

DATE: January 31, 2022

TO: Hearing Attendees and Commenters –  
Oregon Administrative Rules chapter 333, division 19

- COVID-19 Vaccination Requirement for Healthcare Providers and Healthcare Staff in Healthcare Settings
- Masking Requirements to Control COVID-19 in Health Care Settings

FROM: Brittany Hall, Hearing Officer

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public Comment Period

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### Hearing Officer Report

**Date of hearing:** January 24, 2022

**Purpose of hearing and public comment period:** To receive testimony and comments regarding the Oregon Health Authority's (OHA) proposed adoption of OAR 333-019-1010 and 333-019-1011 related mask requirements to control COVID-19 in healthcare settings, and vaccination requirements for healthcare providers and staff in healthcare settings, respectively.

In August 2021, OHA issued temporary administrative rules 333-019-1010 and 333-019-1011 in order to control the spread of COVID-19 and reduce hospitalizations in Oregon associated with COVID-19. Wearing face masks and obtaining COVID-19 vaccination are two important strategies that play a role in controlling COVID-19. Under [Oregon Revised Statute 183.335](#), temporary rules cannot be extended past six months. Because under Oregon law, temporary rules cannot be extended, OHA has proposed to adopt these rules as permanent until they are no longer needed as strategies to control spread of disease and maintain acute healthcare capacity.

**Hearing Officer:** Brittany Hall

**Comments and Testimony received:** In [OHA's Notice of Proposed Rulemaking](#), OHA announced that individuals could submit written comments by sending them to OHA's

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designated email address for receiving such comments, or by fax or mail. In addition, OHA took public testimony at the public hearing that was held on January 24, 2022. OHA received oral testimony from 55 individuals at the public hearing and received many written public comments. OHA staff have considered the written comments and public testimony received prior to the deadline on January 24, 2022, at 5:00 p.m. OHA thanks all Oregonians who provided public comment and appreciates the varied input they have provided to the rulemaking process.

Themes of the testimony and written comments, in no particular order, are summarized below.

- OHA heard concerns from commenters that Oregon is not following the lead of other states in that Oregon is one of few states with a mask requirement.

**Agency response:** *During the course of the COVID-19 pandemic, Oregon has had better outcomes than most other states in the country. Oregon has maintained lower case rates and death rates from COVID-19 than most states and has aligned with other western states on COVID-19 policies. Oregon has seen high levels of compliance with wearing of masks in accordance with state requirements. Oregonians have also outpaced many other states in obtaining vaccination and as a result has been able to maintain hospital capacity to ensure Oregonians have access to emergency care, even throughout the surges of Delta and Omicron variants. In Oregon we are following the science and the data and continue to believe that, for now, these rules remain necessary to control COVID-19.*

- OHA heard concerns from commenters that believe there are studies that masks don't work to prevent the spread of COVID-19 or media outlets reporting that masks don't work to prevent the spread of COVID-19.

**Agency response:** *Universal mask wearing as part of layered mitigation strategies in healthcare settings helps prevent transmission of COVID-19. Symptom-screening alone is insufficient to prevent the spread of SARS-CoV-2 due to asymptomatic infection:*

- <https://jamanetwork.com/journals/jama/fullarticle/2764953>

*Effectiveness has been demonstrated across multiple scientific studies:*

- <https://www.bmj.com/content/375/bmj-2021-068302>
- [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31142-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31142-9/fulltext)
- [https://www.ajicjournal.org/article/S0196-6553\(20\)30765-3/fulltext](https://www.ajicjournal.org/article/S0196-6553(20)30765-3/fulltext)
- [https://academic.oup.com/cid/article/73/Supplement\\_2/S154/5956266](https://academic.oup.com/cid/article/73/Supplement_2/S154/5956266)
- <https://jamanetwork.com/journals/jama/fullarticle/2768533>

- OHA heard concerns from commenters who believe that requiring masks in healthcare settings does not take into account accommodations needed for people with disabilities who may not be able to wear a mask.

