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CMS Vaccine Mandate Webinar

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SPEAKERS

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Nathan Baugh: Director of Government Affairs @ NARHC

Sarah Hohman 00:11

Okay. Hello, everyone. Thank you so much for joining us for today's call. My name is Sarah Holman, deputy director of government affairs for the National Association of rural health clinics. And I'm pleased to welcome you to our webinar today on the CMS vaccine mandate. And all of the details associated with that. This webinar series is sponsored by hearses Federal Office of Rural Health Policy, and it's done in conjunction with the National Association of rural health clinics. We're supported by a cooperative agreement as you see on your screen through four. And that allows us to bring these webinars to you free of charge. So thanks for joining us. The purpose of this series, as always, is to provide all of you with valuable technical assistance and RHC specific information. Please help us spread the word about these free webinars by encouraging anyone who can benefit from this information to sign up to receive our announcements about topics, dates and speakers on the NRA, cheat na R HC website. We will have plenty of time for questions today. So I encourage you to put your questions in the q&a box, you will not have access to the chat today. But please put those in the q&a box so that everyone can see them and we can get to as many as possible. As with all webinars, we're at the mercy of good bandwidth for all parties. We know that connectivity can go up and down. But if you have any audio or visual issues, please just briefly leave the zoom and rejoin the webinar. And hopefully that will fix the issue. But as always, you can access the slides that Kate put in the chat, and you can access the slides, the recording and the transcript following the presentation on our website. Next slide. Okay, so with that, I'm pleased to welcome you and to introduce our speaker, Nathan and I will be presenting today. Next slide please. Just a few things we'll go over today. So we will be reviewing the CMS interim final rule details as they're written. We'll talk about the required policy and procedure that your agencies will have to implement if the CMS mandate is upheld, and we'll also discuss the legal uncertainty around all vaccine mandates, as it stands right now.

Nathan Baugh 02:50

Perfect. Thank you, Sarah. And hello, everyone. So interesting time to be talking about this. Because as you can see on your screen right now, we are beyond December six, what's the date today? December 8, right? So if there wasn't an injunction, the we would already be past the first deadline. However, there is an injunction on this rule, and therefore it is currently not being enforced. But just to go over the timeline here, just so everyone is clear. September 9 was when this these there were two mandates announced on September 9, the CMS one and the OSHA one. And we'll talk about both in just a second. On November 4, CMS released an interim final rule just on the CMS version of the mandate. And that required by December six, two employees to have

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their first shot and facilities including all rural health clinics, were required to have their policies and procedures in place by December 6, according to that rule. And then, also the same rule. It had the timeline that by January 4, which was 60 days after the release of the rule that all staff must be fully vaccinated. So that is the timeline as it was proposed. And here's the litigation update that is from the this is verbatim what you will see on the CMS FAQ updating everyone as to the status of these rules. And you can see I bolded. The key section here on November 30, the Western District of Louisiana, issued a nationwide preliminary injunction against the implementation and enforcement of the rule. CMS has appealed to both of these decisions. There's actually another court case but the bottom line is that currently CMS is not enforcing these, the mandate. However, CMS is confident, as they say in this little note that they do have the authority to do this and they are going to appeal it. And the legal, the legal activity and litigation will continue. And of course, we will be following that. So just right now we are in a, it's on hold, and it's currently not being enforced. Real quick, we're mostly going to be talking about the CMS rule. But I just want to talk about briefly the OSHA mandate. And OSHA stands for Occupational Safety and Health Administration. And the that rule is also being challenged in court. And there's also a hold on enforcing that rule. But that rule applies to employers with more than 100 employees. And systems. If you're in a system that does have more than 100 employees, you're definitely going to want to follow the results of the litigation for both the CMS rule and the OSHA mandate rule. There is an FAQ for the CMS rule, where it talks about how it interacts with the OSHA rule. In general, the CMS rule is going to be more stringent. And by following the CMS rule, you're almost defaulted to be following the OSHA mandate as well. But there might be some nuances and some differences between the two that are in there highlighted in that FAQ. So we would, again, advise everyone to look at the CMS rule, because the CMS rule applies to all RH C's. And that's why we're focusing on this more so than the the OSHA mandate. Alright, so most of this presentation, we are going to be a lot of text, it's a very text heavy presentation. And that is I'm going to put up specific quotes either from the interim final rule or guidance, and we're just going to go over it and talk about what it means to your RHC if necessary. And of course, we'll have questions at the end, and we'll have the exact language, we'll look at the same exact language together and decide okay, you know, this is how I would interpret it, and this is how you should interpret it, so on and so forth. So, the vaccine policies and procedures pretty much apply to everyone. Right, and this is the, again, the direct text from the the rule. And the regulation says, facility employees, practitioners, students, trainees, volunteers, any individuals who provide care, treatment or other services and or its patients, so on and so forth. The only people that are the rule is not subject to are individuals who provide services 100% remotely, such as a fully remote telehealth professional or someone who provides payroll services 100% remote, they would not be subject to the vaccination requirements. And then here's the big gray area section when determining whether and this is again verbatim what the interim rule says, When determining whether to require COVID-19 vaccination of an individual who does not fall into the categories established by this IFC, the ones I just had on the screen, facilities should consider their frequency of presence services provided and proximity to patients and staff. Okay, I've we put that in red and bold because that is what we are being asked to consider it when we're determining whether or not this extends to X, Y or Z person. That's a contracted worker now if they work directly for the clinic or the system, that they're going to be categorized under this facility employees unless of course, they're 100% remote. If their contract that's where it gets into this gray area, and of course they give you the example here about a plumber makes an emergency repair and wears a mask, then they say, you know, in that situation, because the frequency of presence is really it's a one time thing, you don't have to have make sure that that plumber is vaccinated. However, if you have if you're doing a project, and you have construction members who are going to be there frequently, then the frequency of presence there is obviously higher and that they would expect the vaccine mandate to apply to those construction workers.

