



Implementing Oregon's Temporary Mandatory COVID-19 Vaccination Rule (OAR 333-019-1010)



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Overview

- Fundamental elements of the Temporary Rule
 - Settings Where Rule Applies
 - Who must be vaccinated
 - Vaccine verification requirements and process
 - Communicating with relevant groups
- Pay and paid time off
- Consequences of not being vaccinated
- Reasonable Accommodation
- Questions



Overview of Oregon's Temporary Rule

- Applies to all **“Healthcare Providers”** and **“Healthcare Staff”** in a **“Healthcare Setting”**
 - Must be fully vaccinated by October 18, 2021
- Exceptions only for disability or religious reasons
 - Must be documented using State form
- Specific list of acceptable proof of vaccination
 - Attestation is not acceptable

What is a **Healthcare Setting**



- Nursing facilities (federal mandate on the horizon)
- Assisted living facilities
- Residential care facilities
- Memory Care Communities
- Likely not stand-alone independent living communities (no health care)
- Possibly could apply to a CCRC campus
- Does NOT apply to a private home

Who Must Be Vaccinated

- Health Care Providers and Staff employed at Healthcare Setting
 - Individuals, paid and unpaid, working, learning, studying, assisting, observing or volunteering; and
 - Have **direct** patient or resident care or **potential for direct or indirect exposure** to patients, residents, or infectious materials
 - Includes licensed and unlicensed caregivers, dietary, housekeeping, laundry, security, facilities management, and administrative staff
 - Does not apply to staff working 100% remotely



Who Must Be Vaccinated

- Contractors
 - A person who has healthcare providers or healthcare staff on contract to provide services in healthcare settings in Oregon
 - Includes contract staff
 - Includes any employees of contractors/vendors that may have direct or indirect contact with residents
 - Ex: Sysco delivery person; plumber
 - Includes visiting caregivers contracted by residents (including home care/home health)
- Volunteers and Students



