

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
For internal agency use only.

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 Assisted Living Facilities, Nursing Facilities, and Residential Care Facilities

Agency Approved Date: [01/31/2022]

Effective Date: [01/31/2022] through [07/17/2022]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean 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 (ODHS), Aging and People with Disabilities Program (APD) is immediately amending temporary rules in OAR chapter 411, division 061 that became effective on January 19, 2022 and January 24, 2022, relating to reporting of vaccination data in assisted living facilities, nursing facilities, and residential care facilities. The amendment includes the following:

411-061-0010 Reporting of COVID-19 Vaccination Data in Nursing Facilities, Assisted Living Facilities, and Residential Care Facilities – Adds language indicating the Department may impose a daily fine if weekly reporting of vaccination data is not timely. **This updated filing revises the penalty for failure to comply with the weekly reporting requirement from a civil penalty of \$250 per violation to a civil penalty of not less than \$250 per day.**

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The COVID-19 variants continue to spread throughout the community, including long-term care facilities, which house vulnerable adults. The Omicron variant is 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.

Justification of Temporary Filing:

It is imperative the Authority has timely information regarding vaccination data in long-term care facilities so that the spread of COVID-19 may be mitigated and the risk to public health accurately evaluated.

Failure to act promptly and immediately amend OAR chapter 411, division 061 will result in serious prejudice to the public interest and vulnerable adults living in long-term care facilities. These rules need to be adopted promptly to improve the timely reporting of vaccination data by assisted living facilities, nursing facilities and residential care facilities. Facilities that do not report their data timely may be subjected to a daily civil penalty. **This updated filing revises the penalty for failure to comply with the weekly reporting requirement from a civil penalty of \$250 per violation to a civil penalty of not less than \$250 per day.**

Documents Relied Upon, and where they are available:

None.

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

01/31/2022

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**
(Temporary effective 01/31/2022 through 07/17/2022)

(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 weekly 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