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TEMPORARY ADMINISTRATIVE ORDER INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 35-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

08/11/2021 6:24 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adoption of rule requiring masks to be worn in indoor spaces in Oregon

EFFECTIVE DATE: 08/13/2021 THROUGH 02/08/2022

AGENCY APPROVED DATE: 08/11/2021

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Filed By:
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NEED FOR THE RULE(S):

The temporary rule is in response to the significant increase in COVID-19 cases and the significant decrease in hospital bed capacity in the state as a result of spread of the Delta variant.

COVID-19 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 vaccination effectiveness. At the time of this rule adoption, the Delta made up the vast majority of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors than outdoors. It is vital to the state that individuals wear a mask or face covering when in indoor spaces.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest and the Authority. This rule needs to be adopted promptly to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- OHSU statement on COVID-19 forecast (08.10.2021): <https://news.ohsu.edu/2021/08/10/prepared-statement-on-august-10-covid-forecast>
 - OHSU COVID Forecast (08.10.2021): https://www.ohsu.edu/sites/default/files/2021-08/ohsu-covid-oregon-trends_202108101.pdf
 - Oregon's HOSCAP report (updated 08.10.2021): <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19HospitalCapacity/BedAvailabilitybyRegion>
 - STATUS UPDATE: COVID-19 EPIDEMIC TRENDS AND SCENARIO PROJECTIONS IN OREGON (07.29.2021): <https://www.oregon.gov/oha/covid19/Documents/DataReports/Epidemic-Trends-and-Projections.pdf>
 - The Science of Masking to Control COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/science-of-masking-full.pdf>
 - Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>
 - Guidance for Wearing Masks Help Slow the Spread of COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>
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ADOPT: 333-019-1025

RULE TITLE: Masking Requirements for Indoor Spaces

RULE SUMMARY: ADOPT OAR 333-019-1025

The Oregon Health Authority is temporarily adopting a rule under chapter 333, division 19 pertaining to wearing masks in indoor spaces. The rule is in response to the significant increase in COVID-19 cases and the significant decrease in hospital bed capacity in the state as a result of spread of the Delta variant.

COVID-19 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 vaccination effectiveness. At the time of this rule adoption, the Delta made up the vast majority of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors than outdoors. It is vital to the state that individuals wear a mask or face covering when in indoor spaces.

"Indoor spaces" is defined broadly as anywhere indoors, including but not limited to public and private workplaces, businesses, indoor areas open to the public, building lobbies, common or shared spaces, classrooms, elevators, bathrooms, transportation services and other indoor space where people may gather for any purpose. An indoor space does not include a private residence or a private automobile that is not used for ride sharing.

There are exceptions to mask wearing in indoor spaces. Masks are not required if an individual:

- Is under five (5) years of age; or is under two (2) years of age and using public transportation or in transportation hubs.
- Is sleeping.
- Is actively eating or drinking.
- Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when actively swimming.
- Is in a private individual workspace.
- Must remove the mask, face coverings or face shield briefly because the individual's identity needs to be confirmed by visual comparison, such as at a bank or if interacting with law enforcement.
- Is practicing or playing a competitive sport at any level.
- Is performing, including but not limited to playing music, delivering a speech to an audience, and theater.

A person responsible for an indoor space must:

- Ensure that employees, contractors, and volunteers comply with this rule within the indoor space.
- Make reasonable efforts to ensure customers, guests, visitors and other individuals comply with this rule within the indoor space.
- Post signs at every entrance to the indoor space that face coverings are required as described in this rule.

Employers and places of public accommodation must still make 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 659A.

An individual or person responsible for an indoor space who violates any provision of this rule is subject to civil penalties of up to \$500 per day per violation.

RULE TEXT:

(1)(a) It is vital to this state that individuals wear a mask or face covering when in indoor spaces with other people (but not when in private residences). COVID-19 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 vaccination effectiveness. As of the time this rule was adopted, Delta was the variant making up more than 90 percent of sequenced specimens in Oregon. The Delta variant is approximately two to three times more infectious than early wild-type COVID-19 variants. There is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.