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Now, you know, the difference between a one off, two off three off four off, you know, at what point does the frequency get to, to a level where you're contracted? We can't say you will have to make that determination, put it in your policies and procedures and then follow it. Okay. Sir, anything to add?

Sarah Hohman 11:03

Nope. Um, we're getting lots of questions. A few questions in the chat already. And we will address those a little bit later on. But keep the questions coming, but nothing bad so far. Okay.

Nathan Baugh 11:17

So definition of fully vaccinated. Again, this is pretty straightforward here. You're fully vaccinated when you're two weeks from more since the completion of your primary vaccination series, if you have people that get their second shot on December, or I'm sorry, January 3, even though technically, you know, it's not two weeks since the completion of their primary vaccinations series, you are you would be compliant here. Again, these dates are not currently enforced or be will be enforced. But let's just say the legal situation plays itself out and a new date is given for people to be fully vaccinated by let's say, march 4, right? What the rule says is that, even if they haven't completed their 14 day waiting period, they've got their second shot, they would be okay. So when we get the real full implementation date, if we ever come to that day, this is the how I would view that booster shots are encouraged, but are not required to be fully considered fully vaccinated. Sara, you wanted to weigh in on that booster. So

Sarah Hohman 12:35

just wanted to note that in terms of what you need to include in your policies and procedures, there's lots of information about noting your process for documenting your employees that are are partially fully vaccinated, who have received exemptions, etc. And while booster shots are not required to be fully vaccinated, they are required to be part of that documentation that you maintain for each staff member. So I just wanted to note

Nathan Baugh 13:07

that yeah, and we're gonna get into the documentation stuff in a second, but the Yeah, so just document who has booster so ask your staff to report to you, you know, when they got have booster so you have that documentation. Okay. Let's go next question or next slide here. Alright, so, you have to every facility does have to offer both a medical exemption process and a religious exemption process. Okay. And for the medical exemptions, I'm giving you again, the full text here, I will read it just to emphasize facilities must ensure that all documentation confirming recognized clinical contraindications to COVID-19 vaccinations for staff seeking a medical exemption are signed and dated by a licensed practitioner, who is not the individual requesting the exemption and is acting within their respective scope of practice based on applicable state and local laws. This documentation must contain all information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive the recognized clinical reasons for contraindications. So thankfully, with the medical exemptions, there is some objective standard here. And if you go to this, the CDC website that we have linked, where you can say up or down yes or no based on an objective standard, if you have the document the proper documentation from again, you can't if this is a physician, he can't diagnose himself, or she can't diagnose himself, you would have to have someone else provide that documentation, right. But

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the medical exemptions are certainly a bit more objective and less subjective than the religious exemptions, which again, you are required to have a process for a staff to seek a religious exemption. So this is again, a q&a from the CMS FAQ, which I do recommend people take a look at, does get to the heart of most of the policy in a relatively short amount of pages. So, take a look at that FAQ. For sure. But this is what says what is the process for staff to seek a religious exemption? Answer. facilities have the flexibility to establish their own process that permits staff to request a religious religious exemption from the COVID-19 vaccination requirements. CMS requires facilities to ensure that requests religious exemptions are documented and evaluated in accordance with applicable federal law and as a part of a facility's policies and procedures. So this is so before we get to religious exemption, let's just talk about documentation. Right? We already live in a world where RHC should be trained, and I think this audience should understand that you want to document things. Just even before COVID, you'd had to document things like when you were doing your annual review. And you know, that you were you were documenting how you were meeting your requirements to have a nurse practitioner or a PA there, at least half the time. Documentation is key, because that's what the surveyor is going to look for. Right? You can't just say, oh, yeah, we have a religious exemption, but then, and we apply a religious exemption this way, and then have no documentation to back it up. Right. So documentation, just like all things, compliance is key for the vaccine mandate. Okay. So it's not enough to just do the vaccine mandate, you need to document that you have done the vaccine mandate for purposes of your service of the survey. religious exemptions are they are somewhat subjective, I don't know how to to say it, that they aren't. The best language that we have identified on the Internet that will help you make these determinations. is Section L of the E OC. Which Sara helped me EEOC stands for equal employment opportunity, or my um, our Marsha, I believe. Commission. Can you double check that? Yeah, for me, EEOC, Section L of the EEOC. Okay, guys. And right. Okay. Opportunity Commission. You're right. All right, here we go. So we actually have the QR code, which will take you to Section L, or is that the sample? Sara?

Sarah Hohman 18:42

Nope. The sample is the QR code and what's linked up in the upper right section L is is linked.

Nathan Baugh 18:49

Okay, so Section L is hyperlinked. The, if you take that QR code, it'll take you to the sample religious exemption form. And that is this is the one from CMS.

Sarah Hohman 19:01

This is the one from the safer Federal workforce that CMS included in the interim final rule. Okay.

