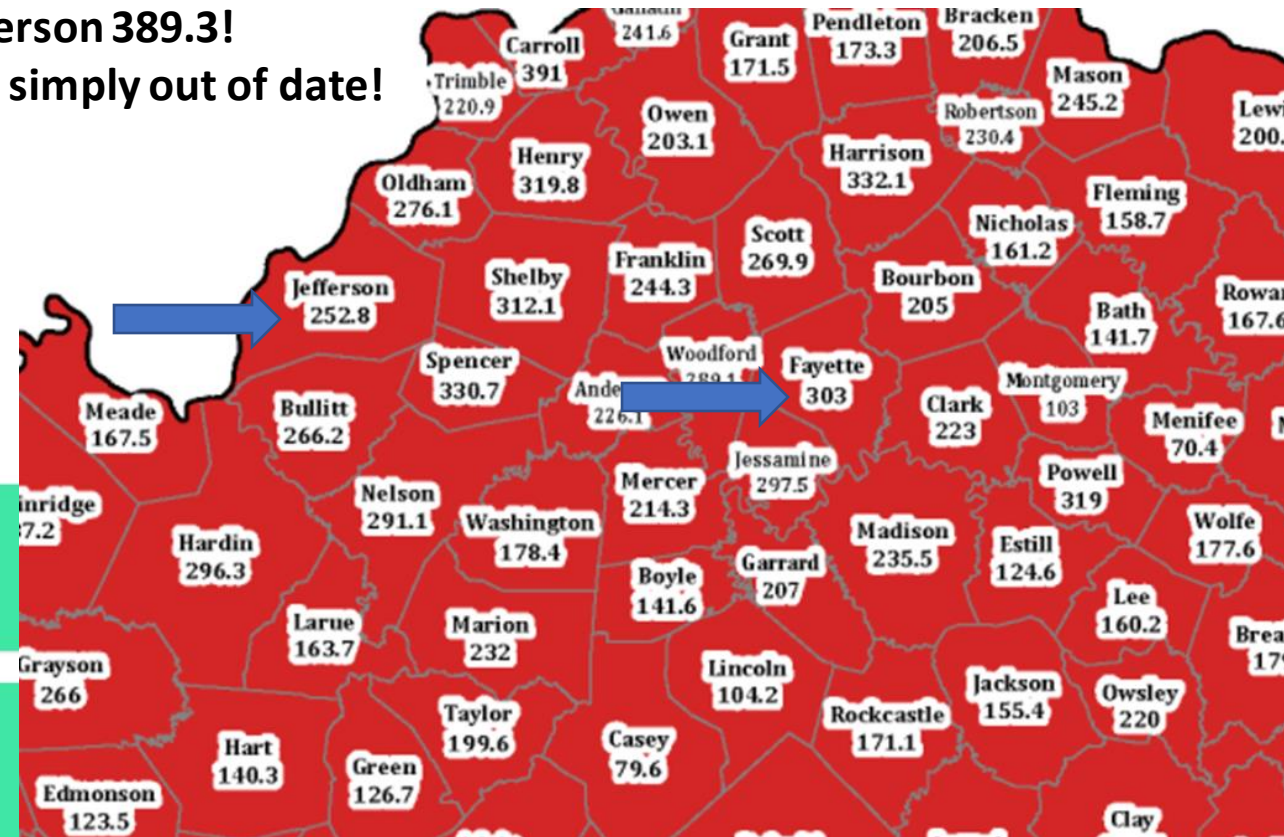
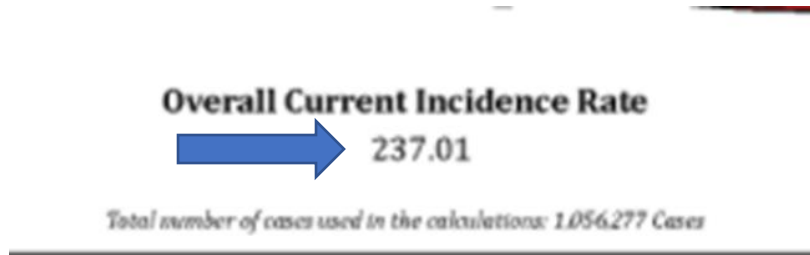
ANYTHING MORE THAN 25 IS BAD, DO NOT TRAVEL TO LOCATIONS WITH MORE THAN 10% POSITIVITY RATE

Overall Incidence Rate for the entire state of 237.01!

Overall Positivity Rate in Kentucky of 32.10%!

Fayette County Incidence Rate of 303; Jefferson 252.8; Henderson 389.3!

Something has to change because the map and guidance are simply out of date!





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Legal and Regulatory Updates



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Two out of the Three Federal Mask/Vaccine Mandates were addressed by SCOTUS:

1. OSHA Emergency Temporary Standard (ETS) affecting employers with more than 100 employees
2. The Centers for Medicare and Medicaid Services' (CMS) interim final rule requiring vaccination of employees working in facilities receiving Medicare or Medicaid funding

The third mask mandate, referred to as the "Safer Federal Workforce Task Force Mandate," requiring all employer entering into contracts with the United States, continues to create problems and have varying rulings from varying Courts.

