

**DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 60**

**COVID-19 TESTING IN LICENSED ASSISTED LIVING FACILITIES,
NURSING FACILITIES AND RESIDENTIAL CARE FACILITIES**

411-060-0000 Purpose

(Temporary effective 11/01/2020 – 1/10/2021)

The purpose of these rules in OAR chapter 411, division 060 is to establish requirements for Nursing Facilities, Assisted Living Facilities and Residential Care Facilities to ensure all residents, Facility Staff and Associated Staff are tested for COVID-19. The scope of these rules includes requirements for admission testing, routine testing of staff, and ongoing outbreak-associated testing. The standards are designed to protect vulnerable Residents, prevent transmission among Residents, Facility Staff and Associated Staff, and improve prevention efforts during the COVID-19 pandemic.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0005 Definitions

(Temporary effective 11/01/2020 – 1/10/2021)

(1) “Assisted Living Facility” refers to entities licensed under rules contained in Oregon Administrative Rule chapter 411, division 054.

(2) “Associated Staff” means individuals providing direct care services to facility residents via a contractual relationship with the facility such as supplemental staffing agencies. Associated staff also includes volunteers, hospice personnel, caregivers who provide care and service to residents on behalf of the facility, individuals providing environmental (housekeeping, laundry) or food services via a contractual relationship with the facility, and

students in the facility's nurse aide training program or from affiliated academic institutions.

(3) "Associated Staffing Provider" means a separate legal entity, including an entity that has contracted with a Facility to provide staffing for the Facility, which employs Associated Staff.

(4) "Authority" means the Oregon Health Authority.

(5) "COVID-19" refers to Coronavirus disease 2019, which is defined as an illness caused by a novel coronavirus now called severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(6) "Department" means the Department of Human Services.

(7) "Facility" means an Assisted Living Facility, Nursing Facility and Residential Care Facility licensed by the Oregon Department of Human Services.

(8) "Facility Staff" means anyone directly employed by the Facility who is scheduled, or anticipated, to work at the Facility in the future.

(9) "Hospital" means Hospital as defined in ORS 442.015.

(10) "Isolation" means the separation of sick people with, or presumed to have, a contagious disease, including COVID-19, from people who do not have that contagious disease.

(11) "Legal Representative" means that term as defined in OAR 411-085-0005.

(12) "Local Public Health Authority" means Local Public Health Authority (LPHA) as defined in ORS 431.003.

(13) "Nursing Facility" means an entity licensed by the Department pursuant to Oregon Administrative Rule chapter 411, division 085 to 089.

(14) "Positivity Rate" means the percentage of people who test positive for COVID-19 of those overall, who have been tested in a defined group in a defined period of time.

(15) “Quarantine” means separation and restriction of the movement of people who have been exposed to a contagious disease, including COVID-19, to see if they become infected with the contagious disease.

(16) “Resident” is defined as an individual who has been admitted or moved in and is receiving room, board, care and services on a 24-hour basis in a Facility.

(17) "Residential Care Facility" means an entity licensed under rules contained in Oregon Administrative Rule chapter 411, division 054.

(18) “Routine Testing” means regular, proactive testing of a defined population such as Facility Staff and Associated Staff to identify the presence of the COVID-19 virus in symptomatic and asymptomatic individuals.

(19) “Suspect COVID-19” refers to a person with a new onset of symptoms consistent with COVID-19, including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste, sore throat, nausea or vomiting, or diarrhea, without a more likely alternative diagnosis.

(20) “Testing” refers to a testing process to detect SARS-CoV-2 by a laboratory certified by the US Clinical Laboratory Improvement Amendments program (CLIA) and that meets Authority (OHA) and Department testing criteria.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0010 Admission and Readmission Testing

(Temporary effective 11/01/2020 – 1/10/2021)

(1) A Facility shall implement quarantine measures for newly admitted or readmitted Residents for a period of 14 days, except residents who have recovered from COVID-19 within 90 days of admission or readmission and are asymptomatic. Quarantine measures can include placement of

Resident in a private room, or cohorted area and use of personal protective equipment for Resident care as prescribed by the Authority, and monitoring for signs and symptoms associated with COVID-19 at least daily.

(2) A Facility shall conduct risk-based COVID-19 screenings of all Residents prior to admission or re-admission, based on OHA guidance for identifying people with symptoms consistent with having the COVID-19 virus and/or with having known contacts with a person(s) with COVID-19 or Suspect COVID-19. Negative tests obtained during the quarantine period do not supplant quarantine requirements in section (1) of this rule.

(3) A Facility may not admit or readmit a Resident that presents with any COVID like symptoms and/or has had known contacts with a person(s) with COVID-19, as determined by the risk-based screening described in section (2) of this rule, regardless of symptom severity, unless Testing has been administered to the Resident and test results have been received by the Facility prior to admission. Testing should be performed no more than three days prior to the proposed admission date. Negative test results from pre-admission testing are in supplement to, and do not supplant, quarantine requirements in section (2) of this rule.