Nathan Baugh 19:10

So there you go. Sectional is really good, highly recommend folks read that fully. I do have some of the key highlights here. That might help color in how you can make these determinations. Generally, under Title Seven. An employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information. An employee who fails to cooperate with an employer's reasonable request for verification of the sincerity or religious nature of a professed belief risk losing any

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subsequent claim that the employer improperly denied an accommodation. So I found that somewhat informative and just in terms of you assume that the belief is sincerely held, but you are allowed to ask for additional information from your employees supporting their claim. I'm not going to read the second paragraph, I just would strongly refer people to Section L of the EEOC and that link before the full language. I hesitate a little bit to use this example. But just for, for example, if you have no, I'm actually I'm not even gonna go there. So I was going to use an organized a very well known organized religion that has very clearly professed beliefs, like online somewhere, versus an example of someone that maybe belongs to a church that doesn't have, you know, very widespread beliefs, but I'm not gonna go there. So I This is difficult. And we recognize that you have to have a process for the religious exemption in your policies and procedures. And you have to follow that. We're going to talk about the sample PMP in just a second, but there is a section in that sample PMP, that talks about the religious exemption, how you document the request from your employer, and what your determination is all of that stuff, again, needs to be documented. Sara, do you want to weigh in on religious exemption?

Sarah Hohman 22:04

Sure, I'm just to say that, you know, when Nathan says, Your determination and exemptions as they're presented to you, that's just the the you and you're there is just another thing that you need to have documented in your PMP as part of the process for religious exemptions. So there's not a set or established individual or group of people that CMS says, are the ones to review these religious or medical exemptions. That's something that you need to create, who will? Who will that be that reviews them, but just ensure that that's part of the part of your PMP exactly what that process will look like, including who's going to be reviewing those?

Nathan Baugh 22:57

And I think you could, you know, you can consult experts on this. I mean, there's for sure if there's if you want to consult legal counsel from a law firm that has strong backing and he you know, employment equal equal employment law, then absolutely, you're allowed to sort of rely on their expertise and nuancing some of this. So, you as an employer definitely can make these calls, but you can, in doing so you can absolutely seek the advice of, of legal counsel.

Sarah Hohman 23:36

Yes, absolutely. And, like Nathan said, we'll go over the sample PNP that we created at NARC, but again, that's not legal advice, either. So, you know, we're just we're all doing our best to understand this.

Nathan Baugh 23:53

Yeah. Alright, so we've gone through, there's two exemptions. Okay. And the exemptions in this scenario for for people who definitely it definitely applies to them. Okay, let's say because they're an employee, that's not 100%. Remote. Okay. Exemptions are for that category. If you're 100% remote, you don't need an exemption technically, because it does. The rule doesn't extend to you, if that makes sense. If the rule clearly does extend to this employee because there aren't 100% of remote, then they would in order to not be vaccinated, they would need to be under one of the exemptions. Alright, so you've done all your work in terms of identifying the medical exemptions and religious exemptions in your clinic or in your system. What comes next? And the answer is that you need to take quote, additional precautions for those members who were granted an

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exemption and are not a vaccine added staff members who are granted an exemption are not vaccinated. You need to have these additional precautions listed in your policies and procedures, and then you need to follow them. The term additional precautions is not defined in the interim final rule. So it is largely up to you to decide what those additional precautions are for people who have been granted an exemption. We have given you some examples. Now, this is not in the internal interim final rule, nor is it in the guidance. But these are some obvious things that we think makes sense in terms of being an additional precaution that the folks that have an exemption would be subjected to. So, of course, you can, if you can convert them to 100%, telework that is an additional precaution that you could take weekly, or some other pace of testing COVID-19 testing, where it could be an additional precaution that you would take for the exemptions, utilizing additional PPE. Whether that's a mask plus other PPE or a more like in 95 Mask that's more sort of clinical than some of the other masks like Visa, these are again, just examples here, you're going to have to decide what these additional precautions that the exempt employees need to take that does not apply to the employees that have vaccines. So like, for example, if you require masks, at all times for all employees, even those that are vaccinated, it would not be an additional precaution to require those unvaccinated employees that have an exemption to wear a mask. So there needs to be an extra level of precaution for your exempt employees. Of course, you have physical distancing, social distancing, when appropriate. You can do temperature checks as well. These are just examples, you have to make this determination, there is no definition in the rule or the regulation about additional precautions, okay. So the rule, the rule is quite long, right? But the new regulations are is actually really not that long. Okay. And so if you want to just get to the heart of the new regulation that applies to RHCs, I would direct you to 42 CFR 4918, D, okay, A, B, and C are our staffing and staff responsibility. sections that many of you are already familiar with DEA is what was added and includes the COVID-19 vaccination of staff, that hyperlink takes you to our website. And it takes you directly to the full section of four, nine 1.8. So again, this is our section of the regulation that applies to our ACS, and it's in what we call our conditions of participation, right? It's it lives with all that other stuff that we do to be surveyed and certified as rock clinics. So four nine 1.8 D begins by saying the RHC must develop an implement policies and procedures to ensure that all staff are fully vaccinated for COVID-19. For purposes of this section, staff are considered fully vaccinated than two weeks or more since completed primary vaccination series. Completion of a primary vaccination series is defined here as administration of a single dose or the administration of all required dose of multi dose vaccine. So that's how the section begins. But I would actually highly recommend that people take a look at the entire section because it's not it's really not that long. And it cuts a little bit more to the chase of the rules that apply without the color commentary that is in sort of the guidance, documentation. sections. So we we wanted to highlight one of the just a little section in that conditions of the new conditions of purchase dissipation, which, again is four, nine 1.8. D, this is number three. And it says that the policies and procedures, again, have to have the PNP. Technically, you would have needed it by December six. But again, with the court injunction, you don't need it currently. But if that if this rule goes into effect, you will need this in your PMP. They must include and there's a whole list of things, there's actually I think there's 10 Roman numeral sections here. So it goes, little eye all the way to x. And number three, AAA is a process for ensuring that the clinic or center follows nationally recognized infection prevention and control guidelines intended to mitigate the transmission and spread of COVID-19. So we've had we've not had technically an infection prevention and control standard ever applied to RH C's. Many other facilities did have something like this and infection prevention and control standard, pre COVID. This is the first time that it's formally laid out that our eye sees to have to be following a nationally recognized infection and prevention control, guideline or standard. Okay. I would suspect that many of you are already have a policy on infection prevention and control. And we're following a standard, particularly if you're in a system, the hospital, I believe, is required to have to be

