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 7/15/2020 – 1/10/2021)* 1

411-060-0005 Definitions *(Temporary effective 8/10/2020 – 1/10/2021)* 1

411-060-0010 Admission and Readmission Testing *(Temporary effective 7/15/2020 – 1/10/2021)* 4

411-060-0020 Initial Testing Requirements *(Temporary effective 8/10/2020 – 1/10/2021)* 5

411-060-0025 Ensuring Trauma-Informed and Culturally Responsive Testing *(Temporary effective 7/15/2020 – 1/10/2021)* 6

411-060-0028 Testing Associated Staff *(Temporary effective 7/15/2020 – 1/10/2021)* 7

411-060-0030 Outbreak Prevention Testing *(Temporary effective 7/15/2020 – 1/10/2021)* 7

411-060-0040 Consent for Initial Testing *(Temporary effective 7/15/2020 – 1/10/2021)* 8

411-060-0050 Reporting *(Temporary effective 8/10/2020 – 1/10/2021)*..... 8

411-060-0060 Reimbursement for Initial Testing for Residents, Facility Staff and Associated Staff *(Temporary effective 7/15/2020 – 1/10/2021)* 10

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411-060-0000 Purpose *(Temporary effective 7/15/2020 – 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 initial testing, admission testing, 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 8/10/2020 – 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 include individuals providing environmental (housekeeping, laundry) or food services via a contractual relationship with the facility.

(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) “Contracted Testing Provider” means the Contractor(s) contracted by a Facility or Associated Staffing Provider to provide testing services for completing initial testing requirements in lieu of the state contracted testing provider(s).

(6) “Contracted Testing Rate” means the contracted rate paid by the State of Oregon, on a per test basis, to perform initial testing of all Residents, Facility Staff and Associated Staff at all Facilities in Oregon.

(7) “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).

(8) “Department” means the Department of Human Services.

(9) “Direct Testing Expenditure” means any fiscal expenditure made by a Facility or Associated Staffing Provider to cover the cost of COVID-19 testing not paid for by health insurance, by the Department of Human Services or other state agency, or by another payor. In the case of Facility Staff and Associated Staff testing, ‘Direct Testing Expenditure’ means the Facility or Associated Staffing Provider fiscal expenditure to cover the cost of Facility Staff and Associated Staff testing.

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

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

(12) “Hospital” means Hospital as defined in ORS 442.015.

(13) “Initial Testing” means the initial round of COVID-19 testing of all consenting Residents and all Facility and Associated Staff within the

timeframe, and following the protocols, established in these rules and related guidance.

(14) “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.

(15) “Legal Representative” means that term as defined in OAR 411-085-0005.

(16) “Local Public Health Authority” means Local Public Health Authority (LPHA) as defined in ORS 431.003.

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

(18) “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.

(19) “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.

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

(21) “State Testing Provider(s)” means the businesses contracted by the State of Oregon to provide testing services to Facilities that choose to use the state testing contractor to complete their Initial Testing. These contractors are separate and distinct entities from the Oregon State Public Health Laboratory.

(22) “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.

(23) “Testing” refers to a testing process to detect SARS-CoV-2 RNA 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 7/15/2020 – 1/10/2021)*

(1) A Facility shall implement quarantine measures for newly admitted or readmitted Residents for a period of 14 days. Quarantine measures include placement of Resident in a private room, 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.

(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 or Suspect COVID-19, as determined by the risk-based screening described in section (1) 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 (1) of this rule.

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

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 Initial Testing Requirements *(Temporary effective 8/10/2020 – 1/10/2021)*

(1) The State of Oregon will provide testing services for all initial testing of all Residents, Facility Staff and Associated Staff for all Facilities in Oregon.

(2) Facilities are required to cooperate with the State Testing Provider in performing the initial testing, unless they choose to use their own Contracted Testing Provider, subject to the reimbursement provisions contained in OAR 411-060-0060.

(3) Each Facility is required to communicate the testing and reporting requirements to those Associated Staffing Providers who provide Associated Staff for their Facility.

(4) For a Facility or Associated Staffing Provider electing to use its own Contracted Testing Provider, the Facility or Associated Staffing Provider must demonstrate that the Contracted Testing Provider uses testing practices as defined in OAR 411-060-0005, and gathers and reports to the Facility or Associated Staffing Provider all data necessary to meet the reporting requirements described in OAR 411-060-0050.

(5) Except as provided in this rule, all initial testing must be completed between the period June 1, 2020 and September 30, 2020, or as agreed upon by the State of Oregon and the State Testing Provider(s).

(6) Asymptomatic Residents, Facility Staff and Associated Staff that can be documented by the Facility as having been tested on or after June 1, 2020 do not need to be re-tested prior to September 30, 2020 to meet the initial testing requirements.

(7) Symptomatic Residents, Facility Staff and Associated Staff shall be tested pursuant to OAR 411-060-0030(1).

(8) The Department may prioritize certain Facilities and begin testing earlier or later in the testing period identified in section (6) of this rule, based on factors which may include, but are not limited to, the type or location of the Facility.

