

MDS Alert

Covid-19 : Focus on Vaccination Education, Too, to Remain Compliant

Some nursing homes have reached a 100% vaccination rate for staff.

Many experts say that most of the United States is again experiencing a surge in COVID-19 cases - even though the data is a bit shoddy now that many people are relying on rapid antigen tests, which aren't necessarily reported or counted by health departments, if individuals are testing at all.

Still, the Centers for Medicare & Medicaid Services (CMS) have made healthcare worker vaccinations a particular priority, and surveyors are looking at nursing homes, hospices, and home health agencies to make sure staff are vaccinated. A new report suggests that 12 percent of nursing homes nationwide have achieved 100 percent vaccination (read more here

www.kff.org/coronavirus-covid-19/issue-brief/nursing-facility-staff-vaccinations-boosters-and-shortages-after-vaccination-deadlines-passed).



Reminder: Following a November 2021 Interim Final Rule with comment period (IFC) and multiple lawsuits, the CMS' vaccination mandate for healthcare workers - including home health and hospice agency workers - took effect on Feb. 28, March 15, and March 21, based on the court decision governing the state. Guidance to surveyors suggested leniency if providers were significantly on track to meet their goals, but the leeway for those periods ended on March 28 in the earliest batch of states, April 14 in the second batch of states, and April 20 in Texas.

Since the deadlines, surveyors have been focusing on the requirement, industry representatives report. Consider these tips for meeting compliance goals:

1. Get it down in writing. "It's important to develop a plan and have written company-wide policies on the books," stresses **Joe Russell** with the Ohio Council for Home Care & Hospice. To get an idea of what your peers are putting in their plans and policies, reach out to your state and national associations, Russell suggests.

2. Include exemption process details. Your written plan and policies should set out your procedure for processing exemptions to the mandate, experts say. Remember, agencies "must grant any exemption required by federal law," points out attorney **Robert Markette Jr.** with Hall Render in Indianapolis. That includes ones under the Americans with Disabilities Act and Title VII of the Civil Rights Act.

3. Proceed with consequences. The mandate doesn't require agencies to fire employees on the spot if they won't get vaccinated. But they can't turn a blind eye either. When staff members refuse vaccination, "agencies need to start progressive discipline," advises **Nancy Fitterer** with the Home Care and Hospice Association of New Jersey.

"If providers can't get their employees to comply, then in the end - after progressive discipline - they will need to be let go," Fitterer says. Terminating employees in such a tight labor market "will have devastating effects," Fitterer acknowledges.

4. Educate. Agencies' most powerful tool to combat noncompliance is staff education, and multiple topics need review.

Topic No. 1: Persuading staff that it's safe and helpful to patients and themselves to get vaccinated is job number one. "Educate staff as much as possible on why getting the vaccine/ booster is critical," Fitterer counsels. "One-on-one conversations work best," she offers.

Topic No. 2: Employees need to know exactly what will happen if they don't comply with Medicare's requirement. "It's

important to be very open and clear about the policies and their enforcement implications," Russell says.

Remember, the CMS guidance on the requirement issued to surveyors last December includes a duty not required specifically in the IFC: education on vaccinations. CMS tells surveyors to "determine if [unvaccinated staff] have been educated and offered vaccination" and to "request to see [the] employee record of the staff education of the HHA policy and procedure regarding unvaccinated individuals."



5. Double-check staff understanding. Workers need to know exactly what's at stake. "Some agencies had their employees acknowledge that they have read and understand their policies," Russell shares.

"The hope is employees will finally comply when their jobs are on the line," Fitterer tells AAPC.

6. Document. Just like on the clinical side, when it comes to vaccination requirements, if it's not documented, it's not done - at least from the surveyor's viewpoint.

"Surveyors are verifying compliance through documentation, so even if you're totally in compliance, they might ding an agency just because their documentation was insufficient," Russell warns. From education to the exemptions process to termination for noncompliance, "documentation is key for compliance," Russell emphasizes.

Note: Links to the survey guidance are at

www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfo/policy-and-memos-states-and-guidance-interim-final-rule-medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-0.