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following nationally recognized guidelines, so on and so forth. But this was notable because it's the first time that this was really put in our regulation. Furthermore, and then again, this goes to our point about additional precautions. For those staff that get the exemption, right, you have to do something above and beyond what you do for everyone else. additional precautions, okay. I, I know I've hammered that point a lot. But I think a surveyor would say okay, I understand that you do maths for everyone, or you do these things for everyone. What is the step that you take for those that got an exemption that are not fully vaccinated? What is the additional thing that you do for them? And they will ask for documentation of that. We posted a link to a nationally recognized infection prevention and control guideline, which of course is the CDC, we would say start there. But again, I hope most of you already are implementing some sort of infection prevention control guideline. Sarah, am I missing anything? Nope. Sarah did a really good job. Putting these sample policies and procedures together, and we posted those online, again, you can get to that through the QR code. You can also get through there through the hyperlinked word here. And it's what six pages I think so five, or six pages, and seven. And you can plug in your clinics name, your organization's name, it sort of prompts you to maybe customize things in certain sections that make, you know, make sense to customize. But, you know, hopefully get you down the right path in terms of what you need for to include in your policies and procedures. So just to be clear, we think, or I think that most people would want to include this into your RHC your, the policy and procedures that you already have. I guess technically it could live as a separate document certainly could be a separate chapter, but you would want to take this sample PMP and incorporate it as it makes sense into the RH C's policies and procedures. It does, it certainly does not have to be separate or combined. You can do whatever is best for your situation. But you do need to have the sample policies and procedures and you need to be following them. And you need documentation that you're following your own sample policies and procedures because that is how this will be enforced by the surveyors. Again, as I mentioned 4918 D Three is actually specifically on the policies and procedures, your 4918 D is overall the vaccine mandate policy. Arabic numeral three is about the policies and procedures. And there are 10 components there that you would want to have addressed in your policies and procedures. Sir, anything to add? Nope. Okay. So I know this is overwhelming, and it's a lot. And so we tried to put together somewhat of a workflow for you to think about it and in a different way, perhaps than just looking at regulatory text. So the where do you start, the first thing is, obviously, you want to get your staff to be fully vaccinated. That's step one. The more vaccinated staff you have, the easier it'll be for you. Step two, is that we suggest working on the policies and procedures, create your policies and procedures, use a sample, use a template, you know, customize it as necessary, determine what those things are, what are those additional precautions that you that makes sense for you, so on and so forth, and get all that policy written down. So that's number two. Okay? Once you have that in place, okay, then you are going to want to certainly process the exemption requests, whether those are religious, or medical exemptions according to your your policies and procedures. So for example, if you have a form that everyone must use in order to request a religious exemption, then you would do would require your employees to submit this specific form to do a medical exemption or to do a religious exemption. And, and, again, have all that documentation according to your PMP. Okay, so then you go through, let's say, you approve 50% of the religious exemptions, and you deny the other 50%. For everyone that gets an exemption, you start following you that you put in place and you ensure that you're documenting the additional precautions that those staff with exemptions are that you're taking. Okay, so that's weekly tests, daily tests, temperature checks, extra masking, whatever it is, whatever your additional precaution is, you start following that for your staff with exemptions, okay. As I already said, a million times, and I'll continue to say document everything, okay, it's not enough. Let's say you do all these steps beautifully. But you don't have documentation that shows how beautifully you you handle all this. It's useless for in terms of the survey, okay. And so obviously, you know,

