



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 29-2023

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

05/10/2023 4:01 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Suspension of COVID-19 vaccination requirements for teachers and school staff

EFFECTIVE DATE: 06/17/2023 THROUGH 12/13/2023

AGENCY APPROVED DATE: 05/10/2023

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Filed By:
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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 25, 2021, followed by a permanent rule effective January 31, 2022, the Oregon Health Authority (OHA) adopted OAR 333-019-1030, which requires teachers and school staff, absent a medical or religious exception, to receive a primary COVID-19 vaccination series. For teachers 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 333-019-1030 will be suspended effective June 17, 2023, a date which aligns closely with the end of the 2022-2023 school year, 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, teachers, school staff, and students. This rule needs to be adopted promptly but with a slight delay in its effect to avoid disruption to the school-year and provide adequate notice that the rule will be suspended at what is the end of the school year for most school districts, and to align with the end of the federal public health emergency, 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.
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SUSPEND: 333-019-1030

RULE SUMMARY: OAR 333-019-1030 currently requires teachers and school staff, 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 effective June 17, 2023, a date which aligns closely with the end of the 2022-2023 school year, 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:

~~333-019-1030~~

~~COVID-19 Vaccination Requirements for Teachers and School Staff~~

~~(1) Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible or cause more severe disease. Being vaccinated is critical to prevent the spread of COVID-19. COVID-19 variants have and can run through the state's unvaccinated population and cause an increase in breakthrough cases for those who are fully vaccinated. This rule is necessary to help control COVID-19, and to protect students, teachers, school staff, and volunteers.¶¶~~

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

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

(b) "Documentation of a medical exception" means a form prescribed by the Oregon Health Authority, 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.¶¶

(c) "Documentation of a religious exception" means 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 includes a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.¶¶

(d) "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.¶¶

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

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

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

(h) "School":¶¶

(A) Means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof.¶¶

(B) Does not mean stand-alone preschool program that goes up through kindergarten.¶¶

(i) "School-based program" means a program serving children or students that takes place at or in school facilities.¶¶

(j) "School-based program staff and volunteers":¶¶

(A) Means anyone age 16 and older:¶¶

(i) Who is employed by a school-based program or who is not employed but is otherwise engaged to provide goods or services to a school-based program through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, child care staff, cleaning staff, coaches, school-based program drivers, family volunteers; and¶¶

(ii) Providing goods or services at or for a school-based program that includes direct or indirect contact with children or students.¶¶

(B) Does not mean short-term visitors or individuals making deliveries.¶¶

(k) "Teachers, school staff and volunteers":¶¶

(A) Means anyone age 16 and older:¶¶

(i) Who is employed at a school or anyone who is not employed but is otherwise engaged to provide goods or services to or at a school through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, cleaning staff, coaches, school bus drivers, family volunteers and substitute teachers; and¶¶

(ii) Providing goods or services at or for a school that includes direct or indirect contact with students.¶¶

(B) Does not mean short-term visitors, individuals making deliveries, or school board members unless they are also volunteering in a school.¶¶

(3) After October 18, 2021:¶¶

(a) Teachers, school staff and volunteers may not teach, work, learn, study, assist, observe, or volunteer at a school unless they are fully vaccinated or have provided documentation of a medical or religious exception and the exception has been approved or accepted.¶¶

(b) A school may not employ, contract with, or accept the volunteer services of teachers, school staff or volunteers who are teaching, working, learning, studying, assisting, observing, or volunteering at a school unless the teachers or school staff are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.¶¶

(4) Schools that grant a medical or religious exception to the vaccination requirement must take reasonable steps to ensure that unvaccinated teachers, school staff and volunteers are protected from contracting and spreading COVID-19.¶¶

(5) After October 18, 2021:¶¶

(a) School-based program staff and volunteers may not teach, work, provide care, learn, study, assist, observe, or

volunteer for a school-based program unless they are fully vaccinated or have provided documentation of a medical or religious exception and the exception has been approved or accepted.¶¶

(b) A school-based program may not employ, contract with, or accept the volunteer services of school-based program staff or volunteers who are teaching, working, providing care, learning, studying, assisting, observing, or volunteering at a school-based program unless the staff or volunteers are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.¶¶

(6) School-based programs that grant a medical or religious exception to the vaccination requirement must take reasonable steps to ensure that unvaccinated school-based program staff and volunteers are protected from contracting and spreading COVID-19.¶¶

(7) A school may request that a school-based program operating at that school, attest to whether it is, or is not, in compliance with this rule. If a school-based program receives such a request from a school, it must respond.¶¶

(8) A school-based program may request that a school at which it intends to operate, attest to whether it is, or is not, in compliance with this rule. If a school receives such a request from a school-based program, it must respond.¶¶

(9) Nothing in this rule is intended to prohibit schools or school-based programs 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 teachers, school staff and volunteers, and school-based program staff and volunteers 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) Allowing a school district or other governing body to collect the vaccination and exception documentation required under this rule.¶¶

(10) Proof of vaccination documentation and documentation of medical and religious exceptions 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.¶¶

(11) Schools and school-based programs that 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