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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 50-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Healthcare provider REALD collection and reporting rules

EFFECTIVE DATE: 09/30/2021 THROUGH 03/28/2022

AGENCY APPROVED DATE: 09/29/2021

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NEED FOR THE RULE(S):

OAR 333-018-0011 requires all health care providers to report REALD for COVID-19 encounters after October 1, 2021, through electronic case reporting (ECR). Neither providers nor the Oregon Health Authority (OHA) have systems in place to facilitate ECR and therefore these temporary rules establish the mechanisms for reporting REALD that are not dependent on ECR.

In addition, the current rule requires healthcare providers not currently subject to the REALD reporting requirements under OAR 333-018-0011(3) and (4) to start collecting and reporting REALD for COVID-19 encounters starting October 1, 2021. This would include requiring schools to collect and report REALD for testing at schools. OHA has heard from multiple providers that it will be impossible to comply with the October 1, 2021, date because of the current surge in COVID-19 cases due to the Delta variant, and staff shortages in the healthcare system. Providers not currently subject to the REALD collection and reporting requirements are less likely to have systems and staff available to assist with meeting the REALD requirements. Schools were not aware of the REALD collection and reporting requirement and do not have a system in place for collecting and reporting REALD. Therefore, OHA has decided to push back the final phase of REALD reporting by healthcare providers to January 1, 2022. This additional three months will enable the final group of healthcare providers and schools to continue to work on systems for collecting and reporting REALD for COVID-19 encounters.

OHA recognizes that communities of color and disabled communities are disproportionately impacted by COVID-19, and without collection and reporting of REALD data for COVID-19 encounters these inequities cannot be adequately tracked and measured. The state's response to mitigating the spread and health impacts of COVID-19 for the purpose of service provision, including but not limited to: testing, education, outreach, wrap services and vaccine distribution will continue to be impaired if it does not have reliable REALD data. The following healthcare providers are and will

continue to be subject to the REALD collection and reporting requirements:

- Hospitals
- Healthcare providers within a health system
- Healthcare providers working in federally qualified health centers (FQHC)
- Healthcare facilities
- Healthcare providers working in congregate settings

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, healthcare providers and schools. These rules need to be adopted promptly so that healthcare providers can continue to report REALD information in the manner they have been reporting, and not be held to a requirement that they cannot meet. In addition, healthcare providers working outside of health systems, healthcare facilities, FQHC's, congregate settings and schools cannot meet the October 1, 2021, deadline for collecting and reporting REALD for COVID-19 encounters because of the Delta variant surge and unprecedented staff shortages, and need additional time to come into compliance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4212 (2020 1st special session): <https://olis.oregonlegislature.gov/liz/2020S1/Downloads/MeasureDocument/HB4212>

OHA REALD CSV Implementation Guide, March 2021:

<https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/COMMUNICABLEDISEASE/REPORTINGCOMMUNICABLEDISEASES>

AMEND: 333-018-0011

RULE SUMMARY: The temporary amendments to OAR 333-018-00011 allow, on and after October 1, 2021, for the reporting of race, ethnicity, language and disability (REALD) by healthcare providers under HB 4212 (2020 1st special session) to occur in the following ways:

- By electronically sending CSV (comma separated values) files in accordance with standards established by the Oregon Health Authority (OHA)
- Through OHA's Oregon COVID Reporting Portal, at: www.healthoregon.org/howtoreport
- By fax if the Oregon COVID Reporting Portal is not operable.

In addition, the temporary rules push back the deadline for all providers who are not yet required to collect and report REALD under OAR 333-018-0011(3) and (4), to no later than January 1, 2022.

CHANGES TO RULE:

333-018-0011

Race, Ethnicity, Language and Disability COVID-19 Data Reporting

(1) The reporting requirements in this rule are in addition to the information required to be reported under OAR 333-018-0010.¶

(2) For purposes of this rule:¶

(a) "Congregate setting" means an environment where a number of people reside, meet or gather in close proximity for either a limited or extended period of time, and include but are not limited to homeless shelters,

group homes, prisons, detention centers, schools and workplaces.¶

(b) "Encounter" means an interaction between a patient, or the patient's legal representative, and a health care provider, whether that interaction is in person or through telemedicine, for the purpose of providing health care services related to COVID-19, including but not limited to ordering or performing a COVID-19 test.¶