(b) COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors than outdoors. Indoors, the concentration of viral particles is often higher than outdoors, where even a light wind can rapidly reduce concentrations.

- (c) This rule is necessary to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.
- (2) Nothing in this rule is intended to:
- (a) Prohibit an individual or person from complying with a more restrictive local, state or federal mask requirement.
- (b) Prohibit a person, including a business, from applying a more restrictive requirement.
- (3) For the purposes of this rule, the following definitions apply:
- (a) "Business" means an individual, organization or entity engaged in commercial, industrial, or professional activities.
- (b) "Common or shared space" means an area where individuals may interact such as a restroom, breakroom, hallway, elevator, lobby, classroom, large room with cubicles, meeting rooms, conference rooms and any area open to the public.
- (c) "Face covering" means a cloth, polypropylene, paper or other face covering that covers the nose and the mouth and that rests snugly above the nose, below the mouth, and on the sides of the face. Face coverings are not a covering that incorporates a valve that is designed to facilitate easy exhalation, mesh masks, lace masks or other coverings with openings, holes, visible gaps in the design or material, or vents.
- (d) "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.
- (e) "Fully vaccinated individual" means an individual who has 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) "Indoor spaces" means anywhere indoors, including but not limited to public and private workplaces, businesses, indoor areas open to the public, building lobbies, common or shared spaces, classrooms, elevators, bathrooms, transportation services and other indoor space where people may gather for any purpose. An indoor space does not include a private residence or a private automobile being used for personal use and that is not used for ride sharing.
- (g) "Mask" means a medical grade mask.
- (h) "Person responsible for an indoor space" means any person or governmental entity responsible for the activities within an indoor space.
- (i) "Private individual workspace" means an indoor space within a public or private workplace used for work by one individual at a time that is enclosed on all sides with walls from floor to ceiling and with a closed door.
- (j) "Public and private workplaces" means indoor places where people work, including but not limited to businesses, banks, food processing plants, manufacturing facilities, construction sites, warehouses and farms.
- (k) "Public transportation" means any form of transportation open to the public including but not limited to trains, buses, trolleys, street cars, vans, school buses, airplanes, boats, ride sharing services. Public transportation does not include private vehicles unless the private vehicle is being used for public transportation such as ride sharing services.
- (l) "Ride sharing services" means transportation services, whether public or private, where a driver transports an individual or a group of people in a vehicle and charges a fare or bills for services. Ride sharing services include, but are not limited to, taxicabs, Uber, and Lyft.
- (m) "Transportation hub" means any airport, bus terminal, marina, seaport or other port, subway station terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.
- (4) Individuals, regardless of vaccination status, are required to wear a mask, face covering or face shield when in an indoor space unless the individual:
- (a) Is under five years of age; unless an individual is using public transportation or in transportation hubs in which case an individual under two years of age is not required to wear a mask, face covering or face shield.
- (b) Is sleeping.
- (c) Is actively eating or drinking.
- (d) Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when actively swimming.
- (e) Is in a private individual workspace.

- (f) Must remove the mask, face covering or face shield briefly because the individual's identity needs to be confirmed by visual comparison, such as at a bank or if interacting with law enforcement.
 - (g) Is practicing or playing a competitive sport at any level.
 - (h) Is performing, including but not limited to playing music, delivering a speech to an audience, and theater.
- (5) A person responsible for an indoor space must:
- (a) Ensure that employees, contractors, and volunteers comply with this rule within the indoor space.
 - (b) Make reasonable efforts to ensure customers, guests, visitors and other individuals comply with this rule within the indoor space.
 - (c) Post signs at every entrance to the indoor space that face coverings are required as described in this rule.
- (6) Nothing in this rule is intended to prohibit an employer or place of public accommodation 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.
- (7) Penalties: An individual or person responsible for an indoor space who violates any provision of this rule is subject to civil penalties of up to \$500 per day per violation.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004

STATUTES/OTHER IMPLEMENTED: ORS 431A.010, ORS 431.110, ORS 433.004