Olivia Peterson (00:00:02):

Hello again, everyone, and welcome. We are going to go ahead and get started. My clock is saying 4:00 PM Eastern time. So good afternoon. We're very excited to have you for this webinar. We are going to be discussing the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule: Health Center Compliance and Equitable Implementation. On behalf of the National Association Of Community Health Centers, my name is Olivia Peterson and I am a Training and Event Program Specialist here in the Training and Technical Assistance Division. I will be supporting the webinar as your technical host today, and I am pleased to bring you this event along with my colleague Vacheria Tutson, who is the director of regulatory affairs. I will be turning things over to Vacheria in just a moment, but before we dive into today's topic, I have a few quick housekeeping items to review with you all.

Olivia Peterson (00:00:50):

First and foremost, please note that this meeting is being recorded. The recording and additional resources will be made available to you all after the event. You can expect the recording to be available within the next week or so. And then a copy of the slides will be sent to everyone from trainings@nachc.org after the event. So keep an eye out for that email for a copy of today's slides. After the webinar, you'll be directed to an evaluation, and we really encourage you to fill this out as it informs our future trainings and we value your feedback. So thank you in advance for your input.

Olivia Peterson (00:01:23):

You will notice that all lines have been automatically muted when you join today's call. If you have any issues with your audio, you can always try calling into the webinar via phone, which you can do by going to the arrow next to your unmute button and clicking switch audio for instructions. And then we were able to collect a number of questions that you all submitted at registration, so we thank you for submitting those and I'm sure we well have a number of additional questions coming in during the webinar. So you'll notice that we have the Q&A panel available to you all on the bottom right hand side of your screen.

Olivia Peterson (00:01:58):

Please feel free to enter your questions into that Q&A panel and make sure you are sending to all panelists. That is really going to help us make sure we can see and streamline your questions. We will have some time for Q&A at the end of the webinar, but we also have a few folks online who are going to be monitoring the Q&A and answering questions throughout. We will also have some polling and that will also be in the bottom right hand side of your screen. And that concludes our housekeeping. So without any further delay, I am going to go ahead and turn things over to my colleague, Vacheria Tutson, to get us started for today. Thank you so much.

Vacheria Tutson (00:02:37):

Thank you, Olivia. Hello everybody. I hope you had a great weekend. I hope that you have a great week as we go into the Thanksgiving holiday and get some much needed rest. Thank you for joining us today. I'm Vacheria Tutson. I'm the director of regulatory affairs here at NACHC and I always get the pleasure of helping break down complicated regulations like the one we're talking about today and chatting with you all. Before we get started, I definitely want to give a big thank you to all of our NACHC staff that has been contributing, helping with responding to this vaccine mandate as well as our partners at Feldesman Tucker. We have Molly Evans and Dianne Pledgie who is helping me in the chat box in the

Q&A. So want to give a big shout out to them and also just give a shameless plug that they also will continue to be educating the field on the vaccine mandate and the CMS rule.

Vacheria Tutson (00:03:30):

They have two webinars starting December 2nd and December 9th. So if you want more of a deep dive and you have some more questions after this webinar, I really encourage you to visit Feldesman Tucker's website. We can include that in the email information after and continue to learn and just have a deep dive into the regulation, but wanted to really just give a shout out to them as they've been very helpful and supportive to me and some of my favorite people to work with at Feldesman Tucker.

Vacheria Tutson (00:03:57):

Today we are going to have an overview where I'm going to walk through the regulation, the CMS Interim Final Rule for staff vaccination requirement, as well as we're going to get into a lot of the questions that were already submitted today. However, if you have any other questions or anything appears, I encourage you to put it in the Q&A box and we will do our best to get to as many questions as possible. But also if we do not get to your question, please review the FAQ that I have put together on this interim final rule as well as you can email me or we chat and I'll reply.

Vacheria Tutson (00:04:32):

I do want to also just give a disclaimer that a lot of the answers are very fact intensive and really depend on where your health center is and how things are already going for you on the ground. So just a disclaimer that today we are really going over the bare bones of the regulation and what is required. And if you have a more specific question that's really tailored to your health center, I really encourage you to consult legal counsel as there's a lot of different state laws that can interact with the vaccine requirement for staff. And so really encourage you to just get adequate legal counsel as you wade through some of these questions and wonder how this regulation applies to your health centers. Next slide.

Vacheria Tutson (00:05:14):

To really get things started, I think NACHC is really interested in just where the workforce is landing right now. And so a question we have for you all is, what percent of your workforce has separated from your health center over the past year? The polling should have popped up on your right hand side. Please just take a minute to answer the poll as we are trying to figure out how has this regulation maybe impacted the health centers, but also just I think they are calling it the great resignation of just different reasons that people are leaving the workforce, kind of doing career shifts, and we definitely see that in the healthcare space. So we would love to get a little bit more information on what's happening at your health center over the last year and where your workforce is. So this is our first of three different polling questions, but if you could take a minute and just fill this out, that would be great.

Vacheria Tutson (00:06:08):

As we think about the context of this webinar, it's really important to just think about how we want to continue to support our workforce, how you want to make sure that you retain as much workforce as possible and that is also about equitable implementation. That's something that I'm really excited to discuss at the end of our presentation with one of our presenters. So just thinking about the workforce as a whole and what it means to you and your health center and how NACHC can support you and this

information definitely can. I think we're going to give a few more seconds and then we're going to move on to question two.

Vacheria Tutson (00:07:00):

Okay. Let's move on to the next one, if possible. Okay. Oh great. And it's good to see these results. I know 25% is kind of a big jump, but I'm glad to not see it's 50%. So I think we are in good shape. This is something that you will see from us later, or maybe early in 2022, launching a more official survey to really just understand where's our workforce after the vaccine mandate's implemented, but just also the challenges related to the healthcare workforce in general throughout the pandemic.

Vacheria Tutson (00:07:38):

The second question focuses on the actual workforce category, so the type of staff that you have lost over the last year. And so we're going to do this in two waves. The first one is the highest loss. And then the second question is the second highest loss. And so this is really important as NACHC gets a lot of questions about who is leaving and the type of staff. And so this is really helpful for us to know how to advocate, especially when we're thinking about this is an interim final rule that will have a comment period. NACHC will provide a template comment letter for health centers, PCAs and HCCNs to also weigh in and talk about the health center perspective and how this rule impacts us and compliance and enforcement. But this is also really important to let the agency and the government know how this rule is going to impact us and what our staff workforce really looks like.

Vacheria Tutson (00:08:31):

So I encourage you to really kind of think about this. Also the next question will be more open-ended. So I really encourage you to kind of tell us what's going on. Tell us what's going on in your mind and what have you seen on the ground and that's really going to be helpful for NACHC as we build our strategy to support health centers on the ground in 2022 and to strengthen our workforce and provide you all with the resources you need to maintain a strong, safe, and happy workforce, which I think we all want.

