



January 4, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
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RE: CMS-3415- IFC Medicare and Medicaid Programs: Omnibus COVID-19 Health Care Staff Vaccination

Dear Administrator Brooks-LaSure:

The National Association of Community Health Centers (NACHC) is the national membership organization for federally qualified health centers (also known as FQHCs or health centers). Health centers are federally-funded or federally-supported nonprofit, community-directed provider clinics that serve as the health home for over 28 million people, including 1 in 5 Medicaid beneficiaries and 1 in 3 people living in poverty nationwide. It is the collective mission and mandate of over 1,400 health centers around the country to provide access to high-quality, cost-effective primary and preventative medical care as well as dental, behavioral health, and pharmacy services and other “enabling” or support services that facilitate access to care to individuals and families located in medically underserved areas, regardless of insurance status or ability to pay.

NACHC truly values the Biden Administration’s recognition of the integral role health centers have played in America’s COVID-19 pandemic response. Health centers have been on the ground in force for over a year, fighting the spread of the virus in hard-to-reach communities, including communities of color and among special populations such as the elderly, homeless, and agricultural workers. They have tested, vaccinated, diverted non-acute cases from overwhelmed hospitals, and connected affected patients with housing, food, and critical services. With the support of this Administration, health centers have delivered over 16 million COVID-19 vaccinations and over 14 million COVID-19 tests.

In the fight against COVID-19, the health center mission of advancing equity in the nation’s pandemic response is now more critical than ever. As health centers work towards compliance with the Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (IFC), NACHC has concerns around the implications on the workforce and the ability for health centers to remain on the front lines serving the most vulnerable communities. The daunting challenges of sustaining the health center workforce predates the COVID-19 pandemic and has only been exacerbated over the last two years. NACHC is concerned about CMS’ timeline for implementation of its vaccination requirements, the rise in cases tied to the delta and omicron variant, and the ongoing stress on the health care system. NACHC urges CMS to consider broadening compliance

requirements under the IFC to provide facilities, like health centers, the flexibility to retain their workforce and minimize administrative burdens.

1. Due to inconsistent enforceability across the country, CMS should delay implementation for the IFC until there is a decision from the Supreme Court.

Health centers across the country have devoted countless hours to developing policies and educating staff in preparation for implementing the IFC. However, for the last month it has been difficult for health centers to stay abreast on the legality of the IFC due to ongoing litigation, which has caused great confusion. As the Supreme Court is currently reviewing the enforceability of the CMS Omnibus COVID-19 Health Care Staff Vaccination IFC and OSHA COVID-19 Vaccination and Testing ETS, we urge CMS to delay implementation for the 25 states not currently enjoined under existing preliminary injunctions until there is a final decision.

NACHC appreciates CMS providing updated guidance with new compliance deadlines, however moving forward with only 25 states will create inequities in the health care system. A main concern for all CMS facilities has been competition amongst health care providers that do not fall under the IFC and retaining staff who chose not to get vaccinated. We urge CMS to consider the impact of continuing to enforce the IFC on half the nation and the pressure it creates on the health care system during a time of uncertainty. Furthermore, if the IFC is upheld by the Supreme Court, CMS should extend the compliance deadlines for the enjoined states that have slowed implementation due to the preliminary injunctions. As an effort for equitable enforcement, all 50 states and territories should have the same compliance deadlines and requirements that adequately account for the litigation delays.

2. We encourage CMS to expand compliance with the IFC to include a testing accommodation for unvaccinated staff for facilities struggling to maintain an adequate workforce.

Every state, city, and county have been impacted differently by the COVID-19 pandemic and there is not a one size fits all approach to reaching the 100% staff vaccination rate. Currently, there are counties with less than 40% of their residents vaccinated due to COVID-19 misinformation and dueling political ideologies creating additional hurdles for health care facilities, like health centers, to get their staff fully vaccinated. This is particularly important for health centers in states that are under preliminary injunctions and in states with laws targeting vaccine mandates. We urge CMS recognize health centers making a good faith effort toward achieving compliance with the staff vaccination requirement but need longer than 90 days to reach 100% due to local challenges. Providing the option for unvaccinated staff to submit regular negative COVID-19 tests, while working towards compliance, will alleviate stress on the workforce and enable health centers to continue providing the essential care patients needs.

As the staff vaccination mandate was created to address the COVID-19 pandemic, the heightened workforce shortage will jeopardize access to care in the most underserved communities especially when trying to close the care gap created over the last two years. Currently, staff turnover has forced health centers to reduce their patient loads to accommodate staffing shortages.

These staffing shortages have clear consequences on the delivery and efficiency of care, which can have a lasting impact on patients. Health centers need every single staff member to provide high quality care to the patients that need it the most. We urge CMS to broaden compliance to include

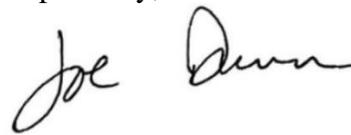
regular testing for health centers experiencing staffing shortages which will impede the facility's capacity to provide patient care.

3. CMS should permit attestation forms as permissible documentation of vaccination status for contractors and 3rd party vendors.

The definition of "staff" under the IFC, includes contractors and 3rd party vendors that visit the facility regularly and use shared common areas like restrooms, cafeteria, or breakrooms. This requires health centers to devote extensive time to coordinate with outside companies and collect documentation, specifically from organizations that do not fall under IFC. To alleviate the administrative burden, CMS should allow health centers to collect attestation forms as permissible documentation under the IFC. We encourage CMS to adopt guidelines that minimize the amount of documentation health centers need to collect from outside organizations, as this process could interfere with a facility's ability to maintain vital contractual relationships. Health centers need more guidance on implementing the staff vaccination requirement on contractors that do not provide patient care or administrative support, like janitors and construction workers.

Thank you for your consideration of these comments. If you have any questions, please contact Vacheria Tutson, Director of Regulatory Affairs at vtutson@nachc.org.

Respectfully,

A handwritten signature in black ink that reads "Joe Dunn". The signature is written in a cursive, flowing style.

Joe Dunn
Senior Vice President
Public Policy & Research