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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 38-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Vaccination Requirements to Control COVID-19 for Healthcare Providers and Healthcare Staff

EFFECTIVE DATE: 08/25/2021 THROUGH 01/31/2022

AGENCY APPROVED DATE: 08/25/2021

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NEED FOR THE RULE(S):

It is vital to this state that health care providers and health care staff be vaccinated against COVID-19 in order to protect themselves, their patients and statewide hospital capacity. COVID-19 infection is caused by a virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This virus undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease or have other features of public health concern such as decreased vaccine effectiveness. In August of 2021, the B.1.617.2 (Delta) variant accounted for more than 98% of the COVID-19 infections in Oregon.

The Delta variant is approximately 2-3-fold more transmissible than early wild-type COVID-19 variants. People infected with the Delta variant have higher viral loads and a shorter incubation period. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively. Being vaccinated, is therefore critical to prevent spread of Delta. Health care providers have contact with multiple patients over the course of a typical day, including providers who provide care for people in their homes. Individuals cared for by health care providers are more likely than the general public to have conditions that put them at risk for complications of COVID-19. The Delta variant is causing a surge in unvaccinated cases and vaccine breakthrough cases. This rule is necessary to help control COVID-19, protect patients, and to protect the state's healthcare workforce.

This filing replaces Temporary Administrative Order PH 34-2021 filed and effective on August 5, 2021.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and healthcare personnel and patients seeking and relying on health care. This rule needs to be adopted promptly so that the state can continue to prevent and slow the spread of COVID-19, for the reasons specified above. Requiring

vaccination for healthcare personnel in healthcare settings is crucial to the effort in controlling COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Health Care Workforce COVID-19 Vaccine Uptake

(<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonHealthCareWorkforceCOVID-19VaccineUptake/Dash-Overview>)

Long-Term Care Facilities COVID-19 Vaccination Data (July 26, 2021)

(<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/LTCFCOVID-19VaccinationData/WeeklyTrend>)

OHA COVID-19 Breakthrough Report (August 19, 2021)

(<https://www.oregon.gov/oha/covid19/Documents/DataReports/Breakthrough-Case-Report.pdf>)

OHA Dashboard: Hospital Capacity and Usage in Oregon (reported by HOSCAP), August 20, 2021. Available at

<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19Update/HospitalCapacity>.

OHA Dashboard: Oregon's Hospitalization Trend by Severity (August 20, 2021). Available at

<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19HospitalCapacity/HospitalizationbySeverity>.

OHA Dashboard: Oregon's COVID-19 Disease Spread (August 22, 2021). Available at

<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19PublicHealthIndicators/DiseaseSpread>.

Cavanaugh AM, Spicer KB, Thoroughman D, Glick C, Winter K. Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination — Kentucky, May–June 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1081-1083. DOI:

<http://dx.doi.org/10.15585/mmwr.mm7032e1>

Christie A, Brooks JT, Hicks LA, et al. Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage. *MMWR Morb Mortal Wkly Rep*

2021;70:1044–1047. DOI: <http://dx.doi.org/10.15585/mmwr.mm7030e2>

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<https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e3.htm>

Herlihy R, Bamberg W, Burakoff A, et al. Rapid Increase in Circulation of the SARS-CoV-2 B.1.617.2 (Delta) Variant — Mesa County, Colorado, April–June 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1084-1087. DOI: <http://dx.doi.org/10.15585/mmwr.mm7032e2>

Lee JT, Althomsons SP, Wu H, et al. Disparities in COVID-19 Vaccination Coverage Among Health Care Personnel Working in Long-Term Care Facilities, by Job Category, National Healthcare Safety Network — United States, March 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1036–1039. DOI: <http://dx.doi.org/10.15585/mmwr.mm7030a2>

Li, B., Deng, A., Li, K., Hu, Y., Li, Z., Xiong, Q., Liu, Z., Guo, Q., Zou, L., Zhang, H. and Zhang, M., 2021. Viral infection and Transmission in a large well-traced outbreak caused by the Delta SARS-CoV-2 variant available at <https://www.medrxiv.org/content/10.1101/2021.07.07.21260122v1>.