Vacheria Tutson (00:09:06):

Oh, we've reached a minute and a half. Okay. We will move to the last polling question, which is what I said, which is an open ended one, but this is the results so far. Interesting. We see a lot of nurses and other medical staff. We know that the nursing industry has been impacted a lot based on the pandemic and travel nursing and being able to afford to keep nurses on staff. So that's something that we are actually tracking. So let's move on to the last question, Olivia, please.

Vacheria Tutson (00:09:42):

This is really, yes, like I said, an open ended question where you could just share what challenges that your health center has faced or trends maybe in your state that you've seen with even other healthcare workforces like hospitals, nursing homes. We're really interested just to know what's going on in your state and how we can find trends if there's trends in certain regions or if there's anything that we could pull out to help provide different resources to help maintain the workforce. So would appreciate any insight that you could provide. And Olivia, I think I could keep going while this poll is open, correct?

Vacheria Tutson (00:10:20):

Perfect. Okay. I'm going to take that as a yes. Let's start and get into the nitty gritty of this regulation. So the Centers for Medicare and Medicaid Services Omnibus COVID-19 Staff Vaccination Interim Final Rule applies to all FQHCs. The reason it is an interim final rule is because there was not a notice and comment period attached to a proposed rule. So the rule came out as effective pretty much. And so what that means is we will still have the opportunity to provide comment, but the comments do not delay or change what the effective rule is at this moment.

Vacheria Tutson (00:11:00):

So the agency will use our comments to continue to improve and tweak the rule or provide more guidance as 2022 goes on. The comments are due January 4th. So that's right around the time that the last implementation date under the regulation goes into effect. So we will be providing the opportunity to health centers to have a template letter, encourage you to personalize it. Please let me know if you want to chat about that, but that is why it is an interim final rule.

Vacheria Tutson (00:11:32):

The staff vaccination requirement applies to facilities that are regulated by the CMS health and safety standards. And so the health and safety standards are why CMS has the legal right to regulate facilities. So for FQHCs, we must comply with the conditions for coverage to qualify for Medicare reimbursement. What makes health centers a little bit different is that our enforcement is not with a survey that happens for other facilities like hospitals. Health centers submit an attestation form, and that is used by Medicare to verify us.

Vacheria Tutson (00:12:12):

So NACHC is reaching out to CMS to ask about enforcement since we do not already have the mechanisms in place for on-site surveys from CMS. There are other surveys that happen definitely in the health center program or if you are in another accreditation program like maybe the joint commission. However, this is something that we are still getting to be determined. Someone said like we know as much about the rule as you do as it just came out. So as time goes on, I'm sure we will get more information from CMS, but right now we urge you to just continue to work towards compliance and making your best faith effort to get your staff vaccinated.

Vacheria Tutson (00:12:53):

The statute has been amended where CMS requires facilities like FQHCs to develop and implement policies and procedures to ensure their staff are vaccinated for COVID-19 and that they also collect appropriate documentation of those vaccinations. And so that is what I will be breaking down over the next hour. And so we'll get more into that. However, I do want to point out that this regulation, the CMS rule, takes priority over other federal vaccination requirements.

Vacheria Tutson (00:13:23):

We know that there is the OSHA Emergency Temporary Standard for employers with over 100 employees. That regulation does not apply to health centers because the CMS rule, the CMS vaccine mandate is more applicable in our health space. And so that is the rule that governs health centers. There might be some spaces and some unique cases where health centers will fall under other vaccine mandates. However, for the most part, the CMS rule is what takes priority over other regulations. So the CMS rule is what we have to focus on.

Vacheria Tutson (00:13:58):

Now, there was another OSHA ETS that came out this summer, OSHA's COVID-19 Healthcare Emergency Temporary Standard. That does still apply. That was also referenced in the CMS regulation saying that the OSHA ETS for healthcare workers is still applicable and those requirements are still active. So as you all have made a lot of effort over the last few months to comply with the OSHA ETS for healthcare workers, that work did not go in vain. A lot of those requirements are complementary to the CMS rule and I'm actually going to highlight a few of those pieces throughout the presentation that you should keep in mind for implementation.

Vacheria Tutson (00:14:39):

And then as well, I do want to point out because I received a lot of questions about how does HRSA get involved or is this going to be a part of the OSV? And the answer is these are two different agencies. HRSA has jurisdiction for enforcement and oversight over regulations that come out of BPHC or HRSA itself. The CMS rule is what CMS will oversee for enforcement. So HRSA does not weigh in on how the vaccine mandate is implemented by a health center and your compliance. They defer to the other agency, which is CMS, who will oversee that.

Vacheria Tutson (00:15:19):

I know that there are some things that are unique to the health center program that we will address. However, just keep in mind that what's for HRSA and what is issued by HRSA, they oversee. What is issued by CMS is what they oversee. And we will talk about some of the different nuances, but I think this regulation can get complicated. So just trying to take it up from a bird's eye view and make it as simple as possible that the CMS rule is what CMS is going to oversee, the health center program is what BPHC and HRSA oversees, and we don't need to complicate the two. Next slide.

Vacheria Tutson (00:15:58):

The compliance timeline. The regulation was released November 5th and that is the day that it went into effect. But because of how the COVID-19 vaccine has timing in the series to go to been from one shot to two in the fully vaccinated time period, the agency chose to have two phase deadlines pretty much. The first phase deadline, I have December 6th here because that is a Monday. However, some people have said December 5th, but let's just say we'll count the business day. And so by December 6th, all staff at minimum have to receive their first dose of the COVID-19 vaccine.

Vacheria Tutson (00:16:37):

And so the regulation describes it as their primary vaccination series. What that means is if you get the Johnson and Johnson shot, then that only takes one shot. If you get Pfizer or Moderna, that takes two. So either you've had one Johnson and Johnson shot, or you've had one Pfizer or Moderna shot by December 6th. Additionally, the second requirement by December 6th phase one is that all facilities are required to have appropriate policies and procedures developed and implemented. That means you have to move past the brainstorming stage. You need to start having things on paper. And then also those things to be developed and implemented means that they need to be communicated to staff. So there needs to be something on paper, there needs to be things circulated to staff letting them know what is the expectations of the health center, how your health center plans to meet these deadlines and what is required of staff.

Vacheria Tutson (00:17:34):

Phase two deadline is January 4th, 2022. That requirement is that all staff have completed a primary vaccination series for COVID-19 or have been granted a religious or medical exemption. And so by then, the caveat is that by January 4th, every staff person does not have to be fully vaccinated, as it needs to have 14 days since they received the second shot or their first Johnson and Johnson shot. It just means that they needed to have gotten those shots. So there is a grace period of they might not be fully vaccinated until January 8th because of the timing of when they got their first shot, but you would still be in compliance as long as they have completed a primary vaccination series.