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we want to defeat COVID. That's a goal number one here. But goal number two is to get through any sort of survey without any headache, particularly on this section. In order to do that, you want to have documentation. Okay. And then, finally, and this is key, you must continue to apply this policy in the future. Okay. So you're not going to get surveyed on January 5, and asked, okay, show me all your documentation. It very well could be the case that you get surveyed in the summer or way later. And that surveyor is going to look for recent evidence. And I think we have this in the next slide. Yeah. They're going to look at the COVID cases over the last four weeks. Right? And they're going to interview the staff that exist this summer. Or, you know, whatever time that they come, right. So continued adherence is key, because if you adhere to it perfectly in January, and then in February, and then somehow you slip and March, April, May, June or July, and then you get surveyed in August, then you don't really you're still out of compliance. You did a really good job in January, February, but you stopped adhering to it when whatever way. If you stopped documenting or you stopped following a proper process for exemption requests, or you know, like you hired a new person and he didn't follow the process properly, so on and so forth. You stopped doing the additional precautions. Continued adherence. Can't emphasize is that enough? I've already talked about it's, it's going to be enforced by surveyors, and or accreditors. So for us, that would be quite a, or the compliance team, or your state surveyors, that is who will handle enforcement. CMS expects that state survey agencies will conduct on site compliance reviews in two ways, they would assess all facilities for these requirements during the standard recertification survey. And then they could also get a survey triggered via complaint. So if somebody complained about your facility, I guess you would, you know, it could trigger that they could come out and assess your compliance if they receive a complaint. So certainly, you need to make sure you're doing this, the surveyors will be checking up on you. I also find it notable that the surveyors I believe they already did this to some extent. But the enforcement here, they mentioned that they will do interviews with your staff. And they're going to review the case count of COVID, in the in the four weeks leading up to the survey, so you know, they're all gonna, they're gonna bring all of that in to assess your compliance with these rules. Now. We don't have a slide in here, but I do want to verbalize that. Just like any other survey, there are different levels of deficiencies. And you will have time to correct those deficiencies before you lose your ability to bill Medicare and Medicaid. And the goal, of course, is to have those deficiencies corrected. Now, I do believe some of the deficiencies could lead to some monetary penalty for being out of compliance. And other ones that are more serious, I think the surveyor does have a little bit of discretion to figure out what sort of condition level or I'm sorry, what deficiency level, they should cite us. But again, the emphasis here is that you should have time to correct whatever that deficiency is. And if you do correct it, then you would be able to maintain and Bill as an RHC. So for example, if you are doing a really good job and everyone's vaccinated, but you're following just a little bit short on not properly documenting everything that might be your your citation might be less than if you forgot to ask a new employee if they've been vaccinated. Right. So they do have different levels of deficiencies. And then finally, hanging over all of this is certainly those dates are up in the air. While this court case, while the multiple court cases are ongoing. All the only thing I can guarantee is that whenever we learn more, we will certainly send out an update. I suspect that all the several of these court cases reflecting are impacting both rules, could very well end up being appealed all the way to the US Supreme Court. That, you know, it's certainly possible that the Supreme Court could see it or hear them and make a determination quickly, particularly given the circumstances. But I do not have enough constitutional law background to tell you how often the Supreme Court does that and whether they would do it on these on on these pieces of litigation or not. All I can do all I can guarantee is that when we hear more, and we are looking out for it, we will certainly let everyone know. And just to emphasize what I said at the beginning in case folks missed it. All of this OSHA plus CMS at the federal level is not being enforced currently. When they if there is a difference termination.

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And and let's say for example the CMS rule is upheld, it would be. I would say, again, this is complete speculation on my part, but I would say it would be somewhat likely that the dates would get shifted around. Right. I don't think that a, a ruling would come out from a judge and says, All right, everyone, you know, you didn't you got no heads up. But you know, you have to have your PMPs. Done and operational today, just because I issued this rule like now, certainly, I think it would be wise to have your PNPs prepared and ready to go, should the legal determination be made that this this is constitutional and be upheld? You want to have that ready to go. But I think it would be likely to expect somewhat of a timeline, okay, like this is we're back on. And the new date to be fully vaccinated is x. And the new date to have your your policies and procedures in order is why. So that is the presentation. We have time for questions per usual, we're gonna go beyond 1248, it's running out, it's zooming through to the end that I apologize for that. We're going to go till about maybe 315. And take as many questions as we can. And we do have the ability for not only to type in your questions, but also the ability to raise your hand if you would like to verbally ask a question. I that's a feature that I like, I like verbal questions. Because then I you know, I like to hear other people talk as well. So, Sarah, have you been looking through the questions? Do you want to start us off?

Sarah Hohman 47:02

Yep. Lots of questions, which is great. Many of these have have quick answers. I could have just typed my response to you, but I think they're beneficial for everyone to hear. So some of these will go through quickly. And then Nathan, if you have anything to add, some I'll ask to you. What about someone who cleans after hours or, or who has no contact with staff or patients? So Teresa, this would depend on whether they're a staff, a staff member of the RHC or their their contracted staff, if they're employees of your RHC. The interim final rule does explicitly say that, you know, those providing housekeeping food, other services are part of this. If they're contracted staff, Nathan has the language on the screen as to where you have to make that determination. Based on you know, things you should consider like frequency of presence services provided and proximity to patients and stuff. Okay, um, can you require all new hires to have the COVID vaccine? Is it required to offer medical or religious exemptions for these new hires? Yes. So, new hires are are subject to this mandate as well, they need to either be granted a religious or medical exemption or be fully vaccinated before they provide patient care. But to everyone, yes, it is required that you offer medical and religious exemptions.

Nathan Baugh 48:48

So I think Penny and we would have to double check this. I think one that was a penny has here is that she doesn't want to offer medical or religious exemption for new hires like it. Could you Could that be an option? I don't know if I don't recall reading about medical or religious exemptions only being offered for existing employees versus new hires. Do you Do you remember anything on that, Sarah?

Sarah Hohman 49:15

Well, I mean, those are, by EEOC law, you're required to offer religious exemption, so I feel pretty strongly that those need to be offered to new hires as well.

Nathan Baugh 49:31

Okay, fair enough.