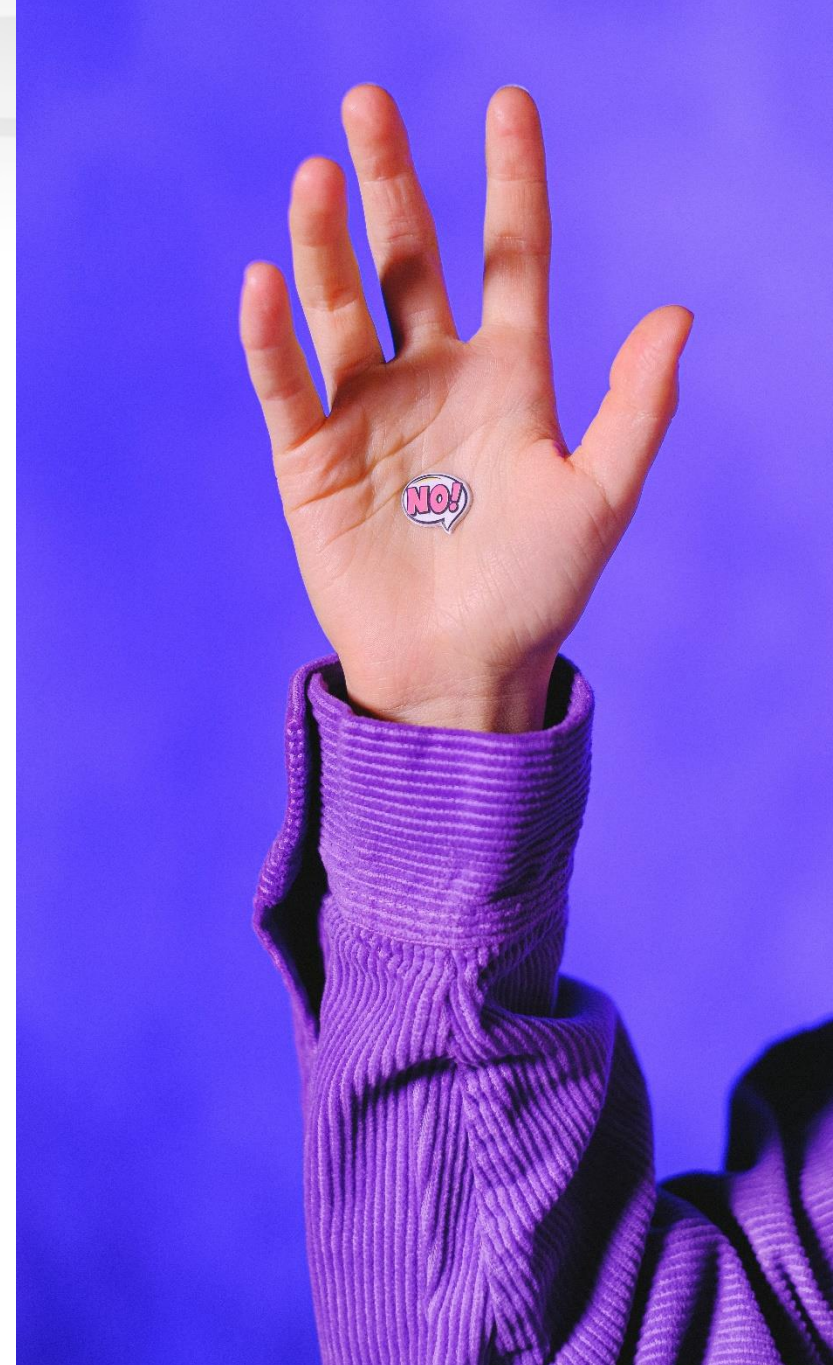
Who Must Be Vaccinated

- Mandate also applies to DHS Surveyors, APS, Medicaid Caseworkers, Ombudsman if are physically present in buildings and have potential to interact with residents
- Applies to firefighters, law enforcement, EMS/paramedics



Interplay with ORS 433.416

- ORS 433.416: A worker shall not be required as a condition of work to be immunized, unless such immunization is otherwise required by federal or state law, rule or regulation.
- “Worker” essentially licensed/certified individuals (RNs, CNAs, Med Techs, Administrators etc.)
- Governor’s Temporary Rule permits mandatory vaccinations; intended to supplement not limit ORS 433. 416
 - If can mandate under existing law; can continue to mandate even with temporary rule in effect
 - Ex: IL



