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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 37-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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& LEGISLATIVE COUNSEL

FILING CAPTION: Control of COVID-19 in Healthcare Settings

EFFECTIVE DATE: 08/20/2021 THROUGH 02/15/2022

AGENCY APPROVED DATE: 08/20/2021

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NEED FOR THE RULE(S):

COVID-19 infection is caused by a virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This virus undergoes frequent mutations as it replicates, often resulting in variants that either are more transmissible or cause more severe disease. Delta is the variant that makes up more than 90% of sequenced specimens in Oregon in summer 2021. The Delta variant is approximately twice as infectious as the wild type variant. People infected with the Delta variant have higher viral loads and a shorter incubation period. Spread from people who are infected with Delta tends to be greater than in people infected with the wild type virus, whether they are vaccinated or not. Proper use of a mask, in addition to being vaccinated, is therefore an important action to prevent spread of Delta. Health care providers have contact with multiple patients over the course of a day and week, including providers that provide care for people in their homes. Individuals cared for in these settings are more likely than the general public to have conditions that put them at risk for complications due to COVID-19. Proper use of masks by health care providers in these settings provides protection to the health care provider as well as to the people they care for, as the masks act as source control if the provider has COVID-19.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and healthcare personnel and patients seeking and relying on health care. These rules need to be adopted promptly so that the state can continue to prevent and slow the spread of COVID-19, for the reasons specified above. Requiring masking for healthcare personnel in healthcare settings is crucial to the effort in controlling COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

CDC Infection Control Guidance for Healthcare Personnel: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.

ADOPT: 333-019-1011

RULE TITLE: Masking Requirements to Control COVID-19 in Health Care Settings

RULE SUMMARY: OAR 333-019-1011 helps to prevent and slow the spread of COVID-19 by requiring health care personnel in health care settings to wear a mask or face covering, and patients, residents, clients and visitors in most healthcare settings. The rule is intended to apply to any settings not covered by Oregon Occupational Health and Safety Division (Oregon OSHA) rule, OAR 437-001-0744, or when more restrictive than Oregon OSHA requirements. To the extent any requirement in this rule conflicts with the statewide indoor masking rule in OAR 333-019-1025 and is more restrictive, this rule applies.

The rule does not apply to certain healthcare settings within the jurisdiction of the Oregon Department of Human Services, specifically:

- (a) Adult foster homes licensed by the Oregon Department of Human Services (ODHS) under ORS 443.705 to 443.825.
- (b) Developmental disability child foster homes certified by ODHS under 443.830 to 443.835.
- (c) Residential training homes and residential training facilities licensed by ODHS, as defined in ORS 443.400.

Healthcare personnel includes individuals, paid and unpaid working, learning, studying, assisting, observing, or volunteering in a healthcare setting who have the potential for direct or indirect exposure to patients or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel. It does not include parents, guardians or foster parents providing care to their children or foster children in the home.

Health care setting includes any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, and residential facilities, behavioral health residential facilities, home health care, hospice, pharmacies, in-home care, vehicles or temporary sites where health care is delivered (e.g., mobile clinics, ambulances, secure transportation, and street based medicine), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, school-based health centers, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.

A person responsible for a health care settings and healthcare personnel must adopt and follow policies requiring healthcare personnel to wear a mask or face covering while in a healthcare setting, unless alone in a closed room and that require patients, clients and visitors to wear a mask or face covering, with limited exceptions.

Masks or face coverings are not required when an individual:

- (a) Is under five (5) years of age.
- (b) Is sleeping.
- (c) Is actively eating or drinking.
- (d) Is engaged in an activity or receiving health care that makes wearing a face covering or face shield not feasible, such as receiving a physical examination of the throat or having dental work.

- (e) Is alone in a closed room.
- (f) Is a patient or resident in their designated room with their door closed.

A person responsible for a healthcare setting or healthcare personnel who violates the rule may be subject to civil penalties of \$500 per day per violation.

RULE TEXT:

(1)(a) COVID-19 infection is caused by a virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This virus undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible, cause more severe disease or have other features of public health concern such as decreased vaccine effectiveness. In July 2021, the B.1.617.2 (Delta) variant became the dominant variant in Oregon and nationwide.

(b) The Delta variant is approximately two to three times more transmissible than early wild-type COVID-19 variants. People infected with the Delta variant have higher viral loads and a shorter incubation period. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively. Masking in addition to vaccination is, therefore, critical to slowing the spread of Delta.

