



## Health Policy Briefing

January 25, 2021

### Biden Sworn In as 46th President of the United States

Joe Biden and Kamala Harris were sworn in as the nation’s President and Vice President during a scaled-back inauguration ceremony last week. Approximately 25,000 National Guard soldiers had been deployed throughout the Washington, D.C. area in anticipation of the event, which came two weeks after the insurrection at the Capitol by Trump supporters. In place of a large crowd, nearly 200,000 American flags were planted on the National Mall to honor the victims of the COVID-19 pandemic. President Donald Trump opted not to attend the inauguration and instead departed the White House early Wednesday morning for his Mar-a-Lago estate in Palm Beach, Florida. Vice President Pence and former presidents Bill Clinton, George W. Bush, and Barack Obama attended the inauguration. The 46th President’s inaugural remarks focused on the need for unity to confront the pandemic and the nation’s current social and economic challenges. The new President and Vice President then visited Arlington National Cemetery in place of the traditional inaugural parade.

Democratic senators Jon Ossoff and Raphael Warnock, elected in Georgia’s run-off elections earlier this month, and Alex Padilla, Harris’ replacement in the Senate, were sworn in shortly after Biden and Harris took office. Their presence officially gives Democrats control of the Senate with 50 seats, leaving Vice President Harris to cast any tie-breaking votes.

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## ***Biden's First Days in Office Include Health-Related Executive Actions, Regulatory Freeze***

President Joe Biden took more than a dozen executive actions during his first days in office, many aimed at supporting the economy and containing the coronavirus pandemic. The President also unveiled a national strategy to curtail the coronavirus pandemic. The [National Strategy for the COVID-19 Response and Pandemic Preparedness](#) includes a series of executive actions to overhaul the federal government's response to the coronavirus. The strategy is based on seven goals, including restoring trust with the American people; mounting a safe and effective vaccination campaign; expanding masking, testing, data and treatments; building the health care workforce; safely reopening schools, businesses and travel while protecting workers; protecting those most at risk for serious illness, including people of color; and restoring U.S. leadership globally. Many of the President's proposals require new funding that would be included in his ***American Rescue Plan***. The 200 page blueprint includes:

- An executive order (E.O.) to expand use of the Defense Production Act (DPA) to produce more medical supplies needed to fight the virus. The administration has identified 12 immediate supply shortages that could be improved through the use of the DPA.
- A Presidential Memorandum directing increased reimbursement for states that have deployed National Guard to assist with their pandemic response for personnel costs and emergency supplies.
- An executive order (E.O.) to create a national Pandemic Testing Board to increase testing capacity, expand the public health workforce, support COVID screening in schools, and ensure access to tests in underserved communities.
- An E.O. directing studies to identify COVID treatments and ensure treatments meet the needs of diverse populations.
- An E.O. directing federal agencies to improve data collection and reporting for high-risk populations.
- Details on the President's new vaccination initiative to improve the rapid and equitable distribution of vaccines.
- An E.O. instructing the Occupational Safety and Health Administration (OSHA) to issue updated guidance on COVID-19 worker protections, and to determine whether there is a need for emergency temporary standards to protect workers from COVID-19 infections. If such an emergency rule is necessary, the strategy instructs OSHA to release it by March 15.
- An E.O. requiring mask-wearing in airports and on certain modes of public transportation, and requiring a negative COVID-19 test before flying to the U.S. from other nations. The President also launched a "100 Day Masking Challenge" calling on Americans to commit to wearing masks for the first 100 days of his administration. He had previously acted to require face coverings and distancing for all federal buildings and federal lands.
- An E.O. creating a COVID-19 Health Equity Task Force to provide recommendations for allocating resources and funding in communities disproportionately impacted by COVID-19.
- A reversal of the U.S. withdrawal from the World Health Organization (WHO). Dr. Anthony Fauci was tapped to represent the nation at the WHO's Executive Board meeting last week.

The President plans to take additional executive actions this week. On Monday, a 'Buy American' E.O. directing agencies to strengthen requirements for acquiring goods and services from American businesses and workers is expected. On Tuesday, a package of E.O.s related to racial equity is expected. On Thursday, E.O.s related to health care – specifically, the so-called Mexico City policy, the Title X family planning program, strengthening of the Medicaid program, and initiating a new Affordable Care Act (ACA) open enrollment period – are expected.

