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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, ET. AL.,

PLAINTIFFS,

AND

MONTANA NURSES ASSOCIATION,

PLAINTIFF-INTERVENORS,

v.

AUSTIN KNUDSEN, ET AL.,

DEFENDANTS.

CV-21-108-M-DWM

**NOTICE WITHDRAWING
REQUEST FOR
EXPEDITED RULING ON
MOTION FOR
CLARIFICATION**

Defendants hereby submit this notice regarding their motion for clarification of the preliminary injunction, Doc. 54, and withdrawing their request for expedited consideration of their motion for clarification, Doc. 57. Defendants previously provided documentation that Benefis Health System issued a memorandum on March 29, 2022, requiring staff to receive COVID-19 booster doses by May 1, 2022. *See* Doc. 56 (Benefis Memo). The May 1, 2022, deadline was the basis for Defendants seeking expedited consideration of their Motion for Clarification. *See* Doc. 57.

At approximately 3:26pm on April 12, 2022, the Office of the Attorney General received additional documentation via email regarding Benefis Health Systems' COVID-19 booster policy. *See* Corrigan Email. On April 5, 2022, Benefis issued a memorandum rescinding its COVID-19 booster dose policy for staff, stating: "At this time Benefis employees are not required to receive COVID-19 booster, as [CMS] has not yet required it." *See* Benefis April 5 Memo at 1. In light of this additional information, Defendants withdraw their request for expedited ruling on their motion for clarification, Doc. 57.

Defendants still, however, believe the Court should provide necessary clarity on the scope of the preliminary injunction vis-à-vis COVID-

19 booster doses given that at least one health care provider has relied on the CMS Rule to require them (albeit temporarily). *See* Doc. 55. Agencies within the State tasked with enforcing MCA § 49-2-312 continue to need guidance as it relates to booster doses and the scope of this Court’s injunction. In fact, the scope of the injunction—as it relates to booster doses—is still a point of disagreement among the parties. Defendants provided Plaintiffs a copy of Defendants’ Motion for Clarification and Brief in Support prior to filing and Plaintiffs still opposed. The Court’s guidance is, therefore, necessary in the event Benefis or another health care provider subject to the CMS Rule decides to require COVID-19 booster doses for employees.

DATED this 12th day of April, 2022.

Respectfully submitted.

/s/ Christian Corrigan
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CERTIFICATE OF SERVICE

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: April 12, 2022

/s/ Christian Corrigan
CHRISTIAN CORRIGAN

Corrigan, Christian

Subject: [EXTERNAL] COVID-19 Policies at Benefis Healthcare
Attachments: Benefis COVID-19 Update .jpg; Benefis Covid-19 Update 2(1).jpg; Benefis Covid-19 Update 2.jpg; Benefis COVID-19 Update.jpg

Fr
Sent: Tuesday, April 12, 2022 3:26 PM
To: Corrigan, Christian <Christian.Corrigan@mt.gov>
Subject: RE: [EXTERNAL] COVID-19 Policies at Benefis Healthcare

Mr. Corrigan,

Attached is the Memorandum Benefis provided to their employees. After sending my original email it seems Benefis issued an updated Memorandum rescinding their mandate for COVID-19 boosters, which I have also attached.

From the beginning of the pandemic, it is a concern of many Montana workers that employers are implementing additional mandates that do not follow guidance provided by government agencies. It is my hope that despite the fact that Benefis has already changed their policy regarding boosters, that there will be additional oversight implemented them, and on other Montana employers when it comes to what COVID mandates they compel their employees to submit to. The current mandates that have already been implemented by the federal government have brought into question what rights employees actually have, and it is imperative to ensure that those rights are not violated any further.

Sincerely,

COVID-19 UPDATE

April 05, 2022

Please disregard the portion of the Benefis communication from March 29, 2022, indicating that the deadline to become up to date with your COVID-19 vaccine booster is May 1. At this time, Benefis employees are not required to receive COVID-19 boosters, as the Centers for Medicare & Medicaid Services has not yet required it. However, we still encourage employees who have received their primary vaccine series and not a booster to get their booster dose to optimize protection against COVID-19.

We do expect that boosters will be required at some point by CMS. We will proceed with offering the booster vaccine clinics outlined below, and we do encourage you to get your booster.

Please make sure you have reviewed the other updates from last week's communication, which are included again below for your reference.

COVID-19 Vaccine Clinics

For employees who need a booster dose, vaccine clinics will be offered in Classroom 5A as follows:

- Thursday, April 7, from 8 a.m.-3:30 p.m. -- Pfizer and Moderna
- Tuesday, April 12, from 8 a.m.-3:30 p.m. -- Pfizer
- Thursday, April 14, from 8 a.m.-3:30 p.m. -- Moderna
- Tuesday, April 19, from 8 a.m.-3:30 p.m. -- Pfizer
- Thursday, April 21, from 8 a.m.-3:30 p.m. -- Moderna
- Thursday, April 28, from 8 a.m.-3:30 p.m. -- Pfizer and Moderna

The above clinics are for boosters only. Appointments are required; no walk-ins will be accepted. Schedule online at [Benefis.org/vaccine](https://benefis.org/vaccine).

If you wish to receive a booster vaccine from a local community pharmacy, please scan a copy of the long-form document verifying your receipt of the vaccine from the pharmacy to Employee_Health@benefis.org.

COVID Testing Requirement

As part of the CMS vaccine rule, starting April 11, employees who received medical or religious vaccine deferrals will be tested weekly for the virus. If you fall into this category, you and your manager will be contacted by Employee Health on April 7 to schedule your initial testing appointment. After that, your manager will schedule you for a recurring testing appointment on a particular day/time of the week. You must be tested at your scheduled time each week. If you need to adjust your scheduled appointment time on a particular week, your manager will need to reschedule you.