Last week, U.S. Supreme Court Overruled the Sixth Circuit, and reinstated the Fifth Circuit Stay on the "vax-or-test" mandate issued by OSHA. Therefore, the mandate cannot take effect.

- In reinstituting the Stay, the Supreme Court rejected OSHA's "outdoor exemption" as "largely illusory," and also called the ETS "a blunt instrument" making no distinctions among industries or based upon different risks of exposure to COVID-19.
- The Court found that Petitioners would likely prevail in showing that OSHA lacked authority to issue the mandate, noting that "this is no 'everyday exercise of federal power.' . . . We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance."
- The Court also found that the ETS was not authorized by OSHA, characterizing the ETS as a "broad public health measure[]" rather than an "occupational safety or health standard."
- Finally, the Court found that the equities did not weigh in favor of leaving the ETS in place, stating that it was not the Courts' role to weigh the relative costs between lives and financial, stating that such obligation lies solely with the legislative, and not the judicial or executive branches.

So, what now? The stay of the ETS is **temporary**.

This stay will remain in effect while the entire matter gets sent back to the Sixth Circuit for yet another decision **on the merits, instead of based upon a temporary** stay.

Meanwhile, OSHA issued a lengthy announcement in response , including a veiled threat:

*OSHA will be evaluating all options to ensure workers are protected from this deadly virus. We urge all employers to require workers to get vaccinated or tested weekly to most effectively fight this deadly virus in the workplace. **Employers are responsible for the safety of their workers on the job**, and OSHA has comprehensive COVID-19 guidance to help them uphold their obligation.*

Regardless of the ultimate outcome of these proceedings, OSHA will do everything in its existing authority to hold businesses accountable for protecting workers, including under the Covid-19 National Emphasis Program and General Duty Clause.

Wow?! So, OSHA still threatening action under the General Duty Clause despite SCOTUS ruling!

So, what should employers who would have been covered by the ETS do?

- First, if any operations are in a state that requires employers to mandate vaccination or testing, then employers operating in those states will still need to comply with state law (not Kentucky).
- Second, if you are in a state (such as Florida or Texas) that restricts employers' ability to impose vaccination mandates, it's safe to start complying with your state law now.
- For everybody else, (which is probably everyone on this Webinar), I will reiterate what I shared back when the ETS was issued, in November, 2021:
 - You should have established a philosophy on vaccine mandates.
 - If you mandate, you have the ability to move forward, with accommodations.
 - If you want to vax and test, then do it (remember lack of test kits available)
 - If you don't mandate, take all recommended precautions to prevent spread of COVID
 - Don't distribute ETS-compliant written materials, but save just in case....

SCOTUS Lifted the Stay on the CMS Interim Final Rule, enforcing the CMS Vaccine Mandate

- CMS did not exceed its authority by making mandatory vaccination a condition of participation in the Medicare/Medicaid programs.
- The CMS vaccine mandate was not arbitrary and capricious, as its analysis and explanation demonstrates the agency “acted within a zone of reasonableness.”
- The “winter flu season” and potential for increased “COVID-19 infections, hospitalizations, and deaths” is the “something specific” that is required to establish good cause and forgo notice and comment.
- CMS was not required to consult with the appropriate State agencies before issuing
- CMS was not required to prepare a regulatory impact analysis

SCOTUS emphasized the need to promote and protect patient health and safety and that the “fundamental principle of the medical profession” is “first, do no harm.” It would be contrary to these principles if unvaccinated health care workers were to contract and transmit COVID

On January 21, 2022 CMS issued new guidance and separate compliance deadlines:

- Apart from deadline extensions, the new CMS guidance is substantively the same as its 12/28/21 guidance which applied to covered facilities in non-enjoined states
- Starting February 14, monitoring begins for all covered facilities in the 24 (or, perhaps, 25) “injunction states” for full compliance subject to the following three-phase rollout plan:
- **Phase 1 (due February 14):** Develop and implement P&P that ensure all staff are vaccinated for COVID-19 (regardless of clinical responsibility or patient contact), and that all staff have received at least one dose, have a pending request for, or have been granted, an exemption
- **Phase 2 (due March 15):** Develop and implement P&P that ensure all staff are vaccinated for COVID-19 and that all staff have either received the necessary doses to complete the vaccine series, have been granted a qualifying exemption, otherwise, the facility will not be considered compliant. A non-compliant facility will not be subject to enforcement action if it is 90% compliant and has a plan to achieve 100% compliance w/in 30 days
- **Phase 3 (due April 14):** Must be 100% compliant with the standard

- On November 30, 2021, the Eastern District of Kentucky entered a Preliminary Injunction preventing enforcement of Executive Order (EO) 14042 against federal contractors and subcontractors in Kentucky, Ohio, and Tennessee
 - Only applied the Injunction, pursuant to Sixth Circuit Precedent, to Kentucky, Tennessee and Ohio, but mentioned that it impacts all states in a similar manner.
- Eleventh Circuit rejected the Administration's request to lift the stay
- On Friday, January 21, 2022, yet another Federal Court issued yet another Stay, this time Nationwide....
- The Executive Order Mandates are Continuing to be Addressed, Continue to be in Limbo, so stay tuned....

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