

# Congress of the United States

## House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

August 1, 2023

The Honorable Xavier Becerra  
Secretary of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Becerra,

The Select Subcommittee on the Coronavirus Pandemic (Select Subcommittee) is investigating the development and implementation of vaccination policies and mandates.

On November 5, 2021, the Centers for Medicare and Medicaid Services (CMS) issued an interim final rule (IFR) with a comment period that required most Medicare and Medicaid certified providers receive vaccination against COVID-19.<sup>1</sup> Normally, a rule change such as this would require a 60-day delay from publication in the Federal Register,<sup>2</sup> but CMS sought to waive the 60-day effective date.<sup>3</sup> The IFR offered in support of the waiver, among other things, voluntary vaccination was insufficient.<sup>4</sup> CMS stated that the IFR would impose “costs [on private sector entities] in excess of approximately \$158 million.”<sup>5</sup>

We are investigating how the mandates came to be to inform Congressional action should there be a future pandemic. As such, to assist the Select Subcommittee in this investigation, we request the following documents and information as soon as possible, but no later than August 15, 2023:

1. All documents and materials CMS considered or relied upon prior to promulgating the IFR on November 5, 2021, as well as subsequent revisions to the IFR.
2. All documents and communications between or among CMS and employees of the White House, including any personnel within the Executive Office of the President, regarding the November 5, 2021 IFR and its subsequent revisions.
3. All communications, advice, and guidance CMS received from medical and public health professionals within or outside the U.S. Government prior to drafting,

---

<sup>1</sup> Center for Medicare and Medicaid Services, Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 FR 61555, (Nov. 5, 2021).

<sup>2</sup> See, 5 U.S.C. § 801(a)(3)(A).

<sup>3</sup> See, 5 U.S.C. §§ 553(b)(3)(B), 808(2).

<sup>4</sup> GOVERNMENT ACCOUNTABILITY OFFICE, RIN: 0938-AU75, MEDICARE AND MEDICAID PROGRAMS; OMNIBUS COVID-19 HEALTH CARE STAFF VACCINATION, RIN: 0938-AU75, 2 (Nov. 19, 2021).

<sup>5</sup> *Id.* at 3.

The Honorable Xavier Becerra

August 1, 2023

Page 2

developing, promulgating, and implementing the November 5, 2021 IFR and its subsequent revisions.

4. All communications, advice, and guidance CMS received from or provided to CMS regulated facilities, including trade or advocacy organizations representing CMS regulated facilities, concerning developing, promulgating, and implementing the November 5, 2021 IFR.
5. The number of covered health care staff at Medicare and Medicaid certified providers who requested an exemption to receiving the vaccine and the number of those that were granted.
6. The number of covered health care staff at Medicare and Medicaid certified providers who were terminated or received disciplinary or adverse administrative action due to not receiving the vaccine after the mandate was implemented.

The Select Subcommittee on the Coronavirus Pandemic is authorized to investigate “the implementation or effectiveness of any Federal law or regulation applied, enacted, or under consideration to address the coronavirus pandemic and prepare for future pandemics” and “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic” under H. Res. 5.

Thank you for your prompt attention to this important matter.

Sincerely,



Brad Wenstrup, D.P.M.  
Chairman

cc: The Honorable Raul Ruiz, M.D., Ranking Member  
Select Subcommittee on the Coronavirus Pandemic