

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

Oregon Department of Human Services (ODHS) Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
ODHS, Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301		
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FILING CAPTION
(Must be 15 words or fewer)

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

Last Date and Time for Public Comment: Written comments are accepted until **5:00 PM on 06/29/2022** and should be sent to apd.rules@dhsoha.state.or.us.

		TELECONFERENCE +1 971-277-2343	
06/22/2022	10:00 AM – 10:30 AM	Conference ID: 52557100#	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 ODHS|OHA programs and services. ODHS|OHA provides free help. Some examples of the free help ODHS|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

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-061-0010

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (Department) is proposing to permanently amend rules in chapter 411, division 061 to do the following:

Amend: 411-061-0010

Rule Title: Reporting of COVID-19 Vaccination Data in Nursing Facilities, Assisted Living Facilities, and Residential Care Facilities

Rule Summary: Adds language indicating the Department may impose a \$250 daily penalty if weekly reporting of vaccination data is not submitted timely.

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

Need for Rule(s):

The COVID-19 variants continue to spread throughout the community, including long-term care facilities, which house vulnerable adults. The Omicron variants are particularly infectious. The Department currently requires vaccination data across all long-term care facility types to be reported weekly to the Oregon Health Authority. The data needs to be reported timely, so the Authority has an accurate assessment of the vaccination efforts and overall risks to vulnerable adults. The Department is amending rules to allow imposition of civil penalties when facilities fail to report timely.

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.

Documents Relied Upon, and where they are available:

None.

EQUITY IMPACT STATEMENT
Required by HB 2993 (2021 Regular Session)

Statement identifying how adoption of the rule(s) will affect racial equity in this state:

This rule impacts all owners (operators) of nursing facilities, assisted living facilities, and residential care facilities. Adoption of this rule authorizes the department to assess a daily civil penalty when the facility fails to timely report their weekly COVID-19 vaccination data to the Oregon Health Authority. These civil penalties will be issued to facility owners regardless of their race, gender, or ethnic background. The Oregon Department of Human Services, Aging and People with Disabilities program does not have data regarding the racial composition of the impacted population, and RAC participation failed to provide additional information. Aging and People with Disabilities has retained an Equity Strategy Manager whose team will work with policy analysts to recognize resources to identify and engage with diverse populations who may be impacted by future rulemaking.

FISCAL AND ECONOMIC IMPACT

Fiscal and Economic Impact:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

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 there will be staffing costs related to reviewing reports issued by the Oregon Health Authority, imposing civil penalties for facility failure to report their data timely, and processing of payments by Financial Services. The cost will depend upon how many facilities fail to report their weekly data timely.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on local government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The Department estimates there will be a cost to all providers who fail to report their data timely. The total amount will be assessed on a per day basis. Small business without the financial resources of larger corporations may be disproportionately impacted by larger civil penalties.

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);

All long-term care facilities will be affected by this requirement. The Department estimates approximately 711 long term care facilities will be subjected to the requirements contained in this rule. There are 334 long-term care facilities (less than 50 licensed beds) that may be considered a small business as defined in ORS 183.310.

(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 in the Department's statement of cost of compliance.

(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 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 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

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

If not, why not?

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

05/02/2022

Signature

Date

**OREGON 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) Failure to comply with reporting requirements set forth in section (2) may result in the Department imposing a \$250 per day civil penalty. The civil penalty process is described in OAR 411-089-0030 for nursing facilities and OAR 411-054-0120 for residential care and assisted living facilities.

(54) 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