Messaging the Mandate

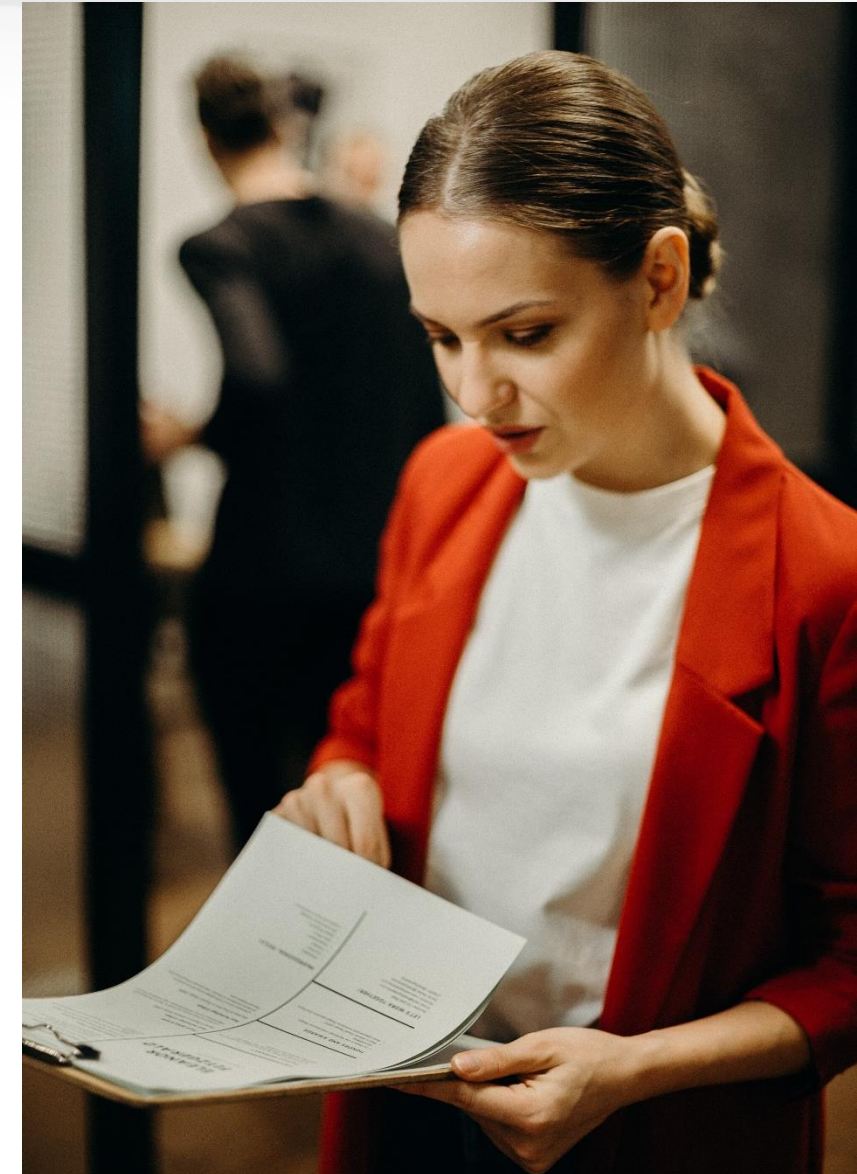


- Communicate your policy and vaccine verification process to employees
- Communicate your policy and vaccine verification process to contractors, volunteers, and students
 - Use an Attestation with Contractors
- Communicate your policy and vaccine verification process for contracted caregivers to residents

Proclamation Enforcement

How will the Proclamation be enforced?

- OHA can request documentation for up to two years
- \$500 per day per violation
 - Can be assessed against employers, contractors and responsible parties
- For SNF Mandate (F-Tags); for AL/MC possible citations
- Unsafe Work Environment; Medical Malpractice law suits



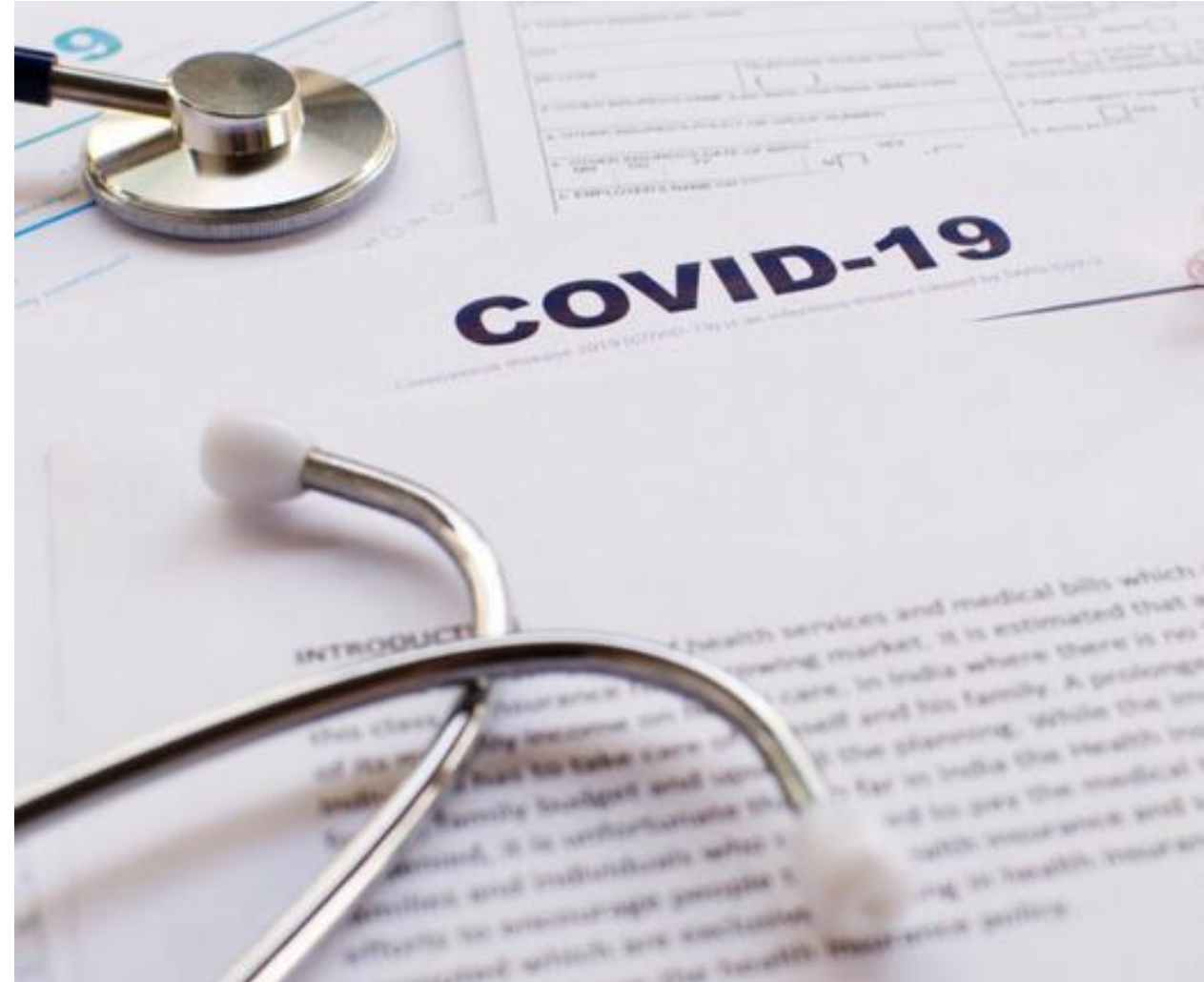
Federal Mandate for Medicare/Medicaid Recipients