Vacheria Tutson (00:18:21):

Then second, by January 4th, 2022, facilities must have a contingency plan for unvaccinated staff. And so that means that there is a gray area in between December 6th and January 4th where technically if you have staff that in between that December and January timeline have not received one shot, the health center would technically be out of compliance. However, I think our long game is to focus on the January 4th. And so having a contingency plan for your interim time between December and January is also important, but really knowing what your health center is going to do with staff that are not vaccinated by January 4th and have not asked for a medical or religious exemption is really the focus that you should think about.

Vacheria Tutson (00:19:08):

Under the regulation, anyone who has not completed the primary vaccination series by January 4th technically should not be seeing patients or should not be interacting with patients or other staff. Your health center should have a process of if you're going to put them on unpaid leave, you're going to require them to work from home. But the contingency plan needs to kind of lay out what the health center's plan is if they have staff after January 4th that are not vaccinated and how they're going to move forward. So that's a very important piece to think about as time goes on.

Vacheria Tutson (00:19:44):

There's also the regulation permits a temporary delay in vaccination. So that's for someone who maybe have just received monoclonal antibodies, a plasma transfer or other recommendations because maybe they just had COVID and a doctor has said you should wait a certain amount of time before you get vaccinated again. So the rule does permit for certain circumstances where medically that person should not be getting vaccinated within this time period, but that also needs to be included in your contingency plan and laid out so that if you do somehow get a survey or someone from CMS popping up, that you can say, "Oh, the reason these four people aren't vaccinated is because they just had COVID or they just had antibodies treatment and we know that they'll get vaccinated by X, Y, and Z date." So that is very important to have. Next slide.

Vacheria Tutson (00:20:37):

Who does this regulation apply to? Under the interim final rule, CMS has a different definition for staff than I think we think about on the daily basis. CMS defines staff to include individuals that provide services directly, on a regular basis or under contract or arrangement. This includes your actual FQHC health center staff, employees that are there already, and it includes licensed practitioners, students, trainees, volunteers, board members, which we will get into later I promise, or individuals who provide care, treatment and other services for facilities or patients under contract or other arrangements.

Vacheria Tutson (00:21:18):

And so this is a much more exhaustive list than you would think about if someone says, "Oh, this applies to your staff." It's not just your full-time health center staff that you have personally hired, but it is also contractors that you have brought on from maybe a staffing agency. It also can include your board members or volunteers that you have for certain events. I know a lot of health centers have had a lot of volunteers helping, especially through COVID-19 testing or vaccinations or doing mass clinics. So really think about who you have coming in and out of the health center. And the rule specifically says that it's not really about frequency but really considering the frequency of presence, services provided and proximity to staff and patients. The next slide will dive into this a little bit deeper.

Vacheria Tutson (00:22:07):

When does the staff vaccination requirement apply? People who fall under the definition of staff under the interim final rule, if those individuals use shared facilities like restrooms, cafeteria, break rooms during breaks or in between seeing patients or throughout their day while they're on premises at the facility. It also includes people who are an extension of your health center. So that means if you have a community health worker who goes and does home visits, they also fall under this category. So they might not be physically at the health center but they are technically an extension of the health center going into the community or providing home-based services. So those type of staff members also qualify as staff under this interim final rule.

Vacheria Tutson (00:22:53):

Exactly like I said, individuals that perform their duties at any site of care or has a potential to have contact with patients or staff at that site of care. And I think this is another distinction I would like to make is just that it's not just about the patients, it's about who interacts with the staff at the health center as well. So even if someone's not patient forward but they interact with other staff members at the health center, they fall under this regulation too. And so there is also the 100% remote requirement, and that person would not fall under this regulation. We could go to the next slide, please.

Vacheria Tutson (00:23:28):

So if an employee is 100% remote, that means that under this regulation, they have no expectation or you as a health center has no expectation for that person to interact with any patients or other staff. So this could be you have a telepsych doctor who's in California and you're in Texas and that person will never be in the actual facility in Texas. That is a qualification for 100% remote.

Vacheria Tutson (00:23:55):

So when you think about it, I really encourage you to not try to skirt the lines and make the 100% remote work for one employee and not the other, but really think about is this person never coming into the health center? Have they ever came into the health center? Will their role require them to ever come to the health center and interact with staff? And that means it could be a board retreat, it could be a staff retreat, just different ways, and really think about how your health center functioned also pre-pandemic and really take into consideration as we move forward and as this evolves and as we get back to normal, what does that mean and what does it look like for your staff?

Vacheria Tutson (00:24:35):

Who does this not apply to? Individuals that provide infrequent services and tasks performed in or for a healthcare facility conducted by one off vendor, volunteer or professional. This could be a plumber. This could be someone to come fix a door hinge, someone that does not come in and out all the time and

they're there for one off instances where you have to bring someone in. But even when those folks enter the health center, you do have an obligation to require them to have a certain amount of PPE and provide safety measures for the people around at the health center.

Vacheria Tutson (00:25:09):

Also, individual who provide infrequent ad hoc non-health services, so like an elevator inspection, or perform exclusively offsite or not adjacent to patient care like an accountant. And then lastly, and I want to encourage you to think about all these things broadly and really know that we can't give you an answer for every specific fact pattern, but really just think about this and think about it in a way that you want to comply with the regulation the best way. So considering also individuals who may have infrequently entered the facility or limited purposes and for a limited amount of time is also a good factor to think about too. So really just kind of think about all this holistically. Next slide.

Vacheria Tutson (00:26:00):

Documentation requirement. CMS requires all facilities to track and securely document the vaccination status of each staff member, including exemptions. This applies to contractors. This applies to board members. This applies to volunteers. This applies to anyone that CMS has defined as staff under this interim final rule. So the health center is required to track the documentation for all those different categories that we just walked through. Appropriate documentation includes the facility's immunization records, health information on files and other relevant documents.

Vacheria Tutson (00:26:42):

I want to raise a concern that I heard a lot about HIPAA protections. HIPAA regulates a patient doctor relationship, not an employer employee relationship. Just because a health center is a healthcare organization, that relationship is an employee and employer relationship. So HIPAA does not apply to this. Now, there are other regulations that stipulate how you have to handle staff and employee documentation or private information definitely. But as far as HIPAA, that is not applicable to just maintaining a health staff member's vaccination information. Next slide.

Vacheria Tutson (00:27:22):

What's an acceptable form of proof of vaccination? This is a question we've heard a lot about. Just an attestation form does not meet the requirements under the CMS rule. And that goes for if it's a contractor, if you hire someone through a staffing agency. I encourage you to reach out to that staffing agency or contractor organization and let them know what your health center's plans are to verify the forms for COVID-19 vaccine, how you're going to store that information, or to make sure that maybe that organization is not already doing that and you're not hitting that individual with two different requests from different angles. So really encourage you to coordinate with other organizations that impact your staff and then make sure that they are aware of how your health center's moving forward.

