



Center for Clinical Standards and Quality

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DATE: December 2, 2021

TO: State Survey Agency Directors

FROM: Directors,
Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Vaccination Regulation: Enforcement of Rule Imposing Vaccine Requirement for Health Care Staff in Medicare- and Medicaid-certified Providers and Suppliers is Suspended so Long as Court Ordered Injunctions Remain in Effect

Memorandum Summary

Survey and Enforcement of the Vaccine Requirement for Health Care Staff in Medicare- and Medicaid-certified Providers and Suppliers Suspended While Court Ordered Injunctions are in Effect: The Centers for Medicare & Medicaid Services (CMS) will not enforce the new rule regarding vaccination of health care workers or requirements for policies and procedures in certified Medicare/Medicaid providers and suppliers (including nursing facilities, hospitals, dialysis facilities and all other provider types covered by the rule) while there are court-ordered injunctions in place prohibiting enforcement of this provision.

Background

On November 4, 2021, the Federal Register posted the notice of the CMS interim final rule with comment revising the requirements that most Medicare- and Medicaid-certified providers and suppliers must meet to participate in Medicare and Medicaid programs. *See* Interim Final Rule with comment period, “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination,” 86 Fed. Reg. 61,555 (Nov. 5, 2021). The published rule requires staff working in Medicare- or Medicaid-certified providers to have the shots necessary to be fully vaccinated against COVID-19 by January 4, 2022, and to receive their first shot prior to December 6, 2021. The rule allows for medical and religious exemptions and requires that providers have policies and procedures to operationalize these requirements.

On November 29 and November 30, 2021, the United States District Court for the Eastern District of Missouri and United States District Court for the Western District of Louisiana issued preliminary injunctions against the implementation and enforcement of the Interim Final Rule against Medicare- and Medicaid-certified providers and suppliers. Between the two of them, these injunctions cover all states, the District of Columbia and the US Territories. CMS has appealed both of these decisions, and has filed motions for stays of these orders. While CMS remains confident in its authority to protect the

health and safety of patients in facilities certified by the Medicare and Medicaid programs, it has suspended activities related to the implementation and enforcement of this rule pending future developments in the litigation. Accordingly, while these preliminary injunctions are in effect, surveyors must not survey providers for compliance with the requirements of the Interim Final Rule. Health care facilities, of course, may voluntarily choose to comply with the Interim Final Rule.

Contact: Questions about this memorandum should be addressed to your CMS Location.

/s/

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