Moline HL, Whitaker M, Deng L, et al. Effectiveness of COVID-19 Vaccines in Preventing Hospitalization Among Adults Aged 65 Years — COVID-NET, 13 States, February–April 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1088-1093. DOI: <http://dx.doi.org/10.15585/mmwr.mm7032e3>

Nanduri S, Pilishvili T, Derado G, et al. Effectiveness of Pfizer-BioNTech and Moderna Vaccines in Preventing SARS-CoV-2 Infection Among Nursing Home Residents Before and During Widespread Circulation of the SARS-CoV-2 B.1.617.2 (Delta) Variant — National Healthcare Safety Network, March 1–August 1, 2021. *MMWR Morb Mortal Wkly Rep*. ePub: 18 August 2021. DOI: <http://dx.doi.org/10.15585/mmwr.mm7034e3>

Rosenberg ES, Holtgrave DR, Dorabawila V, et al. New COVID-19 Cases and Hospitalizations Among Adults, by Vaccination Status — New York, May 3–July 25, 2021. *MMWR Morb Mortal Wkly Rep*. ePub: 18 August 2021. DOI: <http://dx.doi.org/10.15585/mmwr.mm7034e1>

ADOPT: 333-019-1010

SUSPEND: Temporary 333-019-1010 from PH 34-2021

RULE TITLE: COVID-19 Vaccination Requirement for Healthcare Providers and Healthcare Staff in Healthcare Settings

RULE SUMMARY: OAR 333-019-1010 helps to prevent and slow the spread of COVID-19 by requiring health care personnel and healthcare staff who work in healthcare settings to be vaccinated against COVID-19 or request a medical or religious exception.

Healthcare personnel includes individuals, paid and unpaid working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and

volunteer personnel.

Healthcare setting includes any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, residential facilities, residential behavioral health facilities, adult foster homes, group homes, pharmacies, hospice, vehicles or temporary sites where health care is delivered (for example, mobile clinics, ambulances), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.

However, healthcare setting does not include:

- Any setting described in paragraph (2)(e)(A) of the rule where the responsible party is a part of state government as that is defined in ORS 174.111.
- An individual's private home if that individual contracts directly with the healthcare provider or health care staff person, and the home is not otherwise licensed, registered or certified as a facility or home listed in paragraph (2)(e)(A) of the rule.

Medical exception means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

Religious exception means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

After October 18, 2021:

- A health care provider or healthcare staff person may not work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have provided documentation of a medical or religious exception.
- An employer of healthcare providers or healthcare staff, a contractor, or a responsible party may not employ, contract with, or accept the volunteer services of healthcare providers or healthcare staff persons who are working, learning, studying, assisting, observing or volunteering at a healthcare setting unless the healthcare providers or healthcare staff persons are fully vaccinated against COVID-19 or have a documented medical or religious exception.

On or before October 18, 2021, healthcare providers and healthcare staff must provide their employer, contractor or responsible party with either:

- Proof of vaccination showing they are fully vaccinated; or
- Documentation of a medical or religious exception.

A medical exception must be corroborated by a document signed by a medical provider, who is not the individual seeking the exception, certifying that the individual has a physical or mental impairment that limits the individual's

ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.

A religious exception must be corroborated by a document, on a form prescribed by the Oregon Health Authority, signed by the individual stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and including a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.

Employers of healthcare providers or healthcare staff, contractors and responsible parties who grant an exception to the vaccination requirement should take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19.

On or before October 18, 2021, all employers of healthcare providers or healthcare staff, contractors, and responsible parties must have documentation that all healthcare providers and healthcare staff are in compliance with the rule.

The rule permits employers of healthcare providers or healthcare staff, contractors and responsible parties to:

- Have more restrictive or additional requirements, including but not limited to requiring healthcare providers and healthcare staff to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.
- Impose the vaccination requirements at an earlier date.

The vaccination documentation and documentation of medical and religious exceptions described in the rule must be:

- Maintained in accordance with applicable federal and state laws;
- Maintained for at least two years; and
- Provided to the Oregon Health Authority upon request.