Vacheria Tutson (00:28:10):

But acceptable forms of proof of vaccination includes the actual COVID-19 vaccine card, a legible photo of the card counts as well. Documentation of vaccination from a healthcare provider or electronic health record. Also, if your state has immunization information systems, that is another acceptable form. However, someone just signing a piece of paper that says, "Hey, I'm vaccinated," does not meet this standard and you need proof, documented proof, of that person being vaccinated to make sure you are in compliance with this regulation. Next slide.

Vacheria Tutson (00:28:46):

The OSHA ETS support for vaccination, which is very timely for the big wave of staff that you might have leaving for PTL to get vaccinated. Under the OSHA healthcare ETS, employers must support COVID-19 vaccinations for employees by providing reasonable time and paid leave to each employee to get the vaccination and then also for any side effects they've experienced from the vaccination. And so what this means is that under the rule or under the OSHA ETS for healthcare workers that came out in June, so not the one that's for 100+ employees but the one that we have been working on for the last four or five months, an employer is required to provide at least four hours for that employee to go and get vaccinated, and then eight hours per shot for recovery time. So technically a day per shot. And this is required under the ETS, as well as if you require... Well, I'll get into that. Next slide.

Vacheria Tutson (00:29:45):

If you require an employee to get tested, you also do have to provide them the time, the PTO to do so. However, the ETS does not require you to provide like a new pot of PTO. If that person has sick leave or PTO available, then you as an employer can require them to use existing PTO before having to tap into other sources. Next slide.

Vacheria Tutson (00:30:11):

And so then, this is a very popular question, I think, everybody is trying to understand is the OSHA ETS Medical Removal Protection benefits. And so this is for if an employee tests positive for COVID. And as the CMS rule mentions, they hope that less employees will test positive for COVID-19. And so employers will not have to carry on the burden of the medical removal protection benefits, which I know is very concerning for a lot of health centers on how they can afford to provide this level of a paid time off. And so under the medical removal protection benefits, employers must pay employees their normal entitled pay and their regular pay that they would've received if they were not absent from work up to $1,400 per week.

Vacheria Tutson (00:30:59):

And so the regulation still under this permits an employer to require an employee to use their PTL if they already have it. However, the rule does state that if that employee does not have enough PTL to take off 14 days, which is recommended if someone tests positive for COVID. Then the employer does have an obligation to make sure that that employee is able to not come into work and still receive their regular pay. Go to the next slide.

Vacheria Tutson (00:31:32):

I have the specific language from the actual rule. The gist of what this says is that if this employee receives compensation from another way, so paid sick leave, administrative leave or another publicly funded compensated program, then the employer can reduce that amount to remove the employee of what they would've paid them. So you're not required to pay them two paychecks because they use their PTL and you think you have to pay them an additional week's worth of pay. It's a balance to it.

Vacheria Tutson (00:32:04):

However, I think what's really important, something we're going to get into later, is you want to create an environment where people know that their employer will not force them to come to work because they tested positive for COVID but they don't have any PTO. So I really encourage you to take a generous

look at this regulation and see how you are applying it to your staff to make sure you're not creating an environment where people are disincentivized from taking time off because they actually are sick but coming into the workplace to avoid not getting paid. Next slide.

Vacheria Tutson (00:32:37):

This is just a specific example but really tied to health centers just received a lot of money to start capital projects, which means that you guys will have a lot of construction workers coming on or repair staff. What does that mean? This is specifically pulled from the rule and I think it's just a really good example. The first example is a plumber who comes to make an emergency repair in an empty bathroom or service area but correctly wears his mask the entire visit may not be appropriate candidate for mandatory vaccination. That means that that plumber coming once or twice to fix something is not someone you need to require to be vaccinated. However, you can require them to wear a mask and you can make sure that they know if you don't want them to go to certain areas to make sure you keep your staff safe. Those are precautions that you can take.

Vacheria Tutson (00:33:25):

However, on the other hand, if you have a construction crew and those members of that construction crew use shared facilities like restrooms, cafeteria, break room, then they would be subject to the requirements because they are using common areas that your staff and patients and other visitors are using. So it's really important that you think about the frequency. Are you using shared facilities? Would that construction crew interact with your staff? And if it's too much overlap, then maybe you do need to discuss with that contractor that there is a vaccination requirement for them to complete a project where they're going to be on-site on facility for maybe a few months, and how would you move forward with that. Next slide.

Vacheria Tutson (00:34:10):

Here we are. I think this is like topic of just like the biggest question we've heard about at NACHC definitely and I'm going to bring my colleague Emily Heard in a second to kind of give more of an overview, but specifically, what about board members? Under the interim final rule, it includes voluntary and fiduciary board members under the definition of staff. Health centers are a very unique facility and we also have a unique consumer board requirement that other healthcare facilities do not have. So CMS was not going to mention specifically a patient board member because that is very unique in niche to health centers.

Vacheria Tutson (00:34:48):

However, you can glean from the voluntary or fiduciary board members that patient board members do fall under this category. CMS takes a very encouraging stance saying pretty much when you think someone maybe does or doesn't apply, that you should encourage that person to be vaccinated anyway.

Vacheria Tutson (00:35:05):

But when we think about how we evaluate board members at a health center, you should really think about if that patient board member is coming to the health center as a patient to get services, then they are there in their patient capacity. There's no patient vaccine mandate. However, they are still a board member. And so whatever obligations that they have as a board member is the lens that you should approach that to. So consumer board members and non-consumer board members have the same

obligation from the health center of how you're going to require them to be vaccinated, apply for religious and medical exemptions, and how you're going to move forward with your board governance.

Vacheria Tutson (00:35:45):

I know that we could get very into the weeds and the nitty gritty of, well, they're a patient and they came in for this, and well, they're more a board member, but like let's take a step back and just say that, what are you doing for your board members? And those board members, some of them are consumers and some of them do come in as patients, but what is the standard you're applying to all board members? That's the lens I really encourage you to look through.

Vacheria Tutson (00:36:06):

And as you evaluate how this mandate applies to your board members, really think about how your board served your health center before the pandemic. I know everything has been remote and we see a lot of things being remote in the future. However, is your board going to stay remote for the foreseeable future, like three, four years down the line, because these regulations are put into statute. They're not tied to the public health emergency. They're not just tied for six months. These are requirements for CMS facilities. So really think about how your board's going to move forward. Post pandemic, are you going to have a board retreat because that doesn't qualify as 100% remote.

Vacheria Tutson (00:36:44):

So these are things that you need to think about. I encourage you to consult legal counsel in your state if you really want to get into the weeds of it and figure out how it works best for your health center. However, I really encourage everyone to take a general approach to this and not to get hung up on the patient board member piece but just they are a board member as a whole. And so now I'm going to turn it over to Emily who's going to dig a little bit deeper and remind you guys of some good board member tips.

