

Issue Brief

FEDERAL ISSUE BRIEF



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CMS Issues Changes to the COVID-19 Health Care Staff Vaccination Requirements; Changes to the Requirements for LTC Facilities and ICFs-IID to Provide COVID-19 Vaccine Education and Offer Vaccinations to Residents, Clients, and Staff; Policy and Regulatory Changes to the LTC Facility COVID-19 Testing Requirements

The Centers for Medicare & Medicaid Services (CMS) have issued a final rule that removes expired language addressing staff and patient COVID-19 testing requirements for Long-Term Care (LTC) Facilities issued in an interim final rule with comment "Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act, published in the September 2, 2020 **Federal Register**, otherwise known as the "LTC facility testing IFC." This IFC revised regulations to strengthen CMS' ability to enforce compliance with Medicare and Medicaid long-term care facility requirements for reporting information related to COVID-19, established a new requirement for hospitals and critical access hospitals (CAHs) to track the incidence and impact of COVID-19, and established a new requirement for LTC facilities to test residents and staff for COVID-19 applicable for the duration of the PHE.

Subsequently CMS finalized provisions addressing the hospital and CAH COVID-19 reporting requirements in the final rule "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates ("FY 2023 Hospital Inpatient Prospective Payment System final rule").

On May 13, 2021, CMS issued an IFC titled "Medicare and Medicaid Programs; COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff," otherwise known as the "educate and offer IFC." This IFC revised the requirements for LTC facilities and CoPs for ICFs-IID to require the provision of COVID-19 vaccination education and to offer vaccines to residents, clients, and staff. The IFC also revised the infection control requirements for LTC facilities to include COVID-19 data reporting.

In addition, the rule withdraws the regulations in the interim final rule with comment (IFC) "Omnibus COVID-19 Health Care Staff Vaccination" published in the November 5, 2021 **Federal Register**, and finalizes certain provisions of the "COVID-19 Vaccine Requirements for LTC Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff" IFC, published in the May 13, 2021 **Federal Register**.

The COVID-19 Public Health Emergency expired on May 11, 2023.

This document is scheduled to be published in the **Federal Register** on June 5, A copy of the 82-page document is currently available at: <https://public-inspection.federalregister.gov/2023-11449.pdf>.

Comment

The rule is constructed such that CMS spends considerable efforts explaining the provisions of the interim final rules cited above and responding to comments received on the interim final rules. Most of the discussion is now moot with the end of the PHE.

Provisions of the Final Rule

The following table lists the statutory authority by provider and supplier type for which CMS is issuing the requirements in this final rule:

Statutory Authority by Provider and Supplier Type

| Provider and Supplier Type | Statutory Authority |
|--|---|
| Ambulatory Surgical Centers (ASCs) | Sections 1832(a)(2)(F)(i), and 1833 (i)(1)(A) of the Act |
| Hospices | Section 1861(dd) of the Act |
| Psychiatric Residential Treatment Facilities (PRTFs) | Section 1905(h)(1) of the Act |
| Programs of All-Inclusive Care for the Elderly(PACE) Organizations | Sections 1894(f), and 1934(f) of the Act |
| Hospitals | Section 1861(e)(9) of the Act |
| Long Term Care (LTC) Facilities | Sections 1819(d)(4)(B), 1819(f)(1), and 1919(d)(4)(B) and (f)(1) of the Act |
| Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) | Section 1905(d)(1) of the Act |
| Home Health Agencies (HHAs) | Sections 1861(m), 1861(o), and 1891 of the Act |
| Comprehensive Outpatient Rehabilitation Facilities(CORFs) | Section 1861(cc)(2)(J) of the Act |
| Critical Access Hospitals (CAHs) | Section 1820(e)of the Act |
| Clinics, Rehabilitation Agencies, and Public HealthAgencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services (Organizations) | Section 1861(p)(4)(A)(v) of the Act |
| Community Mental Health Centers (CMHCs) | Sections 1861(ff)(3)(b)(iv), 1832(a)(2)(J), and 1866(e)(2)of the Act |
| Home Infusion Therapy (HIT) Suppliers | Section 1861(iii)(3)(D)(i)(IV) of the Act |
| Rural Health Clinics (RHCs)/ Federally Qualified Health Centers (FQHCs) | Sections 1861(aa) and 1905(l)(2)(B) of the Act |
| End-Stage Renal Disease (ESRD) Facilities | Section 1881(b)(1)(A) of the Act |

A. Omnibus COVID-19 Health Care Staff Vaccination

CMS is withdrawing from the Code of Federal Regulations (CFR) the requirements regarding COVID-19 vaccination of health care staff as established under the staff vaccination IFC. CMS notes that it intends to encourage ongoing COVID-19 vaccination through other mechanisms, including its quality reporting and value-based incentive programs.

The table below lists the regulatory locations from which staff vaccination regulations are addressed in this final rule by provider and supplier type.

Withdrawn Regulations by Provider and Supplier Type

| Provider and Supplier Type | Revised Regulation |
|---|---------------------------|
| Ambulatory Surgical Centers (ASCs) | § 416.51(c) |
| Hospices | § 418.60(d) |
| Psychiatric Residential Treatment Facilities (PRTFs) | § 441.151(c) |
| Programs of All-Inclusive Care for the Elderly (PACE) Organizations | § 460.74(d) |
| Hospitals | § 482.42(g) |
| Long Term Care (LTC) Facilities | § 483.80(i) |
| Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) | § 483.430(f) |
| Home Health Agencies (HHAs) | § 484.70(d) |
| Comprehensive Outpatient Rehabilitation Facilities (CORFs) | § 485.70(n) |
| Critical Access Hospitals (CAHs) | § 485.640(f) |
| Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-language Pathology Services (Organizations) | § 485.725(f) |
| Community Mental Health Centers (CMHCs) | § 485.904(c) |
| Home Infusion Therapy (HIT) Suppliers | § 486.525(c) |
| Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs) | § 491.8(d) |
| End-Stage Renal Disease (ESRD) Facilities | § 494.30(b) |

B. COVID-19 Vaccine "Educate and Offer" Requirements for LTC Facilities and ICFs-IID Residents, Clients, and Staff

CMS is finalizing the infection control requirements at § 483.80(d) that LTC facilities must meet to participate in the Medicare and Medicaid programs. By doing so, LTC facilities must continue to educate and offer the COVID-19 vaccine to residents, resident representatives, and staff, as well as perform the appropriate documentation for these activities.

CMS is also finalizing the COVID-19 facility staffing and health care services requirements at §§ 483.430(f) and 483.460 that ICFs-IID must meet to participate in the Medicare and Medicaid programs. By doing so, ICFs-IID must continue to educate clients, client representatives, and staff and offer the COVID-19 vaccine to clients and staff, as well as perform the appropriate documentation for these activities.

C. COVID-19 Reporting Requirements for LTC Facilities

CMS is deleting the expired COVID-19 testing requirement for LTC facilities.