



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 28-2023

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

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& LEGISLATIVE COUNSEL

FILING CAPTION: Suspension of COVID-19 vaccination requirements for healthcare providers and healthcare staff

EFFECTIVE DATE: 05/11/2023 THROUGH 11/06/2023

AGENCY APPROVED DATE: 05/10/2023

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NEED FOR THE RULE(S):

Since its arrival in Oregon in February 2020, pandemic COVID-19 has caused nearly a million documented cases, more than 41,000 hospitalizations, and more than 9,500 deaths among Oregonians. Vaccines against this disease, authorized by the U.S. Food and Drug Administration (FDA) in December 2020, initially proved 94%–95% efficacious in preventing COVID-19 illness and were subsequently recommended in stages for all Oregonians 6 months of age or older. One study estimated that the vaccines have prevented more than 18 million hospitalizations and 3 million COVID-19 deaths in the United States.

In accordance with recommendations of the Centers for Disease Control and Prevention (CDC) in place at the time, and beginning with a temporary rule effective August 5, 2021, followed by a permanent rule effective January 31, 2022, the Oregon Health Authority (OHA) adopted OAR 333-019-1010 which requires healthcare providers and staff in healthcare settings, absent a medical or religious exception, to receive a primary COVID-19 vaccination series. For providers and staff granted medical or religious exceptions, employers are required to take reasonable steps to protect the unvaccinated from contracting and spreading COVID-19.

The rationale for the rule when it was adopted was that COVID-19 was likely to be transmitted in these congregate settings, placing vulnerable persons at risk. OAR 333-019-1010 is now being suspended, because immunity from the primary series is known to wane over time, such that 2 booster vaccinations have since been recommended for most persons. Moreover, the virus that causes COVID-19 has mutated such that the original series provides little long-term protection against infection by currently circulating strains. Finally, at this point most people have been infected by the virus (94% by one estimate), giving survivors a degree of immunity at least equivalent to that provided by the original vaccination series for some period of time.

Although OHA is suspending this rule, even in persons previously infected, vaccination with the most up-to-date formulations further reduces the likelihood of severe disease, and OHA continues to strongly recommend their use.

JUSTIFICATION OF TEMPORARY FILING:

OHA finds that failure to act promptly will not serve the public interest, OHA, health care workers, and patients. This rule needs to be adopted promptly to align with the end of the federal public health emergency and elimination of other COVID-19-related control measures, and because there is no longer a significant public health need for this rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- Fitzpatrick MC, Moghadas SM, Pandey A, Galvani AP. Two years of U.S. COVID-19 vaccines have prevented millions of hospitalizations and deaths. The Commonwealth Fund December 13, 2022. Available at www.commonwealthfund.org/blog/2022/two-years-covid-vaccines-prevented-millions-deaths-hospitalizations. Accessed 2 May 2023.
- Link-Gelles R. Updates on COVID-19 Vaccine Effectiveness during Omicron. Presentation to CDC's Advisory Committee on Immunization Practices, 1 Sep 2022 (see, e.g., slide #10). Available at www.cdc.gov/vaccines/acip/meetings/downloads/slides-2022-09-01/04-COVID-Link-Gelles-508.pdf. Accessed 2 May 2023
- Altarawneh HN, Chemaitelly Hasan MR, et al. New Engl J Med 2022; Available at www.nejm.org/doi/full/10.1056/NEJMc2200133. Accessed 2 May 2023.
- Klaassen F, Chitwood MH, Cohen T, et al. Changes in population immunity against infection and severe disease from SARS-CoV-2 Omicron variants in the United States between December 2021 and November 2022 [preprint]. MedRxiv 2022. Available at www.medrxiv.org/content/10.1101/2022.11.19.22282525v1.full.pdf. Accessed 2 May 2023.

SUSPEND: 333-019-1010

RULE SUMMARY: OAR 333-019-1010 currently requires healthcare providers and healthcare staff in healthcare settings, absent a medical or religious exception, to receive a primary COVID-19 vaccination series; and employers of such persons to take reasonable steps to prevent COVID-19 infection of and transmission from those unvaccinated. This rule is now being suspended, because immunity from the primary series is known to wane over time, such that 2 booster vaccinations have since been recommended for most persons. Moreover, the virus that causes COVID-19 has mutated such that the original series provides little long-term protection against infection by currently circulating strains. Finally, at this point most people have been infected by the virus (94% by one estimate), giving survivors a degree of immunity at least equivalent to that provided by the original vaccination series for some period of time.