Emily Heard (00:37:10):

Thank you so much, Vacheria. I have the privilege at NACHC of supporting our health center board for training and technical assistance. For those of you who may not be as familiar, the consumer majority community-based board has really been central for the health center model since the inception of the health center program. The board plays a vital role in ensuring the success and sustainability of the health center, and certainly board guidance on strategy and board oversight has been so critical during the pandemic. And now here we are discussing a vaccine mandate for board members.

Emily Heard (00:37:44):

On the screen, you'll recognize this language if you participated in the November 11th webinar brought to you on behalf of NACHC by Feldesman Tucker Leifer Fidell where Molly Evans and Dianne Pledgie said, yes, definitive health center board members are covered by the CNS IFR. We included this slide, again, that pulls out that language, in case you haven't already shared this with your board members, we certainly would encourage you to do so at your next board meeting if not before in a board communication.

Emily Heard (00:38:18):

As we look to the next slide, I did just want to go through some of the common questions that we're getting about this as it applies to board members. The first question we've been getting is, how are boards responding to the mandate? And by and large, what we're hearing is our board members have been ambassadors for the COVID-19 vaccine in our community and we don't anticipate too much trouble getting to that 100% compliance. However, there are a couple of other things that we're hearing which will bring us to questions two and three.

Emily Heard (00:38:55):

The second question we're getting is, what about the remote option? Vacheria referred to this. Technically if a board is still meeting 100% virtually, there's an argument that they could be exempt, but I think that there's two things to consider here. First, as you heard her advice, please do seek legal counsel on this because I think it is really something that you want your lawyer to advise the board on. But second, I would tee up some strategic questions for your board. Is the board going to continue to meet virtually in the long term? Is that practical? Does your board actually not have any interaction with your staff? And then finally, what is the board's strategic responsibility to the requirement and to the health center?

Emily Heard (00:39:47):

The last question we're getting, and I have seen this come up in the chat even today is, what if some of our board members resign? And certainly this is a possibility and may have already happened at your health center. It's important to aim for positive transitions. And as we go to the next slide, we do just want to make sure that you're aware that we do have some resources to support your boards if there's a need for some immediate recruitment of board members.

Emily Heard (00:40:16):

There's various articles available that speak to recruiting community and consumer board members. Our governance guide for health center boards has various tools that your health center board can customize. We also have sample materials for board member orientation and onboarding. And even though our focus today is really of a practical implementation around the requirement, I did just also want to flag that hopefully your board is thinking about some of the longer term implications around board member recruitment and onboarding. So even just thinking about proactively in your recruitment efforts, making sure that potential board members are aware of this requirement, updating documentation that you might have that speak to board member responsibilities, and then making sure that you're incorporating steps to ensure documentation during orientation.

Emily Heard (00:41:12):

All right. As we move forward in our slide deck, just a few more things. I wanted to take this opportunity to remind you about it is important, of course, for your board to be approving policies at your center about this, and we do have a COVID-19 vaccine mandate toolkit that was featured in an earlier webinar that really highlights clear and concise sample policies that health centers have shared for us to be able to share with you.

Emily Heard (00:41:40):

And then finally, as we go to our next slide, I do just also want to make sure that you're aware that we have lots of resources to support your health center boards. We really are so grateful for the service of your board members. Please reach out anytime with questions. And I know also in the coming weeks we

will be issuing a short document that answers some of the questions we've touched on today about how this applies to board members, and then also questions that might come up during the Q&A, we'll also be sure to throw those in. So I'm going to turn it to back to you, Vacheria.

Vacheria Tutson (00:42:16):

Thank you. Thank you. And encourage you guys to reach out to Emily as well if you just have any questions about board governance. She's great. Okay. Now we're going to keep on moving to religious and medical exemptions. I know this is a very tricky space and this is definitely somewhere where this is a whole subset of law that existed before the COVID-19 vaccination of just religious and medical exemptions in the employer/employee workspace. And so there are specific lawyers who do this day in day out, and if you are really wrestling with certain questions, I really encourage you to reach out to legal counsel specifically on this, on the EEOC laws because it's very tricky and there are different state components as well.

Vacheria Tutson (00:43:02):

Some of the questions that we are able to address on the webinar, they have to be very general. I'm just going to give that disclaimer that some of the specific things we just cannot answer because it really depends on who, what, when, where, but we could definitely chat offline and I encourage you to email me if you have any other questions. But the interim final rule does require facilities to allow exemptions for staff with recognized medical conditions or religious police or practices where they have religious objections to the COVID-19 vaccine. So these are covered on the Americans Disability Act as well as Title VII of the Civil Rights Act.

Vacheria Tutson (00:43:40):

I know that there have been some health centers who have not provided a religious exemption or medical exemptions to staff. So moving forward and as it stands now under the interim final rule, health centers are required to provide that option. This means that facilities must have a process for collecting and evaluating such requests, tracking and the documentation and the information provided by those staff who requested the exemption as well as what the health center's decision is, and then also whatever accommodations are provided. This is just saying that there is a very heavy documentation requirement under this interim final rule under a lot of aspects. So you should err on the side of caution of over documentation versus under documentation. I think that stands for a few pieces in this regulation. Next slide.

Vacheria Tutson (00:44:36):

When in granting the exemptions or accommodations, employers must ensure that they minimize the transition of COVID-19 to risk other individuals. Reasonable accommodations; health centers have flexibility in what that looks like at your facility. So CMS do not prescribe specific things to be a reasonable accommodation. There is discretion in how your health center can approach that. That means that you can require weekly testing as a reasonable accommodation. You can require additional PPE as a reasonable accommodation. If there are remote options available, that is another reasonable accommodation.

Vacheria Tutson (00:45:14):

So it really depends on that person's role, how you can make adjustments for them, but there's not a list of what qualifies as a reasonable accommodation, but there are suggestions from the agency and also

other governing bodies like the CDC, OSHA. So really look at all the different regulations that have came out to regulate the healthcare space as well as just COVID-19 regulations to see what are other suggestions for reasonable accommodations. There's also sample forms from federal agencies that I have linked to on the slides that we will send out after the webinar where you can use these request forms or sample forms to help guide your policy, your procedures at your health center. Next slide.

Vacheria Tutson (00:46:00):

I do want to plug that NACHC put together a great COVID-19 vaccine mandate operational resource guide. The link is also here in the slide as well. I mean, you can find it on our website. It has also sample documents from other health centers that they shared on their religious and medical exemptions. It shares other resources that we have in our health center clearing house. It's really just a great overview. It also includes the board member piece that Emily highlighted as well. So really encourage you to visit that. And we will also include that in the information when we send out after the webinar as well. Next slide.

