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PUBLIC HEALTH DIVISION

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FILING CAPTION: Masking and vaccination requirements to control COVID-19 in health care settings

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RULES:

333-019-1010, 333-019-1011

ADOPT: 333-019-1010

REPEAL: Temporary 333-019-1010 from PH 42-2021

RULE TITLE: COVID-19 Vaccination Requirement for Healthcare Providers and Healthcare Staff in Healthcare Settings

NOTICE FILED DATE: 12/10/2021

RULE SUMMARY: OAR 333-019-1010: COVID-19 Vaccination Requirement for Health Care Providers and Health Care Staff in Health Care Settings:

- Section (1) explains the need for the rule.
- Section (2) contains the following definitions:
 - o Contractor
 - o COVID-19
 - o Documentation of medical exception
 - o Documentation of religious exception
 - o Fully vaccinated
 - o Health care providers and health care staff
 - o Health care setting
 - o Medical exception
 - o Proof of vaccination
 - o Religious exception
 - o Responsible party.
- Section (3) requires that after October 18, 2021:
 - o Healthcare providers and staff must be fully vaccinated in order to work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have provided documentation of a medical or religious exception.
 - o Employers of healthcare providers and staff, or contractors or responsible parties cannot allow a health care

provider or staff person to work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have an approved medical or religious exception.

- Section (4) requires employers, contractors, and other responsible parties who grant medical or religious exceptions to take reasonable steps to ensure that unvaccinated health care providers and staff are protected.
- Section (5) indicates that this rule does not prohibit compliance with the Americans with Disabilities Act; or having stricter requirements for vaccination.
- Section (6) delineates requirements for documenting and maintaining records of vaccinations and medical and religious exceptions to the requirement.
- Section (7) authorizes civil penalties for violations of this rule.
- Section (8) specifies that certain entities that are licensed by OHA may be subject to licensing actions for violations of this rule.

RULE TEXT:

(1) It is vital to this state that healthcare providers and healthcare staff be vaccinated against COVID-19. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible or cause more severe disease. Unvaccinated individuals exposed to COVID-19 are very likely to become infected in the absence of mitigation measures and may then transmit the virus to others. Fully vaccinated people get COVID-19 (known as vaccine breakthrough infections) much less often than unvaccinated people. Being vaccinated is critical to prevent spread of COVID-19. Healthcare providers and healthcare staff have contact with multiple patients over the course of a typical day and week. The CDC recommends vaccination against COVID-19 for all eligible individuals. This rule is necessary to help control COVID-19, protect patients, and to protect the state's healthcare workforce.

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

- (a) "Contractor" means a person who has healthcare providers or healthcare staff on contract to provide services in healthcare settings in Oregon.
- (b) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- (c) "Documentation of a medical exception" means a form prescribed by the Oregon Health Authority (OHA), or a similar form, that contains all of the information required in the OHA form, signed by a medical provider who is not the individual, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.
- (d) "Documentation of a religious exception" means a form prescribed by the Oregon Health Authority (OHA), or a similar form, that contains all of the information required in the OHA form, signed by the individual, stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and includes a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.
- (e) "Fully vaccinated" means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine.
- (f) "Healthcare providers and healthcare staff":
- (A) Means individuals, paid and unpaid, working, learning, studying, assisting, observing or volunteering in a healthcare 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, family members, guardians or foster parents residing in the home and providing care to a child or foster child in the home.
- (g) "Healthcare setting":
- (A) Means any place where health care, including physical, dental 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, residential facilities, residential behavioral health facilities, adult foster homes, group homes, pharmacies, hospice, vehicles or temporary sites where health care is delivered or is related to the provision of health care (for example, mobile clinics, ambulances) outpatient facilities, such as dialysis centers, health care provider offices, dental offices, behavioral health care offices, urgent care centers, counseling offices, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.

(B) Does not include a person's private home if the home is not otherwise licensed, registered or certified as a facility or home listed in paragraph (A) of this subsection.