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Sarah Hohman 49:34

Okay, um, Cate Visser, are you able to send the slides again in the chat for some that may have come late missed those? Yep, I can be great. I'm okay. Next question. How about board of directors, volunteers to meet one time per month in the hospital. Those also are explicit listed in the interim final rule as being subject to this mandate. Yeah. Okay. As far as policies, if we're attached to a critical access hospital, can we just reference their policy in our policy? And have the critical access employee health nurse follow all the employees?

Nathan Baugh 50:23

Hmm. Do you have an answer on this one? This one is tough.

Sarah Hohman 50:28

Yeah. And there's there's a few other questions about using their their systems policies. I think that this is pretty, pretty directly requiring RHC PMP. And so I would say, No, you can't just use your systems kind of in in place of your own certainly things that, you know, if those additional precautions are set in place by your system, I would say you can certainly use those. But I don't think that can fill the place of the PNP you're required to create for your RHC.

Nathan Baugh 51:15

Yeah, I mean, I think it's a tad more nuanced than that. I mean, we had several years ago, when we had the emergency preparedness rules come out. There was a whole thing about how RH C's could be following the emergency preparedness guideline or policies of their larger system. But those emergency preparedness policies had to include specific references to the ICS. And consider what might be different about any given address or location. So it does get a tad more nuanced, I would say potentially, we can check on this to see if it's listed anywhere. Certainly, I think you could have very, very similar policies and procedures, it probably wouldn't hurt to copy and paste them and make a few tweaks and drop them in your own just in case. I would I would have to consult potentially with the some of the surveyors on whether or not they would accept just a reference to a hospital's PMP in in the RHC PMP. So so it's a good question. I don't fully have the answer, I would probably have to go consult a surveyor on that.

Sarah Hohman 52:46

Kate Hill is raising her hand. So Kate Hill, well, I hear you and allow you to talk speaking

Nathan Baugh 52:51

of an accreditor. Let's let's let's get Kate Hill. Okay, you should be able to unmute.

Kate Hill 52:57

I just got it. Thank you so much. I want to be clear on that one, because that's a very common question. So the code, the hospital policy must be very clear that it includes all their entities, and I would even love it if they would name the clinics, and then they're absolutely fine. They own the clinic. It's true of HR. It's true of hiring policy. So that's 100% acceptable that but but you don't

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have you don't say in your clinic policy, we file we follow XYZ hospital, that policy would need to be clear that it includes the clinics, do you understand what I mean? That's true of all things.

Nathan Baugh 53:32

That's the nuance I was seeking. Thank you. Okay, exactly true.

Kate Hill 53:35

And that's and that's often a problem with with emergency preparedness, because they say, Oh, we follow the hospital, but then you go to the hospital stuff, and nowhere does it mention a clinic. Yes. So to your point, exactly. It must include the hospital of the clinics, and then it's fine, absolutely fine. There's no they own them. There's no reason to have different standards for the hospital, then you have for the clinic. None of them are now infection prevention. So we see we've got a trauma room, we've got operating room. We don't want all that in the clinic stuff that's a little bit different, but this one is the same. But it must be clear. Okay, thank

Nathan Baugh 54:10

you, Kate.

Kate Hill 54:11

You're doing a great job with a tough subject.

Nathan Baugh 54:16

Sir, go ahead. Take this next one.

Sarah Hohman 54:18

Thanks, Kate. Okay, next question. If you are part of a health system and they keep your HR information, including vaccination status, do you recommend we keep a copy on site also in case a surveyor comes on site? Is that required? Or will they give us time to obtain that document?

Nathan Baugh 54:46

Sorry, sorry, I had to step away for a second. Can you repeat the question?

Sarah Hohman 54:49

Sure. If you are part of a health system and they keep your HR information, including vaccination status, do you recommend we keep a copy on Also in case a surveyor comes on site, is that required? Or will they give us time to obtain that document?

Nathan Baugh 55:15

They keep your HR information clean vaccination, like I would say, Well, is there is this listed specifically in the requirements? Sara? I think a copy would make would be fine.

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Sarah Hohman 55:27

All right. I think a copy would be fine. Yes. Also, that's something that you can include in your PMP. As to, you know, you have you keep a copy, but you know that,

Nathan Baugh 55:39

yeah, that's your documentation and record. Yeah, yeah. No, I think a copy is fine. Hopefully that answers your question. Sir, hold on. I'm sorry, I have to run you. You're you're handling this solo just for a hot second. Okay. Great. All right.

Sarah Hohman 55:59

Okay, um, next question. There is a court order stay in place? Will they put new deadlines in place once the legal disputes are over? So certainly, they can't keep the same deadlines, because we're moving past those. But yes, there will, there will be a date that, that you learn of when these these legal disputes are resolved. And so that will probably come with whatever that ruling is, the judge could give, give CMS the direction to set new dates or give a certain amount of time following when that rule comes out, so yes. Okay. Next question. For enforcement. Does this go on as long as the pandemic exists? Or does it have an end date, there is no end date, this is now part of your RHC conditions of participation. And you're writing those PMP to be incorporated into your existing policies and procedures. So this is an indefinite type of situation without an end date. Okay, um, next question. How does this apply to EMS providers?

