



January 27, 2022

Don Howard, MSW, LCSW-C
Centers for Medicare and Medicaid Services
Office of Clinical Standards and Quality
Quality, Safety and Oversight Group
Division of Continuing and Acute Care Providers
7500 Security Blvd, Mail Stop C2-21-16
Baltimore, MD 21244

RE: Omnibus COVID-19 Health Care Staff Vaccination
Requested Clarification to Rule; Direct Care Workforce Crisis

Dear Mr. Howard:

On behalf of the American Network of Community Options and Resources (ANCOR), thank you for your time meeting with community stakeholders to ensure consistency of understanding and implementation of the regulations impacting ICF/IID services. We greatly appreciate your insight and support navigating appropriate compliance during these unprecedented times.

ANCOR is a national, nonprofit trade association representing more than 1,600 private providers of community-based services to people with intellectual and developmental disabilities (I/DD). Combined, we support over one million individuals with disabilities and work collaboratively to shape policy, share solutions, and strengthen community. Our members assist people with I/DD to live full and independent lives by providing services and support for instrumental activities of daily living.

Services Provided Outside of the Facility

We write to urge CMS to issue further written guidance clarifying the distinction between contracted services provided **within** the facility and services provided **outside** of the facility.

CMS's Omnibus COVID-19 Health Care Staff Vaccination rule (Omnibus rule) requires ICF/IIDs to ensure vaccination of facility staff, including "individuals who provide care, treatment, or other services for the facility and/or its patients under contract or other arrangement."¹ This has prompted question from providers which contract with other providers to offer center-based community supports. It is common for residents of an ICF/IID to leave the ICF/IID to access these and other home and community-based services.

During the last CMS and ICF/IID Stakeholder Call, CMS provided verbal guidance that the staff vaccination requirement for ICFs extends only to contracted services provided **within** the

¹ 42 C.F.R. § 483.430(f)(1)

facility. Moreover, that it is within the ICF/IID provider's discretion to require vaccination of contracted services, such as day treatment programs, offered **outside** of the facility. This interpretation was further confirmed with CMS by email correspondence.

This distinction is not clear in the Omnibus rule or within CMS's current External FAQ. Creating clear and accessible communication of the difference between services provided within the facility and outside of the facility is critical to appropriate compliance. Many ICF/IID providers have assumed the vaccination requirement of facility staff extends to *all* services provided to residents, regardless of where the services are offered. This has resulted in disruption to ongoing contracting with home and community-based service providers for services offered in centers outside of the facility.

This distinction is also critical for ICF/IID providers which offer services not governed by the conditions of participation and/or those that maintain administrative services outside of the facility. It is our understanding that if those staff do not enter the facility, they are not subject to the Omnibus rule. Providing further written clarification as updates to the FAQ or separate guidance would support providers in consistent application.

Thank you for this opportunity to provide additional comment. If we have misunderstood any of the above, please reach out to me at ldawson@ancor.org as soon as possible for correction.

Sincerely,

A handwritten signature in black ink, appearing to read 'LD', with a stylized flourish extending downwards.

Lydia Dawson, J.D.
Director of Policy, Regulatory, and Legal Analysis
ANCOR

CC: Ralph Lollar, Director of the Division of Long Term Services and Supports