

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Authority, Public Health Division

333

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

Temporarily adopting OAR 333-003-1050 to allow the Authority during the declared emergency relating to COVID-19 to suspend administrative rules that are inconsistent with CMS waivers or other emergency orders issued by the Governor.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

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

Statutory Authority: ORS 413.014, 441.025, 441.086, 443.085, 443.860, 682.017, 688.635 & 688.650

Other Authority:

Stats. Implemented: ORS 441.025, 441.086, 443.085, 443.860, 682.017, 688.635 & 688.650

Need for the Temporary 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.

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 (CAHs): FAQs, Considerations for Patient Triage, Placement, Limits to Visitation and Availability of 1135 waivers.

<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfopolicy-and-memos-states-and/guidance-infection-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,%20Issued%203-26-2020.pdf>

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%20Flexibilities,%20Issued%203-26-2020.pdf>

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)

Justification of Temporary Rule(s): (1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s); (2) who would suffer these consequences; (3) why or how failure to immediately take rulemaking action would cause these consequences; (4) how the temporary action will avoid or mitigate those consequences.

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.