

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

Department of Human Services, Aging and People with Disabilities (APD)	411
Agency and Division Name	Administrative Rules Chapter Number

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FILING CAPTION
(Must be 15 words or fewer)

APD: COVID-19 Vaccination Reporting in Licensed Assisted Living Facilities, Nursing Facilities and Residential Care Facilities

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **November 18, 2021 at 5 p.m.**

TELECONFERENCE ONLY

	+1 971-277-2343	
10/18/2021	2:30 p.m. – 3 p.m.	Conference ID: 913855896# Staff
Hearing Date	Time	Address Hearings Officer

HEARING NOTES: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@dhsoha.state.or.us or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

ADOPT:

411-061-0010

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services, Aging and People with Disabilities Program (APD) is proposing to permanently adopt rules in OAR chapter 411, division 61 to do the following:

411-061-0010 Reporting of COVID-19 Vaccination Data in Nursing Facilities, Assisted Living Facilities, and Residential Care Facilities – Created to establish definitions and vaccination data gathering and submission requirements. It also requires that facilities must be able to provide individual-level vaccination status information for staff and residents upon request. ***This updated Notice now covers rule language that has been added to address weekly reporting of staff and residents who were eligible to receive available COVID-19 vaccine additional doses or boosters and reporting of staff and residents who received additional doses or boosters. The revised language also adds a definition for “Additional dose or booster.”***

Other changes may be made to OAR 411-061-0010 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

Due to the COVID-19 pandemic, the Department is adopting OAR chapter 411, division 61, which requires licensed Assisted Living Facilities, Nursing Facilities and Residential Care Facilities to report vaccination data for staff and residents on a weekly basis. ***This updated filing reflects language that has been added to address reporting of additional COVID-19 vaccination doses and boosters.*** CMS is requiring vaccination data reporting for all nursing facilities beginning June 13, 2021, and these rules

would require uniform reporting data for all long-term care facility types. This information is critical in evaluating vaccination efforts and overall risks to vulnerable adults.

Other changes may be made to OAR 411-061-0010 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

Fiscal and Economic Impact:

This rule will have de minimis impact on providers. The Department has minimized the amount of information required to be reported.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates no fiscal impact associated with this rule.

Units of Local Government: The Department estimates no fiscal impact associated with this rule.

Consumers: The Department estimates no fiscal impact associated with this rule.

Providers: The Department estimates a de minimis fiscal impact, represented solely by staff time, required to report the information to the Oregon Health Authority.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

The Department estimates approximately 680 long term care facilities will be subjected to the requirements contained in this rule.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance. We estimate complying with the reporting requirement will take 5-15 minutes per week.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

A small business, or representative of a small business, as defined in ORS 183.310 will be included in the public review and comment period.

Documents Relied Upon, and where they are available:

None.

Was an Administrative Rule Advisory Committee consulted? Yes or No? No.

If not, why not?

A Rule Advisory Committee (RAC) was not convened. APD was granted an exception to the Administrative Rule Advisory Committee (RAC) process by the ODHS|OHA Administrative Rules Program Manager, because the temporary rules filed on June 1, 2021 were drafted collaboratively with the Oregon Health Authority, the Department of Justice, Oregon Health Care Association (OHCA), and LeadingAge Oregon. OHCA and LeadingAge Oregon are the two main industry organizations that represent a significant number of long-term care facilities in Oregon. On May 27, 2021, the final draft rules were emailed to the participants. On May 28, 2021, APD received communication from OHCA that indicated they had received feedback from several of their members who were supportive of the rules as written. On June 1, 2021, an email notification was sent to industry advocates, stakeholders, and other interested parties informing them that the temporary rules had been filed. APD Rules Coordinator will notify all subscribers of the APD Rules list, interested parties and legislators when the Notice of Proposed Rulemaking is filed. The email will announce the

hearing date and details and that comments may be submitted through the end of the public comment period.

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

Signature

9/28/2021

Date

**DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 61**

**COVID-19 VACCINATION REPORTING FOR LICENSED ASSISTED
LIVING FACILITIES, NURSING FACILITIES AND RESIDENTIAL CARE
FACILITIES**

**411-061-0010 Reporting of COVID-19 Vaccination Data in Nursing
Facilities, Assisted Living Facilities, and Residential Care Facilities**

(1) For purposes of this rule, the following definitions apply:

(a) "Additional dose or booster" means a COVID-19 vaccine received two or more weeks after completion of an initial series (dose 1 and dose 2 of COVID-19 vaccines requiring two doses for completion or one dose of COVID-19 vaccine requiring only one dose for completion).

(b) "Assisted Living Facility" has the meaning given that term in OAR 411-054-0005.

(c) "Authority" means the Oregon Health Authority.

(d) "Contraindication" means a physical condition or disease that renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices, U.S. Department of Health and Human Services, and the Centers for Disease Control & Prevention.

(e) "Nursing Facility" has the meaning given that term in OAR 411-085-0005.

(f) "Residential Care Facility" has the meaning given that term in OAR 411-054-0005.

(g) "Staff" means individuals who work in a facility on a regular basis (at least once a week), including individuals who may not be physically in the facility for a period of time due to illness, disability, or scheduled time off, but who are expected to return to work. This also includes individuals under contract or arrangement, including hospice and dialysis staff, physical therapists, occupational therapists, mental health professionals, or volunteers, who are in a facility on a regular basis.

(2) All Assisted Living Facilities, Nursing Facilities, and Residential Care Facilities must request the following information from residents and staff and submit the following information to the Authority, on a weekly basis, or less frequently if authorized by the Authority, in a form and manner prescribed by the Authority:

(a) Number of staff who, if known:

(A) Were eligible to work during the previous week.

(B) Have received one dose of an available two-dose COVID-19 vaccine, by product.

(C) Have received a complete series of available COVID-19 two-dose vaccine, or one-dose COVID-19 vaccine, by product.

(D) Were eligible to receive available COVID-19 vaccine additional doses or boosters.

(E) Have received COVID-19 vaccine additional doses or boosters, by product.

(F) Have a medical contraindication to receipt of COVID-19 vaccine.

(b) Number of Residents who:

(A) Were at the facility for at least one day in the previous week.

(B) Have received one dose of an available two-dose COVID-19 vaccine, by product.

(C) Have received a complete series of available COVID-19 two-dose vaccine, or one-dose vaccine, by product.

(D) Were eligible to receive available COVID-19 vaccine additional doses or boosters.

(E) Have received COVID-19 vaccine additional doses or boosters, by product.

(F) Have a medical contraindication to receipt of COVID-19 vaccine.

(3) Long-term Care Facilities that report the information in section (2) of this rule through the National Healthcare Safety Network in compliance with Centers for Medicare and Medicaid Services requirements beginning June 13, 2021, may, in lieu of reporting this information directly to the Authority, report the information to the Authority through the National Healthcare Safety Network.

(4) Nursing facilities, Assisted Living Facilities, and Residential Care Facilities must provide individual-level vaccination status information for residents and staff upon request by the Authority for purposes of a disease outbreak investigation or to validate data reported in accordance with this rule.

Statutory/Other Authority: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Statutes/Other Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991