Nathan Baugh 57:57

Sorry, sorry about the technical difficulties, I guess. And I know the audio change, hopefully, you can maybe plug it back in and we can speak to the mic. I'm sorry about this. We're back at it. Alright, so for EMS providers, it depends on if they're a contractor or not. And whether or not they whether would be be subjected to it, I would pretty much expect even if they were a contractor, that the frequency and again, I know we lost our slides, apologies for the technical difficulty, but the frequency of the interaction with staff would would would require that they be vaccinated. So that is my brother didn't mean that it would apply to them. So that's my answer there. Anything God Sarah?

Sarah Hohman 59:05

Next question, because we are in the state of Oregon who has their own vaccine mandate, it expires as of January 31 2022. At this time, we still need to follow that even if federal requirements have been put on hold Correct.

Nathan Baugh 59:26

Yes, you would need to follow follow the state of Oregon, the the B just because the federal requirements are on hold. It does not mean that the Oregon law has changed. So yes, still follow that.

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Sarah Hohman 59:49

What if your state allows medical or religious exemptions does this apply and then waive their requirement if the CMS rule was passed?

Nathan Baugh 1:00:00

Well, this CMS rule includes medical and religious exemptions. So I'm not entirely sure how it would be different. There's medical and religious exemptions in your in your in your state. But there's also those exemptions on the on the CMS rule.

Sarah Hohman 1:00:21

What about documented natural immunity

Nathan Baugh 1:00:25

at this time, that does not impact your consideration about of being fully vaccinated?

Sarah Hohman 1:00:35

If the mandate does go into effect, and the clinic during the state RHC inspection is found to be out of compliance with the vaccine mandate, can the RHC prepare a plan of correction and vaccinate everyone within the 45 days to clear a condition level deficiency and maintain their RHC? Status?

Nathan Baugh 1:00:57

Yeah, I mean, I don't know about those technical details of the 45 days, but as I mentioned, you would have time to correct any sort of deficiency depending on the level of the condition or the level of the deficiency. So, you know, I'll take your word for it, that it's probably a 45 day time period on the condition level deficiency. So yeah, preparing a plan of correction, and then fixing it is absolutely what you would need to do. If you don't you lose your ability bill, Medicare and Medicaid as an RHC.

Sarah Hohman 1:01:35

Okay, so if the head practitioner of the practice wants to be medically exempt, who would sign off on it? Can a practitioner from the same facility? Or does it have to be from another facility? This is a great

Nathan Baugh 1:01:45

question. I don't think it's listed anywhere. You know, just because they're the medical director, I don't think they get any special status. So theoret, theoretically, one of the people that he or she oversees could sign off on their medical exemption. It doesn't say that it has to be from another organization. I don't recall that it had it says anywhere that it has to be a different facility or organization.

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Sarah Hohman 1:02:22

Can unvaccinated staff take a weekly test to prove they have negative results?

Nathan Baugh 1:02:27

Nope. I mean, that is an additional precaution that you could require.

Sarah Hohman 1:02:34

But that would be for if that staff member is granted an exemption, not just a blanket option for all vaccinated stuff.

Nathan Baugh 1:02:43

Correct. This is after you've already done that exemption work. And again, I saw I'm sorry, we lost the slides here. So we're just gonna, I would pull that page back up with the flowchart. So you first before you're doing these additional precautions, you're evaluating the exemptions. Do we want to let Katrina ask your question live? Or do you want to share the slides? Sarah? Sure, here Yeah, Sarah's gonna pull it up. And we're gonna also, we're gonna let Katrina hopefully answer or ask your question

Sarah Hohman 1:03:26

Hey, Katrina, you should be able to unmute yourself and ask your question.

Nathan Baugh 1:03:54

Alright, let's go back to the q&a.

Sarah Hohman 1:04:03

Okay, um, how do you handle religious exemptions for COVID vaccines when the employee has taken other vaccines, ie the flu vaccine. So we can't, you know, explicitly give you the things that you should use to evaluate each and every religious exemption. But they do. They do explain options of what you can consider when evaluating those exemption requests. And one of those is, you know, whether employees have received other vaccines, whether they specifically have a religious exemption to one of the types of vaccines, things like that. So that can be part of your consideration. Certainly. Yeah, I agree. If our organization has chosen to still follow the CMS guidelines, even though it is on hold, do we need to already have our PNP in place? My recommendation would be that you do have, you know, some type of PMP in place, not for specifically, the enforcement of it by a survey surveyor at this point, since it's not being enforced, but just to have something that you are kind of basing your decisions on and all of those things that it's gonna

Nathan Baugh 1:05:35

protect you just in general, you don't want to just be like, Oh, we're fine. We have vaccine mandate policy, and then but you know, it's just living in someone's head and not in a documentation or

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policies and procedures. So you should definitely follow your PMP if you're opting to move forward as an organization despite the hold.

Sarah Hohman 1:06:00

If we do accept exemptions to these rules, say what we have to do for or with non vaccinated employees weekly testing extra masking,

Nathan Baugh 1:06:09

again, this is additional precautions, and it's up to you to determine what those additional precautions are. They are not spelled out anywhere. What you see on your screen are just some suggestions.

Sarah Hohman 1:06:24

If you require weekly COVID, testing for an additional precaution for unvaccinated employees, is it the employers responsibility to pay for the COVID? Tests? You report? You bet?

Nathan Baugh 1:06:37

I know. Oh, no, no, no, no, no, no. If someone talking we did we put Katrina back on you. Sorry, everyone. Now Yeah, she's good. Alright. Again, normally don't have as many technical problems. This is 100% my fault. So sorry, everyone, but we're gonna still answer a few more questions. And then we will go ahead and close this out. Do we answer this one? If?

