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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 27-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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& LEGISLATIVE COUNSEL

FILING CAPTION: COVID-19: immunity, exclusions, public health, safety requirements for child-care providers and youth programs

EFFECTIVE DATE: 06/29/2021 THROUGH 12/25/2021

AGENCY APPROVED DATE: 06/29/2021

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NEED FOR THE RULE(S):

The Oregon Health Authority (Authority), Public Health Division is temporarily amending and adopting Oregon Administrative Rules in chapter 333, division 19 pertaining to immunity, exclusions, and public health and safety requirements for child care providers and youth programs related to COVID-19.

333-019-0010: In order to ensure proper preventive measures with regard to COVID-19, the Authority needs to amend this rule to clarify the definition for "evidence of immunity" to COVID-19 as well as defining what it means to be exposed to COVID-19. In addition, in child care and school settings, students or staff who are susceptible to COVID-19, can be excluded from those settings if they have been exposed.

333-019-1005: In order to ensure that child care programs and youth programs help to prevent and control the spread of COVID-19, the Authority needs to adopt these control measures in the absence of guidance implementing the Governor's Executive Orders which have been rescinded. COVID-19 is still spreading in the community and particularly for programs providing services for children who may not yet be able to be vaccinated, it is important to have these requirements for communicable disease plans, exclusion of those with COVID-19 and who are susceptible to COVID-19, and to require certain recordkeeping to assist with contact tracing, including notifying, as soon as possible, in coordination with the local public health authority (LPHA), all families and other individuals if there has been a case of COVID-19 on the premises.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds it vital that the COVID-19-specific definitions of "evidence of immunity" and "exposed" individuals are immediately amended to prevent further spread of the COVID-19 pandemic. Furthermore, the Authority finds that

failure to act promptly will result in serious prejudice to the public interest, the Authority, youth attending child care programs and youth programs, and staff for these programs. These rules need to be adopted promptly so that there is not a gap in requirements for these programs to prevent and control the spread of COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>

RULES:

333-019-0010, 333-019-1005

AMEND: 333-019-0010

RULE SUMMARY: OAR 333-019-0010 is a rule concerning disease related school, child care, and worksite restrictions for individuals who have certain diseases or who are susceptible to certain diseases. The rule is being amended to add certain definitions, such as what does being "exposed" to COVID-19 mean, what is evidence of immunity to COVID-19, and to require staff and students who are susceptible to COVID-19 to be excluded from child care and school settings. An individual is susceptible if they have no evidence of immunity.

CHANGES TO RULE:

333-019-0010

Disease Related School, Child Care, and Worksite Restrictions: Imposition of Restrictions ¶¶

(1) For purposes of this rule:¶¶

(a) "Evidence of immunity":¶¶

(A) To measles, mumps or rubella means meeting the criteria for presumptive evidence of immunity specified in the Morbidity and Mortality Weekly Report (MMWR) volume 64, issue RR04, issued June 14, 2013, available at www.cdc.gov/mmwr/preview/mmwrhtml/rr6204a1.htm;¶¶

(B) To diphtheria or pertussis means having documentation of having been immunized as recommended in the Morbidity and Mortality Weekly Report (MMWR) volume 67, issue 2, dated April 27, 2018, available at www.cdc.gov/mmwr/volumes/67/rr/rr6702a1.htm;¶¶

(C) To hepatitis A means having documentation of detectable serum antibodies directed against this virus; having laboratory documentation of having had the disease; or having documentation of having been immunized as recommended in the Morbidity and Mortality Weekly Report (MMWR) volume 55, issue RR07, issued May 19, 2006, available at www.cdc.gov/mmwr/preview/mmwrhtml/rr5507a1.htm;¶¶

(D) To hepatitis B means having documentation of having been immunized as recommended in the Morbidity and Mortality Weekly Report (MMWR) volume 67, issue 1, issued January 12, 2018, available at www.cdc.gov/mmwr/volumes/67/rr/rr6701a1.htm; or having documentation of ever having at least 10 milli-international units per milliliter of serum of antibodies to hepatitis B surface antigen.¶¶

~~(E)~~ To COVID-19 means:¶¶

(i) Having received a complete series of COVID-19 vaccine as recommended by the Centers for Disease Control and Prevention;¶¶

(ii) Having received a dose of COVID-19 vaccine after having documented SARS-CoV-2 infection; or¶¶

(iii) Having had laboratory-confirmed SARS-CoV-2 infection within the preceding 90 days.¶¶

(b) "Exposed" for purposes of being susceptible to COVID-19 means having been:¶¶

(A) Within six feet of a confirmed COVID-19 case or presumptive COVID-19 case for 15 minutes or more within one day; or¶¶

(B) In contact with the infectious secretions or clinical specimens of a confirmed COVID-19 case or presumptive

COVID-19 case.