(c) "Federally qualified health center" has the meaning given that term in OAR 410-120-0000.¶

(d) "Health care facility" has the meaning given that term in ORS 442.015.¶

(e) "Health care provider" has the meaning given that term in Oregon Laws 2020, 1st Special Session, chapter 12, section 40.¶

(f) "Health system" means an organization that delivers health care through at least one hospital in Oregon and through other facilities, clinics, medical groups, and other entities, all under common control or ownership.¶

(g) "Hospital" has the meaning given that term in ORS 442.015 and includes hospital satellites as that is defined in OAR 333-500-0010.¶

(h) "Long term care facility" has the meaning given that term in ORS 442.015.¶

(3) Beginning October 1, 2020, the following health care providers at the time of an encounter, or as soon as possible thereafter, must collect data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with OAR chapter 943, division 70, and provide that data to the Authority when reporting COVID-19 information as required in OAR 333-018-0016, or if approved by the Authority, at least on a weekly basis as long as the demographic data can be linked to the COVID-19 reportable disease reports:¶

(a) Hospitals except for licensed psychiatric hospitals, and clinical laboratories licensed under ORS 438.110 operating within a hospital.¶

(b) Health care providers within a health system, except for clinical laboratories licensed under ORS 438.110.¶

(c) Health care providers working in a federally qualified health center, except for clinical laboratories licensed under ORS 438.110 operating within a federally qualified health center.¶

(4) No later than March 1, 2021, the following health care providers at the time of an encounter, or as soon as possible thereafter, must collect data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with OAR chapter 943, division 70, and provide that data to the Authority when reporting COVID-19 information as required in OAR 333-018-0016, or if approved by the Authority, at least on a weekly basis as long as the demographic data can be linked to the COVID-19 reportable disease reports:¶

(a) Health care facilities, except for clinical laboratories licensed under ORS 438.110 operating within such facilities.¶

(b) Health care providers working in or with individuals in a congregate setting, except for clinical laboratories licensed under ORS 438.110 operating within such congregate settings.¶

(5) No later than ~~October~~ January 1, 2021~~2~~, all health care providers at the time of an encounter must collect data on race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status in accordance with OAR chapter 943, division 70, and provide that data to the Authority when reporting COVID-19 information as required in OAR 333-018-0016, or if approved by the Authority, at least on a weekly basis as long as the demographic data can be linked to the COVID-19 reportable disease reports.¶

(6) The reporting required under this rule must be submitted in the following manner:¶

~~(a) Until October 1, 2021:~~¶

~~(A) Through the Online Morbidity Report System, which can be found at: www.healthoregon.org/howtoreport;~~¶

~~(B) By facsimile but only if the Online Morbidity Report System for reporting COVID information is not operable;~~¶

~~(C) Through electronic case reporting in accordance with standards established by the Authority in its Electronic Case Reporting (ECR) Manual, or another means, if approved by the Authority. OHA REALD CSV Implementation Guide;~~¶

(b) Through the Oregon COVID Reporting Portal, which can be found at: www.healthoregon.org/howtoreport; or

¶

~~(b) On or after October 1, 2021, through electronic case reporting in accordance with standards established by the Authority in its ECR Manual~~By facsimile but only if the Oregon COVID Reporting Portal is not operable.¶

(7) A health care provider is not required to collect the data described in this rule and provide it to the Authority if the provider:¶

(a) Has previously collected the information and submitted it to the Authority in accordance with this rule within the last 12 months.¶

(b) Has knowledge that another health care provider has collected the data and submitted it to the Authority in accordance with this rule within the last year.¶

(c) The patient or the patient's caregiver is unable to provide answers to the questions because of incapacity.¶

(8) A health care provider who for reasons outside of their control cannot meet the collection and reporting requirements in this rule by the deadlines established in this rule, may submit to the Authority in writing, a request for an extension of time. The Authority may, at its discretion, grant or deny an extension.¶

(9) Nothing in this rule is intended to prevent a health care provider from collecting and reporting race, ethnicity, preferred spoken and written language, English proficiency, interpreter needs and disability status information to the Authority in accordance with OAR chapter 943, division 70, before the deadlines established in this rule.

Statutory/Other Authority: ORS 413.042, Oregon Laws 2020, 1st Special Session, Chapter 12, Sections 40-41

Statutes/Other Implemented: Oregon Laws 2020, 1st Special Session, Chapter 12, Sections 40-41