

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

<u>Department of Human Services, Aging and People with Disabilities (APD)</u>	411
Agency and Division Name	Administrative Rules Chapter Number

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FILING CAPTION
(Must be 15 words or fewer)

APD: Implement COVID-19 vaccination and masking requirements in nursing facilities

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **February 18, 2022 at 5 p.m.**

TELECONFERENCE ONLY

	+1 (971) 277-2343		
01/25/2022	2:00 – 2:30 p.m.	Conference ID: 204753507#	Staff
Hearing Date	Time	Address	Hearings Officer

HEARING NOTES: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@dhsoha.state.or.us or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-086-0330

RULE SUMMARY:

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is proposing to permanently amend rules in chapter 411, division 086. The changes are summarized below:

411-086-0330 Infection Control and Universal Precautions: Amended to require nursing facilities to take specific steps concerning vaccinations, documentation of medical or religious exemptions, and masking to control the spread of COVID-19.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

COVID-19 is a deadly virus. Given the pandemic has continued to spread and impact so many citizens, Governor Brown has directed state agencies to take additional steps to control this pandemic. The fact that COVID-19 is particularly aggressive toward the elderly population, the Department is amending rules addressing long-term care settings, in an attempt to control the virus in these settings.

Fiscal and Economic Impact:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department will need to review facility infectious disease practices related to COVID-19 requirements and potentially impose

sanctions against any facility determined to have violated the required steps to control the spread of COVID-19.

Units of Local Government: The Department estimates there will be no additional costs to local government.

Consumers: The Department does not believe there will be additional costs to residents based on these rules.

Providers: The Department estimates there will be additional staff time involved in ensuring facility staff follow the specific steps to control the spread of COVID-19 (e.g., vaccination requirements, proof of vaccination, masking and applicable Oregon Occupational Safety and Health Division requirements.) There will also be costs associated with purchasing masking equipment and meeting vaccinations required by the new rule.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

All nursing facilities will be affected by this amended rule. This includes approximately 21 facilities that are defined as small businesses.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The costs associated with ensuring vaccinations and correctly masking staff could involve a fair amount of money. Costs will be associated with obtaining and disseminating vaccinations, purchasing all masking equipment, and costs involved with tracking vaccination and exemption paperwork.

Describe how small businesses were involved in the development of these rule(s)?

A small business, or representative of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee staffed by the Oregon Health Authority.

Documents Relied Upon, and where they are available:

Oregon Health Authority, Oregon Administrative Rule 333-019-1010

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1234>

Oregon Occupational Safety and Health Division, Oregon Administrative Rule 437-001-0744

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2051>

Was an Administrative Rule Advisory Committee consulted? Yes or No?

If not, why not?

No, a Rule Advisory Committee (RAC) was not convened. APD was granted an exception to the RAC process by the ODHS Administrative Rules Program Manager, because APD nursing facilities must comply with rules adopted by the Oregon Health Authority and the Oregon Occupational Safety and Health Division requirements. The Oregon Health Authority conducted a RAC as part of their rulemaking process. Industry advocates and other interested parties were notified of the proposed rules when the temporary rule was filed on September 30, 2021. The APD Rules Coordinator will send notification to stakeholders, legislators, and interested parties with the rulemaking hearing date and details, and that comments may be submitted through the end of the public comment period.

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

12/22/2021

Signature

Date

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

**CHAPTER 411
DIVISION 86**

**NURSING FACILITIES/LICENSING –
ADMINISTRATION AND SERVICES**

411-086-0330 Infection Control and Universal Precautions

(1) Infection Control:

(a) The Quality Assurance and Assessment Committee shall establish, maintain and enforce an infection control program, including universal precautions and isolation procedures, which assures protection of residents and staff from infections;

(b) The committee shall meet quarterly and as needed to review facility policies, procedures, and monitor staff performance relative to infection control. These meetings and the results thereof shall be documented;

(c) In reviewing and developing facility infection control policies and procedures, the committee shall consider all guidelines relative to infection control issued by the Division and by the Center for Disease Control, Atlanta, GA.

NOTE: Copies available through National Technical Information Service, 1-703-487-4650.

(d) Facilities must comply with masking requirements as prescribed in OAR 333-019-1011 or, if applicable, OAR 437-001-0744, to control the spread of COVID-19.

(e) By October 18, 2021, facilities must comply with vaccination requirements for COVID-19 as prescribed in OAR 333-019-1010.

Facilities must maintain proof of vaccination or documentation of a medical or religious exemption as required in OAR 333-019-1010(4).

(2) Simultaneous Duties. Personnel shall not be simultaneously responsible for duties which are incompatible with sanitation. This includes prohibiting personnel from being assigned to both resident care and work in the kitchen, laundry, or housekeeping. This also prohibits personnel from having responsibility for work in the kitchen combined with laundry, housekeeping or other such conflicting tasks.

(3) Communicable Disease. Each nursing facility shall maintain compliance with the Health Division rules for communicable disease, including rules relating to tuberculosis examinations for facility personnel and residents.

(4) Soiled Laundry. Soiled linen, toweling, clothing, and sickroom equipment shall not be sorted, laundered, rinsed, or stored in bathroom, kitchen, resident rooms or clean utility areas. Soiled linen, toweling and clothing shall be stored in a separate, ventilated room. Soiled clothing shall be washed separately from soiled linen. Soiled laundry must be transported and stored in a covered container impervious to moisture.

(5) Waste Disposal. All garbage, refuse, soiled surgical dressings and other similar wastes shall be disposed of in a manner that will not create a nuisance or a public health hazard and which is consistent with the State Health Division's rules for infectious waste (OAR 333, division 056). When community garbage collections and disposal service are not available, garbage and refuse shall be disposed of by some other equally effective and sanitary manner approved by the local health officer.

(6) Clean Linen Storage. All clean linen shall be stored in clean storage rooms or cupboards easily accessible to nursing personnel. Laundry carts used for storing clean linen shall be kept covered when not in use.

Stat. Auth.: ORS 410.070, 410.090, 441.055

Stats. Implemented: ORS 441.055, 441.615