(c) "Restrictable disease":

(A) As applied to food service facilities includes but is not limited to COVID-19, diphtheria, hepatitis A, hepatitis E, measles, Salmonella enterica serotype Typhi infection, Shiga-toxigenic Escherichia coli (STEC) infection, shigellosis, infectious tuberculosis, open or draining skin lesions infected with Staphylococcus aureus or Streptococcus pyogenes, any illness accompanied by diarrhea or vomiting.

(B) As applied to schools, children's facilities, and health care facilities, includes but is not limited to chickenpox, COVID-19, diphtheria, hepatitis A, hepatitis E, measles, mumps, pertussis, rubella, Salmonella enterica serotype Typhi infection, scabies, Shiga-toxigenic Escherichia coli (STEC) infection, shigellosis, and infectious tuberculosis and may include a communicable stage of hepatitis B infection in a child, who, in the opinion of the local health officer, poses an unusually high risk to other children (for example, exhibits uncontrollable biting or spitting).

(C) Includes any other communicable disease identified in an order issued by the Authority or a local public health administrator as posing a danger to the public's health.

(ed) "Susceptible":

(A) For a child, means lacking documentation of immunization required under OAR 333-050-0050.

(B) For an employee of a school or child care facility, means lacking evidence of immunity to the disease.

(2) To protect the public health, an individual who attends or works at a school or child care facility, or who works at a health care facility or food service facility may not attend or work at a school or facility while in a communicable stage of a restrictable disease, unless otherwise authorized to do so under these rules.

(3) A school administrator shall exclude a susceptible child who attends a school or children's facility if the administrator has reason to suspect that the child has been exposed to measles, mumps, rubella, diphtheria, pertussis, hepatitis A, ~~or~~ hepatitis B, or COVID-19, unless the local health officer determines, in accordance with section (6) of this rule, that exclusion is not necessary to protect the public's health.

(4) A school administrator shall exclude an susceptible employee of a school or children's facility if the administrator has reason to suspect that the employee has been exposed to measles, mumps, rubella, diphtheria, pertussis, hepatitis A, ~~or~~ hepatitis B, or COVID-19, unless the local health officer determines, in accordance with section (6) of this rule, that exclusion is not necessary to protect the public's health.

(5) A school administrator may request that the local health officer determine whether an exclusion under section (3) or (4) of this rule is necessary.

(6) If a local health officer receives a request from a school administrator to determine whether an exclusion is appropriate under this rule, the local health officer, in consultation as needed with the Authority, may consider the following non-exclusive factors in making the determination:

(a) The severity of the disease;

(b) The means of transmission of the disease;

(c) The intensity of the child's or employee's exposure; and

(d) The exposed child's or employee's susceptibility to the disease.

(7) The length of exclusion under this rule is one incubation period following the child or employee's most recent exposure to the disease.

(8) A susceptible child may be excluded under this rule notwithstanding any claim of exemption under ORS 433.267(1).

(9) The infection control committee at each health care facility shall adopt policies to restrict employees with restrictable diseases from work in accordance with recognized principles of infection control.

(10) Nothing in these rules prohibits:

(a) A school or children's facility from adopting more stringent exclusion standards under ORS 433.284.

(b) A health care facility or food service facility from adopting additional or more stringent rules for exclusion of employees.

Statutory/Other Authority: ORS 624.005, ORS 413.042, 431.110, 433.004, 433.255, 433.260, 433.284, 433.329, 433.332, 616.750

Statutes/Other Implemented: ORS 433.255, 433.260, 433.407, 433.411, 433.419

ADOPT: 333-019-1005

RULE SUMMARY: OAR 333-019-1005 sets out public health and safety requirements for child care providers and youth programs and defines terms used in this rule.