Employers of healthcare providers or healthcare staff, contractors and responsible parties who violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

RULE TEXT:

(1) It is vital to this state that healthcare providers and healthcare staff be vaccinated against COVID-19. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible or cause more severe disease. As of the time this rule was adopted, Delta was the variant making up more than 98 percent of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively. Being vaccinated, is therefore critical to prevent spread of Delta. Healthcare providers and healthcare staff have contact with multiple patients over the course of a typical day and week, including providers that provide care for people in their homes. Individuals cared for in these settings are more likely than the general public to have conditions that put them at risk for complications due to COVID-19. COVID-19 variants are running through the state's

unvaccinated population and causing an increase in breakthrough cases for those who are fully vaccinated. This rule is necessary to help control COVID-19, protect patients, and to protect the state's healthcare workforce.

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

(a) "Contractor" means a person who has healthcare providers or healthcare staff on contract to provide services in healthcare settings in Oregon.

(b) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(c) "Fully vaccinated" means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine.

(d) "Healthcare providers and healthcare staff":

(A) Means individuals, paid and unpaid, working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel.

(B) Does not mean parents, family members, guardians or foster parents residing in the home and providing care to a child or foster child in the home.

(e) "Healthcare setting":

(A) Means any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, residential facilities, residential behavioral health facilities, adult foster homes, group homes, pharmacies, hospice, vehicles or temporary sites where health care is delivered (for example, mobile clinics, ambulances), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.

(B) Does not include any setting described in paragraph (A) of this subsection where the responsible party is a part of state government as that is defined in ORS 174.111.

(C) Does not include a person's private home if the home is not otherwise licensed, registered or certified as a facility or home listed in paragraph (A) of this subsection.

(f) "Medical exception" means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

(g) "Religious exception" means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

(h) "Proof of vaccination" means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, or a print-out from the Oregon Health Authority's immunization registry.

(i) "Responsible party" means a person or persons who have control or responsibility for the activities of healthcare providers or healthcare staff in a healthcare setting.

(3) After October 18, 2021:

(a) A health care provider or healthcare staff person may not work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have provided documentation of a medical or religious exception.

(b) An employer of healthcare providers or healthcare staff, a contractor, or a responsible party may not employ, contract with, or accept the volunteer services of healthcare providers or healthcare staff persons who are working,

learning, studying, assisting, observing or volunteering at a healthcare setting unless the healthcare providers or healthcare staff persons are fully vaccinated against COVID-19 or have a documented medical or religious exception.

(4) On or before October 18, 2021, healthcare providers and healthcare staff must provide their employer, contractor or responsible party with either:

- (a) Proof of vaccination showing they are fully vaccinated; or
- (b) Documentation of a medical or religious exception.

(A) A medical exception must be corroborated by a document signed by a medical provider, who is not the individual seeking the exception, on a form prescribed by the Oregon Health Authority, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.

(B) A religious exception must be corroborated by a document, on a form prescribed by the Oregon Health Authority, signed by the individual stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and including a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.

(5) Employers of healthcare providers or healthcare staff, contractors and responsible parties who grant an exception to the vaccination requirement under section (4) of this rule must take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19.

(6) On or before October 18, 2021, all employers of healthcare providers or healthcare staff, contractors, and responsible parties must have documentation that all healthcare providers and healthcare staff are in compliance with section (4) of this rule.

(7) Nothing in this rule is intended to prohibit employers of healthcare providers or healthcare staff, contractors and responsible parties from:

- (a) Complying with the Americans with Disabilities Act and Title VII of the Civil Rights Act, and state law equivalents, for individuals unable to be vaccinated due to a medical condition or a sincerely held religious belief.
- (b) Having more restrictive or additional requirements, including but not limited to requiring healthcare providers and healthcare staff to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.
- (c) Imposing these requirements at an earlier date.

(8) The vaccination documentation and documentation of medical and religious exceptions described in section (4) of this rule must be:

- (a) Maintained in accordance with applicable federal and state laws;
- (b) Maintained for at least two years; and
- (c) Provided to the Oregon Health Authority upon request.

(9) Employers of healthcare providers or healthcare staff, contractors and responsible parties who violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004

STATUTES/OTHER IMPLEMENTED: ORS 431A.010, ORS 431.110, ORS 433.004