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CoPs are Enforcement Mechanism for CMS COVID-19 Vaccine Mandate; PHE Could Go to July

By Nina Youngstrom

Health care organizations face both immediate compliance deadlines with CMS's new regulation on the COVID-19 vaccine mandate and the possibility of sweeping changes to Medicare and Medicaid in the reconciliation bill pending in Congress, according to Kim Brandt, former principal deputy administrator for operations and policy at CMS during the Trump administration and a former Senate counsel. At the same time, she said it looks like most COVID-19 waivers may be available through July 2022 and perhaps longer.

CMS on Nov. 5 announced the Omnibus COVID-19 Health Care Staff Vaccination Regulation, which applies to Medicare and Medicaid facilities, including hospitals, home health agencies and ambulatory surgery centers, that are regulated by the Medicare conditions of participation (CoPs).^[1] CMS "is very serious about this and will be aggressively enforcing it," Brandt said Nov. 9 at the Healthcare Enforcement Compliance Conference sponsored by Health Care Compliance Association.^[2]

There are two phases to the rule, according to a Nov. 10 CMS call and slides on the vaccination regulation.^[3] By Dec. 6, providers are required to have a plan for vaccinating staff, providing exemptions and accommodations, and tracking and documenting staff vaccinations. Employees and other people (e.g., licensed practitioners, students, trainees, contracted staff and others "who provide care, treatment or other services at the facility") must have the one-dose vaccine or the first shot of the two-dose vaccine by that date. Everyone must be fully vaccinated by Jan. 4 unless they have an exemption.

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