

Oregon Statewide Pharmacy – Local Public Health Authority Memorandum of Understanding

ARTICLE I PURPOSE

The purpose of this memorandum of understanding (MOU) is to utilize existing Pharmacy infrastructure to help address health and medical needs of an affected population during a Public Health Incident, Emergency or Disaster (“Incident”), using coordinated and standardized protocols statewide. The Conference of Local Health Officials (CLHO), Oregon State Pharmacy Association (OSPA), Oregon Society of Health System Pharmacists (OSHP), Oregon Board of Pharmacy (BoP), and Oregon Public Health Division (OPHD) support the development of this MOU.

ARTICLE II DEFINITIONS

- 1) “Administer” has the meaning given that term in Oregon Revised Statute (ORS) 689.005.
- 2) “Dispense” has the meaning given that term in ORS 689.005.
- 3) “Drug” means a drug or vaccine or medical device, or any combination of these terms.
- 4) “Emergency” has the meaning given that term in ORS 401.025.
- 5) “Local Public Health Authority (LPHA)” has the meaning given that term in ORS 431.260.
- 6) “Operational Guidance” is a document containing templates and procedures for MOU implementation, as well as screening forms, tracking requirements, and treatment protocol templates developed pursuant to this MOU.
- 7) “Oregon Public Health Division” (OPHD) means that division of the Oregon Health Authority that is responsible for planning for and responding to a public health emergency.
- 8) “Pacific Northwest Emergency Management Arrangement” (PNEMA) means the compact, ratified in Chapter 25 Oregon Laws 2008, between the states of Alaska, Idaho, Oregon and Washington, the Province of British Columbia, and the Yukon Territory, to provide mutual assistance in an emergency or public health emergency.
- 9) “Pharmacy” means a signatory to this MOU who meets the definition of a pharmacy as defined in ORS 689.005.
- 10) “Public Health Incident, Emergency, or Disaster (“Incident”)”: Any occurrence, or threat thereof, whether natural or caused by man, in war or in peace, to which an LPHA may respond pursuant to its authority under ORS 431.262, or other applicable law, and that, in the judgment of the LPHA, results or may result in circumstances sufficient to exceed the day-to-day operational capabilities of immediate local or regional public health response.
- 11) “Strategic National Stockpile” (SNS) means the US Government stockpile of antiviral drugs and other drugs and medical supplies that can be made available to a state in an emergency.

ARTICLE III PARTICIPATION

The Pharmacies have a desire to assist the LPHAs in addressing health and medical needs of an affected population during an Incident. The LPHAs and Pharmacies agree that this MOU does not create a legal duty to do so. The LPHAs and Pharmacies agree that any and all actions taken pursuant to this MOU shall be voluntary and in each LPHA’s and Pharmacy’s sole discretion.

ARTICLE IV
HOW TO INVOKE ASSISTANCE

An LPHA may request assistance of a Pharmacy by contacting the Pharmacy directly or by contacting the BoP. If desired, signatory pharmacies can share with LPHAs contact information for preferred recipients within their organizations of requests for assistance under this MOU. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing as soon as possible to the extent practical. The process is outlined in greater detail in the Operational Guidance.

ARTICLE V
EFFECT OF DECLARATION OF EMERGENCY

The LPHAs and Pharmacies recognize that state or federal declarations of emergency, or orders related thereto, may supersede the arrangements made or actions taken pursuant to this MOU. Nothing in this MOU should be construed as independent of or bypassing established emergency management procedures, the provisions of county or state declarations of emergencies, or any conditions for the distribution and dispensing of the Strategic National Stockpile (SNS) or administration of vaccines established by the federal or state governments. In a state of declared emergency certain rules of the BoP, contained in OAR Chapter 855 Division 007, will be activated. These rules would broaden the options available to Pharmacies and LPHAs in response to an incident. In a declared emergency, pharmacists and other healthcare volunteers who are enrolled in the state's SERV-OR health volunteer registry are considered agents of the state under ORS 401.651-401.670 for activities within the scope of assigned responsibilities related to the response, and will be afforded workers' compensation and liability coverage. Notwithstanding these effects, the activities under this MOU are not limited to situations in which an emergency has been declared.

