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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 2-2022

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Hospital requirements when making triage decisions for care during resource constrained periods

EFFECTIVE DATE: 01/17/2022 THROUGH 07/15/2022

AGENCY APPROVED DATE: 01/11/2022

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Filed By:
Public Health Division
Rules Coordinator

NEED FOR THE RULE(S):

The Oregon Health Authority (Authority) is continuing to respond to the COVID-19 pandemic and the highly transmissible Omicron variant that is surging through this state at record levels. During the week of December 27, 2021 through January 2, 2022, the Authority recorded 16,791 new cases of COVID-19, a 140% increase over the previous week and hospitalizations increased by 57% over the previous week. Hospitals are having to address the surging rates of hospitalization and consider making triage decisions regarding allocation of patient care.

This temporary rule, OAR 333-505-0035, requires that when a hospital is experiencing a resource constrained period and has to make triage decisions for patient care, it must do the following:

- Provide notice to the Oregon Health Authority that it is making triage decisions.
- Inform the public by at a minimum posting information on its website and at the hospital in conspicuous locations that triage decisions are being made.
- Make available upon request, the triage decision-making tool, protocol or standard that the hospital is using to make triage decisions.
- Communicate a triage decision to a patient, their support person, or the individual legally authorized to act on behalf of the patient, in a language they understand and in a culturally responsive manner to the extent possible given the emergency, including how the triage decision was made.
- Document specific information for each patient undergoing consideration and triage for scarce resource allocation.
- Provide patients information about how to contact the hospital's Americans with Disability Act coordinator or patient advocate.
- Provide the documentation of triage decision to the Oregon Health Authority upon request.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public. The COVID-19 Omicron variant has impacted the state and the world very quickly, causing a sharp increase in the numbers of patients hospitalized with COVID-19, which impacts all individuals needing hospitalization in the state. We know that hospitals

are having to make decisions about which patients get scarce life-saving equipment and care. On January 7, 2022, the Oregon Health Authority issued its Interim Crisis Care Tool, which provides a tool for hospitals to use when and if they have to make decisions about which patients get limited critical care resources. The tool will help ensure that difficult decisions about who gets critical care resources, is done equitably and without discrimination. Regardless of whether a hospital uses the Interim Crisis Care Tool, this rule ensures that the Oregon Health Authority is provided notice when a hospital is making triage decisions, that the public understands when triage decisions are being made at a hospital and have access to the triage tool that a hospital is using, that triage decisions are communicated to patients, their caregivers and family members, and that the decisions are being documented and can be reviewed. This rule needs to be adopted promptly so that there is transparency when these difficult triage decisions are being made, and there is accountability for the decisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Interim Crisis Care Tool:

https://sharesystems.dhsoha.state.or.us/DHSForms/Served/le4019c.pdf?utm_medium=email&utm_source=govdelivery.

ADOPT: 333-505-0035

RULE TITLE: Hospital Requirements During Resource Constrained Periods

RULE SUMMARY: Adopt OAR 333-505-0035

Require that when a hospital is experiencing a resource constrained period and has to make triage decisions for patient care, it must do the following:

- Provide notice to the Oregon Health Authority that it is making triage decisions.
- Inform the public by at a minimum posting information on its website and at the hospital in conspicuous locations that triage decisions are being made.
- Make available upon request, the triage decision-making tool, protocol or standard that the hospital is using to make triage decisions.
- Communicate a triage decision to a patient, their support person, or the individual legally authorized to act on behalf of the patient, in a language they understand and in a culturally responsive manner to the extent possible given the emergency, including how the triage decision was made.
- Document specific information for each patient undergoing consideration and triage for scarce resource allocation.
- Provide patients information about how to contact the hospital's Americans with Disability Act coordinator or patient advocate.
- Provide the documentation of triage decision to the Oregon Health Authority upon request.

RULE TEXT:

(1) For purposes of this rule:

(a) "Emergency" includes but is not limited to a Governor's declared emergency, a determination by the state Public Health Director under ORS 431A.015(1), an epidemic as that is defined in ORS 431A.005, or any other event that results in an increased need for scarce hospital resources

(b) "Hospital" has the meaning given that term in ORS 442.015.

(c) "Resource constrained period" means a period of time where because of an emergency a hospital has scarce resources along with a high demand for services, during which a hospital must make triage decisions.

(d) "Support person" has the meaning given that term in OAR 333-505-0033.

(e) "Triage decisions" means the decisions necessary to provide equitable prioritization of critical care resources for patients using the Oregon Health Authority's Interim Crises Care Tool or similar hospital protocols or standards that ensure equitable care decisions.

(2) On and after January 17, 2022, during a resource constrained period when a hospital is making triage decisions the hospital must:

- (a) Provide notice to the Oregon Health Authority at mailbox.hclc@state.or.us, or in another manner as directed by the Authority.
- (b) Inform the public by at a minimum posting information on its website and at the hospital in conspicuous locations that triage decisions are being made.
- (c) Make available upon request, the triage decision-making tool, protocol or standard that the hospital is using to make triage decisions.
- (d) Communicate a triage decision to a patient, their support person, or the individual legally authorized to act on behalf of the patient, in an accessible format, language they understand and in a culturally responsive manner to the extent possible given the emergency, including how the triage decision was made.
- (e) Document for each patient undergoing consideration and triage for scarce resource allocation:
 - (A) The patient's medical record number.
 - (B) The hospital's name and location.
 - (C) The patient's date of birth.
 - (D) The patient's sexual orientation and gender identity, if known.
 - (E) The patient's race, ethnicity, language and disability, in accordance with OAR chapter 943, division 70.
 - (F) Whether, at the time of presentation at the hospital, the patient was using a personal ventilator or other personal medical treatment equipment or resources.
 - (G) The patient's home address, whether they are unhoused, or whether their housing status is unknown.
 - (H) The patient's care preferences, as documented in an advanced directive, portable orders for life-sustaining treatment (POLST), or as communicated by a health care representative, support person, or a family member.
 - (I) The patient's triage prioritization and clinical outcome.
- (f) Provide patients information about how to contact the hospital's Americans with Disability Act (ADA) coordinator or patient advocate.
- (3) A hospital must provide the documentation required in section (2) of this rule to the Authority upon request.

Note: The Oregon Health Authority's Interim Crises Care Tool can be found at www.healthoregon.org/hflc.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 441.025

STATUTES/OTHER IMPLEMENTED: ORS 441.025