Sarah Hohman 1:07:20

If an employee refuses to be vaccinated without a medical or religious exemption? Where does that leave the employer?

Nathan Baugh 1:07:34

And you either run the risk of losing your ability to bill or you can be out of compliance if you continue to have them provide care and live with those consequences. Or you can fire the individual. I mean, I think those are your options. Yeah.

Sarah Hohman 1:07:55

I mean, as of as of right now, again, just a reminder, this isn't being enforced. So right now, you don't necessarily have to do anything with that. But if this mandate would go into effect, then that's when you would have to make those decisions.

Nathan Baugh 1:08:09

Yeah. And you could put them on unpaid leave, I guess, as well. And maybe perhaps the upset, perhaps they would come into compliance eventually. So doesn't have to be it's not like you can never hire this person again. You know, but certainly they would not need to be allowed to come in, they would have to flip to 100% remote, or you would be out of compliance as a facility.

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Sarah Hohman 1:08:45

Are surveyors allowed to view employee medical and religious exemption forms? Are they only allowed to know the employee status vaccinated versus exempted?

Nathan Baugh 1:08:58

Our surveyors allowed to view employee I feel like they would that be part of reviewing the documentation. So because the surveyors would be wanting to make sure that you're applying the medical and religious exemptions properly, so I believe that they would probably ask for those. We don't have full guidance like for everything else, we have Appendix G for the artsy stuff. We have Appendix C, which covers the emergency preparedness and then those indexes or indices, I should say. The surveyors have explicit instructions on what they will ask for and so sometimes those that gives us that extra color in terms of what a surveyor will exactly be looking for. We don't have that yet for this for the vaccine mandate, but I suspect that they would

Sarah Hohman 1:10:00

Okay, someone noted that some states have specific forms you must use for each of the two exemptions. Oregon being one in particular. So thanks for sharing that. Make sure if that's if that's a requirement in your state that you're using those specific forms. Alright, so we'll

Nathan Baugh 1:10:25

go ahead and just take two more questions, we're gonna try to find one that we potentially haven't answered yet. And then we'll close it real quick, I see that Kate, Kate raised her hand again. So, okay, we're gonna about to unmute you.

Kate Hill 1:10:57

Great, thanks. And as far as the, if your employer requires that testing, then you would have to pay for the employer, you can't ask them to pay for something that you require as a term of employment. So I would disagree with you on that one, little one. As far as the medical health records, we look at them remember that? Well, your state doesn't need it. But a creditors the quad A and us we have to have a BAA in place. And we do look at those things. We're looking at your patient records as well. They will be definitely we will be required to look at the we've already been told that at the vaccination cards for everybody. Okay, when that when that occurs,

Nathan Baugh 1:11:34

sorry. Can you clarify that again? On the paying for the tests?

Kate Hill 1:11:39

Yeah. If it's a term of employment, if your employer requires that you weekly testing they they can't make you pay for it? Because it's, it's required for party your job.

Nathan Baugh 1:11:50

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Okay. Yeah, I Yeah, I'm sure. Yeah, I'll, I would defer to you on that. Because I think that that could I feel like I've read people discussing that. And I wonder if that's gonna get pulled into the politics side of this and certain states requiring that are not required requiring that?

Kate Hill 1:12:11

I would I would think not because it's it's a term of employment, you can't make them. So for example, our surveyors, well, well, first of all, we're, we're vaccinated. But secondly, we have to have TB test once here, because we're out there all over the country in rural and company pays for that. We would not have to pay for that. Okay.

Nathan Baugh 1:12:34

All right. Yeah. I, I don't know if this, this is litigated in the rule, certainly not in the CMS rule. So we will, I think this is one that we will circle back on and see if we can get clarity just in terms of who has to pay for the tests. Yeah.

Kate Hill 1:12:51

And there's about 50 Other unanswered questions. CMS has told us all the accreditors about two weeks ago that we would have guidance by the following like Monday, and then the shutdown happened. So I don't know when it's gonna come. But you know, we're all we're all looking for that because there's so many, so many little questions here that are that are very important.

Nathan Baugh 1:13:10

Right, right. Okay. Um, let's do one more, and then we'll go ahead and close it out.

Sarah Hohman 1:13:20

Should boosters be encouraged?

Nathan Baugh 1:13:25

Well, the the answer to that is obviously, yes, of course, CMS and healthcare in general is we want to encourage the boosters again, the key on the Boosters is that you document it. That is important for your for your PMP. We're going to go ahead and put the CRH CP code up again, I know it flash it earlier, but then we had difficulties. And, and Sarah is going to go ahead and close this out.

Sarah Hohman 1:13:57

Thanks, everyone, for joining us today. And thank you for bearing with us through those technical difficulties. And especially as we continue to learn more about this, and continue to provide as much information as we possibly can to all of you. So thank you for joining us. We will you know, we certainly have more to learn about this. And we'll continue to update the entire art community as we get lots of clarification and further answers on lots of your questions. So thanks again for joining us. And thanks to the Federal Office of Rural Health Policy for sponsoring this technical assistance webinar series. If you have ideas for future topics, please email nathan@nathan.ba at an AR H c.org. With your topic ideas. We have additional webinars coming up in the future

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including one next week on how the no surprises act impacts our HCS so be receiving information about that shortly through our listserv so please sign up and join us there to continue to learn more thank you for your participation and this concludes today's presentation