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New federal requirement for health care worker vaccination in effect, most health care providers subject to new law

[HOSPITAL] will comply in order to protect health care services for community

TOWN, MONT. (November XX, 2021) – The Centers for Medicare and Medicaid Services (“CMS”) on November 4 issued an Interim Final Rule (“IFR”) requiring most Medicare and Medicaid certified providers to ensure their staff is fully vaccinated staff by January 4, 2022.

The IFR applies to essentially all health care entities that receive Medicare or Medicaid funding, including IHS facilities based on the application of the Conditions of Participation. [Hospital] is regulated by CMS in order to participate as a provider in the Medicare and Medicaid program. The IFR does not apply to physician’s offices, assisted living facilities, or group homes, all of which are not subject to CMS’s regulatory authority.

Medicare and Medicaid-certified facilities are expected to comply with all regulatory requirements, and CMS has a variety of established enforcement remedies. For nursing homes, home health agencies, and hospice (beginning in 2022), this includes civil monetary penalties, denial of payment, and even termination from the Medicare and Medicaid program as a final measure. The remedy for non-compliance among hospitals and certain other acute and continuing care providers is termination from the program.

Medicare, Medicaid and Children’s Health Insurance Program (CHIP) provide health care services to more than 524,000 Montanans. Montana hospitals are the largest provider of care to these patients. Termination of hospitals from these programs would drastically reduce access to health care services for those covered by these programs.

**“We are committed to providing safe, high-quality care for every member of our community. Failure to comply will jeopardize the health care of our community’s seniors, people with disabilities, pregnant moms, children and low-income working families,”** said [Hospital CEO/Administrator]. **“We believe that health care providers should have the ability to self-determine the policies that will best serve and protect our patients, staff and community. However, we will comply with the federal vaccine mandate, while continuing our long-standing practice of granting medical and religious exemptions and implementing appropriate safety accommodations, in order to keep our doors open and care flowing to our community.”**

**“The COVID-19 vaccine is safe and effective protection against the disease, and is especially important for people who have weaker immune systems or those who have increased exposure risk, like health care workers,”** said [Hospital CMO/CNO]. **“We urge everyone to speak with their health care provider and get vaccinated.”**

Termination from CMS programs and the loss of Medicare and Medicaid patient volumes and revenue would threaten the viability of most health care providers in the state. CMS reimbursements account for approximately 67% of payments to Montana hospitals. Failing to comply with IFR would put $2.1 billion in health care dollars in Montana at risk.

**“There’s not a hospital in Montana that could survive if it didn’t follow those directives, and the impact would be felt community-wide,”** said Rich Rasmussen, president and CEO of the Montana Hospital Association. **“Local hospitals** **are either the largest or one of the largest employers in their communities, and their demand for goods and services creates a significant number of jobs outside the hospital facility. CMS certification is not only critical to the health of Montana residents, it’s critical to the health of our local economies.”**

All affected health care entities must develop a policy ensuring all eligible staff have received either the first dose of the Moderna or Pfizer vaccine or the Johnson & Johnson vaccine by December 5, 2021, prior to providing any care, treatment, or other services. Employees that do not request an exemption must be fully vaccinated by the January 4, 2022 deadline.

According to CMS, this federal regulation preempts any state or local law (such as HB 702 passed by the Montana Legislature earlier this year).

More information on CMS’ November 4 Interim Final Rule can be found [here](https://www.cms.gov/newsroom/press-releases/biden-harris-administration-issues-emergency-regulation-requiring-covid-19-vaccination-health-care).

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