(4) A Facility shall obtain written approval from the Department prior to admitting Residents known to have COVID-19.

(5) A Facility shall follow OHA COVID-19 clinical guidelines as published on the OHA website.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0020 (*Suspended 11/01/2020*)

411-060-0025 Ensuring Trauma-Informed and Culturally Responsive Testing

(*Temporary effective 11/01/2020 – 1/10/2021*)

(1) Facilities and Associated Staffing Providers must adopt trauma-informed approaches to testing in accordance with Department guidance

and professional standards of practice. Such approaches must account for the experiences and preferences of the person being tested to eliminate or mitigate triggers that may cause re-traumatization of the resident.

(2) Facilities and Associated Staffing Providers must ensure that all communications and testing-related support services for Residents, Facility Staff, and Associated Staff, such as mediation, decision-making support, and mental health services, are delivered in a linguistically and culturally appropriate manner and are in accordance with Department guidance and professional standards of practice. Medicaid enrolled members who require the use of certified health care interpreters shall be afforded that opportunity consistent with relevant OARs.

Stat. Auth.: ORS 441.612, 443.450

Stats. Implemented: ORS 441.612, 443.450

411-060-0027 Routine Staff Testing Requirements

(Adopted 11/01/2020)

Every Assisted Living Facility and Residential Care Facility shall:

(1) Ensure that all Facility Staff and Associated Staff are tested routinely for COVID-19 on an interval that considers the published county positivity rate, the availability of testing resources and at the frequency outlined in the Department guidance. Nursing Facilities will follow the standards set forth in the interim rules issued by the US Centers for Medicare and Medicaid Services (CMS) in 85 Federal Register 54820 (September 2, 2020). Nursing Facilities will also follow any guidance issued by CMS related to these rules.

(2) If a Facility is unable to comply with the required testing interval due to lack of access to molecular testing services that can reliably process tests within 48 hours or lack of access to antigen tests, the Facility may request an exception and alternate testing schedule from the Department.

(3) Conduct testing in a manner that is consistent with current standards of practice for conducting COVID-19 tests as defined in OHA clinical guidance.

(4) For each instance of Facility Staff and Associated Staff testing, document or obtain copies of documentation that testing was completed and the results of each test.

(5) Upon the identification of an individual specified in this paragraph with symptoms consistent with COVID-19, or who tests positive for COVID-19, take actions to prevent the transmission of COVID-19.

(6) Have procedures for addressing Facility Staff and Associated Staff who refuse testing or are unable to be tested. Serial testing of all Facility Staff and Associated Staff is mandatory, except for those Facility Staff and Associated Staff who provide medical justification for declining testing from a licensed health care provider. If any Facility Staff or Associated Staff refuses testing that is required under this rule, the Facility or Associated Staffing Provider is required to address a refusal as a personnel matter with the individual employee. Personnel consequences for refusals to test shall be consistent with requirements under federal and state employment laws and collective bargaining agreements, if applicable.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0028 (*Suspended 11/01/2020*)

411-060-0030 Outbreak Prevention Testing

(*Temporary effective 11/01/2020 – 1/10/2021*)

Effective November 1, 2020, a Facility must coordinate or complete specimen collection for COVID-19 testing of all Residents, Facility Staff and Associated Staff within 72 hours of identification of a new case of COVID-19 in either a Resident, Facility Staff or Associated Staff.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0040 Consent for Testing

(Temporary effective 11/01/2020 – 1/10/2021)

(1) A Facility must obtain consent from a Resident, or their representative, and Facility Staff prior to COVID-19 testing. The Facility shall develop a protocol to obtain consent from Residents and a separate protocol to obtain consent from Facility Staff.

(2) Prior to obtaining consent pursuant to section (1) of this section, a Facility shall provide communication to a Resident or their representative, and the Resident family as applicable, regarding upcoming testing. Where possible and feasible, the Facility shall provide this communication at least one week prior to obtaining consent from the Resident.

(3) Facilities must ensure that Associated Staffing Providers obtain consent from Associated Staff prior to COVID-19 testing. The Facility shall develop a protocol to document consent for any Associated Staff.

(4) Prior to obtaining consent pursuant to section (3) of this section, an Associated Staffing Provider shall provide communication to Associated Staff regarding upcoming testing. Where possible and feasible, the Associated Staffing Provider shall provide this communication at least one week prior to obtaining consent from the Associated Staff.

Stat. Auth.: ORS 441.612, 443.450

Stats. Implemented: ORS 441.612, 443.450

411-060-0050 Reporting

(Temporary effective 11/01/2020 – 1/10/2021)

All Facilities with Clinical Laboratory Improvement Amendments (CLIA) waivers must follow the reporting requirements contained in OARs 333-018-0000 thru 333-018-0145. This includes the requirements contained in OAR 333-018-0011 for reporting race, ethnicity, language and disability data.

Stat. Auth.: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

Stats. Implemented: ORS 441.025, 441.055, 441.615, 441.630, 441.637, 441.650, 443.400-443.455, 443.991

411-060-0060 (*Suspended 11/01/2020*)