National Association for Behavioral Healthcare

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21 December 2021

Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicare and Medicaid Programs; Omnibus Covid-19 Health Care Staff Vaccination: Interim Final Rule [CMS-3415-IFC]

Dear Administrator Brooks-LaSure:

The National Association for Behavioral Healthcare (NABH) respectfully submits the following comments on the interim final rule (IFR) regarding Omnibus Covid-19 Health Care Staff Vaccination that the Centers for Medicare & Medicaid Services (CMS) published on Nov. 5, 2021.

NABH represents behavioral healthcare systems that provide mental health and addiction treatment across the entire continuum of care, including inpatient, residential treatment, partial hospitalization, and intensive outpatient programs, as well as other facility-based outpatient programs, including medication assisted treatment centers. Our membership includes behavioral healthcare providers in 49 states and Washington, D.C.

The Covid-19 pandemic has magnified the need for improved access to behavioral healthcare. National surveys and research studies have repeatedly indicated significantly elevated levels of anxiety and depression and suicidal ideation during the pandemic.[i, ii, iii, iv] Drug overdoses have risen to unprecedented levels with more than 100,000 deaths as of April 2021.[v] Based on previous epidemics, we expect the current pandemic's impact on behavioral health will continue for years to come.[vi]

NABH members fully recognize the importance of vaccination against Covid-19 and have taken steps to facilitate access to these vaccines among the staff at the treatment facilities they operate. Nonetheless, they are very concerned about the impact that a vaccine mandate will have on their ability to staff these mental health and addiction treatment settings. Our members' organizations were already struggling with staffing shortages at unprecedented levels.

Severe shortages of behavioral healthcare providers have been well documented across the United States. According to the Health Resources and Services Administration, as of September 2, 2021, more than one-third of Americans (125 million people) lived in 5,788 mental health professional shortage areas.[vii] In these areas, the number of mental health providers available were adequate to meet about 27% of the estimated need.[viii] Increasingly during the Covid-19 pandemic, as the supply of psychiatric beds has declined, the wait for a transfer from emergency departments to a specialized inpatient or other treatment setting has increased[ix] with frequent reports of people waiting for weeks for an available bed.[x]

Behavioral healthcare settings are disadvantaged in their ability to retain and attract new staff. They generally operate with much lower profit margins and are unable to compete with other local healthcare settings in terms of the salaries they can offer personnel. In addition, since the onset of the pandemic, behavioral healthcare facilities have had to absorb unanticipated additional costs for Covid-19 screening and infection control, as well as new technology and training to support telehealth services. Furthermore, many potential staff are reluctant to work in mental health or addiction treatment settings due to stigma and/or concerns regarding challenging patient populations.

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In the context of these ongoing concerns, we appreciate the opportunity to suggest some modifications to the IFR requiring Covid-19 vaccination among personnel in healthcare settings subject to the CMS health and safety regulations.

1. **Implement a phased-in approach**
   We urge CMS to apply a phased-in approach to implementation of this vaccine requirement at least for behavioral healthcare settings. These facilities are facing multiple layers of challenges because of widespread staffing shortages and the added burden of numerous and ever-changing infection-control protocols, as well as a significantly increased need for mental health and addiction treatment in the U.S. population. We recommend that CMS specify certain percentages of staff that will be expected to be vaccinated by certain dates with gradual increases in percentages during the next year, instead of the abrupt deadline indicated in the IFR.

2. **Create an exception process for rural providers and/or providers facing severe staff shortages**
   In addition, we recommend that CMS implement a process whereby certain providers can apply for an exception from the vaccine requirements. An exception process will be critical in states that require certain staff-to-patient ratios that facilities may not be able to meet if staff quit or must be fired due to the CMS vaccine requirement. In addition, CMS should authorize exceptions for facilities in areas where the vaccine requirement may result in closure of the only one or one of a very few mental health or addiction treatment providers in the area—particularly in rural areas that already struggle with a dearth of behavioral healthcare providers.

