



Department of Public Health and Human Services

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Greg Gianforte, Governor

Adam Meier, Director

July 28, 2021

Dear Providers:

You are likely aware that the 2021 House Bill 702 (“HB 702”) generally added discrimination on the basis of vaccination status to the Montana Human Rights Act (*see* Title 49, Chapter 2, Part 3 of the Montana Code Annotated).

Importantly, Section 2 of HB 702 exempts licensed nursing homes, long-term care facilities, and assisted living facilities from this nondiscrimination framework when compliance with the law would “result in a violation of regulations or guidance issued by the Centers for Medicare and Medicaid Services (CMS) or the Centers for Disease Control and Prevention.”

The Department of Public Health and Human Services (DPHHS) has received inquiries from health care facilities about the scope of this exemption and what constitutes “regulations or guidance” issued by CMS or the CDC. Current CMS guidance related to COVID-19 vaccination in the aforementioned facilities is found within the CMS Quality, Safety & Oversight Group memorandum issued on May 11, 2021 to state survey agency directors (QSO-21-19-NH) and the interim final rules that are the subject of the memorandum entitled Medicare and Medicaid Programs; COVID-19 Vaccine Requirements for Long-Term Care (“LTC”) Facilities¹ and Intermediate Care Facilities for Individuals With Intellectual Disabilities (“ICFs-IID”) Residents, Clients, and Staff, 86 FR 26306 (“Interim Final Rules”).

Under the Interim Final Rules, every LTC and ICF-IID must have a vaccination program that meets the educational and information needs of each resident, resident representative, client, parent (if the client is a minor) or legal guardian, and staff member. The Interim Final Rules also require LTC and ICF-IID facilities to offer residents and staff vaccination against COVID-19 when vaccine supplies are available.

Facilities must also maintain records as to the provision of this education and appropriate medical records on each resident that are complete and accurately documented, including any refusal of a vaccine and the stated reason for the refusal. The Interim Final Rules, however, do not require these facilities to ensure that residents and staff members are vaccinated.

Likewise, CDC guidance on COVID-19 vaccination in long-term care facilities merely recommends that health care personnel and residents of LTC facilities be vaccinated and that these individuals be included among those offered the first supply of COVID-19 vaccines. The CDC guidance provides that facilities should promote and provide vaccination for all residents and staff, encourage vaccination among new admissions, maintain a record of the vaccination status of patients/residents and staff, and encourage vaccination of all visitors.

¹ Note that the 42 CFR § 483.5 definition of “facility” does not include assisted living facilities

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Taken together, the current regulations and guidance of CMS and CDC strongly encourage COVID-19 vaccination of all residents and staff, but do not mandate it for any party. Moreover, facility operators are required to provide education and the opportunity for vaccination, as well as accurate documentation of both activities.

Sincerely,

A handwritten signature in cursive script that reads "Adam Meier".

Adam Meier, Director
DPHHS