Although the Oregon Health Authority (OHA) is suspending this rule, even in persons previously infected, vaccination with the most up-to-date formulations further reduces the likelihood of severe disease, and OHA continues to strongly recommend their use.

CHANGES TO RULE:

~~333-019-1010~~

~~COVID-19 Vaccination Requirement for Healthcare Providers and Healthcare Staff in Healthcare Settings~~

~~(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. Unvaccinated individuals exposed to COVID-19 are very likely to become infected in the absence of mitigation measures and may then transmit the virus to others. Fully vaccinated people get COVID-19 (known as vaccine breakthrough infections) much less often than unvaccinated people. Being vaccinated is critical to prevent spread of COVID-19. Healthcare providers and healthcare staff have contact with multiple patients over the course of a typical day and week. The CDC recommends vaccination against COVID-19 for all eligible individuals. 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) "Documentation of a medical exception" means a form prescribed by the Oregon Health Authority (OHA), or a similar form, that contains all of the information required in the OHA form, signed by a medical provider who is not the individual, 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.¶¶

(d) "Documentation of a religious exception" means a form prescribed by the Oregon Health Authority (OHA), or a similar form, that contains all of the information required in the OHA form, 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 includes a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.¶¶

(e) "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.¶¶

(f) "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.¶¶

(g) "Healthcare setting":¶¶

(A) Means any place where health care, including physical, dental 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 or is related to the provision of health care (for example, mobile clinics, ambulances) outpatient facilities, such as dialysis centers, health care provider offices, dental 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 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.¶¶

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

(i) "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 or 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, a print-out from the Oregon Health Authority's immunization registry, or a Quick-Response (QR) code from a verified digital vaccine record.¶¶

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

(k) "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) Health care providers and healthcare staff 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 an approved or accepted medical or religious exception.¶¶

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

(5) 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.¶¶

(6) Proof of vaccination documentation and documentation of medical and religious exceptions described in 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.¶¶

(7) 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.¶¶

(8) In addition to the imposition of civil penalties under section (9) of this rule, a violation of this rule may also be grounds for a licensing action authorized under the following statutes or rules:¶¶

(a) ORS 443.045; OAR chapter 333, division 27 (home health agencies, to the extent staff are providing services or care in healthcare settings).¶¶

(b) ORS 443.864, 443.869; OAR chapter 333, division 35 (hospice programs, to the extent staff are providing services or care in healthcare settings).¶¶

(c) ORS 441.030; OAR chapter 333, division 71 (special inpatient care facilities).¶¶

(d) ORS 441.030; OAR chapter 333, division 76 (ambulatory surgical centers, extended stay centers and birthing centers).¶¶

(e) ORS 441.030; OAR chapter 333, division 501 (hospitals).¶¶

(f) ORS 443.325; OAR chapter 333, division 536 (in-home care agencies, to the extent caregivers are providing care in healthcare settings).¶¶

(g) ORS 441.030; OAR chapter 333, division 700 (outpatient renal dialysis facilities).¶¶

(h) ORS 426.415; OAR chapter 309, division 22 (psychiatric residential treatment facilities).¶¶

(i) ORS 435.415, 443.421, 443.455; OAR chapter 309, division 35 (residential treatment facilities, community based residential treatment homes, secure residential treatment facilities).¶¶

(j) ORS 443.745, 443.790; OAR chapter 309, division 40 (adult foster homes).

Statutory/Other Authority: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004, ORS 426.415, ORS 443.085, ORS 443.315, ORS 443.450, ORS 443.745, ORS 443.790, ORS 443.860, ORS 441.025

Statutes/Other Implemented: ORS 431A.010, ORS 431.110, ORS 433.004, ORS 426.415, ORS 443.045, ORS 443.325, ORS 443.421, ORS 443.455, ORS 443.745, ORS 443.790, ORS 443.864, ORS 441.030