

**STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY AND FINDINGS IN SUPPORT OF ADOPTION OF  
EMERGENCY REVISIONS TO**

6 CCR 1011-1, Standards for Hospitals and Health Facilities

Chapter 2 - General Licensure Standards

**Emergency rules adopted by the Board of Health on August 30, 2021. Effective August 30,  
2021.**

**Basis and Purpose.**

In response to COVID-19, Governor Polis verbally declared a disaster emergency on March 10, 2020, and issued the corresponding Executive Order D 2020 003 on March 11, 2020. Since that time there have been 7,327 deaths due to COVID-19 in Colorado, 2,625 of which occurred in licensed healthcare facilities. With the rise in the Delta variant, ensuring that all workers in licensed healthcare facilities are vaccinated is one of the most effective means the state can take to protect the public health, safety, and welfare of all Coloradans and end this ongoing pandemic. As Colorado approaches the back-to-school and influenza seasons, it is imperative that the Department takes all available measures to increase vaccination rates to keep as many Coloradans as healthy as possible to reduce the burden on the already overstretched healthcare system and workforce.

On August 23, 2021, the FDA announced that it had granted full approval to the Pfizer/BioNTech COVID-19 vaccine (now known as Comirnaty) for individuals age 16 and older. Prior to this announcement, Colorado (and many other states) had seen some businesses enact mandatory vaccination requirement for their staff. Additionally, there is a movement on the federal level to require full vaccination among healthcare workers, with an announcement that the Centers for Medicare and Medicaid Services will promulgate an emergency regulation to this effect for nursing homes. While these different measures will certainly affect some areas of the Colorado's healthcare system, enacting the proposed regulations ensures parity across facility types.

Furthermore, the Department recognizes the concern that enacting these proposed regulations may cause a decrease in the healthcare workforce, as individuals may choose to leave the field rather than obtain a vaccine. The Department is cognizant of these concerns, and continues to work to increase its staffing support and hopes to be able to fill any gaps that may result from the proposed revisions. Additionally, the Department believes enacting these regulations will have a positive impact on the workforce, by lessening the strain felt by the entire system when staff and employees become infected with COVID-19. While the Department has identified only 16 total deaths among facility staff; however, there have been 13,062 total cases among facility staff. Each time a staff member tests positive, there is an impact to that individual's coworkers in increased workload and acute staffing shortages as more staff get sick and/or have to quarantine. Increasing the overall staff vaccination rate should decrease the amount of positive cases amongst staff, in addition to patients and clients.

The Department has authority to enact and enforce regulations over all licensed healthcare facilities and agencies: Acute Treatment Units, Ambulatory Surgical Centers, Assisted Living Residences, Behavioral Health Entities, Birth Centers, Community Clinics, Community Clinics with Emergency Centers, Community Integrated Health Care Services Agencies, Community Mental Health Centers, Dialysis Treatment Clinics, Freestanding Emergency Departments, Home Care Agencies, Home Care Placement Agencies, Hospices, Hospitals (General, Rehabilitation, Psychiatric, and Hospital Units), Facilities for Individuals with Intellectual and Development Disabilities (Group Homes and Intermediate Care Facilities), and Nursing Homes.

The Department does not have authority over individual healthcare practitioners or staff, nor does it oversee other settings where patients seek medical care, including primary care offices and urgent care locations.

Although the COVID-19 vaccine is now widely available, approximately 30% of the healthcare workforce in these facilities and agencies remain unvaccinated. The Department currently collects data on vaccination rates among long-term care facilities, (Nursing Facilities, Assisted Living Residences, and Group Homes/Intermediate Care Facilities), which is a small subset of the licensed facilities regulated by the Department. In these settings, 27% of staff remain unvaccinated. However, when examining historical flu vaccination data for the same facility-types, the unvaccinated rate among staff is only 15%. One major difference is that since 2012 the Department has had regulations in place requiring facilities to implement policies and procedures requiring flu vaccinations among staff members with the potential for exposure to the flu.

While the existing flu regulation served as a baseline for these proposed regulations, there are differences. The first major difference is the expectation that facilities and agencies maintain 100% vaccination among eligible employees, direct contractors, and support staff. Based on the nature of the COVID-19 virus, especially the airborne spread, the Department anticipates the category of eligible individuals will be quite broad. However, each facility/agency will have the ability to identify individuals it has determined are safe to be exempt from this requirement in its policies and procedures, with justification for that decision. Additionally, the reporting requirements in the proposed regulations are more robust than the current flu regulation. Rather than annual reporting, the proposed regulations require twice monthly reporting, beginning October 1, 2021. This will enable the Department to maintain comprehensive and current data on the rate of vaccination among staff in licensed healthcare facilities, track trends to ensure the rates continue to increase, and identify facilities and agencies that may need technical assistance complying with the regulations. The Department anticipates it will modify the reporting requirements for the future state after conducting further stakeholder engagement.

The Department anticipates these regulations will have an immediate, widespread, and positive impact on the health, safety, and welfare of Coloradans, as they will apply to most of the employees of the approximately 3800 licensed healthcare facilities and agencies regulated by the Department. Accordingly, the Department requests the Board adopt the following regulations requiring all licensed healthcare facilities to ensure their eligible employees, direct contractors, and support staff are fully vaccinated against COVID-19.

#### **Findings Pursuant to Section 24-4-103(6), C.R.S.**

In response to COVID-19, Governor Polis verbally declared a disaster emergency on March 10, 2020, and issued the corresponding Executive Order D 2020 003 on March 11, 2020. Since that time there have been 7,327 deaths due to COVID-19 in Colorado, 2,625 of which occurred in licensed healthcare facilities. Although the COVID-19 vaccine is now widely available, approximately 30% of the healthcare workforce in these facilities and agencies remain unvaccinated. With the rise in the Delta variant, ensuring that all workers in licensed healthcare facilities are vaccinated is one of the most effective means the state can take to protect the public health, safety, and welfare of all Coloradans and end this ongoing pandemic. Studies show that the rate of hospitalization due to COVID-19 infection is greatest in the unvaccinated. As Colorado approaches the back-to-school and influenza seasons, it is imperative the Department takes all available measures to increase vaccination rates to keep as many Coloradans as healthy as possible in order to reduce the burden on the already overstretched healthcare system and workforce. Therefore, the Board finds that immediate adoption of these revisions is imperative to preserve the public health, safety and welfare,

and that compliance with the normal rulemaking requirements of Section 24-4-103, C.R.S. would be contrary to the public interest.

Specific Statutory Authority.

Statutes that require or authorize rulemaking:

Section 24-4-103(6), C.R.S.

Section 25-1.5-102, C.R.S.

Section 25-1.5-103, C.R.S.

Section 25-3-103, C.R.S.

---

Is this rulemaking due to a change in state statute?

Yes, the bill number is \_\_\_\_\_. Rules are \_\_\_ authorized \_\_\_ required.

No

Does this rulemaking include proposed rule language that incorporate materials by reference?

Yes  URL

No

Does this rulemaking include proposed rule language to create or modify fines or fees?

Yes

No

Does the proposed rule language create (or increase) a state mandate on local government?

No.

- The proposed rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed;
- The proposed rule requires a local government to perform or increase a specific activity because the local government has opted to perform an activity, or;
- The proposed rule reduces or eliminates a state mandate on local government.