**Agency response:** *OHA's rules require compliance with all federal, state and local disability laws, including providing accommodations under the Americans with Disabilities Act. OHA recognizes that people with disabilities have a right to accommodations to ensure equitable access to healthcare. In addition, OHA recognizes that healthcare providers are obligated to ensure equitable access. The rule specifically acknowledges that some individuals may not be able to wear masks for medical reasons, and policies must be in place to address infection control in those situations.*

- OHA heard concerns from commenters that believe broad mask requirements in healthcare settings and a vaccine requirement for healthcare workers and staff healthcare settings do not recognize the personal choices of Oregonians.

**Agency response:** *Reducing the spread and burden of communicable disease relies on all of us to work together to implement protections that benefit individuals, as well as the entire community, including those in the community who may be more vulnerable to severe illness or death from disease. Masks are most effective when all individuals in indoor settings are wearing them consistently, acting as source control in the event that an individual has COVID-19 and protecting all individuals who are in close contact. That is why universal masking as part of layered mitigation strategies is important in healthcare settings. In addition, healthcare settings are spaces that frequently have people with underlying conditions that put them at risk for more severe illness from COVID-19. Masking, along with other mitigation strategies protect all patients, providers and staff and support protection of the general community.*

*The risk of hospitalization and death from COVID-19 is extremely rare in individuals who are fully vaccinated. Even as cases have risen sharply during the current surge, hospitalizations and deaths among the fully vaccinated individuals have remained low. Vaccination reduces the likelihood of severe illness resulting in hospitalization and thus protects healthcare workers and hospital capacity, both of which are vital to ensuring a broad spectrum of care to Oregonians.*

- <https://www.oregon.gov/oha/covid19/Documents/DataReports/Breakthrough-Case-Report.pdf>
- <https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination>
- <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/data-tables/421-010-CasesInNotFullyVaccinated.pdf>
- <https://www1.nyc.gov/site/doh/covid/covid-19-data.page#daily>

- OHA heard concerns from commenters that the mask requirement in healthcare settings may be affecting negatively the mental health of people in these settings, including those in congregate care settings such as long-term care facilities.

**Agency response:** *OHA recognizes the impact of the pandemic on the physical and emotional health of Oregonians. In particular, the pandemic has caused well-documented physical and emotional stress on healthcare personnel and residents of congregate care facilities. The current body of evidence highlights the negative impact of loss of life, isolation, increased workloads, and high-risk environments on mental health:*

- <https://link.springer.com/article/10.1186/s12889-020-09322-z>
- <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2763229>
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7214944/>
- <https://mhanational.org/mental-health-healthcare-workers-covid-19>

*The reassurance of a layered approach that includes masking, in addition to the benefit of protecting those in high-risk settings from COVID-19, serves to promote a culture of safety and address the major stressors affecting our healthcare settings.*

- OHA heard concerns from commenters who believe that decisions about COVID-19 mitigation strategies should be made at the local level.

**Agency response:** *OHA is proposing to adopt these rules until they are no longer needed statewide. COVID-19 does not recognize borders and Oregonians do travel between counties. Community spread of COVID-19 remains high in Oregon. OHA expects to lift the statewide restrictions when disease spread lowers significantly over a sustained period of time, available staffed hospital capacity increases, and epidemiologists and healthcare professionals agree that statewide policies in healthcare settings are no longer needed.*

- OHA heard concerns from commenters that believe masks may pose a danger to wearers.

**Agency response:** *There are numerous scientific studies that prove masks do not deprive users of oxygen or lead to higher levels of carbon dioxide (<https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>). Prolonged masking is common in many occupations to protect workers. Some examples include health care workers (e.g., performing prolonged surgery), construction (e.g., protection against dust and other particles) and environmental workers (e.g., removing mold).*

- OHA heard recommendations from commenters for OHA to differentiate in rule the various types of healthcare settings with regards to masking requirements.