3. **Specify that lack of vaccination does not qualify as immediate jeopardy**
   We also urge CMS to specify that lack of vaccination is not cause for immediate jeopardy under the agency's health and safety regulations. Noncompliance with the vaccine requirement does not cause serious injury, harm, impairment, or death to patients who themselves apparently are not required to be vaccinated under this IFR. Lack of compliance would also not seriously limit the provider's capacity to render care. Clarification that immediate jeopardy does not apply would allow surveyors discretion to grant non-compliant facilities additional time to submit a plan of correction to achieve compliance. This approach will be critical for areas where there are shortages of mental health and addiction treatment providers. As the current pandemic continues to result in significantly increased need for behavioral healthcare, immediate jeopardy findings can result in closure of desperately needed treatment settings.

4. **Clarify who is subject to this vaccine requirement**
   The IFR mentions that vaccination is not mandated for "one-off" vendors, volunteers, or professionals who provide infrequent, non-health care services, e.g., occasional plumbing repairs or annual elevator inspection, or for individuals who provide services exclusively at an off-site location where no patient care is rendered, e.g., accountants who work offsite. This information is not easy to find in the IFR and not highlighted in guidance documents issued by CMS. We suggest that CMS clarify a few scenarios when this exception applies and also clarify that the vaccine mandate does not apply to patients' family members and other patient visitors.

Thank you for considering our concerns and recommendations. If you have any questions, please contact me directly at shawn@nabh.org or 202-393-6700, ext. 100, or contact NABH Director of Policy and Regulatory Affairs, Kirsten Beronio at kirsten@nabh.org or 202-393-6700, ext. 115.

Sincerely,

Shawn Coughlin
President and CEO

National Association for Behavioral Healthcare

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About NABH

The National Association for Behavioral Healthcare (NABH) represents provider systems that treat children, adolescents, adults, and older adults with mental health and substance use disorders in inpatient behavioral healthcare hospitals and units, residential treatment facilities, partial hospitalization and intensive outpatient programs, medication assisted treatment centers, specialty outpatient behavioral healthcare programs, and recovery support services in 49 states and Washington, D.C.. The association was founded in 1933.

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[i] Ettman CK, Abdalla SM, Cohen GH, et al: Prevalence of Depression Symptoms in US Adults Before and During the Covid 19 Pandemic. JAMA Network Open (Sept. 2, 2020).

[ii] Vahratian A, Blumberg SJ, Terlizzi EP, Schiller JS: Symptoms of Anxiety or Depressive Disorder and Use of Mental Health Care Among Adults During the COVID-19 Pandemic — United States, August 2020–February 2021. MMWR Morb Mortal Wkly Rep. ePub: 26 (March 2021).

[iii] Czeisler MÉ, Lane RI, Petrosky E, et al: Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic — United States, June 24–30, 2020. MMWR Morb Mortal Wkly Rep 2020; 69:1049–1057.

[iv] Ahmad FB, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2021.

[v] Ahmad FB, Rossen LM, Sutton P: Provisional drug overdose death counts. National Center for Health Statistics. (2021).

[vi] Hawryluck L, Gold WL, Susan, S. SARS Control and Psychological Effects of Quarantine, Toronto, Canada, *Emerg Infect Dis*, July 2004, vol.10 no.7, 1206–1212; Sara Reardon, "Ebola's mental-health wounds linger in Africa: health-care workers struggle to help people who have been traumatized by the epidemic", Nature, vol. 519, no. 7541, 2015, p. 13; Emily Goldmann and Sandro Galea, “Mental health consequences of disasters,” Ann Rev Public Health, Volume 35, pp. 169–83, 2014.

[vii] Health Resources and Services Administration: Designated HPSA Quarterly Summary, Sept. 2021.

[viii] Health Resources and Services Administration, National Center for Health Workforce Analysis: National Projections of Supply and Demand for Selected Behavioral Health Practitioners: 2013-2025 (November 2016).

[ix] Mark T, Misra S, Howard J, et al. Inpatient Bed Tracking: State Responses to Need for Inpatient Care. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Aug. 2019.

[x] Rapoport R (2020, Dec. 23). Every day is an emergency: The pandemic is worsening psychiatric bed shortages nationwide, Stat News.