December 6, 2021 *(date should be on or after Dec 6, 2021)*

***Via E-mail: 1135Waiver@cms.hhs.gov***

Centers for Medicare & Medicaid Services

Re: 1135 Waiver Request for *Name of ICF/Provider*

**Contact Name:** Name of Contact

**E-mail:**  E-mail of Contact

**Phone:**  Phone Number of Contact

**Duration of Request:** Retroactive to December 6, 2021, continuing for a six month period of time.

To Whom It May Concern:

Please accept this letter as our request for a waiver of the staff vaccination Medicaid requirements (42 CFR 483.430 (f)) under section 1135 of the Social Security Act for *Name of ICF/Provider*. We are submitting this request in response to the March 13, 2020, proclamation by the President of the United States that the COVID-19 outbreak in the United States constitutes a national emergency.

While we whole heartedly believe in the efficacy of the COVID-19 vaccines and have seen the impact that vaccination can have on this virus, we need to balance that positive impact with the potential negative impact on the lives of the people we serve, if we are unable to employ sufficient staffing to meet the health and safety needs of our residents.

*Add description of the ICF/provider here. Include things including background of the organization (such as non-profit, family owned, multiple services, etc.) Example:* ICF123 is a family owned and operated Intermediate Care Facility for Individuals with Intellectual Disabilities. ICF123 first opened our doors in 1963 serving 8 people with severe intellectual and medical disabilities. We expanded in 1995 to our current capacity of 25. Of the 8 original residents, 4 still reside at ICF123 today. Our mission is to empower people with disabilities to live their best lives.

*Add description of the people served by the ICF/provider here. Example:* ICF123 is a 25 certified bed home that is currently only serving 20 individuals due to lack of staffing. The individuals living at ICF123 need assistance with a variety of activities of daily living, including bathing, feeding, toileting and mobility. In addition, ICF123 serves 10 individuals with high medical needs including g-tubes, tracheostomy, and ventilators.

*Add description of the staff. Example:* ICF123 typically employs 100 full-time and 25 part-time staff. Due to the current staffing crisis, we currently only employ 67 full-time and 15 part-time staff. This means that 33 full-time and 10 part-time positions are currently vacant at ICF123.

*Add description of the vaccination status of staff and the actions you have taken to educate your staff regarding the vaccine and options for them to have access to vaccines. Example:* Of the 82 current employees at ICF123, 40 staff have had one or more of the COVID-19 vaccination shots. That is about 49% of the current employees at ICF123. Owners and administrators at ICF123 have educated all staff on the three available COVID-19 vaccines including ongoing education with our medical director, sharing fact sheets and updated CDC information regarding the vaccines and weekly reminders of the availability of the COVID-19 vaccine and places within our community to receive the vaccine. Additionally, ICF123 has held three clinics at our offices where employees had the opportunity to receive the COVID-19 vaccine.

*Add description of the actions that will need to be taken if CMS requires you to terminate your unvaccinated staff. Example:* As you can see, there are currently 42 staff at ICF123 who are not vaccinated. ICF123 does not have the ability to move these unvaccinated staff to positions where they would not have interactions with our residents. If CMS would require ICF123 to terminate the 42 unvaccinated staff, ICF123 would need to terminate services to 13 of our 25 residents. These 13 residents, many whom have lived in ICF123 for over 10 years, would lose not only the live saving services they need on a daily basis, but also their home.

*Add additional impacts of the vaccine mandate here. Example:* Not only does the new regulation in 42 CFR 483.430 (f) apply to staff employed by ICF123, (f)(1)(iv) also extends to “individuals who provide care, treatment, or other services for the facility and/or its clients, under contract or by other arrangement.” ICF123 has always allowed our residents to choose where they want to receive their day services instead of requiring our residents to attend the day program operated by ICF123. This has not only given our residents the ability to make choices in their care, but also increased their ability to be integrated in our community. They attend day programs with their friends and participate in meaningful community activities that are important to them. We have talked with the various day service providers which our residents attend and those day service providers are also unable to comply with the vaccine mandate due to vaccine hesitancy and lack of workforce. If CMS does not waive this requirement for the day service providers serving ICF residents, they will no longer serve our residents and our ICF residents will not only lose the ability to choose what they do during the day, but they will be forced into further isolation from their communities and friends.

For the reasons stated above, we request an 1135 waiver of 42 CFR 483.430 (f) for a period of *six months*. While we cannot guarantee that *ICF123* will be in full compliance with section (f) at the end of the *six months*, we believe this time frame will give us additional time to continue educating our unvaccinated staff, offer additional vaccine options and to hire additional vaccinated staff in an attempt to come into compliance with this regulation. We want to work with CMS to be in full compliance with the regulations, but unfortunately are not able to do so at this point in time without putting the health and safety of the residents in greater risk or terminating services and discharging our residents from their homes.

Thank you for your time and attention to this 1135 waiver request. If you have any questions regarding this request, please contact *Contact person’s name.*

Sincerely,

*Contact Person*