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Client Alert: CMS COVID-19 Vaccine Requirements

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The Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS) has published a Final Rule regarding the former COVID-19 vaccine requirements. The Final Rule withdraws the COVID-19 health care staff vaccination requirements, which were issued as part of the CMS response to the COVID-19 pandemic. In addition, the related policies and procedures associated with those requirements have been withdrawn. CMS has also stated that the interim requirement related to COVID-19 testing for long-term care facilities is no longer in effect. However, the Final Rule does impose certain requirements for Long Term Care Facilities and Intermediate Care Facilities and Individuals with Intellectual Disabilities Facilities to continue to provide COVID-19 vaccination education to residents (or resident representatives), clients, and staff, and to offer COVID-19 vaccines to these populations.

In the Final Rule, CMS stated that, "Moving forward, CMS aims to use quality reporting and value-based incentive programs to encourage health care facilities to practice preventative measures against COVID-19." Per the rule, particular providers will still be required to continue meeting certain monitoring and reporting requirements. Additionally, as referenced in the Final Rule, CMS is considering adding quality metrics. For instance, one proposed metric is the "percentage of health care personnel who are considered up-to-date on their COVID-19 vaccinations per the CDC's latest guidance."

The Final Rule can be found at federalregister.gov. It also must be recognized that each state or locality may have licensure laws or other applicable laws or regulations that impact vaccination compliance. Additionally, other non-health care laws may impact an employer's standards or vaccination requirements. For example, OSHA requires that most employers provide a generally safe work environment.

It should be noted that while these specific requirements have changed, facilities still have more general risk management and quality standards that must be met. A COVID-19 outbreak in a facility may still lead to sanctions and litigation. Additionally, such an event would significantly harm a facility's public reputation.

Finally, COVID-19 has been a game-changing experience for most health care providers. However, it is expected that it will not be the last pandemic that we must respond to as an industry. As such, it is advisable to review your policies and engage in a "lessons learned" analysis. Those who were able to be nimble during COVID-19 had a better chance of surviving the economic uncertainty. Those who have a plan for the next pandemic will be ahead of those who have failed to plan.

The above is general information and each specific provider should seek guidance from an experienced health care attorney as to the requirements applicable to its situation.

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