(h) "Medical exception" means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

(i) "Proof of vaccination" means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name or location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, a print-out from the Oregon Health Authority's immunization registry, or a Quick-Response (QR) code from a verified digital vaccine record.

(j) "Religious exception" means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

(k) "Responsible party" means a person or persons who have control or responsibility for the activities of healthcare providers or healthcare staff in a healthcare setting.

(3) After October 18, 2021:

(a) Health care providers and healthcare staff may not work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have provided documentation of a medical or religious exception.

(b) An employer of healthcare providers or healthcare staff, a contractor, or a responsible party may not employ, contract with, or accept the volunteer services of healthcare providers or healthcare staff persons who are working, learning, studying, assisting, observing or volunteering at a healthcare setting unless the healthcare providers or healthcare staff persons are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.

(4) Employers of healthcare providers or healthcare staff, contractors and responsible parties who grant a medical or religious exception to the vaccination requirement in this rule must take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19.

(5) Nothing in this rule is intended to prohibit employers of healthcare providers or healthcare staff, contractors and responsible parties from:

(a) Complying with the Americans with Disabilities Act and Title VII of the Civil Rights Act, and state law equivalents, for individuals unable to be vaccinated due to a medical condition or a sincerely held religious belief.

(b) Having more restrictive or additional requirements, including but not limited to requiring healthcare providers and healthcare staff to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.

(6) Proof of vaccination documentation and documentation of medical and religious exceptions described in this rule must be:

(a) Maintained in accordance with applicable federal and state laws;

(b) Maintained for at least two years; and

(c) Provided to the Oregon Health Authority upon request.

(7) Employers of healthcare providers or healthcare staff, contractors and responsible parties who violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

(8) In addition to the imposition of civil penalties under section (9) of this rule, a violation of this rule may also be grounds for a licensing action authorized under the following statutes or rules:

- (a) ORS 443.045; OAR chapter 333, division 27 (home health agencies, to the extent staff are providing services or care in healthcare settings).
- (b) ORS 443.864, 443.869; OAR chapter 333, division 35 (hospice programs, to the extent staff are providing services or care in healthcare settings).
- (c) ORS 441.030; OAR chapter 333, division 71 (special inpatient care facilities).
- (d) ORS 441.030; OAR chapter 333, division 76 (ambulatory surgical centers, extended stay centers and birthing centers).
- (e) ORS 441.030; OAR chapter 333, division 501 (hospitals).
- (f) ORS 443.325; OAR chapter 333, division 536 (in-home care agencies, to the extent caregivers are providing care in healthcare settings).
- (g) ORS 441.030; OAR chapter 333, division 700 (outpatient renal dialysis facilities).
- (h) ORS 426.415; OAR chapter 309, division 22 (psychiatric residential treatment facilities).
- (i) ORS 435.415, 443.421, 443.455; OAR chapter 309, division 35 (residential treatment facilities, community based residential treatment homes, secure residential treatment facilities).
- (j) ORS 443.745, 443.790; OAR chapter 309, division 40 (adult foster homes).

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004, ORS 426.415, ORS 443.085, ORS 443.315, ORS 443.450, ORS 443.745, ORS 443.790, ORS 443.860, ORS 441.025

STATUTES/OTHER IMPLEMENTED: ORS 431A.010, ORS 431.110, ORS 433.004, ORS 426.415, ORS 443.045, ORS 443.325, ORS 443.421, ORS 443.455, ORS 443.745, ORS 443.790, ORS 443.864, ORS 441.030

ADOPT: 333-019-1011

REPEAL: Temporary 333-019-1011 from PH 37-2021

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

NOTICE FILED DATE: 12/10/2021

RULE SUMMARY: OAR 333-019-1011: Masking Requirements to Control COVID-19 in Health Care Settings