Vacheria Tutson (00:46:38):

Okay. Now I'm really excited. I want to invite our colleague from Mass League, Jasmine Naylor, and we're going to have a good conversation about the equitable implementation piece. Jasmine is the Executive Vice President and Chief Strategy Officer at Mass League. It's been my pleasure to meet her and to work with her and we're really excited to kind of talk about... We talked about the regulation, we talk about operational, but now we're talking about the practical of how this actually works on the ground and we know that everything is not as clean and easy as CMS might think it is.

Vacheria Tutson (00:47:13):

You guys have been on the ground. You guys know how your colleagues feel, how your employees feel, and we know that COVID-19 has kind of thrown our country in a weird space on how you can interact with friends, family. Everybody is not just at the workplace. And so Jasmine and I are going to kind of just have some open dialogue about what this really means and she definitely has a great health equity lens on just tips that really you should think about when we're implementing. Hey Jasmine.

Jasmine Naylor (00:47:43):

Hey Vacheria. Thanks for the invitation. I really appreciate it.

Vacheria Tutson (00:47:46):

Yes. I would love to just kind of get the conversation started about what communities do you think are most impacted by this vaccine mandate, and then how do you think that will impact our patients in return?

Jasmine Naylor (00:48:01):

Definitely. Before I get started, so before I joined the Mass League in June, I actually worked for the prior six years at a community health center in Western Massachusetts. So I've been boots on the ground through the pandemic and understand what the whole experience was like up until I left in the middle of this year. With that being said, some of us know the key critical data points, which is communities of color are lagging behind white communities when it comes to vaccination rates, especially by some of the hardest hit areas that we have seen the highest bad outcomes from.

Jasmine Naylor (00:48:36):

Since this is a known fact to community health centers and PCAs and we're continuously trying to focus on this day in and day out. Essentially health centers exist to serve the most vulnerable patients and many times those patients are the health center employees as well. Particularly the underserved are those that are going to have the highest implication with vaccine mandates. Particularly we work to address urgent public health needs like the pandemic, but we should be careful not to lose sight of the implications or some of the unintended consequences that our decisions have on equity, not just for the patients but our employees who are often one and the same.

Jasmine Naylor (00:49:16):

When we look back, I would expect that research is going to be done on the proportion of staff that are released from health centers for non-compliance due to mandates, and I would suspect that we're going to look at that data broken down by race and ethnicity. Unfortunately, I believe it will show that communities of color will be disproportionately impacted by mandates for those that don't adhere or comply. And so is that equitable? We have to ask ourselves, is that the story that we want to be told when we do the look back and what are we doing now to try to mitigate some of that?

Jasmine Naylor (00:49:55):

I think there'll be studies also on the effects on trust when it comes to healthcare employees that may have felt pressured in choosing between their livelihoods and their values. There's a lot of conflict going on with that right now, and what will that lead to ultimately down the pipeline. We don't ultimately know, but something that I think of and when I frame the decisions that we're making is when we look at the Clinton Crime Bill, it seemed like the right thing to do at the time, but there were implications that happened after that we might have made some decisions that would've been differently. So sometimes we want to try to look forward and try to see what are some equitable decisions we can make now to mitigate negative impacts on our most vulnerable communities, which also include our employees as well.

Jasmine Naylor (00:50:46):

When we think of implications in our health workforce, there's obvious implications when you lose qualified and dedicated and committed staff of color in particular from facilities, all the way from your facility's operations to your front desk, to your clinician wing, to your admin wing, that loss directly impacts the most vulnerable patients because they're losing representation. We know in data it says when you have representation, you have better equity outcomes. It's not the entire story, but it is a big part of the story. So what does it mean to lose those representative faces within your community health centers and what, again, can we do equitable to try to maintain and hold onto them within the laws, within the regulations that are within our control?

Jasmine Naylor (00:51:33):

That shortage also, I just want to make sure we all remember when you lose a front office person, that means that your remaining workforce, as you all are aware, are now taxed in burden. I used to oversee front operations and clinically oversee clinicians. No one is more important than anyone else in the whole healthcare stream. You need your front desk to check in folks, to call folks, to touch base with folks, and you need your providers to be there to see the patients as well. No one is greater than the other.

Jasmine Naylor (00:52:07):

However, we also know that your providers will see on average 15 to 3,000 unique patients a year. So if you lose one and we've all been fighting against the workforce shortages, you lose one, that means we lose the opportunity to serve 1,500 to 3,000 patients. We do our best in trying to spread those patients among the remaining staff, but we know that it's not humanly possible for them to adequately care for other patients on top of their patient loads.

Jasmine Naylor (00:52:36):

What does that mean for those patients? It means those patients fall out of care. It means that their chronic illnesses get worse. It means that some of our patients die prematurely. It means that their lives are cut short if they were going to live to 80 by continuous care. If they lose that continuous care, they might now pass away at the age of 65. I think research will continue to show what were the implications of COVID and all of the different mandates and such that come out. But those are some high level things that I think we need to begin to think about downstream as well as the current stream.

Jasmine Naylor (00:53:11):

I think the other thing too is it's a challenging time and it's a challenging time to make decisions. My boss, Michael Curry, President, CEO of the Mass League, he often says those closest to the pain should be closest to the power. I think in this time, how have we brought those that are closest to the pain closest to the power of decision making? Are those voices at the table? Are they helping shape the decisions that we're making? I visited a lot of health centers within the first couple of months of joining the Mass league throughout Massachusetts and what I was hearing at some of the health centers were that they had 90 to 97% vaccination rates pre any mandates and that they built a culture of vaccination compliance before they were mandates around and they did that by having these teams that worked the vax clinics, that worked the popup clinics, that worked the outreach in having all different folks on the pipeline and it ended up naturally building this vaccination desire to receive it.

Jasmine Naylor (00:54:17):

And so I think about those things and these health centers that have been successful in those ways, and what could we learn from them? I know there's great stories across the nation that are like this that we could potentially benchmark from. So those are a couple of things and a couple of the groups that I think are going to be most vulnerable when it comes to the mandates fully being implemented and folks being potentially removed from their positions.

Vacheria Tutson (00:54:43):

No, thank you for that. That was really great. It makes me think about what you're saying about including staff and including the workforce in decisions. It's like it's not just about the compliance for the staff vaccination requirement but truly how your health center handles it because someone could be fully vaccinated but not like the way that their employer has handled their friends who were employees who maybe have left or they didn't like this different side that they saw from leadership. That also can contribute to workforce shortages of people leaving because maybe they feel like this environment isn't for them or isn't conducive for them.

Vacheria Tutson (00:55:19):

I mean, I'm new to the health center space but I know that health center staff are loyal. People love their health center. They love those patients. They love the people they work shoulder to shoulder with, and there is value in saying that people have been on the front lines before this vaccine existed and they still want to be on the front lines, but can you treat people with compassion and care? It's like I would love to just hear your thoughts on like sometimes people aren't just quitting because they don't want to get the vaccine, it's a deeper issue that contributes to this overall workforce shortage that I think the health center space has been battling but also healthcare in general.