Upon taking office last week, the new administration also acted to freeze all pending rules and regulations. All rules, guidance, or other agency action that did not take effect prior to noon on January 20 will be subject to review by the new administration before taking effect. If the regulations raise questions of "fact, law, or policy" the current agencies can further delay the effective dates and consult with the Office of Management and Budget (OMB) on further options.

More than 20 actions from the U.S. Department of Health and Human (HHS) are now on hold. Amongst other rules, the regulatory pause includes the Medicare Coverage of Innovative Technology (MCIT) rule, the Implementation of Executive Order on Access to Affordable Life-saving Medications rule, the Secure Electronic Prior Authorization For Medicare Part D rule, the Reducing Provider and Patient Burden by Improving Prior Authorization Processes rule, the Promoting Patients' Electronic Access to Health Information rule, the Organ Procurement Organizations Conditions for Coverage rule, the Most Favored Nations (MFN) Model, changes to the Stark Law and Anti-Kickback Statute, and the Medicare Rebate rule.

## ***Senate Forecast on Impeachment, Cabinet Confirmations, COVID Relief***

Majority Leader Schumer has said that the top three priorities for the chamber are impeachment, confirming President Biden's cabinet nominees, and passing coronavirus stimulus legislation. The Senate has yet to reach an agreement on organizing the rules to govern a 50-50 Senate chamber. In the interim, however, Republicans are still chairing committees and new members are not being assigned to panels. The Health, Education, Labor, and Pensions (HELP) Committee is currently awaiting a temporary GOP ranking member following the retirement of Sen. Lamar Alexander (R-Tenn.), which may delay a hearing for the presumed nominee Xavier Becerra as HHS Secretary. The Senate Finance Committee has also not yet scheduled a hearing related to his nomination. Norris Cochran, HHS Deputy Assistant Secretary of Budget, will serve as acting secretary until Becerra is confirmed. The Senate confirmed Avril Haines as National Intelligence Chief, and Lloyd Austin as Defense Secretary last week.

Senate leaders Chuck Schumer (D-N.Y.) and Mitch McConnell (R-Ky.) have reached an agreement to delay former President Donald Trump's impeachment trial for two weeks to allow confirmation votes on President Joe Biden's cabinet nominees. The single article of impeachment for "incitement of insurrection" will be delivered to the Senate today, but the trial will not begin until February 8.

Brian Deese, the President's top economic adviser, met with a bipartisan group of lawmakers on Sunday to discuss the administration's \$1.9 trillion COVID-19 stimulus proposal. While the President is hopeful that the plan can be passed in a bipartisan manner, a growing number of moderate Senate Republicans have expressed concerns about the total size of the package. The plan does not yet have the support of a single Republican, though some GOP lawmakers have stated that common ground could be reached through negotiations. With the 50-50 partisan split in the Senate, the President will need the support of at least 10 Republicans in the Senate to pass the bill under regular order. Rep. Jim Clyburn (D-S.C.), member of House Democratic leadership, is encouraging the President to use his executive authority to provide economic relief if Republican hesitation delays the package's passage. Lawmakers are reportedly aiming for a deadline of March 14 to pass the relief bill. House committees will be working on the proposal this week before the House of Representatives returns to session early next month.

## ***Democrats Eye Reconciliation to Advance Policy Priorities***

During the 117th Congress, Democrats have the option of employing a budgetary maneuver known as reconciliation to avoid a Senate filibuster and pass some of the top priorities on their agenda. The reconciliation process is limited to measures that have a budgetary impact and allows for legislation to be passed with a simple majority if a bill cannot garner the 60 votes necessary to succeed through regular order. The Senate Parliamentarian is responsible for determining whether legislation complies with the Senate rules of reconciliation (especially the Byrd rule to determine germaneness). While the President has indicated his preference for a bipartisan COVID-19 relief bill, the administration has also said that it is not going to take any tools off the table. House Budget Committee Chair John Yarmuth (D-Ky.) has said that his panel could provide reconciliation instructions quickly should it be necessary to pass additional COVID relief. It is likely, however, that parts of President Joe Biden's proposal would not qualify for the rules of reconciliation, such as the increase to the minimum wage.

