

Biden COVID-19 Action Plan Expands Vaccine Mandates, Testing, and Treatment to Combat Spread of Virus

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On September 9, 2021 President Biden announced a [COVID-19 Action Plan](#) entitled “Path out of the Pandemic” (the “Plan”) which comprises a six-pronged national strategy aimed at combatting COVID-19. The Plan includes a number of important provisions related to health care, including implementation of COVID-19 vaccine requirements and an expansion of resources available for treatment of COVID-19. The Plan signals significant changes upcoming for health care organizations, their employees, and their patients.

The following summary addresses certain parts of the Plan with specific implications for health care, but please continue to check [R+C blogs](#) and [legal updates](#) for follow-up analysis of the specific guidance and rules that are released in furtherance of the Plan.

Vaccinating the Unvaccinated

Health Care Workers

The Plan tasks the Centers for Medicare & Medicaid Services (CMS) with responsibility for expanding COVID-19 vaccination mandates to now “require COVID-19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement, including but not limited to: hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies.” In a corresponding announcement, CMS [stated](#) that in order to implement this vaccination directive, CMS will collaborate with the Centers for Disease Control and Prevention (CDC) to expand current regulations mandating vaccinations for nursing home workers to apply to all Medicare and Medicaid-certified facilities as a condition of participation in such programs. CMS expects to publish the new regulations via an Interim Final Rule with Comment Period in October 2021, but notes that health care workers at certified Medicare and Medicaid facilities “who are not currently vaccinated are urged to begin the process immediately.”

Private Sector Employees

A key part of the Plan is aimed at increasing vaccination rates among eligible individuals by “substantially” increasing the number of individuals subject to vaccination requirements. The Plan directs the Occupational Safety and Health Administration (OSHA) to develop and implement a new

emergency temporary standard (ETS) to require employers with 100 or more employees to ensure their employees are fully vaccinated or test negative weekly (see [here](#) for our analysis of a prior COVID-19 ETS issued by OSHA for healthcare facilities). The Plan also contemplates OSHA developing a rule via the ETS that will require employers with more than 100 employees to provide paid time off to employees in order to get vaccinated, and to recover from side effects of vaccination. The Plan estimates that this requirement will affect over 80 million workers in private sector businesses.

Federal Workers and Employees of Government Contractors

The President has issued Executive Orders requiring vaccination for all federal executive branch workers, and of employees of federal contractors.

Protecting the Vaccinated

The Plan seeks to strengthen vaccination protection by facilitating access to booster shots (in approved circumstances). The government is preparing for booster shots to start as early as the week of September 20th, subject to regulatory approval, and for the shots to be free and widely available across 80,000 locations. Individuals will be able to find a booster site online at [Vaccines.gov](https://www.vaccines.gov), by toll-free phone (1-800-232-0233, with vaccination information available in over 150 languages), and via text, among other methods.

Testing & Masking

The Plan seeks to increase access to COVID-19 testing, and utilization of masking to contain the spread of COVID-19. For example, the President proposes to utilize the Defense Production Act and procurement processes to expand industrial capacity in support of COVID-19 testing in a variety of settings. The Plan states that large retailers (including Walmart, Amazon, and Kroger) will sell at-home rapid COVID-19 tests at cost for the next three months to improve access to testing for consumers. The Medicaid program will cover at-home tests for free for beneficiaries, and states are directed to remove any “arbitrary barriers” to at-home testing for their residents. The Plan also includes the provision of millions of free at-home tests to community health centers and food banks, and an expansion of free in-pharmacy testing. Finally, the Plan extends orders for air and ground travel requiring masking on certain modes of public transportation, and masking on federal property.

Opening Schools Safely and Protecting the Economic Recovery

The Plan also includes initiatives to open and operate schools safely, and to counteract the economic impact of COVID-19 by providing additional financial support for small businesses. The Plan’s efforts to mitigate the economic devastation of COVID-19 include a more streamlined approach for certain Paycheck Protection Program (PPP) borrowers to have loans forgiven, and an expansion of small business funding from the Small Business Administration. These initiatives are essential aspects of the Plan but outside the scope of this analysis, so will be covered elsewhere by R+C.

Improving Care for those with COVID-19

Finally, the Plan implements measures to improve COVID-19 treatment, particularly amidst the Delta variant surge in cases. The government is deploying “Surge Response Teams” of clinicians to aid health systems in hard-hit areas and relieve over-burdened staff in hospitals and other facilities. The

government is also increasing shipments of monoclonal antibody treatments for COVID-19 treatment, and launching “monoclonal antibody strike teams” featuring trained clinical personnel to help hospitals deliver monoclonal antibody treatments. The government is also planning to update the declaration issued under the Public Readiness and Emergency Preparedness (PREP) Act to allow more providers, including pharmacists, to administer monoclonal antibody treatment.

**This post was co-authored by Erin Howard, legal intern at Robinson+Cole. Erin is not yet admitted to practice law.*

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