Andrea Garcia, JD, MPH, on legal challenges to Biden's vaccine requirements

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Featured topic and speakers

In today’s COVID-19 Update, a discussion with AMA's Director of Science, Medicine & Public Health, Andrea Garcia, JD, MPH, on COVID-19 vaccine numbers and trending topics related to the pandemic over the past week. Also covering legal challenges to the Biden administration’s recent vaccine requirements for large companies and health workers, as well as ongoing efforts to vaccinate the nation's 5 to 11-year-olds.

Learn more at the AMA COVID-19 resource center.

Speaker

- Andrea Garcia, JD, MPH, director of science, medicine & public health, American Medical Association

Transcript

Unger: Hello, this is the American Medical Association's COVID-19 Update video and podcast. Today we have our weekly look at the numbers, trends and news about COVID-19 with AMA's Director of Science, Medicine and Public Health Andrea Garcia in Chicago. I'm Todd Unger, AMA's chief experience officer, also in Chicago.

Andrea, last week, President Biden, in his effort to get more people vaccinated, came out with a much-anticipated set of vaccine requirements for private sector workers. What are the details of those requirements and how many workers are going to be affected by this?

Garcia: Well, thanks for having me back, Todd. And yeah, last week, the administration set January 4
as the deadline for companies with 100 or more employees to mandate COVID vaccinations or establish a policy requiring employees who are not fully vaccinated to undergo weekly COVID testing and wear a face mask in the workplace. The mandate does allow for medical or religious exemptions to vaccination but obviously, those employees who are exempt must undergo weekly testing and wear a face mask.

We know that companies that fail to comply with these requirements may be fined. The guidance will cover about 84 million workers, roughly 31 million of whom are unvaccinated. This is the government's biggest effort to enlist private businesses in combating the virus. And it lays out the plan that the president first spoke about in September. It invokes OSHA's emergency authority over workplace safety.

**Unger:** Now, the administration also released earlier requirements for some health care workers. Who will be impacted by the these requirements?

**Garcia:** Yeah, so at the same time last week, the administration announced a separate CMS regulation that affects 17 million more workers. That measure requires nursing homes and other health care facilities that receive Medicare and Medicaid funds to ensure all employees are vaccinated against COVID-19 by January 4. There's no option for testing but it does allow for medical and religious exemptions.

**Unger:** Now, these measures have already been met with some pushback and legal challenges. How is the administration responding at this point?

**Garcia:** So Dr. Vivek Murthy, the Surgeon General, said on Sunday that the administration is prepared to defend these measures. He said that, "The president and the administration wouldn't have put these requirements in place if they didn't think that they were appropriate and necessary." He also pointed out that there is precedent in our country for vaccine requirements dating all the way back to when George Washington required troops to get the smallpox vaccine in 1777.

**Unger:** And that is a lot of precedent. What legal challenge specifically have we seen so far?

**Garcia:** So opponents are largely arguing that the OSHA emergency temporary standard requirement is unconstitutional. There is a coalition of businesses, religious groups, advocacy organization in several states that filed a petition on Friday in the U.S. Court of Appeals for the Fifth Circuit in Louisiana. And they are arguing that the administration overstepped their authority.

Then on Saturday, a panel of the court temporarily blocked the new mandate. The stay doesn't have an immediate impact as the first major deadline in the rule is December 5. And that's when companies with at least 100 employees must require unvaccinated employees to wear masks indoors but it does provide momentum for the mandate's opponents.
I think the legal questions here really challenge whether OSHA has the authority to issue a rule like this, or whether the mandate must be passed by Congress. We know that there are a lot of states issuing challenges. So challenges are pending before the sixth, eighth and 11th court of appeals as well.

**Unger:** Now, we've had other challenges to vaccine mandates and have those been successful?

**Garcia:** Yeah, generally these challenges to vaccine mandates have not been successful. And on Sunday, the White House Chief of Staff Ron Klain said, he was quite confident that the mandate would be upheld. I think we'll have to wait and see how this unfolds. I think the thing that we do know is mandates tend to help motivate people who are maybe waverering to go and get the shot.

**Unger:** And just to note, we're going to get into much more detail about the thinking behind these new requirements when we talk to Dr. Bechara Choucair, the vaccinations coordinator on the White House COVID-19 Response Team, that'll be next week. Turning to our overall vaccination numbers, where do we stand this week?

**Garcia:** According to the CDC this week, a total of 223.9 million Americans have received one dose. That's about 67.5% of the total population. And of those 194 million are fully vaccinated, so 58.4% of the population.