- Section (1) explains the need for the rule.
- Section (2) allows the rule to be rescinded by order of the State Public Health Director or State Public Health Officer if the requirements of the rule are no longer needed to control COVID-19.
- Section (3) specifies health care settings in which the rule applies.
- Section (4) specifies that the rule does not apply in settings licensed or certified by the Oregon Department of Human Services.
- Section (5) clarifies that if there is a conflict between this rule and OAR 019-1025, the more restrictive requirement applies.
- Section (6) contains the following definitions:
 - o Face covering
 - o Face mask
 - o Health care personnel
 - o Health care setting
 - o Responsible party.
- Section (7) specifies that the responsible party must develop and enforce policies and requirements regarding face masking.
- Section (8) specifies face covering requirements for health care providers.
- Section (9) specifies face covering requirements for patients, residents, and clients.
- Section (10) specifies exceptions to this rule.
- Section (11) indicates that this rule does not prohibit accommodations made to comply with the Americans with Disabilities Act.
- Section (12) authorizes civil penalties for violations of this rule.
- Section (13) specifies that responsible parties may be subject to licensing actions for violations of this rule.

RULE TEXT:

(1) COVID-19 is an infection caused by a virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This virus can be spread by infected persons without symptoms as well as those with symptoms. It 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. Consistent masking by health care providers in health care settings, as well as masking by visitors and patients provides protection to health care providers and 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) The requirements in this rule remain in effect unless the State Public Health Director or State Public Health Officer issues an order stating that the requirements in this rule are no longer necessary to control COVID-19. If such an order is issued the Oregon Health Authority must provide notice to interested parties and otherwise take reasonable steps to ensure notice of the order is provided to those affected by this rule in accordance with ORS 183.335(1). The State Public Health Director or State Public Health Officer may also rescind such an order, and such a rescission must also be noticed as provided in this section. In determining whether this rule should remain in effect the State Public Health Director or State Public Health Officer will take into consideration as least the following information:

- (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.
- (3) Except as otherwise described in section (4) of this rule, this rule applies:
- (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, as that is defined in ORS 654.005, subject to Oregon OSHA's jurisdiction.
 - (b) If it contains requirements that are more restrictive or are in addition to Oregon OSHA's rule, OAR 437-001-0744.
- (4) The Oregon Department of Human Services (ODHS) 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 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.
- (5) To the extent there is a conflict between this rule and OAR 333-019-1025, a more restrictive requirement in this rule applies.
- (6) 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, dental, 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 or is related to the provision of health care (for example, mobile clinics, ambulances, non-emergency medical transport vehicles (NEMT), secure transportation, and street based medicine), outpatient facilities, such as dialysis centers, health care provider offices, dental 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.
- (7) A responsible party must:
- (a) Develop and follow a policy that requires all patients, residents, clients and visitors to wear a face covering except as provided in section (10) or other 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 covering when entering, exiting and face mask while they are in the health care setting in accordance with the requirements of this rule.

(8) Health care personnel must wear a face covering when entering, exiting and face mask while they are in a health care setting except as described in section (10) of this rule.

(9) Patients, residents and clients must wear a face covering when entering, exiting, or in a health care setting except as described in section (10) of this rule.

(10) 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 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.

(11) 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.

(12) 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.

(13) In addition to the imposition of civil penalties under section (12) of this rule, a violation of this rule may also be grounds for a licensing action authorized under the following statutes or rules:

(a) ORS 443.045; OAR chapter 333, division 27 (home health agencies).

(b) ORS 443.864, 443.869; OAR chapter 333, division 35 (hospice programs).

(c) ORS 441.030; OAR chapter 333, division 71 (special inpatient care facilities).

(d) ORS 441.030; OAR chapter 333, division 76 (ambulatory surgical centers, extended stay centers and birthing centers).

(e) ORS 441.030; OAR chapter 333, division 501 (hospitals).

(f) ORS 443.325; OAR chapter 333, division 536 (in-home care agencies).

(g) ORS 441.030; OAR chapter 333, division 700 (outpatient renal dialysis facilities).

(h) ORS 426.415; OAR chapter 309, division 22 (psychiatric residential treatment facilities).

(i) ORS 435.415, 443.421, 443.455; OAR chapter 309, division 35 (residential treatment facilities, community based residential treatment homes, secure residential treatment facilities).

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