

Payers Seek Clarity on Biden’s Vaccination Mandates

By [Gale Scott](#) October 8, 2021



Are payers running managed Medicaid or Medicare Advantage plans federal contractors? No one seems to know/Getty

The Biden administration’s “Path Out of the Pandemic” action plan’s guidance was released Sept. 24, calling for a series of mandates on workplace Covid-19 vaccination. Under Biden executive orders, the vaccinations must be done by Dec. 8, 2021. The rules apply to private sector employees in large companies, healthcare workers, and those who work as federal contractors.

It’s that last category that has many payers still in limbo. As [reported](#), many large insurers including **Humana**, **CareFirst**, **BlueCross BlueShield**, and **Centene** already have employee vaccination mandates in place.

Others are wondering whether administering Medicaid managed care and Medicare Advantage plans make health insurers fit the definition of federal contractor.

So far, confusion rules. Industry trade body **AHIP** is hoping for help from the **Centers for Medicare & Medicaid Services**.

“The guidance is not clear with respect to Medicaid plans and their employees, so we are waiting for further guidance from CMS to clarify applicability and timing,” says a spokesman for AHIP.



NY Health Plan Assoc. SVP Leslie Moran

At the **New York Health Plan Association**, Senior Vice President **Leslie Moran** says the organization’s interpretation of the Medicaid issue is that these contracts are made with the states. The fact that federal money is involved does not make the insurers that administer Medicaid managed care plans federal contractors, Moran says.

As for Medicare Advantage plans, she says, “Our lawyers are still working on that question.”

CMS did not respond to requests for comment.

At **McDermott, Will & Emery’s** Orange County, Calif. office, **Michelle Strowhiro**, an employment lawyer currently specializing in Covid-19 law says that the clock is ticking. Should the federal government rule that payers are federal contractors in those situations, renewal contracts inked Oct. 15 to Nov. 14, 2021 must include clauses guaranteeing they will comply with the mandates.

If the contracts were not yet up for renewal, the date for complying with the mandates would be at the next renewal date. Since many managed Medicaid agreements are multi-year, some might not renew for years, possibly after the mandates are no longer in effect.

Medicare Advantage contracts are renewed annually, but the ones offered for 2022 coverage are already in place. If CMS repeats this year’s MA plan, new applications would be due in February 2022 for coverage in 2023.



McDermott Partner Michelle Strowhiro

Meanwhile, Strowhiro says the federal contractor component of the proposed mandates is one of three that should concern payers.

Part of the executive order applies directly to facilities that are regulated by CMS, such as hospitals and affects mostly healthcare workers. The rule specifies that if a facility's employees, owners, or contractors work in its buildings, they must be vaccinated. For a payer, the impact is limited though it could mean a payer's claims reviewer working on site at a health system would have to be vaccinated. "The rule is very facility-focused," she says.

In the third piece of the proposed mandates, all companies with 100 employees or more will be required by the **Occupational Safety and Health Administration** to see that their workers are either vaccinated or submit to regular testing. The administration holds that OSHA is legally permitted to enforce the rule as part of the agency's obligation to protect workers from dire health and safety threats.

That rule, if it survives challenges, would have a direct impact on payers and is expected to be resolved within a few weeks, she said.

Stowhiro says her newfound expertise is keeping her busy. She heads the firm's Covid-19 response task force. "We've been very busy, with issues that continue to evolve; we're getting

questions like ‘how do we shut down, how do we go remote, what do we do about discrimination involving Asian colleagues, how to return to work,’” she says.

With the new mandates coming she doesn’t see the pace letting up.

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