- CMS will issue regs requiring SNFs to require all workers be fully vaccinated against COVID-19 as condition of participating in Medicare; part of ROPs
- Oregon's mandate is broader; applies to all health care providers and staff and all healthcare settings



Vaccine Policy Elements

- Who must be vaccinated?
- Will you administer vaccination on-site?
- Effective date
- Vaccine verification requirements and process
- Pay and paid time off
- Consequences of not being vaccinated
- Reasonable accommodations statement and practice
- Relationship to safety protocols



Timing and New Hires

- Last day for final vaccine shot is October 4, 2021
- Encourage reasonable accommodation requests be submitted by September 13, 2021
- Unvaccinated New Hires
 - Delayed start date
 - Hire, but place on leave (paid or unpaid)
 - Offer bonus contingent upon vaccination and a period of work
 - Regardless, offers should be contingent upon obtaining full vaccination or obtaining exemption





Verification

- CDC vaccination record card (including copy or digital picture)
- Print out from OHA immunization registry
- Other documentation from government entity or healthcare provider that includes name, date of birth, type of COVID-19 vaccination given, date(s) given, and the name/location where it was administered

***VACCINATION RECORDS ARE
CONFIDENTIAL MEDICAL RECORDS***

Employee Pay and Paid Time Off For Getting Vaccinated

- Likely must pay current employees for time spent getting a mandatory vaccine, and such time should be included in overtime calculations
- Reasonable time off required under OSHA
 - 4 hours per shot to schedule, travel to and from, and receive vaccination
 - 8 hours per shot for time off due to side effects from vaccination
- American Rescue Plan tax credits
 - Up to 10 days of paid leave to obtain and recover from a COVID-19 vaccination
 - Applies to employers with fewer than 500 employees
 - April 1, 2021-September 30, 2021
 - Must provide leave for other reasons



Consequences For Employees Who Do Not Get Vaccinated



- Consider leave for employees who:
 - Are making efforts to get vaccinated
 - Are making efforts to seek an exemption
 - Are unable to get vaccinated because they were infected by COVID-19
- All others: Leave or termination?
 - Consider leave to maintain relationship with employee