So far, the CDC is estimating that 24.8 million people have received a booster dose. That's a jump from the 19 million or so we had talked about last week. With booster shots and pediatric doses increasing demand, we're administering more vaccines per day than at any point since June.

**Unger:** Wow! A big part of that has been the vaccination of the five to 11-year-old age group. Have we seen additional efforts to get kids vaccinated?

**Garcia:** Yeah. Earlier this week, we saw the first lady and the surgeon general travel to Virginia to promote the vaccination of children against COVID-19. They had visited an elementary school that made history in 1954 when its students were the first to receive a polio vaccine as part of a nationwide clinical trial. This was the kickoff to a nationwide push to persuade parents and guardians to vaccinate children ages five to 11. And the administration is also enlisting schools in this effort.

**Unger:** How are they doing that? What does that look like?
Garcia: Yeah. The Department of Education and the Department of Health and Human Services sent a joint letter to school officials at the beginning of the week. They're really urging them to host COVID-19 vaccine clinics at their schools, to distribute information about COVID-19 vaccines to families with children who are in this age group and to have conversations with their school communities about COVID-19 vaccines.

They're also providing schools with information on how to host clinics, how to conduct outreach and how to partner with COVID vaccine providers. And public health experts really view vaccinating children as a critical step towards bringing the pandemic under control, so we'll likely see more to come.

Unger: I'm saying, that's so important because we have crossed another bit of a milestone here, a very sad one in terms of cases and hospitalizations and deaths, of course. Can you take us through the numbers?

Garcia: Yeah. We reached a devastating new milestone last week. More than 750,000 people in the U.S. have now died from COVID-19, that includes about 50,000 announced since the start of October. That said, we know case levels are remaining stable in recent days. There are around 70,000 new infections reported daily. And we're still seeing hospitalizations and death continue to decline.

We know that we're seeing continued improvement across the South and the Northeast, but that's mostly being canceled out by parts of the West. Some hard hit Western states, including Alaska and Montana, are starting to see some improvement in their numbers but infection levels continue to climb steady in other states like California, Colorado and New Mexico.

Unger: Now, I know my family is making their Thanksgiving and holiday plans for the rest of the year. The U.S. has now lifted some travel restrictions that will likely allow more families to get together. How's that going to affect holiday travel?

Garcia: Yeah, as of this past Monday, November 8, travelers who can provide full proof of vaccination against COVID are now able to enter the U.S. The administration lifted an 18 month ban on travel from 33 countries, including members of the European Union, China, Iran, South Africa, Brazil and India, really reopening the country to thousands of people, including those who've been separated from family in the United States during the pandemic. This is likely to increase travel around the holidays and to help the travel industry rebound. According to the U.S. Travel Association, the travel industry suffered a $500 billion dollar loss in travel expenditures in 2020.

Unger: Wow! So travelers, they'll need to show a proof of vaccination. Do they need to have a test as well?
Garcia: Yeah, so foreign travelers will need to show proof of vaccination before boarding a flight and a negative COVID test within three days of coming to the United States.

And then unvaccinated Americans who want to travel home from overseas will have to clear stricter testing requirements. So they'll need a test negative for COVID one day before traveling to the U.S.

We're also seeing some recommendations from CDC to get tested three to five days after travel, just due to your risk of exposure to COVID during traveling. And then some quarantine requirements once you arrive. So self-quarantining for seven days after travel, if you have a test, a negative test at days three or five. And then if you don't get tested at days three and five, they're recommending that you self-quarantine at home for 10 days.

Unger: And finally, any last messages from the AMA, a note this week?

Garcia: The AMA, the American Hospital Association and the American Nurses Association released a joint statement last Thursday, urging widespread vaccination as the U.S. reached 750,000 COVID-19 deaths.

The statement said, "Today, we mourn the loss of 750,000 Americans who've died of COVID-19. This devastating milestone should serve as a reminder to everyone that the COVID-19 pandemic is not over and it still poses a major threat to our society, particularly to the unvaccinated. The only way to truly end this pandemic is to ensure widespread vaccination and to continue taking preventive public health measures that we know work in curbing the spread of the virus."

Unger: Well said. Andrea, thanks so much for being with us here today and sharing the details.

Unger: That's it for today's COVID-19 video and podcast. We'll be back soon with another episode. In the meantime, for more resources on COVID-19, visit ama-assn.org/COVID-19. Thanks for joining us. Please take care.

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