CMS Issues Rule Requiring COVID-19 Vaccination for Staff of Healthcare Facilities Participating in Medicare and Medicaid

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On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) issued its much-anticipated interim final rule requiring staff of healthcare facilities participating in Medicare and Medicaid programs to be fully vaccinated by January 4, 2022.

Highlights of the CMS rule (which will be published in the Federal Register on November 5, 2022) include the following:

• Healthcare facilities participating in Medicare or Medicaid programs are required to establish a staff vaccination process or policy over two phases where: (1) staff receive the first of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by December 5, 2021; and (2) staff be fully vaccinated by January 4, 2022.
• Unlike the OSHA Emergency Temporary Standard (ETS), the CMS rule does not provide for an option of regular COVID-19 testing instead of vaccination.
• The vaccination requirements apply to all staff working at Medicare or Medicaid providers or suppliers, regardless of their clinical responsibility or patient contact. This includes facility employees, licensed practitioners, student trainees, volunteers, and contractors.
• Offsite staff who do not perform their duties solely within a clinical setting are still subject to the vaccination requirements. However, individuals working 100 percent remotely with no direct contact with patients and other staff are exempt.
• The regulation does not apply to settings which CMS has no regulatory control over, such as assisted living facilities, group homes, physician offices, and schools.
• There are two exceptions to the vaccine mandate: (1) those entitled to a reasonable accommodation under the Americans with Disabilities Act because a vaccine is medically contraindicated; and (2) those entitled to a reasonable accommodation under Title VII of the Civil Rights Act of 1964 because of their

sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement.

CMS released frequently asked questions on the vaccine mandate which provide further detail on the rule's eligibility, requirements, exemptions, and enforcement. The frequently asked questions also state the rule preempts or controls over contrary state and local laws.

We are prepared to assist you with legal advice on these issues, including helping you develop policies, procedures and forms to deal with the CMS rule and potentially conflicting federal, state and local guidance.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance, including but not limited to our firm's COVID-19 Resource Center. Readers with legal questions should consult John Vering (jvering@sb-kc.com), Mark Opara (mopara@sb-kc.com), John Neyens (jneyens@sb-kc.com), Shannon Johnson (sjohnson@sb-kc.com), Brenda Hamilton (bhamilton@sb-kc.com) or other shareholders in Seigfreid Bingham's Employment Law Group, or your regular contact at Seigfreid Bingham at 816-421-4460.