(c) Health care providers have contact with multiple patients over the course of a typical day, including providers who provide care for people in their homes. Individuals cared for by health care providers are more likely than the general public to have conditions that put them at risk for complications of COVID-19. Consistent masking by health care providers in these settings provides protection to the health care provider as well as to the people they care for. Masks act as source control if the provider has COVID-19 and provide a protective effect if a patient has COVID-19.

(2) This rule applies, except as described in section (3) of this rule:

(a) To any health care setting where health care personnel are providing care or services and the Oregon Occupational Health and Safety Division (Oregon OSHA) rule, OAR 437-001-0744, does not apply because the setting is not a place of employment subject to Oregon OSHA's jurisdiction.

(b) To the extent it contains requirements that are more restrictive or are in addition to Oregon OSHA's rule, OAR 437-001-0744.

(3) The Oregon Department of Human Services has established mask and face covering requirements for health care providers and visitors in settings that it licenses or certifies. Therefore, this rule does not apply to:

(a) Adult foster homes licensed by the Oregon Department of Human Services (ODHS) under ORS 443.705 to 443.825.

(b) Developmental disability child foster homes certified by ODHS under ORS 443.830 to 443.835.

(c) Residential training homes and residential training facilities licensed by ODHS, as defined in ORS 443.400.

(4) To the extent there is a conflict between this rule and OAR 333-019-1025, a more restrictive requirement in this rule applies.

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

(a) "Face covering" means a cloth, paper or disposable face covering that covers the nose and mouth and includes a medical-grade face mask.

(b) "Face mask" means a medical-grade face mask.

(c) "Health care personnel":

(A) Means individuals, paid and unpaid working, learning, studying, assisting, observing, or volunteering in a health care setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel.

(B) Does not mean parents, guardians or foster parents providing care to their children or foster children in the home.

(d) "Health care setting" means any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, and residential facilities, behavioral health residential facilities, home health care, hospice, pharmacies, in-home care, vehicles or temporary sites where health care is delivered (for example, mobile clinics, ambulances, secure transportation, and street based medicine), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, school-based health centers, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.

(e) "Responsible party":

(A) Includes a person who has control or responsibility for the activities of health care personnel in a health care setting.

(B) Includes a person who has control or responsibility for the activities within a health care setting.

(C) Does not include an individual who hires, employs, or otherwise receives care from health care personnel in their own home.

(6) A responsible party must:

(a) Develop and follow a policy that requires all patients, residents, clients and visitors to comply with the applicable provisions of this rule.

(b) Develop and follow a policy that if a patient, resident or client cannot tolerate any form of face covering due to a medical condition, strict physical distancing of at least six feet be observed from other non-health care personnel to the greatest extent possible.

(c) Require health care personnel to wear a face mask when entering, exiting and while they are in the health care setting in accordance with the requirements of this rule.

(7) Health care personnel must wear a face covering when entering, exiting and while they are in a health care setting except as described in section (8) of this rule.

(8) A face covering is not required when the individual:

(a) Is under five years of age.

(b) Is sleeping.

(c) Is actively eating or drinking.

(d) Is engaged in an activity or receiving health care that makes wearing a face covering or face shield not feasible, such as receiving a physical examination of the throat or having dental work.

(e) Is alone in a closed room.

(f) Is a patient or resident in their designated room with their door closed.

(9) Nothing in this rule is intended to prohibit an employer of healthcare personnel from making reasonable accommodations in order to comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, ORS 659.850 or applicable provisions of ORS chapter 659A.

(10) Responsible parties and health care personnel who violate any provision of this rule may be subject to a civil penalty of \$500 per day per violation.

(11) A responsible party licensed by the Authority under ORS chapter 441 or 443 is subject to a licensing action under ORS 441.030, ORS 443.045, ORS 443.325, ORS 443.864, ORS 443.869 and any rules adopted pursuant to any of those authorities, for a violation of this rule.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431.110, ORS 431A.010, ORS 433.004, ORS 441.025, ORS 443.085, ORS 443.340, ORS 443.860

STATUTES/OTHER IMPLEMENTED: ORS 431.110, ORS 431A.010, ORS 433.004, ORS 441.025, ORS 443.085, ORS 443.860, ORS 441.030, ORS 443.045, ORS 443.325, ORS 443.864, ORS 443.869