Jasmine Naylor (00:55:56):

Yeah, definitely. I think we know of known factors that are occurring where there's competition for our workforce. What I will say when it comes to the community health center workforce, I believe that is the best workforce that any other health institution could ever pull from. Not that we like them pulling from us because it causes great pain to us and it causes great implications to our communities, but our employees are some of the most steadfast that exist in the country and they touch so many different unique types of lives that it can't be replicated in the traditional hospital systems. It's a catch 22 in essence. And so in some respects, we're not always able to offer the growth projections or trajectory that people would like in their our lives. And so then they go to the competitors.

Jasmine Naylor (00:56:45):

That's something that we also can look at. What are those opportunities for us to grow and develop our staff within our own pipelines and thinking dynamically and uniquely, but also understanding some folks are exhausted. The pandemic is still going on. It carries a tremendous burden. When I was in the health center, I felt like I became part therapist literally trying to keep my staff mentally together. Being that ear, being that shoulder, that's draining not only for your leadership but it's extremely draining for those staff that are leaning on you to try to make it to that next day.

Jasmine Naylor (00:57:20):

And then also knowing some of the staff, if they left that particular day, something would crumble. Our staff truly have been heroes in this pandemic and we have to figure out how to love on them, how to make the best equitable decisions around them that we possibly can in the different lanes that they're looking for us to do that in, all while doing all of the other things that we naturally do on a day-to-day basis.

Vacheria Tutson (00:57:47):

Yeah. I love that. Exactly. I think a great example of trying to have compassionate care is when we talk about this religious and medical exemptions and reasonable accommodations. There's a way to implement that and make an equitable process. That includes giving people access to the information. And yes, staff have a requirement to actually apply and ask for a religious exemption, but when they do take that step, how they are treated and how a leader at a health center evaluates that, there's equity in that too. I know you and I have chatted about just equitable implementation of the vaccine mandate could go one way or other, but when someone is entitled to apply for a religious exemption, how can you make sure equity is embedded in that process?

Jasmine Naylor (00:58:37):

Yes. This is definitely a topic that I'm passionate about because I've been in the health center and then now the role that I get to play at the Mass League, but we really have to take a step back and ask

ourself, is equity at the forefront of our decision making? I'm not saying decisions in the midst of the pandemic are easy because they have been tremendously hard. And even for myself, when I look back, I might have made a few different decisions than the ones that I did make now that I'm forward, because hindsight's always 2020. We know we're bound to a mission to keep our patients in workforce as safe as possible, but we need to consider the other side of that coin, meaning when it comes to mandates, how can we bring solutions that support rather than harm individuals who are already disproportionately impacted by economic hardships, job, mobility, trauma, and so many of the other factors.

Jasmine Naylor (00:59:28):

So when it comes to our religious and our medical exemptions, depending on the state that you're in, we must understand that there is an opportunity to put equity at the forefront of that conversation. What does that look like? I still am in contact with a lot of people in the healthcare environment because I'm still in healthcare and people text me on the side and they ask my feedback and my guidance on different things. It's predominantly communities of color and it's positions from your lower level paying positions all the way up to your higher paying positions. And even people outside of healthcare that have reached out to me from Fortune 500 companies.

Jasmine Naylor (01:00:04):

What I am seeing a trend is is that communities of color in particular, they've never had to fill out a vaccine exemption. They've never had to submit a medical exemption or religious exemption. I'm also seeing some data from different health centers I've spoken to that have said they have this proportion of black and brown unvaccinated population that they know qualify in one exemption or the other but they're not applying for the exemption. And they were seeing that a high level of nurses with a white background were applying.

Jasmine Naylor (01:00:40):

And so this is literally the equity conversation happening without folks knowing an equity conversation is happening. When folks don't know how to do something, they have two choices; to take a stab at it and potentially be rejected or be approved, or don't take a stab at it and avoid the essence of rejection but it could lead to termination. But then the third thing as well is those who hold the paycheck hold much of the power in the world. People will change decisions when you impact their paycheck. And so they're weighing these different options that they have.

Jasmine Naylor (01:01:16):

Bringing equity into the conversation would be, what type of educational sessions can you potentially have with your staff to demystify what these exemptions in the process is like? For instance, someone reached out to me and said, "Hey, here's my exemption form for my Fortune 500 company. How should I fill this out?" First thing I told him is, "You don't have to answer according to those tiny boxes. You can take as much space as you need for your religious exemption." That is something that they would've never heard that from anyone else. And so that person was wise enough to know to pull on somebody that has some background in the area to help them with their exemption requests and their exemption ultimately was approved permanently with some accommodations. Now, had they not reached out, would they have gotten that outcome? They might not have. Their organization wasn't providing any education or demystification to the process.

Jasmine Naylor (01:02:11):

The other thing that I'll say about that as well is, we all have to make our own choices what that means for our workforces and if that's something we're willing and we want to do, but also imagine that you are the person that is your staff member in that situation right now. What is it that they need to get them to the other side? Some of your staff qualify for the exemption, some of them may not qualify, but what if that was you in the situation? What would you have wanted based on your needs at that time and how would you have wanted it to be portrayed?

Jasmine Naylor (01:02:43):

The other thing is some of our staff don't know how to write well. And so filling out exemptions can be challenging for them for that reason as well. They don't know how to articulate their argument. They don't know how to grab information that may be needed and they justifiably may qualify. And what does it mean to lose that person that technically could have qualified and been approved?

Vacheria Tutson (01:03:06):

Thank you. I think that's so enlightening just because this is such a new process. Justice is new for employers trying to figure out how to navigate it. It's new for the staff on trying to figure out how to navigate it. I think the biggest thing we want folks to take away from this is like to lead with compassion, to lead with like these are people who were your friends before this divisive topic of just COVID-19 and where people stand on both sides of it. Everyone feels like their feelings and their viewpoint is valid, but we have to get the space for just different feelings and different viewpoints. And so thank you Jasmine for sticking around and just sharing your tidbits. I think your insight and the work that Mass League has been doing in the health equity space is really inspiring, especially for me at NACHC. So thank you for taking the time and joining us today.

Jasmine Naylor (01:03:52):

No problem. Thank you for the invitation. I appreciate it.

Vacheria Tutson (01:03:56):

Thank you. We are now going to move on to Q&A. Thank you for everybody who has still hung around with us. We have another 10 minutes specifically designated to Q&A. I know Dianne and Molly have been answering some questions. And so I'm going to just start with a few high level things. Number one, yes, we are sending the slides out. We will send out the slides and all of NACHC resources that we have put together to support health centers through this time. So don't worry about getting the slides. We will definitely make sure you get those.