Hart Health Strategies Inc. has prepared a primer on the budget reconciliation process that can be found as an addendum to this newsletter.

## ***Burgess Loses Top Republican Spot on Health Panel***

Rep. Michael Burgess (R-Texas) has lost his spot as the top Republican on the House Energy and Commerce Health Subcommittee, though he will continue to serve on the subcommittee panel. Burgess will be replaced by Rep. Brett Guthrie (R-Ky.). The decision was made after internal party discussions with new Committee Ranking Member Cathy McMorris Rodgers (R-Wash.). It was also announced that the Subcommittee on Oversight and Investigations will be led by Rep. Morgan Griffith (R-Va.) during the 117th Congress.

### *Murkowski to Stay With GOP*

Sen. Lisa Murkowski (R-Alaska) has announced that she will remain a Republican, despite frustration with the party and with former President Donald Trump. Murkowski had publicly questioned her future as a Republican following the insurrection at the Capitol and some of her colleagues' decisions to question the results of the presidential election. She is up for reelection in 2022.

### *Democrats Ask CMS to Reverse Waiver Change*

House Energy and Commerce Chair Frank Pallone (D-N.J.) and Senate Finance Chair Ron Wyden (D-Ore.) have asked the Centers for Medicare and Medicaid Services (CMS) to rescind a guidance that would make it more difficult for the new administration to reverse recent changes to the Medicaid program. The "letter of agreement" would establish procedures for the withdrawal of section 1115 demonstration waivers, providing for a nine-month process if the agency would decide to terminate, amend, or withdraw a Medicaid waiver in the future and making it more difficult Medicaid waivers to be overturned. The lawmakers characterize the policy as a "hastily-drafted, transparent attempt to tie the hands of the Biden administration for at least nine months." The full letter can be found [here](#).

### *Lawmakers Request Info On Coronavirus Variants*

Reps. Don Beyer (D-Va.) and Abigail Spanberger (D-Va.) have requested a briefing from the Centers for Disease Control and Prevention (CDC) about how the agency is tracking new variants of COVID-19. The lawmakers express concerns that the nation's public health surveillance system cannot adequately track mutations of the virus. "The U.S. is not systematically or thoroughly collecting and tracking viral genetic samples. It's impossible therefore to fully landscape or track SARS-CoV-2 mutations," the [letter](#) states.

### *Dates to Watch*

As lawmakers work to confirm the new administration's executive nominees and continue to respond to the ongoing coronavirus pandemic, they will also have to juggle the need to consider must-pass legislation dealing with expiring programs and government funding. **February 1** is the statutory deadline for the President to submit his budget proposal to Congress, though this date is often missed. The Medicare sequestration cuts were postponed until **April 1**. The 2020 end-of-the-year spending and pandemic relief package extended the Paycheck Protection Program (PPP) and Medicare sequestration suspension through **March 31**. The debt limit comes back into effect on **August 1**, though the Treasury Department can use extraordinary measures to extend this deadline. Government funding is set to expire at the end of the fiscal year on **September 30**. The 3.75 percent increase in the Medicare physician fee schedule ends on **December 31**.

### *Dr. Rachel Levine Picked As Assistant HHS Secretary*

President Joe Biden has tapped Rachel Levine to be his assistant secretary of Health and Human Services. Dr. Levine is a physician and professor of pediatrics and psychiatry at the Penn State College of Medicine, and has been leading the state's response to the coronavirus pandemic. If confirmed, Dr. Levin would make history as the first openly transgender Senate-confirmed federal official.

### *Richter, Wu To Lead CMS in Absence of Biden Nominee*

The new administration appointed long-time career staffer Liz Richter to serve as acting CMS administrator. She has been with CMS for over 30 years, most recently serving as the deputy center director of the Center for Medicare. Jeff Wu will work as her acting deputy. Wu has been with CMS since 2011 and has been working to lead the agency's work on Affordable Care Act (ACA) health insurance reforms at the Center for Consumer Information and Insurance Oversight (CCIIO). President Biden has not yet nominated an individual to run CMS on a permanent basis.

