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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 34-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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

EFFECTIVE DATE: 08/05/2021 THROUGH 01/31/2022

AGENCY APPROVED DATE: 08/05/2021

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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 July 2021, the B.1.617.2 (Delta) variant became the dominant variant in Oregon and nationwide.

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.

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. These rules need 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 or testing for healthcare personnel in healthcare settings is crucial to the effort in controlling COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

COVID, C., Team, V.B.C.I., COVID, C., Team, V.B.C.I., COVID, C., Team, V.B.C.I., Birhane, M., Bressler, S., Chang, G., Clark, T. and Dorough, L., 2021. COVID-19 Vaccine Breakthrough Infections Reported to CDC—United States, January 1–April 30, 2021. *Morbidity and Mortality Weekly Report*, 70(21), p.792. available at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e3.htm>

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>.

ADOPT: 333-019-1010

RULE TITLE: COVID-19 Vaccination or Testing Requirements 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 either be vaccinated against COVID-19 or be tested for COVID-19 on at least a weekly basis.

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, adult foster homes, residential facilities, residential behavioral health facilities, pharmacies, hospice, vehicles or temporary sites where health care is delivered (e.g., 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 this rule where the responsible party is a part of state government as that is defined in ORS 174.111. It also does not include any setting described in paragraph (2)(e)(A) of this rule where the responsible party is a school. For the purposes of this rule, a school is a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof, except for school-based health centers certified under ORS 413.223. It also 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 the rule.

An employer of healthcare providers or healthcare staff, contractors or responsible parties must have and follow a policy for:

- (a) Requesting and obtaining from every healthcare provider and healthcare staff person proof of vaccination.
- (b) Required COVID-19 testing for any healthcare provider or healthcare staff person who is unvaccinated or has an unknown vaccination status, on at least a weekly basis.
- (c) Maintaining documentation of weekly COVID-19 test results for any healthcare provider or healthcare staff person who is unvaccinated or has an unknown vaccination status.

Information required to be obtained by employers and others under the rule must be kept in a confidential medical file.

Full compliance with the rule is required no later than September 30, 2021.

A person who violates the rule on or after September 30, 2021, may have civil penalties imposed against them 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 80 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" 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.
- (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, adult foster homes, residential facilities, residential behavioral health facilities, 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 any setting described in paragraph (A) of this subsection where the responsible party is a school. For the purposes of this rule, a school is a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof, except for school-based health centers certified under ORS 413.223.

(D) 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) "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, and a print-out from the Oregon Health Authority's immunization registry.

(g) "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) In order to work, learn, study, assist, observe, or volunteer in any healthcare setting healthcare providers and healthcare staff must:

(a) Be fully vaccinated; or

(b) Undergo COVID-19 testing at least weekly, by molecular or antigen detection for any week the provider or staff person intends to be present at a healthcare setting, on a schedule established by the healthcare provider's or healthcare staff person's employer, contractor or responsible party, or in the case of a self-employed healthcare provider, on their own schedule.

(4) An employer of healthcare providers or healthcare staff, contractors or responsible parties must have and follow a policy for:

(a) Requesting and obtaining from every healthcare provider and healthcare staff person proof of vaccination.

(b) Required COVID-19 testing for any healthcare provider or healthcare staff person who is unvaccinated or has an unknown vaccination status, on at least a weekly basis.

(c) Maintaining documentation of weekly COVID-19 test results for any healthcare provider or healthcare staff person who is unvaccinated or has an unknown vaccination status.

(5) No later than September 30, 2021, all employers of healthcare providers or healthcare staff, contractors, responsible parties, healthcare providers and healthcare staff must be in compliance with this rule.

(6) The vaccination or testing documentation described in section (4) of this rule that is required to be maintained by an employer of healthcare providers or healthcare staff, contractors, and responsible parties must be maintained in a confidential medical file separate from other employment records in accordance with applicable federal and state laws. If a health care provider is self-employed the health care provider must maintain their own documentation of vaccination or weekly COVID-19 test results. Documentation must be maintained for at least two years and must be provided to the Oregon Health Authority upon request.

(7) Nothing in this rule is intended to prohibit an employer of healthcare providers or healthcare staff from making reasonable accommodations in order to comply with the Americans with Disabilities Act (ADA), Title VII of the Civil

Rights Act, ORS 659.850 or applicable provisions of ORS chapter 659A. Nor is this rule intended to exempt an employer from complying with ORS chapter 652 or other provisions of ORS chapter 659A, including but not limited to ORS 659A.306.

(8) Health care providers, health care staff, 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. No civil penalties under this section will be imposed by the Oregon Health Authority before September 30, 2021.

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