Vacheria Tutson (01:04:30):

The next thing is the reasonable accommodations piece. Actually Olivia, could we pull the slide deck up and we could just go to that slide. Maybe I'll give you some time. The reason accommodations. Health centers have discretion to choose what that reasonable accommodation is and how it applies to that staff member. That means that if your health center feels that a reasonable accommodation is to require someone to get tested weekly, then that would be reasonable and applicable under the CMS rule. There's not a requirement that you need to require multiple things. It's the health center's discretion. So it is a or and not an and. You can require testing or you can require them to wear increased PPE, or you can require them to work remotely, or you can require them to get tested and to wear PPE.

Vacheria Tutson (01:05:28):

So it really depends on your health center and it really depends on what you are looking for to make sure that you are taking all the measures to protect all the patients and staff wellbeing. So that is a lens that you approach it from, but you have options on what that maybe could look like, and I think it's the next slide. Olivia, thank you so much. I know that this is a tricky space of like just you want to make sure you are complying with the regulation, but it's not going to give you the perfect roadmap maybe you are looking for. So if you have discretion as a health center on how some of these things are going to be implemented, that means that you have the discretion to figure out what works for your health center, what works for your state, what works for your employees day-to-day and what's the best ways to keep people safe, and also provide that reasonable accommodation that someone has been granted because you have approved their religious exemption.

Vacheria Tutson (01:06:23):

Now, when it comes to the religious exemption and who approves it, that is also your health center's discretion. You should have policies and procedures about how you're implementing the staff vaccination requirement and that should detail who is in charge of approving those religious and medical exemptions. Is it your HR department? Is it your chief compliance officer? Is it your COVID-19 safety coordinator? There's different ways that every health center can approach it. So I don't have a one-size-fits-all approach, but it is this is something that needs to be included in your policies and procedures about how you're implementing this rule and who is collecting those documentation, who is overseeing that process. It should be designated to someone or a team, and those people will have the responsibility of approving the exemptions, deciding and communicating with staff about what that reasonable accommodation is. So as long as you have someone designated to oversee that and that is detailed, and the policy, the procedures that CMS requires, that is very important.

Vacheria Tutson (01:07:26):

As well, I do want to say that CMS is actively updating their FAQs. And so just in the last week, they have updated their FAQ about volunteers. I see someone on the chat ask about what about visitors. I saw someone asked about what about drug reps who come to the facility. That is technically a visitor. The reason that CMS has updated that FAQ is because they have heard from you all and they have heard questions. So continuously check the CMS website for updated resources. NACHC, we will definitely continue to update our FAQ if anything changes that's relevant to what we have in our documentation and on our website. So make sure you're checking the date of the information you've looked at, make sure it's in those current version because things are evolving quickly as we see things change from day-to-day.

Vacheria Tutson (01:08:16):

Another big question we have is how the OSHA ETS for employers with more than 100 employees interacts with the CMS vaccine mandate. We know and we have seen that the OSHA ETS for employers with more than 100 employees has been enjoined by the court, as in it is not going into effect right now. The OSHA regulation is very different from the CMS regulation. CMS has existing statutory authority to regulate facilities that get Medicaid and Medicare reimbursement. The OSHA regulation is very broad and captures a lot of people. It captures almost every business in America. So it has a different applicability and a different reach than the CMS rule. So as far as the litigation that's going on for the OSHA rule, that does not stop and impede the CMS rule.

Vacheria Tutson (01:09:11):

There are two lawsuits right now brought on behalf of one is 10 states and I think the second one is on behalf of 12 states challenging the CMS rule. However, until a court finds that they need an issue a preliminary injunction or stop enforcement, the CMS rule is still in effect. As of today, the CMS rule is still in effect, which means that you as a health senior need to be working towards compliance and reaching that first phase one deadline of December 5th. So until otherwise and if something does happen we will make sure that we get the information out of where it stands legally, but the CMS rule is still in effect.

Vacheria Tutson (01:09:50):

The OSHA rule that I was speaking about earlier is the OSHA ETS for COVID-19 healthcare workers. That is a different emergency temporary standard than the one that applies to 100 and more employees. So the OSHA ETS for healthcare workers that came out in the summer has not been enjoined and that is still in effect as well. So there are different requirements that have came out that are still in effect, but I know with all the litigation it is a little confusing trying to track and make sure you're following the right thing.

Vacheria Tutson (01:10:25):

As well I just want to say under the OSHA ETS for healthcare workers, it requires employers to pay for testing if it is required under their policies and procedures. However, health centers are receiving free tests. Health centers can administer testing. So also I just want to encourage you to make it as easy as possible for your employees to comply with your weekly testing requirement and if they can get that onsite, I think that that probably is the easiest way and least burdensome way to help with this reasonable accommodation.

Vacheria Tutson (01:11:01):

I encourage you all to review the FAQ that NACHC has put together because at the end of the document, it also has FAQs around the EEOC's guidance for religious accommodations or religious objections to the COVID-19 vaccine and providing reasonable accommodation. Because thinking about that reasonable accommodation, if there isn't one and that accommodation would create an undue hardship on the health center, then you have the option of taking another route. So I really would review all the existing information as you decide on how to move forward.

Vacheria Tutson (01:11:37):

I'm just scrolling through the chat to see. There's a lot of questions and I hope that you guys have felt like this has answered everything. I think just going back, some tips that we have thinking about moving forward for implementation is that as someone is frequently at the health center, they probably fall under the definition of staff under the CMS rule. I encourage you all to openly communicate with your staff on this upcoming regulation, how you plan to implement it, what are the expectations and having as much clarity as possible for what are the expectations and guidelines that your health center staff need to follow. We've had the board member conversation and we are under the interpretation that patient board members and non-consumer board members all have the same requirement to be vaccinated.

Vacheria Tutson (01:12:25):

Please make sure that you're communicating that information. And that also means that if someone is required to get the vaccine, that means they also have the option of applying for religious or medical exemption. That includes the board members. That includes volunteers. That includes trainees. That includes the contractor that you have, the site tech that you have on contract. That includes all those folks that are coming in and out of the health center. I know I saw some questions about how this doesn't apply to patients, but that is just outside the scope of what CMS can require. They cannot require every patient to be vaccinated, but they do have the statutory authority to regulate staff at these facilities that receive Medicare and Medicaid reimbursement.

Vacheria Tutson (01:13:09):

We are at time. I just want to say thank you to you all who stuck around for the health equity conversation two. Thank you to Jasmine for appearing. Thank you, Emily, to giving some of your board governance guidance. From NACHC, we want to just say thank you, have a great Thanksgiving holiday. If you have any questions, please feel free to reach out to me at regulatoryaffairs@nachc.org, and I will make sure that I get back to you. But we are here in the fight with you guys and whatever you need, NACHC is definitely here to help you. So have a great day.