ARTICLE VI
RESPONSIBILITIES OF LOCAL PUBLIC HEALTH AUTHORITY

LPHA responsibilities:

- a. Coordinate with OPHD, BoP and/or signatory Pharmacies to ensure statewide consistency with screening forms, tracking, training and other Pharmacy requirements if applicable.
- b. Provide planning, training and technical assistance to Pharmacy, including but not limited to, supply lists, fact sheets, dispensing algorithms, and applicable requirements.
- c. Provide statewide consistent medical screening forms to Pharmacy as guidance for implementing dispensing operations.
- d. Provide a clear description of the mission LPHA is requesting Pharmacy to undertake, including specific information about the population to be immunized or given prophylaxis, specific statewide protocol (standing order) templates to be used, and specific displaced or sheltered populations whose pharmaceutical needs must be met, as well as the vaccine or medication to be used, dosage, route of administration, and follow-up procedures.
- e. Activate community-wide mass vaccination and dispensing plans as necessary.
- f. Notify OPHD of the activation of MOU. Notification may be verbal or in writing. If verbal, the notification shall be confirmed in writing as soon as possible to the extent practical.
- g. Notify Pharmacy that community dispensing plans should be implemented.
- h. Request appropriate amounts and type of medication or vaccine, and available supplies, from local, state or federal sources, including use of SNS resources, or specify that Pharmacy is requested to supply these materials.
- i. Facilitate a discussion with Pharmacy regarding the most appropriate locations for distribution.
- j. Request OPHD to deliver, or have delivered medications to distribution centers as determined by the LPHA in consultation with the BoP and Pharmacy.
- k. With OPHD, modify treatment protocol templates from the Operational Guidance as needed to guide Pharmacy response.

- l. Manage public information activities with regard to the overall health and medical response across the LPHA's jurisdiction.
- m. Provide educational materials, if appropriate, to Pharmacy for the purposes of distributing to all persons in emergencies affecting the public's health.
- n. Provide guidance and criteria to Pharmacy for tracking levels of activity, supplies and inventory, as applicable to the response and consistent across signatory LPHA jurisdictions.
- o. Participate, as appropriate, in mass vaccination or medication dispensing training and exercises, and in exercises to promote emergency response surge capacity as outlined in the Oregon Crisis Care Guidance.
- r. If an Oregon Emergency Response System (OERS) number has been issued by the Oregon Office of Emergency Management for the Incident leading to activation of the MOU, LPHA is encouraged to use the OERS number in communications with emergency management personnel and OPHD.

ARTICLE VII
RESPONSIBILITIES OF OREGON PUBLIC HEALTH DIVISION

OPHD responsibilities:

- a. Coordinate any future updates of this MOU and establish a webpage on which the most current MOU and Operational Guidance are posted,
- b. Oversee development of statewide screening forms and tracking requirements, and make these available to LPHAs as components of the Operational Guidance accompanying this MOU.
- c. Oversee development of statewide treatment protocols that could be used in incident response and make them available to LPHAs in a timely fashion as needed to support response efforts.
- d. Deliver, or arrange delivery of medications to distribution centers as needed, in consultation with the LPHA, BoP, and Pharmacy.
- e. Coordinate public health activities, including collection of information regarding medication administration and dispensing activities, during incidents involving multiple counties.
- f. Determine any limits on administrative fees that can be charged by Pharmacies for dispensing or administration of SNS or other stockpile medications, and disseminate this information.

ARTICLE VIII
RESPONSIBILITIES OF PHARMACIES

Pharmacy responsibilities:

- a. Coordinate with OPHD, BoP, and/or signatory LPHAs to ensure statewide consistency with screening forms, tracking, training, and other Pharmacy requirements.
- b. Comply with Pharmacy standards in effect during the Incident.
- c. Upon receipt of a request for action by an LPHA, determine the Pharmacy's anticipated capacity to respond to the request, including, as appropriate, the approximate number of vaccine or medication doses that could be administered by Pharmacy in a specified time period, the approximate number of displaced persons who could be screened and provided with emergency supplies of medications under provisions of OAR 855-007-0090(1)-(2), or the approximate number of patients that could be accommodated by the Pharmacy under a treatment protocol as outlined in the Operational Guidance; communicate that information to the LPHA.
- d. Identify Pharmacy sites to receive medication deliveries and communicate site locations to the LPHA.
- e. Communicate to LPHAs each site location's scope of Pharmacy practice regarding affected populations, e.g., convey age or prescriptive authority limitations.
- f. Receive and store medication deliveries, consistent with federal, state or local government requirements, at Pharmacy-identified facilities during Incidents.