Reasonable Accommodations

Reasonable Accommodations

- Must be provided to employees with:
 - Disabilities
 - Pregnancy that prevent them from being vaccinated
 - Closely held religious beliefs, or who that prevent them from being vaccinated
- Must engage in the “interactive process”
- Required forms must be used
- Maintain confidentiality (vaccination status and reasonable accommodations provided)



Reasonable Accommodation For Medical Reasons



- Should rely on health care professional's advice
 - Can seek clarification only
- Can require vaccine if:
 - There is a direct threat and no reasonable accommodation reduces that threat, or
 - The accommodation causes undue hardship to the employer ("an action requiring significant difficulty or expense")
- Must go through the motions even if you know reasonable accommodations are not available

Reasonable Accommodation For Religious Reasons

- Religion is broadly defined as "all aspects of religious observance and practice as well as belief"
 - New or uncommon beliefs
 - Beliefs not part of a formal church or sect, only subscribed to by a small number of people
 - Can seem illogical or unreasonable to others
 - Can be "religious" even if the employee is affiliated with a religious group that does not espouse the same beliefs, observances, or practices, or if few or no other people adhere to the same beliefs
- Must be a "sincere and meaningful" belief



Reasonable Accommodation For Religious Reasons



- Assume that a request is based on sincerely held religious belief
- Can request supporting documentation if:
 - Have a “**bona fide doubt**” or an “**objective basis**” for questioning the religious nature or sincerity of the belief
 - Verification from a third party does not have to come from a clergy member or fellow congregant; a first-hand explanation may be sufficient
- Can require vaccination if no reasonable accommodation can be provided without undue hardship to the employer (“more than a de minimis” cost or burden)



Examples of Religious Exemptions

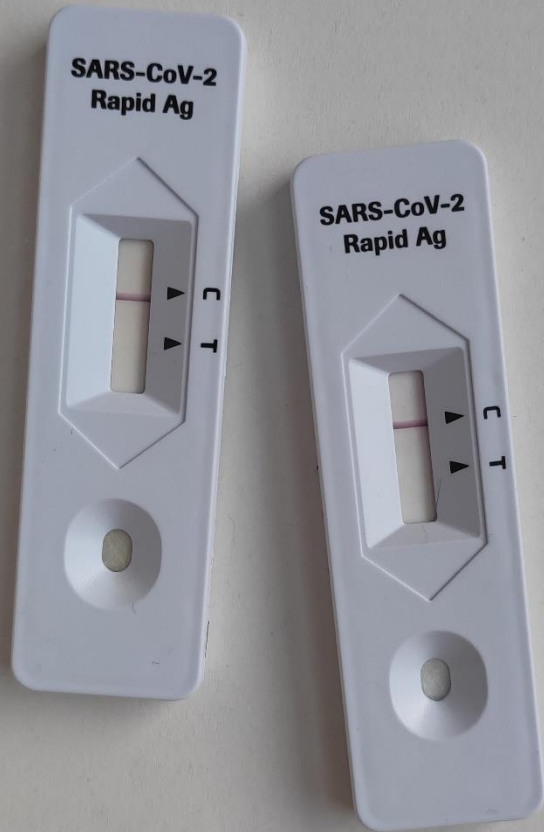
- Pro-life beliefs
- Avoidance of medical intervention
- “God told me”

Examples of Reasonable Accommodations

- More frequent COVID-19 testing
- Enhanced PPE
- Telework
- Reassignment to open position



Testing Alternative



- Must pay for testing time and costs
- ADA/State equivalent laws apply
 - COVID-19 testing is a medical exam
 - Allowed if employee's presence in the workplace poses a direct threat to others
 - EEOC says testing administered consistent with current CDC guidance will meet the ADA's standard.
- Confidential medical records and information

Relevant Documents

- [Temporary Rule 333-019-1010](#)
- [Healthcare Provider and Healthcare Staff Vaccine Rule FAQ](#)
- [Oregon COVID-19 Vaccine Medical Exemption Request Form](#)
- [Oregon COVID-19 Vaccine Religious Exemption Request Form](#)





QUESTIONS?



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