CHANGES TO RULE:

333-019-1005

Public Health and Safety Requirements for Child Care Providers and Youth Programs

(1) For purposes of this rule, the following definitions apply: ¶

- (a) "Child care providers" includes but is not limited to certified child care, child care programs operated by political subdivisions or governmental agencies caring for children under 13 years of age, unlicensed temporary emergency child care, recorded programs, and registered family providers. ¶
 - (b) "Certified child care" means programs with an active certification as defined in ORS 329A.250(2). ¶
 - (c) "Day camp" means a defined setting or facility that youth (K-12) attend for an established period of time, leaving at the end of the program day, which may or may not be licensed under ORS chapter 446. ¶
 - (d) "Enrichment programs" mean programs that provide care for school-age children (K-12), primarily for a single enrichment activity for eight hours or less a week. ¶
 - (e) "Exposed" has the meaning given that term in OAR 333-019-0010. ¶
 - (f) "Fever" means a temperature of 100.4 degrees Fahrenheit or higher. ¶
 - (g) "Local public health authority" or "LPHA" has the meaning given that term in ORS 431.003. ¶
 - (h) "Overnight camp" means a youth program with youth staying overnight at accommodations on site, which may or may not be licensed under ORS chapter 446. ¶
 - (i) "Recorded programs" means programs with an active record issued pursuant to ORS 329A.255 or 329A.257. ¶
 - (j) "Registered family providers" means programs with an active registration as defined in ORS 329A.250(11). ¶
 - (k) "Susceptible" has the meaning given that term in OAR 333-019-0010. ¶
 - (l) "Unlicensed temporary emergency child care" means programs approved to provide emergency child care pursuant to Executive Order 20-19 and who remain in operation and unlicensed pursuant to Executive Order 21-15. ¶
 - (m) "Youth programs" means: ¶
 - (A) Day camps: ¶
 - (B) Summer camps: ¶
 - (C) Overnight camps: ¶
 - (D) Enrichment programs serving children 0 to 18 years of age. ¶
 - (E) Programs operated by political subdivisions or governmental entities that offer programming only for middle school-age children ages 11 years and older: ¶
 - (F) Any enrolled gathering of children from primarily ages 13 to 18 years for a defined period of daytime hours with teen or adult supervision. These gatherings can include children as young as age 11, provided they are part of a mixed-age cohort. ¶
- (2) Child care providers and youth programs must: ¶
- (a) Develop and follow a written communicable disease management plan for preventing and controlling communicable disease, including COVID-19, and provide the plan to the Oregon Health Authority or local public health authority, that includes: ¶
 - (A) A protocol to notify the LPHA of any confirmed COVID-19 cases among children or staff. ¶
 - (B) A protocol for exclusion of individuals with COVID-19 or susceptible to COVID-19 consistent with OAR 333-019-0010. ¶
 - (C) A protocol to end program activities if cases warrant or if recommended by the Oregon Health Authority or LPHA. ¶
 - (D) A process for keeping daily logs and record-keeping to assist the Oregon Health Authority or LPHA contact tracing, consistent with subsection (2)(h) of this rule. ¶
 - (E) A designated COVID-19 Point of Contact to facilitate communication, maintain healthy operations, and

respond to COVID-19 questions from state or local public health authorities, state or local regulatory agencies, families and staff. ¶

(b) Provide to all staff and families the contact information for the COVID-19 Point of Contact.¶

(c) Exclude from the program any child or staff member who has COVID-19, regardless of vaccination status, for at least 10 days after onset of illness or, if the individual is asymptomatic, at least 10 days after they tested positive, or as otherwise directed by the LPHA or health care provider. If after 10 days the individual still has a fever, they may not return until 24 hours after the fever is gone, without use of fever-reducing medication. ¶

(d) Exclude from the program any child or staff member who is susceptible and who is exposed to COVID-19. Exclusion for individuals who are susceptible must be for 14 days after the last exposure to a person with COVID-19 unless the LPHA authorizes a shortened period for individuals without symptoms. ¶

(e) Inform all families, staff, and individuals who enter the child care or youth program that they should not enter if they are unvaccinated and have been exposed to a COVID-19 case.¶

(f) Notify the LPHA immediately if anyone who has been on the premises of the program is diagnosed with COVID-19. ¶

(g) Notify as soon as possible, in coordination with the LPHA, all families and other individuals if there has been a case of COVID-19 on the premises. ¶

(h) Log the following information on a daily basis, to assist with contact tracing, and provide the information to the Oregon Health Authority or LPHA, upon request: ¶

(A) Name and phone number of adult completing drop-off and pick-up.¶

(B) Name of child attending program and arrival and departure date and times.¶

(C) Name and phone number of any staff or person coming in contact with program children, and their arrival and departure date and times.¶

(D) If transportation is provided by the program, name and phone number of all riders.

Statutory/Other Authority: ORS 413.042, 431.110, 433.004

Statutes/Other Implemented: ORS 433.004