## Hart Health Strategies COVID-19 Resources

Hart Health Strategies Inc. continues to update the following resources related to the coronavirus pandemic. Please remember to clear your cache to ensure you download the most recent documents.

- [Disaster Primer](#)
- [Federal Relief Overview](#)
- [Health Care Workers on the Front Lines](#)
- [Hospice and Palliative Care](#)
- [Nursing Resources](#)
- [Personal Protective Equipment](#)
- [Physician Provisions](#)
- [Re-Opening America](#)
- [Small Business Resources](#)
- [Small Business - Paycheck Protection Program](#)
- [Small Business – PPP FAQ](#)
- [State Resources](#)
- [Tax Provisions](#)
- [Telehealth Overview](#)
- [Testing](#)
- [Vaccines](#)

## Upcoming Congressional Committee Activity

*Senate Foreign Relations Committee business meeting to consider the nomination of Antony John Blinken, of New York, to be Secretary of State; 10:00 a.m., 106 Dirksen Bldg.; January 26*

*Senate Commerce, Science, and Transportation Committee hearing to examine the nomination of Gina Marie Raimondo, of Rhode Island, to be Secretary of Commerce; 10:00 a.m., 253 Russell Bldg.; January 26*

*Senate Homeland Security and Governmental Affairs Committee business meeting to consider the nomination of Alejandro Nicholas Mayorkas, of the District of Columbia, to be Secretary of Homeland Security; 11:00 a.m., 106 Dirksen Bldg.; January 26*

*Senate Energy and Natural Resources Committee hearing to consider the nomination of the Honorable Jennifer Granholm to be the Secretary of Energy; 9:30 a.m., 106 Dirksen Bldg.; January 27*

*Senate Foreign Relations Committee hearings to examine the nomination of Linda Thomas-Greenfield, of Louisiana, to be the Representative of the United States of America to the United Nations, with the rank and status of the Ambassador, and the Representative of the United States of America in the Security Council of the United Nations, and to be Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Representative of the United States of America to the United Nations; 10:00 a.m., 325 Russell Bldg.; January 27*

*Senate Veterans' Affairs Committee hearing to examine the expected nomination of Denis R. McDonough, to be Secretary of Veterans Affairs; 3:00 p.m., 106 Dirksen Bldg.; January 27*

*Senate Banking, Housing, and Urban Affairs hearing to examine the nomination of Marcia Louise Fudge, of Ohio, to be Secretary of Housing and Urban Development; 10:00 a.m., WEBEX; January 28*

**Recently Introduced Health Legislation**

*H.R.330 — To direct the Federal Emergency Management Agency to assist States and local governments with the distribution and tracking of vaccines for COVID-19, to direct the Secretary of Health and Human Services to carry out a national program to oversee the collection and maintenance of all Federal and State data on vaccinations of individuals in the United States for COVID-19 to achieve mass vaccination saturation immunity, and for other purposes; Sponsor: Rep. Jackson Lee, Sheila [D-TX-18]; Committees: House - Energy and Commerce; Transportation and Infrastructure*

*H.R.331 — To amend titles XVIII and XIX of the Social Security Act to provide flexibility in training and competency requirements for skilled nursing facility and nursing facility nursing aides under the Medicare and Medicaid programs; Sponsor: Rep. Keller, Fred [R-PA-12]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.340 — To amend title XIX of the Social Security Act to provide the same level of Federal matching assistance for every State that chooses to expand Medicaid coverage to newly eligible individuals, regardless of when such expansion takes place; Sponsor: Rep. Veasey, Marc A. [D-TX-33]; Committees: House - Energy and Commerce*

*H.R.341 — To make permanent certain telehealth flexibilities established in response to COVID-19; Sponsor: Rep. Williams, Roger [R-TX-25]; Committees: House - Ways and Means; Energy and Commerce*

*H.R.344 — To direct the Secretary of Veterans Affairs to conduct an analysis of the need for women-specific programs that treat and rehabilitate women veterans with drug and alcohol dependency and to carry out a pilot program regarding such programs; Sponsor: Rep. Brownley, Julia [D-CA-26]; Committees: House - Veterans' Affairs*

*H.R.346 — To establish a program providing grants to certain small business concerns to modify or reallocate their productive facilities to begin or increase production of certain medical supplies critical to addressing the COVID-19 pandemic, and for other purposes; Sponsor: Rep. Davids, Sharice [D-KS-3]; Committees: House - Small Business*

