



## Policy Brief

August 20, 2021



### The Landscape of Vaccine Mandates:

If Decision-making is a Science, Judgment is an Art

There is no easy way around this; mandatory COVID-19 vaccination requirements are a polarizing and hot-button topic. Hospitals around the country have begun to make COVID-19 vaccinations mandatory for their employees. At present, approximately 150 hospital systems and health care organizations have publicly announced [mandated](#) vaccinations for employees—including [Baylor Scott & White](#) and [Ascension](#). Albeit, it remains unseen how the actual implementation of some of these mandates will play out. As research comes to light on the effectiveness of vaccinations and the threat of the Delta variant grows, hospitals must make tough decisions on how to best protect their staff and the public. Continue reading to learn more about the current landscape and gather the context of this rapidly-changing situation.

### **Concerns Over Employee Retention**

Hospitals have many factors to consider when contemplating mandated vaccination. One concern is how unvaccinated hospital employees will react. Current estimates of total unvaccinated employees [range](#) from 20% - 40%. If hospitals make vaccinations mandatory, there is a concern that these employees might hand in their resignation and seek employment elsewhere. As the Delta variant continues to cause cases to spike, hospitals cannot afford to lose staff; doing so would reduce their ability to provide care to the public. Last month, Houston Methodist Hospital decided to require vaccinations for employees. Following the [mandate](#), 150 employees resigned or were relieved of service for failing to comply with the new requirement. Subsequently, employees filed lawsuits.

## **We'll See You in Court**

The first lawsuit [challenging](#) the validity of COVID-19 vaccine mandates was *Bridges v. Houston Methodist Hospital*. The judge dismissed the lawsuit at Houston Methodist request, setting the precedent that vaccine mandates are legal and that hospitals have the authority to put them in place to protect their workforce. The Equal Employment Opportunity Commission (EEOC) also [advised](#) that employers have the right to require that employees be vaccinated, as long as employers provide reasonable accommodations for those with disabilities or religious convictions that prevent them from receiving the vaccine.

## **Emergency Use Authorization (EUA) Versus Full Authorization**

At present, the Food and Drug Administration (FDA) has only approved COVID-19 vaccinations under an Emergency Use Authorization (EUA) from the FDA. In the coming weeks, a final decision from the FDA on the Pfizer-BioNTech and Moderna vaccines is [expected](#). Some unvaccinated individuals have attributed their [hesitancy](#) to the approval status of COVID-19 vaccines. Full approval by the FDA can help strengthen confidence in the safety and effectiveness of vaccinations and equip hospitals with more justification for potential future mandates.



## **CMMI's 2020 Report to Congress**

While the COVID-19 pandemic and the infrastructure bill maintain much of the spotlight, the Center for Medicare and Medicaid Innovation (CMMI) submitted an important [report to Congress](#) that provides some insight into their future actions. Recently-appointed Director Liz Fowler has the potential to lead CMMI in a new direction, given her extensive experience in health care policy. We may see future initiatives under her leadership to meet the goals set out in this report, such as developing prescription drug models, specialty physician models, and the inclusion of telehealth in models.

## **What is the CMMI Report to Congress?**

The Department of Health and Human Services (HHS), the federal agency over CMMI, must submit a report to Congress on CMMI's activities at least once every other year. The report includes evaluations of all the current models and a review of their practices and model testing. If the models can show that they reduce spending without reducing quality of care or improve quality of care without increasing spending, HHS could decide to expand them in the future.

While only five models have produced statistically-significant savings since the inception of CMMI, other models found an improvement in quality without increasing costs.

### **Key Priorities Stated in the CMMI 2020 Report to Congress**

This report includes CMMI's key priorities and the goals it aims to achieve, providing us with key insights into what CMMI may pursue. Some of these key priorities and goals that are most relevant to AHPA members are:

- Increasing the proportion of health care paid for through value-based arrangements
- Creating physician specialty models, including better managing the care of patients with serious illness
- Testing cutting-edge private payer utilization management techniques, including prior authorization
- Developing new and innovative value-based insurance designs within Medicare Parts C and D
- Developing prescription drug models
- Refining Medicare Advantage innovation models
- Encouraging state-based and local innovation, including Medicaid-focused models
- Facilitating telehealth and improving the interoperability of Electronic Health Records

### **Results and Recommendations May Provide Insight into Future Action**

CMMI's report shows increases in quality under the Comprehensive ESRD Care, the Home Health Value-Based Purchasing Model and the Comprehensive Joint Replacement Model, indicating that these models will likely remain in place. While not all CMMI programs have generated savings, CMMI generally gains insights from the model designs and integrates them into new models. Despite the success, CMS has generally not met the regulatory requirements to expand their models, which largely includes determining that expansion will not increase costs. Instead, CMMI is much more likely to create a new iteration of a model with incorporated learnings. We will keep an eye out for any changes CMMI may make to its models.