- g. Ensure that Pharmacy site locations serve the general public.
- h. At Pharmacy's discretion, ensure that its own employees, including those employed by its parent company, and their families, are cared for consistent with public health recommendations.
- i. As appropriate when the BoP emergency rules in OAR chapter 855, Division 7 have been activated, and if agreed to by Pharmacy, oversee participation in response efforts by pharmacists and pharmacy technicians, licensed in other jurisdictions, but participating in response efforts under PNEMA or EMAC, provided that the individual supplies evidence that he or she holds a valid, current, unrestricted, comparable license by another signatory to PNEMA or EMAC in accordance with OAR 855-007-0050(2).
- j. As appropriate, and if agreed to by Pharmacy, oversee participation in response efforts by pharmacists and pharmacy technicians who have had previously inactive licenses re-activated by the BoP in accordance with OAR 855-007-0050(4).
- k. Conduct medical screening of individuals receiving medications, based on guidance provided by LPHA, to identify potential contraindications and complications, and assure dispensing and administration consistent with federal, state and local government requirements.
- l. Allow pharmacists to prescribe and dispense medications under a treatment protocol under authority of a licensed healthcare prescriber or lawful health order issued by a local health officer or an authorized representative of OPHD.
- m. Maintain accurate records of medications dispensed, administered, and remaining inventory.
- n. Maintain and inventory the local, state or federal stock of medications, vaccines and supplies and physically separate them from the regular inventory. The local, state and federal stock cannot be used in place of commercial pharmacy stock at any time. Pharmacy stock may be used as a substitute for the local, state or federal stock and Pharmacy may seek reimbursement for this action, if available, in accordance with the then current state or federal guidance.
- o. Track contact information of individuals receiving medications.
- p. Communicate information regarding medications dispensed, administered, and, for medical countermeasure from a state stockpile or SNS, provide contact information for recipients to LPHA as required by LPHA, through a secure method. [Release of information to public health in this setting is permitted under HIPAA. See Operational Guidance, Section VI., bullet 4.]
- q. Provide educational materials, supplied by LPHA, when possible to all individuals receiving medications.
- r. Participate, as appropriate, in LPHA-sponsored mass vaccination or medication dispensing training and exercises, and in exercises to increase healthcare response capacity as outlined in the Oregon Crisis Care Guidance.
- s. If they choose to, qualified Pharmacy personnel who would take part in response activities under this MOU can register as Emergency Volunteer Workers with the State's health volunteer registry, SERV-OR pursuant to OAR 333-003-0100 to 333-003-0140 and ORS 401.651 to 401.670. In a declared emergency, pharmacy personnel so registered would be considered agents of the state for actions performed as part of response to the emergency, would have liability limited under ORS 30.260 to 30.300, and would be eligible for workers' compensation protection to the extent allowed by Oregon law.

ARTICLE IX
RESPONSIBILITIES OF THE BOARD OF PHARMACY

BoP responsibilities:

- a. Develop and maintain an accurate roster of Pharmacies in Oregon that includes contact information for all co-signatory Pharmacies.
- b. Upon request from an LPHA or from OPHD, convey request for assistance under this MOU from the requesting public health entity to the requested Pharmacy or Pharmacies.
- c. With OPHD and other parties to this MOU, develop and review treatment protocol templates to ensure that they are in keeping with relevant Oregon statutes and rules.

ARTICLE X
COST AND PAYMENT

When LPHA provides the medications that are to be dispensed or administered by Pharmacy from a local, state, or federal stockpile, it will do so at no cost to Pharmacy. Pharmacy shall dispense or administer these medications to patients or customers at no charge to the patient or customer except for an administrative fee not to exceed an amount set by OPHD, or under emergency federal or state current guidance at the time. Pharmacy agrees to waive this fee if required by then current federal or state guidance. Pharmacy may also, in its discretion, waive this fee for patients or customers who demonstrate an inability to pay. When Pharmacy provides the medications that are dispensed or administered by Pharmacy during implementation of this Agreement, this restriction shall not apply, and Pharmacy, at its discretion, can bill for services and medications in its usual and customary manner. All other costs incurred by either LPHA or Pharmacy through implementation of this Agreement shall be borne by each respective agency.

ARTICLE XI
LIABILITY, INDEMNIFICATION, AND LIMITATIONS

The Parties acknowledge that if this Agreement has been triggered after a federal public health emergency declaration by the Secretary of the Department of Health and Human Services under the PREP Act, immunity under state and federal law will extend to covered persons involved in dispensing, distributing, and administering countermeasures/prophylaxis under 42 U.S.C.A. §247d-6d. Immunity under the PREP Act does not apply to willful misconduct or acts conducted outside the scope of the declaration.

The Parties further acknowledge that if this Agreement has been triggered after a locally or state declared emergency under ORS 401.165 or ORS 433.441-433.452, a pharmacist who meets the definition of a “qualified emergency service volunteer” under ORS 401.358 or is an emergency healthcare provider under ORS 401.651, who otherwise complies with ORS 401.358 to 401.368 and ORS 401.651 to 401.670, will be considered an agent of the state and will have liability coverage for activities within the scope of assigned responsibilities related to the response. Liability coverage does not apply to gross negligence, willful or wanton misconduct, or acts outside the scope of the assigned responsibilities or not under the direction of the local emergency management organization.