*H.R.349 — To direct the Secretary of Health and Human Services to award contracts, grants, and cooperative agreements to expand and enhance capacity for manufacturing covered products to prevent and control the spread of SARS-CoV-2 and COVID-19; Sponsor: Rep. Kuster, Ann M. [D-NH-2]; Committees: House - Energy and Commerce*

*H.R.352 — To establish an initiative for national testing, contact tracing, and pandemic response, and for other purposes; Sponsor: Rep. Morelle, Joseph D. [D-NY-25]; Committees: House - Energy and Commerce; Education and Labor*

*H.R.360 — To direct the Secretary of Veterans Affairs to automate third-party health insurance billings and collections of the Department of Veterans Affairs; Sponsor: Rep. Steube, W. Gregory [R-FL-17]; Committees: House - Veterans' Affairs*

*H.R.365 — To provide for the rescheduling of marijuana into schedule III of the Controlled Substances Act; Sponsor: Rep. Steube, W. Gregory [R-FL-17]; Committees: House - Energy and Commerce; Judiciary*

*H.R.366 — To amend title XI of the Social Security Act to authorize the Secretary of Health and Human Services to waive or modify application of Medicare requirements with respect to telehealth services during any emergency period, and for other purposes; Sponsor: Rep. Thompson, Mike [D-CA-5]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.369 — To amend the Internal Revenue Code of 1986 to improve affordability and reduce premium costs of health insurance for consumers; Sponsor: Rep. Underwood, Lauren [D-IL-14]; Committees: House - Ways and Means*

*H.Res.55 — Recognizing the importance of access to comprehensive, high-quality, life-affirming medical care for women of all ages; Sponsor: Rep. Biggs, Andy [R-AZ-5]; Committees: House - Energy and Commerce*

*H.R.373 — To treat certain face coverings and disinfectants as medical expenses for purposes of certain Federal tax benefits; Sponsor: Rep. Curtis, John R. [R-UT-3]; Committees: House - Ways and Means*

*H.R.374 — To prohibit the availability of United States contributions to the World Health Organization until Congress receives a full report on China and the COVID-19 pandemic, and for other purposes; Sponsor: Rep. Boebert, Lauren [R-CO-3]; Committees: House - Foreign Affairs*

*H.R.379 — To authorize the Director of the Centers for Disease Control and Prevention to carry out a Social Determinants of Health Program, and for other purposes; Sponsor: Rep. Barragan, Nanette Diaz [D-CA-44]; Committees: House - Energy and Commerce*

*H.R.387 — To prevent doses of vaccines for COVID-19 from being wasted, and for other purposes; Sponsor: Rep. Budd, Ted [R-NC-13]; Committees: House - Energy and Commerce*

*H.R.391 — To authorize a comprehensive, strategic approach for United States foreign assistance to developing countries to strengthen global health security, and for other purposes; Sponsor: Rep. Connolly, Gerald E. [D-VA-11]; Committees: House - Foreign Affairs*

*H.R.419 — To prohibit United States assessed and voluntary contributions to the World Health Organization; Sponsor: Rep. Roy, Chip [R-TX-21]; Committees: House - Foreign Affairs*

*H.R.430 — To prohibit the Secretary of Veterans Affairs from denying a veteran benefits administered by the Secretary by reason of the veteran participating in a State-approved marijuana program, and for other purposes; Sponsor: Rep. Steube, W. Gregory [R-FL-17]; Committees: House - Veterans' Affairs*

*H.R.432 — To amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare program, and for other purposes; Sponsor: Rep. Thompson, Mike [D-CA-5]; Committees: House - Energy and Commerce; Ways and Means*

*H.R.433 — To establish a grant program for family community organizations that provide support for individuals struggling with substance use disorder and their families; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Energy and Commerce*

*H.R.434 — To direct the Secretary of Health and Human Services to convene a task force to advise the Assistant Secretary for Mental Health and Substance Use on a national strategy for preventing mental health and substance use crises during a public health emergency, and for other purposes; Sponsor: Rep. Trone, David J. [D-MD-6]; Committees: House - Energy and Commerce*