

CMS FINAL RULE TERMINATES COVID VACCINATION MANDATE AND FINALIZES REGULATIONS FOR LONG-TERM CARE FACILITIES

On May 31, 2023, the Centers for Medicare & Medicaid Services (“CMS”) released a final **rule** (“Final Rule”) that withdraws the COVID vaccine requirement for health care workers of Medicare-certified and Medicaid-certified long-term care facilities (“LTC Facilities”). The Final Rule follows through on the May 1, 2023 memorandum released by the Quality, Safety & Oversight Group at CMS, which announced that certain regulations or other policies included in the Interim Final Rules during the public health emergency (“PHE”) will be modified with the ending of the PHE. The Final Rule also finalizes the education and offer requirements for LTC Facilities and removes expired regulatory provisions regarding LTC Facility testing requirements.

EFFECTIVE DATE

The Final Rule is scheduled to be published on June 5, 2023. The Final Rule will be effective on August 4, 2023.

COVID VACCINATION MANDATE

The Final Rule removes 42 CFR Section 483.80(i), which was the requirement to have all staff vaccinated for COVID or receive a medical exemption. LTC Facilities still need to report COVID vaccination of health care staff and residents through the SNF Quality Reporting Program.

ENFORCEMENT OF STAFF VACCINATION PROVISIONS

CMS wrote in the preamble to the Final Rule that its decision to terminate the facility staff vaccination requirements in the Final Rule reflects its determination that the emergency circumstances which occasioned these vaccination provisions no longer exist. CMS also stated in the preamble to the Final Rule that it will not enforce the staff vaccination provisions during the 60-day wind-down period before the effective date of the Final Rule.

COVID VACCINATION EDUCATION AND OFFERING REQUIREMENTS

The Final Rule also finalizes requirements for LTC Facilities to provide education about COVID vaccines and to offer COVID vaccines to residents, clients and staff.

On May 13, 2021, CMS issued an interim final rule, which required LTC Facilities to document in each resident’s medical record that the resident was provided education regarding the benefits and potential risks associated with the COVID vaccine, the doses administered to the resident or if the resident did not receive a COVID vaccine. The interim final rule also called for LTC Facilities to document that staff were educated on the benefits and risks associated with COVID vaccines, were offered a vaccine or information on obtaining a vaccine, and to report the vaccine status of staff to the Centers for Disease Control and Prevention’s (“CDC”) National Healthcare Safety Network (“NHSN”).

In the Final Rule, CMS finalizes these requirements.

Going forward, LTC Facilities must continue to educate and offer COVID vaccination to residents and staff. LTC Facilities will also continue to document and report COVID vaccine status for residents and staff to NHSN.

COVID TESTING FOR LONG-TERM CARE SETTINGS

In September 2020, CMS issued an interim final rule, “Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency” that required LTC Facilities to test their staff and residents for COVID.

The Final Rule removes the expired language in 42 CFR Section 483.80(h) and the language that required LTC Facilities to test their staff and residents for COVID.

PRACTICAL TAKEAWAYS:

- LTC Facilities should update their policies and procedures to be consistent with the updated requirements.

- LTC Facilities should continue to educate and offer COVID vaccination to residents and staff.
- LTC Facilities should continue to ensure proper health data is reported to the CDC.

If you have questions or would like additional information about this topic, please contact:

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