### **An End—For Now—to Work Requirements in Medicaid**

This month, CMS Administrator Chiquita Brooks-LaSure informed the states of [Ohio](#), [South Carolina](#) and [Utah](#) that the Agency would no longer allow them to make employment a condition

of Medicaid coverage. In recent years, [some states](#) began to use Medicaid's Section 1115 waivers to add work or civic engagement as prerequisites to qualifying for the insurance program—a policy [encouraged](#) by the Trump Administration. In light of the COVID-19 PHE and the accompanying job loss, CMS now [believes](#) work requirements “may be unreasonably difficult or impossible for individuals to meet.”

### **What has changed in the last few months that caused work requirements to be reversed?**

The COVID-19 PHE, coupled with the change in Administration, has made new HHS leadership wary of using work requirements in social service programs. The Biden Administration is concerned that work requirements will only further impede access to health care services at a time when people need them the most. Over the last year, job losses due to COVID-19 have exceeded levels not seen [since the Great Depression](#). An [Executive Order](#) from President Biden in January set the stage for withdrawing work requirement waivers by directing HHS to review all policies that may reduce coverage or otherwise undermine the Medicaid program.

### **Does this mean there are no states with Medicaid work requirements?**

Not quite. Georgia is now the last state with an approved Medicaid waiver implementing work requirements. Georgia is currently in negotiations with CMS over a potential partial Medicaid expansion, which includes work requirements. HHS Secretary Xavier Becerra's comments during a [recent visit](#) to Atlanta emphasized that HHS “[doesn't] want [a lack of] work to become an impediment to getting care.” While the final determination is still pending, a [preliminary letter](#) from CMS seems to imply that the Agency will likely not approve Georgia's waiver unless work requirements are removed.

### **Does this mean that work requirements are off the table, forever?**

Although CMS has said that it currently will not approve the extensions of Medicaid waivers that include work requirements, it does not mean that states cannot try again in future applications. In addition, states whose waivers have been denied have the opportunity to appeal for a second consideration. While the Biden Administration appears to be opposed to work requirements, a future change in leadership could spark their resurrection.

## **Infrastructure Package Clears Senate, Moves to House**

Last week, President Biden [reached a deal](#) with the Senate on the latest infrastructure package, passing the bill in a bipartisan 69-30 vote. The plan allocates roughly \$550 billion into improve broadband internet, rework roads and bridges, and rebuild after damage from natural disasters. Not included in the compromise package are many of the President's original priorities, including investments in childcare and education. Senate Democrats are considering passing some form of these provisions through [budget reconciliation](#). From here, the infrastructure package moves to the House of Representatives for approval.

## Updates to COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since August 9<sup>th</sup> to help mitigate the impacts of COVID-19.

### **Hospital Inpatient Payment Rule Increases COVID-19 Treatment Payments**

CMS' [final rule](#) governing inpatient payments for hospitals authorizes additional payments for diagnostics and therapies to treat COVID-19. CMS has extended the New COVID-19 Treatment Add-on Payment (NCTAP) for eligible discharges through the end of the fiscal year in which the public health emergency ends.

### **FDA Amends EUA for COVID-19 Vaccines to Allow for Third Dose**

The FDA has amended the Emergency Use Authorizations (EUAs) for the [Pfizer](#) and [Moderna](#) COVID-19 vaccines to allow for an additional dose in immunocompromised populations. CMS will pay for additional dose administration as outlined in the amended EUAs.

### **CMS Announces Emergency Regulation Requiring Staff Vaccination at Nursing Homes**

CMS and the CDC have [announced](#) that they are currently developing an emergency regulation requiring staff vaccinations in Medicare and Medicaid-participating nursing homes. The regulation text has not yet been released.



## AHPA Resources

**Join Us! AHPA will be hosting a webinar later today, Friday, August 20<sup>th</sup>, on the CY 2022 OPPS proposed rule.**

AHPA Webinar on OPPS and PFS CY 2022 Proposed Rule

Friday, August 20, 2021

1:00PM – 2:00PM EST

[Request a Calendar Invitation](#)

**Save-the-Date! Upcoming Webinar**

**"New Alzheimer Medicine: Hope or Hoax?"**

Thursday, September 9, 2021

12:00 PM EDT | 9:00 AM PDT

[Download Save-the-Date](#)

### **Missed AHPA's IPPS Webinar? No problem!**

Visit AHPA's [YouTube channel](#), where members can stream webinars on the major proposed rules at their convenience.

- [Webinar: Highlights from the Latest IPPS Proposed Rule \(Video\)](#)
- [Webinar Slides \(.PPT\)](#)

## WHAT WE'RE READING...

[U.S. Ramps Up Virus Strategy for Nursing Homes and Urges Boosters](#) – NY Times

[How Medical Associations Fought Against Anti-Transgender Youth Bills](#) – Modern Healthcare

[2020 Census Results Show Increased Diversity](#) – Brookings

[The Tragic Developments in Afghanistan Might Impact the Infrastructure Package](#) – New York Magazine

[The Unvaccinated Face Hurdles if They Want to Work](#) – Modern Healthcare

[U.S. Sends Aid to Haiti After Quake but Much More Needed](#) – Politico