

## The Issue

**The Biden Administration recently released a series of Executive Orders (EOs) related to the COVID-19 pandemic.** One EO includes provisions for the Department of Labor and the Occupational Safety and Health Administration (OSHA) to consider whether an Emergency Temporary Standard (ETS), including with respect to mask wearing, is necessary, and, if so, to issue an ETS by March 15. Proposals to include a congressional requirement for OSHA to promulgate an ETS also are being considered as part of negotiations on the next COVID-19 relief package.

The Proposal: The issue of protecting health care workers from COVID-19 has been a key topic of discussion since the beginning of the pandemic. A requirement for OSHA to issue an ETS for COVID-19 was included in several legislative proposals in 2020. Those bills would have required employers to develop and implement a comprehensive infectious disease exposure control plan. The ETS required under those measures could not be less protective than any OSHA state plan, meaning every state would need a standard in place that is at least as restrictive as the most restrictive state's current rules, which is California at the moment. The Biden Administration now has requested OSHA to consider issuing such a standard. In addition, the EO instructs OSHA to launch a national program to focus enforcement efforts on violations that put the largest number of workers at serious risk or are contrary to anti-retaliation principles.

## Key Points to Make

- Our health care workers are our most vital resource and their health and safety is a top priority. As such, hospitals continue to work every day to protect their health care workers and to be good stewards of personal protective equipment (PPE) and other scarce resources.
- A new standard has real potential to add for hospitals and health systems a new layer of conflicting and impractical regulatory burden at precisely the wrong time.
- If new legislation is introduced similar to what was introduced in the last Congress, it would fail to acknowledge ongoing surges in COVID-19 infections and flu season demands that have depleted the supply of PPE. Enacting these new standards could force hospitals and their staffs into a nearly impossible decision – to either not comply with the standards in order to treat all of the patients who need help or comply with the standards and stop treating patients when supplies of OSHA-required equipment are exhausted.
- Hospitals already adhere to science-based guidance from the Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS). CDC closely tracks any developments and updates its guidance accordingly as more becomes known about emerging pathogens and how they are transmitted.
- Hospitals already establish and support robust infection control programs and invest significant resources to assess and improve those programs. Hospitals, in order to participate in the Medicare and Medicaid programs, must meet specific infection control requirements as set by the programs' conditions of participation (CoP).
- Hospitals remain concerned about the adequacy of supplies of N95 respirators and gloves in particular as the virus continues its surge across the country and the flu season continues. At a time when supplies are limited, N95 respirators should be reserved only for those procedures in which they are absolutely needed, such as aerosol-generating procedures. For other care tasks, the CDC recommends facemasks be used in lieu of N95s and that, to the extent necessary, conservation practices be used to optimize the supply of PPE.
- The CDC holds that COVID-19 is primarily droplet spread except when doing certain aerosolizing procedures. The CDC has recently acknowledged some specific circumstances outside of the hospital setting can generate COVID-19's spread through aerosols. For health care workers, CDC continues to recommend as appropriate the use of facemasks unless workers are performing aerosolizing procedures or procedures that require very close contact with patients with suspected or confirmed COVID-19 infection. Hospitals continue to follow the standards established by CDC, which are science- and evidence-based.