



Center for Clinical Standards and Quality

Ref: QSO-22-17-ALL

DATE: June 14, 2022

TO: State Survey Agency Directors

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

SUBJECT: Surveys for compliance with Omnibus COVID-19 Health Care Staff Vaccination Requirements

Memorandum Summary

- ***CMS is committed*** to taking critical steps to protect vulnerable individuals to ensure America’s health care facilities are prepared to respond to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- ***Survey oversight*** of the staff vaccination requirement for Medicare and Medicaid-certified providers and suppliers will continue to be performed during initial and recertification surveys, but will now only be performed in response to complaints alleging non-compliance with this requirement, not all surveys. Under prior guidance, all surveys included oversight of the staff vaccination requirement.
- ***CMS will revise QSO 22-11*** to ensure deficiency determinations reflect good faith efforts implemented by providers and suppliers and incorporate harm or potential harm to patients and residents resulting from any non-compliance.

Background

On November 5, 2021, CMS issued an interim final rule with comment period (IFC) titled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination” (also referred herein as the “staff vaccination requirement”). This IFC revised the requirements to establish COVID-19 vaccination requirements for staff at applicable Medicare and Medicaid-certified providers and suppliers.

The staff vaccination requirement for all CMS-certified providers and suppliers has been in effect (in all states) since February 20, 2022. Nearly 12,000 providers and suppliers have been surveyed for compliance with the requirement. To date, 95.0% of those providers and suppliers surveyed by states have been found to be in substantial compliance with this requirement.

While we are seeing a significant increase in COVID-19 cases in parts of the country -- driven by the highly transmissible Omicron subvariants -- hospitalizations and deaths currently remain relatively low nationwide. This is a testament to the tools and protections in place today,

particularly the work that federal, state, local, and private partners have done to get over 220 million people vaccinated and over 100 million boosted.

Discussion

While State Survey Agencies (SAs) may expand any survey to include vaccination requirement compliance for non-deemed providers and suppliers and those deemed by Accrediting Organizations with CMS-approved programs (AOs) (with authorization from the appropriate CMS location), SAs and AOs will now only be expected to perform compliance reviews of the staff vaccination requirement **during initial and recertification surveys and in response to specific complaint allegations that allege non-compliance with the staff vaccination requirement**. SAs and AOs are no longer expected to perform these reviews on every survey. This reduction in survey frequency is in keeping with the normal process for oversight of any Medicare requirement, and is supported by the high rates of compliance in initial surveys.

Accrediting Organizations retain the authority to exceed Medicare requirements, per their accreditation standards.

CMS is also reviewing QSO-22-11 to update the interpretive guidance describing Immediate Jeopardy, Condition-level and actual harm determinations to ensure that deficiency citations recognize good faith efforts by providers/suppliers and to more fully evaluate harm or potential harm to patients/residents by considering trends in COVID-19 rates in the community. **State Survey Agencies should reach out to their CMS Location if they are considering citing vaccine requirements at immediate jeopardy, Condition or actual harm levels.**

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

Effective Date: IMMEDIATELY. This policy should be communicated to all survey and certification staff and managers immediately.

/s/

Karen L. Tritz
Director, Survey & Operations Group

David R. Wright
Director, Quality, Safety & Oversight Group

cc: Survey and Operations Group Management
Office of Program Operations and Local Engagement (OPOLE)
Centers for Clinical Standards and Quality (CCSQ)