(9) A Resident or a Resident's legal representative may refuse a COVID-19 test pursuant to the consent process described in OAR 411-060-0040. A Facility may not impose any negative consequences on a Resident who refuses testing, but may implement appropriate infection control practices as necessary to protect the health and safety of other Residents in the Facility, including but not limited to isolation or quarantine strategies for symptomatic Residents and the use of personal protective equipment during Resident care.

(10) Initial testing of all Facility Staff and Associated Staff is mandatory, except for those who provide medical justification for declining testing from a licensed health care provider. If 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

411-060-0025 Ensuring Trauma-Informed and Culturally Responsive Testing *(Temporary effective 7/15/2020 – 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 or 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.

Stat. Auth.: ORS 441.612, 443.450
Stats. Implemented: ORS 441.612, 443.450

411-060-0028 Testing Associated Staff *(Temporary effective 7/15/2020 – 1/10/2021)*

(1) A Facility shall require all Associated Staffing Providers to arrange for initial testing of Associated Staff.

(2) A Facility shall require all Associated Staffing Providers and Contracted Testing Providers to submit test results to the Facility no later than 24 hours after receiving the test results.

(3) Initial testing of all Associated Staff is mandatory, except for those Associated Staff who provide medical justification for declining testing from a licensed health care provider. If Associated Staff refuses testing that is required under this rule, the 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

411-060-0030 Outbreak Prevention Testing *(Temporary effective 7/15/2020 – 1/10/2021)*

Effective upon the date that this rule is filed, a Facility must implement 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. A testing strategy should be developed with the Facility's Local Public Health Authority as new cases are identified.

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 Initial Testing *(Temporary effective 7/15/2020 – 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) An Associated Staffing Provider must obtain consent from staff prior to COVID-19 testing. The Associated Staffing Provider shall develop a protocol to obtain consent from 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 8/10/2020 – 1/10/2021)*

(1) By the last day of July, August, and September 2020, each Facility must submit to the Department on a form promulgated by the Department a summary report attesting to Facility Staff, Associated Staff and Resident testing completed since June 1, 2020, and listing remaining Facility Staff and Associated Staff to be tested and Residents to be offered testing. The summary attestations shall include:

(a) The number of Facility Staff tested to date;

(b) The number of Residents tested to date;

(c) The number of positive Facility Staff test results to date;

(d) The number of negative Facility Staff test results to date;

(e) The number of positive Resident test results to date;

(f) The number of negative Resident test results to date;

(g) The number of Facility Staff and Resident refusals to date;

(h) The number of Associated Staff tested to date;

(i) The number of positive Associated Staff test results to date;

(j) The number of negative Associated Staff test results to date;

(k) The number of Associated Staff refusals to date;

(l) The number of Associated Staff that still need to be tested prior to September 30, 2020;

(m) The number of Facility Staff that still need to be tested prior to September 30, 2020; and

(n) The number of Residents that still need to be offered testing prior to September 30, 2020.

(2) Facilities and Associated Staffing Providers utilizing a Contracted Testing Provider to complete initial testing will also need to ensure that race, ethnicity, language, and disability demographic data, are collected and reporting to the Department using data collection forms and protocols provided by the Department that align with the Race, Ethnicity, Language, and Disability Demographic Data Collection Standards established in OAR 943-070.

(3) A Facility must immediately report any positive test result for a Resident, Facility staff or contracted staff to the Local Public Health Authority and the Department.

(4) A Facility must retain detailed testing results for one year for review by the Department or other authorized entities.

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 Reimbursement for Initial Testing for Residents, Facility Staff and Associated Staff *(Temporary effective 7/15/2020 – 1/10/2021)*

(1) The Department shall cover expenses associated with initial testing.

(2) For Facilities and Associated Staffing Providers that use a Contracted Testing Provider for initial testing, the Department will reimburse Facility and Associated Staffing Provider up to the Contracted Testing Rate, for Direct Testing Expenditures.

(3) REQUEST FOR REIMBURSEMENT. A Facility or Associated Staffing Provider that chooses to use a Contracted Testing Provider under 411-060-0020 for Initial Testing must file a request for reimbursement of Direct Testing Expenditures with the Department that meets the following standards in order to be eligible for payment.

(a) A request for reimbursement must:

(A) Be submitted on a form provided by the Department.

(B) Include only Direct Testing Expenditures incurred for initial testing for Residents for COVID-19.

(C) Include only true and accurate information.

(b) If a Facility or Associated Staffing Provider knowingly, or with reason to know, files a request for reimbursement containing false information, the Department shall refer the Facility to the Oregon

Department of Justice and may take other enforcement action related to the Facility's license.

(4) Failure to provide required documentation as described in section (3) of this rule, shall result in a denial of reimbursement.

(5) Reimbursement payments from the Department under this rule are separate and distinct from the Department's bundled rates for Medicaid services.

(6) These rules do not require a facility to submit a claim for reimbursement with an insurer or other third-party payor, but if this claim is submitted, reimbursements will not be made for expenses that have been paid for by insurers of other third-party payors.

(7) All written requests for reimbursement are subject to audit at the discretion of the Department. The Facility shall be notified in writing of any identified overpayment and of any adjustments to the request for reimbursement. Payment of any amounts due to the Department must be made within 60 business days of the date of notification to the Facility.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070