**Agency response:** *While the risk of SARS-CoV-2 transmission may vary among different healthcare settings, universal masking and healthcare personnel vaccination have a positive impact on SARS-CoV-2 transmission or COVID-19 outcomes in all healthcare settings. Any setting where people are indoors in close proximity for at least 15 minutes poses a risk of SARS-CoV-2 transmission.*

- OHA heard concerns from commenters who believe that mask and vaccine mandates may have created a shortage of healthcare workers and staff in the system.

**Agency response:** *OHA has no data that indicates current worker shortages are due to mask or vaccine requirements. Across the economy there are worker shortages. In order to adequately protect patients and staff, healthcare setting masking and vaccination requirements are very important at this time.*

- OHA heard recommendations from commenters that natural immunity, not just vaccine-induced immunity should be taken into account in the vaccine requirement rule.

**Agency response:** *Studies show that COVID-19 vaccine in addition to prior COVID-19 infection provides protection from hospitalization and death resulting from COVID-19. The risk of hospitalization and death from COVID-19 is extremely rare in individuals who are fully vaccinated. Even as cases have risen sharply during the current surge, hospitalizations and deaths among the fully vaccinated individuals have remained low. While there is evidence natural infection provides strong immunity, there is variability from person to person and less predictability than vaccine-induced immunity. In addition, there is no routine method for determining level of protection following recovery from COVID-19 using antibody testing as this only examines one measure of an individual's immune response. Lastly, vaccination provides protection without the potentially serious complications that can occur with natural COVID-19 protection.*

- <https://www.oregon.gov/oha/covid19/Documents/DataReports/Breakthrough-Case-Report.pdf>
- <http://dx.doi.org/10.15585/mmwr.mm7104e1>

- OHA heard concerns from commenters that vaccines may be causing thousands of injuries according to VAERS (Vaccine Adverse Event Reporting System) and therefore should not be required for anyone.

**Agency response:** *VAERS is one of several systems to assess and monitor adverse events from COVID-19 and other vaccinations*

<https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/index.html>). From the Centers for Disease Control and Prevention, “VAERS accepts and analyzes reports of possible health problems—also called “adverse events”—after vaccination. As an early warning system, VAERS cannot prove that a vaccine caused a problem. Specifically, a report to VAERS does not mean that a vaccine caused an adverse event. But VAERS can give CDC and FDA important information”

<https://www.cdc.gov/vaccinesafety/ensuringsafety/monitoring/vaers/index.html>). These reports do not indicate causation of the adverse event from the vaccination but serve to raise issues studied in more depth in the other robust safety monitoring systems.

- OHA heard feedback from commenters recommending that OHA not lift any preventive measures for COVID-19 when the Omicron variant is still prevalent in communities and hospital capacity is low.

**Agency response:** *OHA agrees that right now, during the Omicron surge, that the masking and vaccination requirements continue to be necessary to slow spread of COVID-19. OHA regularly reviews research and data on prevention and control of COVID-19. OHA intends to lift COVID-19 control requirements when they are no longer necessary statewide.*

- OHA heard concerns from commenters there are no specific metrics for rescinding or suspending the rule so the public does not know when to expect the requirements to be lifted.

**Agency response:** *OHA can rescind the masking or vaccination requirements if it believes the rules or parts of the rules are no longer necessary to control COVID-19. OHA will consider at least, the following information in making that decision:*

- (a) The degree of COVID-19 transmission, as measured by case rates, percent positivity, and any other objective metrics indicative of current or potential transmission in Oregon.*
- (b) COVID-19 related hospitalizations and deaths.*
- (c) Disparate COVID-19 related health impacts on communities of color and tribal communities.*
- (d) Guidance from the U.S. Centers for Disease Control and Prevention.*
- (e) Proportion of the population partially or fully vaccinated.*