

January 4, 2022

PUBLIC COMMENT LETTER

Xavier Becerra, Secretary
Department of Health and Human Services
Attention: CMS-3415-IFC
P.O. Box 8016
Baltimore, MD 21244-8016
Submitted Electronically: regulations.gov

Re: CMS-3415-IFC; Comments on Medicare and Medicaid Programs Omnibus
COVID-19 Health Care Staff Vaccination

Secretary Becerra:

On behalf of our over 470 member hospitals and health systems, including rural, urban, children's, teaching, and specialty hospitals, the Texas Hospital Association ("THA") appreciates the opportunity to provide comments on the above-referenced interim final rule, published November 5, 2021. THA and its members are committed to combatting the COVID-19 pandemic to the best of our abilities and by any means possible. There is no question health care facilities and health care workers serve as the nation's frontline against the pandemic. Health care providers overcame numerous difficulties and challenges in caring for patients since March, 2020 – yet have shown incredible levels of courage, stamina, and proficiency in continuing to provide the highest level of care.

THA believes hospitals should be empowered to make informed decisions regarding the vaccination of their providers and staff. These decisions should be considered locally, with each facility deciding after considering the best interests of their community. As you know, several Texas hospitals introduced vaccine requirements prior to the President announcing the national vaccine initiative and the publication of the above-referenced interim final rule. This includes the first hospital in the country to enact such a requirement. These decisions require lengthy deliberations and rollout periods, especially in light of the ongoing staffing challenges and shortages faced by all health care facilities as a result of the COVID-19 pandemic.

In the event Texas hospitals are required to comply with the interim final rule, THA believes additional time is necessary for full understanding of, and compliance with, the interim final rule's requirements. Simply put: 30 days for compliance with each phase of the interim final rule is insufficient – especially when the requirement calls for individuals to receive a full regimen of an approved vaccine and ambiguities exist with regards to the requirements' full scope and effect.

Hospitals currently struggling with staffing shortages and patient surges, in addition to other day-to-day issues, will not have the capacity and ability to adopt and implement the interim final rule's requirements within the allotted time frames. Each variation, surge, or complication, such as the Omicron variant currently causing additional strain on facilities as COVID-19-related hospitalizations are once again climbing, increases the difficulty of complying with the interim final rule on short notice.

Adding to this complexity, enforcement of the interim final rule is currently enjoined, and Texas Governor Abbott did issue an Executive Order barring vaccine requirements such as those set forth in the interim final rule. This adds additional complication, if not complete impossibility, for Texas hospitals that might have been proactive by implementing similar requirements during any legal challenges to the interim final rule.

THA suggests amending the interim final rule to include an option for hospitals to establish a hardship and opt-out of any requirements, even if temporary. A hospital might show hardship through issues related to staffing, including shortages that may present after the interim final rule's requirements take effect, or other local issue preventing good-faith compliance. This alternative would provide additional time for these hospitals to research the best options for compliance and allow adequate time for implementation.

Finally, THA strongly urges the consideration of extended deadlines for compliance with the interim final rule's requirements. The current 30-day periods for each phase are not sufficient and will force hospital to choose between rushed and possibly incomplete compliance or total non-compliance due to the lack of adequate time for a proper implementation. THA understands the intent of the interim final rule is to protect patients, communities, and health care workers; hospitals should have the time needed to properly implement these requirements in the event such requirement is necessary.

Thank you for the opportunity to comment and participate in this process, and for your time and attention to this matter. We look forward to working with you, and please feel free to contact me at (512) 465-1027 or clopez@tha.org with any questions, comments, or if there is anything else THA can assist with.

Sincerely,



Cesar J. Lopez
Associate General Counsel
Texas Hospital Association