

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 331
OREGON HEALTH AUTHORITY
HEALTH LICENSING OFFICE

FILED

04/28/2022 7:20 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Unrestricted access to a water source in body art facilities

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/28/2022 12:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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1430 Tandem Ave. NE Suite 180
Salem, OR 97301

Filed By:
Anne Thompson
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/17/2022

TIME: 9:00 AM - 11:00 AM

OFFICER: Samie Patnode

ADDRESS: Health Licensing Office Board Room

1430 Tandem Ave. NE Suite 180

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Persons interested in testifying at the hearing may attend in person or via telephone conference call.

Call-in number: 503-934-3605

Participant code: 791607

NEED FOR THE RULE(S)

The rule is needed to clarify that all body art facilities, where individuals licensed to perform earlobe piercing services, have unrestricted access to hot and cold running water. Currently body art facilities, where standard and specialty body piercing and tattooing services are performed, are required to have unrestricted access to hot and cold running water. Electrologists are currently allowed to use a restroom as a hot and cold-water source which must be disinfected between each use. In 2018 administrative rules were filed requiring new body are facilities, where earlobe piercing was being performed, have unrestricted access to a hot and cold running water source. After review of the rulemaking information from 2018 it was determined that all body art facilities, where earlobe piercing is performed, have unrestricted access to hot and cold running water.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes and Oregon Administrative Rules related to earlobe piercing and the Health Licensing Office (HLO). 2018 and 2019 administrative rulemaking documents.

All documents are available at the HLO, 1430 Tandem Ave Suite 180, Salem, OR 97301-1287. To obtain information or copies of information please contact Samie Patnode, Policy Analyst, at 503-509-5592 or by email at samie.patnode@dhsosha.state.or.us, or Monday through Friday between 7 a.m. and 2:30 p.m.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

ORS 690.390 mandates that all practitioners in a field of practice have a hot and cold running water source. This rule requires that individuals licensed in earlobe piercing work in a body art facility with unrestricted access to hot and cold running water similar to individuals licensed in standard body piercing. This rule will be relevant to all body art facilities, with exception of individuals licensed in electrology, no matter the race, gender, or ethnic background. There may be an effect on persons of color, genders, or ethnic backgrounds if they are required to purchase a hot and cold running water source, such as a portable sink or retrofit a facility. If a corporation who licenses body art facilities where earlobe piercing services are provided is considered a community, they may also be required to purchase a hot and cold running water source, such as a portable sink or retrofit a facility.

Below is the data available in the HLO database regarding individuals licensed in earlobe piercing which includes ethnicity and gender. It is important to note that licensees are not required to provide this information.

Ethnicity:

- American Indian or Alaska Native - original peoples of North, Central, South America: 1
- Asian - Far East, Southeast Asia, or Indian subcontinent for example Cambodia, China, India, Japan: 3
- Black or African American - origins in any of the black racial groups of Africa: 1
- Hispanic or Latino - Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture: 10
- Native Hawaiian or other Pacific Islander - Hawaii, Guam, Samoa or other Pacific Islands: 1
- Two or more races (Non-Hispanic or Latino) - persons who identify with two or more racial categories: 2
- White - original peoples of Europe, North Africa or the Middle East: 41
- Unassigned or licensees who did not report ethnicity: 41

Grand Total: 102

Gender:

- Female: 92
- Male: 2

Grand Total: 102

FISCAL AND ECONOMIC IMPACT:

There may be a significant fiscal impact to individuals licensed to perform earlobe piercing and body art facility owners where only earlobe piercing is provided.

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). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public:

If body art facility owners who are licensed to perform earlobe piercing are considered members of the public then there may be a fiscal impact if they need to purchase a water source such as a portable sink or retrofit the facility. There appears to be no fiscal impact on state agencies or units of local government.

Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Currently there are 722 body art facilities in Oregon. Body art facilities where standard and specialty body piercing, and tattooing are required to have unrestricted access to hot and cold-running water. Body art facilities where only earlobe piercing is performed are not currently required to have unrestricted access to hot and cold-running water. The number of facilities that only perform earlobe piercing cannot be determined as all fields of practice (earlobe, standard and specialty body piercing, tattooing and electrology) may be performed under one body art facility license. Currently the HLO does not track which fields of practice are performed in each body art facility.

b. Projected reporting:

There is not estimated to be any increased projected reporting with this rule change.

c. Equipment, supplies, labor and increased administration for compliance:

It is being proposed that body art facilities, where only earlobe piercing services are provided, have unrestricted access to hot and cold running water within the body art facility which must be separate from the restroom. This may be a portable sink with hot and cold running water or plumbing in a hot and cold-water source.

Based on an internet search it appears that licensed plumbers could cost from &45 to &150 per hour plus the cost of supplies which is an unknown cost.

Based on an internet search it appears that portable sinks have a wide cost range from \$100 to \$4000 depending on the type and sophistication of the sink.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several members of the Board of Electrology and Body Art Practitioners are small business owners and provided input regarding the proposed rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. When rulemaking was done in 2018-19 a Rules Advisory Committee (RAC) met and determined that all body art facilities, where earlobe piercing is performed, must have unrestricted access to hot and cold running water. Requiring unrestricted access to hot and cold running water aligns with safety and infection control standards to protect the public.

AMEND: 331-900-0097

RULE SUMMARY: Require body art facilities, where earlobe piercing services are performed, have unrestricted access to hot and cold running water.

CHANGES TO RULE:

331-900-0097

General Standards for Earlobe Piercing ¶

- (1) The cleanliness of any common area in a facility is the responsibility of each license holder. All license holders may be cited for violations found in the common area.¶
- (2) An earlobe piercing license holder licensed to perform earlobe piercing services or a licensed facility owner must:¶
 - (a) Use and maintain appropriate equipment and instruments for providing services in the facility;¶
 - (b) Use all equipment, instruments and supplies in a manner described in the manufacturer's instructions which is consistent with the manufacturer's intended use of the device by the FDA;¶
 - (c) Use equipment and instruments that are not prohibited by the Office or the FDA for use by earlobe piercing license holders;¶
 - (d) Ensure a high-level disinfectant is used in accordance with manufacturer's instructions to disinfect surfaces where services are performed;¶
 - (e) Ensure chemicals are stored in labeled, closed containers;¶
 - (f) Ensure that new single-use disposable paper products are used for each client. Use of towels and linens are prohibited;¶
 - (g) Ensure lavatories located within the facility are kept clean and in good working order at all times. Air blowers within lavatories can be substituted for disposable hand towels;¶
 - (h) Ensure pets or other animals not be permitted in the facility. This prohibition does not apply to service animals recognized by the American with Disabilities Act or to fish in aquariums or nonpoisonous reptiles in terrariums;¶
 - (i) Ensure all disinfecting solutions or agents be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business;¶
 - (j) Ensure all waste or garbage is disposed of in a covered container with a garbage liner;¶
 - (k) Ensure all waste which contains blood or other potentially infectious materials be enclosed and secured in a glove or bag then disposed of in a covered container with a garbage liner immediately following the service;¶
 - (l) Ensure sharp objects that come in contact with blood or other potentially infectious materials be disposed of in a sharps container;¶
 - (m) Ensure biohazard labels or red biohazard bags are available on the facility premises;¶
 - (n) Adhere to all Centers for Disease Control Standards;¶
 - (o) Ensure all surfaces in procedure area are nonporous and disinfected with a high level disinfectant;¶
- (3) An earlobe piercing licensee must wear eye goggles, shields or a mask if spattering is possible while providing services.¶
- (4) All substances used on clients must be single use to prevent contamination of the unused portion.¶
- (5) Single use tubes or containers and applicators shall be discarded following the service.¶
- (6) As of ~~January 1~~ June 30, 2019, all new facilities licensed under OAR Chapter 331, Division 925 must have unrestricted access to a sink with hot and cold running water within the facility premises but separate from a restroom. This may include, but is not limited to, portable handwashing stations or sinks. This rule does not apply to electrologists licensed under OAR Chapter 331 Division 910.¶
- (7) Cross contamination from touch or air particulates in any procedure area that comes in direct contact with client is prohibited.¶
- (8) All tools and instruments used to mark earlobe piercing locations must be disposed of after use on a client.

Statutory/Other Authority: 676.615, 690.390

Statutes/Other Implemented: 690.390