If the provisions of ORS 401.358 to 401.368 and ORS 401.651 to 401.670 do not apply, each party agrees to be responsible and assume tort liability for its own wrongful acts or omissions, or those of its officers, agents or employees to the fullest extent required by law.

Notwithstanding anything to the contrary in this Agreement, once the LPHA has delivered the inventory to the Pharmacy, the LPHA will retain the risk of loss with respect to the inventory unless the loss is the result of the Pharmacy’s negligence, gross negligence or intentional act or failure to act.

ARTICLE XII
INFORMATION SHARING

Pharmacy will provide LPHA with information LPHA deems necessary for documentation of the actions taken and services provided under this Agreement, all of which is available under the public health exemption of HIPAA, 45 CFR §164.512(b), and through authorities outlined in ORS 433.004. This information is protected from subsequent disclosure under ORS 433.008. LPHA will advise Pharmacy of the information needed to protect the public health and to prevent or control disease, injury or disability and will only request the information necessary to protect the public health and to prevent or control disease, injury, or disability.

ARTICLE XIII
TERM AND TERMINATION

This Agreement shall become effective immediately upon its execution by any one Pharmacy and one LPHA. After the first two such executions, this Agreement shall become effective as to any other Pharmacy or LPHA upon its execution by such Pharmacy or LPHA. The Agreement shall remain in effect as between each and every Pharmacy and LPHA until participation in this Agreement is terminated by a withdrawing Pharmacy or LPHA by written notice to all of the other signatories to the Agreement. Termination of participation in this Agreement by a withdrawing Pharmacy or LPHA shall not affect the continued operation of this Agreement as between the remaining Pharmacies and LPHAs so long as at least one Pharmacy and one LPHA remain.

Either LPHA or Pharmacy may terminate this Agreement for convenience with written notification to all of the other signatories to the Agreement no less than thirty (30) calendar days in advance of the termination date.

ARTICLE XIV
AMENDMENTS

No provision of this Agreement may be modified, altered or rescinded by any individual Pharmacy or LPHA without the unanimous concurrence of the other Pharmacies and LPHAs. Substantive modifications to this Agreement must be in writing and will become effective upon the approval of the modification by all signatory Pharmacies and LPHAs. Modifications must be signed by each Pharmacy and LPHA. This article does not apply to updating of contact information that may, from time to time, become necessary to ensure current information is available.

ARTICLE XV
INDEPENDENT CAPACITY

The employees or agents of Pharmacy or LPHA who are engaged in whole or in part in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of any other party to this Agreement.

ARTICLE XVI
SEVERABILITY

If any provision of this Agreement or any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ARTICLE XVII
NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the parties to this Agreement. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary of this Agreement.

ARTICLE XVIII
DISPUTE RESOLUTION

If a dispute between any parties to this Agreement arises out of or related to this Agreement, or the breach thereof, the parties agree to endeavor to settle the dispute in an amicable manner by direct communication between or among each other before terminating the Agreement.

ARTICLE XIX
NOTICES

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the designated representative of the party.

ARTICLE XX
SURVIVORSHIP

The following clauses survive the termination of this Agreement:

- IX. Liability, Indemnification, and Limitations
- XVI. Severability
- XVII. No Third Party Beneficiaries

ARTICLE XXI
OTHER OR PRIOR AGREEMENTS

If a Pharmacy and LPHA have a prior written agreement that relates to the subject matter of this Agreement, namely, using existing Pharmacy infrastructure to assist in addressing health and medical needs of an affected population during an Incident, including but not limited to mass dispensing of antibiotics, antiviral medications or vaccines to the general public during times of health and medical disasters, then, at such time that said Pharmacy and said LPHA both execute this Agreement, such prior written agreement between them shall become null and void and of no further force and effect. Notwithstanding the above provision in this Article XXI, any Pharmacy and/or LPHA may continue or enter into other agreements with other Pharmacies and/or LPHAs provided such other agreements govern subject matter not governed by this Agreement

ARTICLE XXII
GOVERNING LAW

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Oregon.

ARTICLE XXIII
EXECUTION IN COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original. IN WITNESS WHEREOF, this Agreement has been executed and approved and is effective and operative as to each Pharmacy and each Local Public Health Authority as herein provided.

Company/Agency

Signature

Print Name and Title

Date