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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**PH 21-2020**  
CHAPTER 333  
OREGON HEALTH AUTHORITY  
PUBLIC HEALTH DIVISION

**FILED**  
04/10/2020 9:52 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Waiver of OARs Based on Federal Acute Care Waivers or Other Emergency Orders or Proclamations

EFFECTIVE DATE: 04/10/2020 THROUGH 10/06/2020

AGENCY APPROVED DATE: 04/10/2020

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**NEED FOR THE RULE(S):**

The Oregon Health Authority (Authority) is responding to an outbreak of the emerging disease called "COVID-19" caused by a novel strain of coronavirus named "SARS-CoV-2" which was detected in China in December 2019 and in the United States, January 20, 2020. As of April 6, 2020, there are 1,132 cases in Oregon with the number of cases growing daily. In response to the U.S. Department of Health and Human Services' Secretary's public health emergency declaration on January 31, 2020 and the President's declared emergency on March 13, 2020, the federal Centers for Medicare and Medicaid (CMS) have issued waivers specific to CMS requirements.

This temporary rule will give flexibility to licensed health care facilities, home health agencies, hospice, ambulance service agencies, EMS providers and hemodialysis technicians to provide appropriate and necessary services during the COVID-19 declared emergency that is in alignment with waivers issued by CMS and other emergency orders or declarations issued by the Governor.

**JUSTIFICATION OF TEMPORARY FILING:**

The Authority finds that failure to act promptly will result in serious prejudice to the public interest; the Authority; and patients who need services from licensed health care facilities, home health, hospice, EMS providers, and hemodialysis technicians as a result of COVID-19 infections or other emergency and non-emergency services. Failing to adopt this rule will lead to conflicts with federal waivers issued by CMS and other emergency orders or proclamations.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Centers for Medicare and Medicaid Services (CMS):

Guidance for Infection Control and Prevention of COVID-19 in Hospitals, Psychiatric Hospitals, and Critical Access Hospitals (CA

Considerations for Patient Triage, Placement, Limits to Visitation and Availability of 1135 waivers.

<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/g-control-and-prevention-covid-19-hospitals-psychiatric-hospitals-and-critical>

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

Letter from CMS to Oregon Association of Hospital and Health Systems regarding Section 1135 flexibilities

<https://www.oregon.gov/oha/HSD/Medicaid->

[Policy/1135%20Waiver/CMS%20Approval%20of%20OAHHS%20Request%20for%201135%20Waiver%20Flexibilities,%20Iss](https://www.oregon.gov/oha/HSD/Medicaid-Policy/1135%20Waiver/CMS%20Approval%20of%20OAHHS%20Request%20for%201135%20Waiver%20Flexibilities,%20Iss)

Letter from CMS to Oregon Medicaid Director regarding Section 1135 flexibilities

<https://www.oregon.gov/oha/HSD/Medicaid->

[Policy/1135%20Waiver/CMS%20Approval%20of%20Oregon%20Medicaid%20Request%20for%201135%20Waiver%20Flexib](https://www.oregon.gov/oha/HSD/Medicaid-Policy/1135%20Waiver/CMS%20Approval%20of%20Oregon%20Medicaid%20Request%20for%201135%20Waiver%20Flexib)  
[26-2020.pdf](https://www.oregon.gov/oha/HSD/Medicaid-Policy/1135%20Waiver/CMS%20Approval%20of%20Oregon%20Medicaid%20Request%20for%201135%20Waiver%20Flexib)

Declaration of Emergency Due to Coronavirus (COVID-19) Outbreak in Oregon (Executive Order No. 20-03)

[https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_20-03.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf)

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ADOPT: 333-003-1050

RULE TITLE: Declared Emergency: Waiver of Rules Applicable to Acute Care Health Care Facilities, Outpatient Renal Dialysis, Home Health Care, Medical Services, and Hemodialysis Due to Federal 1135 Waivers Approved Under the Federal COVID-19 Declaration of Emergency

RULE SUMMARY: Temporary adoption of OAR 333-003-1050 will give flexibility to licensed health care facilities, home health agencies, EMS providers and hemodialysis technicians to provide appropriate and necessary services during the COVID-19 declaration of emergency with waivers issued by the federal Centers for Medicare and Medicaid Services (CMS) and other emergency orders or declarations.

RULE TEXT:

(1) This rule applies to:

- (a) Hospitals;
- (b) Ambulatory surgical centers;
- (c) Special inpatient care facilities;
- (d) Outpatient renal dialysis facilities;
- (e) Hospice;
- (f) Home health agencies;
- (g) Emergency medical services providers;
- (h) Ambulance service providers; and
- (i) Hemodialysis technicians.

(2) Under the authority of the President's declaration of a national emergency related to COVID-19, the Centers for Medicare and Medicaid Services may issue temporary modifications and waivers for Oregon (and other states) under Section 1135 of the Social Security Act.

(3) For purposes of this rule, "COVID-19 Emergency Authorities" means the following in effect on the date this rule is adopted:

- (a) CMS waivers that apply nationwide, CMS waivers that have been approved for Oregon, and CMS waivers that have been approved for Oregon, of the type listed in section (1) of this rule.
- (b) All emergency orders or declarations relating to COVID-19 issued by the Governor of the State of Oregon.

- (4) The purpose of this rule is to ensure that the entities listed in section (1) of this rule have the flexibility to provide appropriate COVID-19 declared emergencies, in accordance with the COVID-19 Emergency Authorities with the goal of reducing adverse impacts.
- (5) In order to accomplish the purposes identified in section (4) of this rule, and consistent with the COVID-19 Emergency Authority, divisions 027, 035, 071, 076, 250, 255, 265, 275, 500 through 535, and 700 that are inconsistent with the COVID-19 Emergency Authority, all entities and facilities covered by the waivers.
- (6) The Oregon Health Authority (Authority), as time and resources permit, shall issue guidance concerning the rules affected by this rule.
- (7) The Authority shall post any guidance issued under this rule at:  
<https://www.oregon.gov/oha/PH/ProviderPartnerResources/HealthcareProvidersFacilities/HealthcareHealthCareRegulationQ>
- (8) If any of the emergency authorities described in section (2) of this rule are rescinded or terminated by CMS or the Governor, a new rule, consistent with this rule, is back in effect.
- (9) This rule will be suspended when the Governor terminates the declaration of emergency issued on March 8, 2020.

The CMS waivers including the following may be found at:

March 13, 2020 blanket waiver: <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fa>

March 25, 2020 waiver: <https://govstatus.egov.com/OR-OHA-COVID-19>.

March 26, 2020 provider waiver: <https://static1.squarespace.com/static/5e712c5039792019ff647a40/t/5e7ed359d5037c115/Oregon+Waiver+Approval+3-26-2020.pdf>.

On or before March 30, 2020, CMS Blanket Provider Waivers: <https://www.cms.gov/about-cms/emergency-preparedness-responses/emergencies/coronavirus-waivers>.

Oregon Health Authority requested waivers: <https://www.oregon.gov/oha/HSD/Medicaid-Policy/Pages/COVID-19.aspx>

The Governor's Executive Orders can be found at: <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>

STATUTORY/OTHER AUTHORITY: ORS 413.014, ORS 441.025, 441.086, 443.085, 443.860, 682.017, 688.635

STATUTES/OTHER IMPLEMENTED: ORS 441.025, 441.086, 443.085, 443.860, 682.017, 688.635, 688.650