

FACIAL COVERING RESEARCH:

FS 408.824 - 2023

(1) As used in this section, the term:

(a) "Department" means the Department of Health.

(b) "Facial covering" means a cloth or surgical face mask, a face shield, or any other facial covering that covers the mouth and nose.

(c) "Health care practitioner" has the same meaning as in s. 456.001.

(d) "Health care provider" means a provider as defined in s. 408.803; a service provider licensed or certified under s. 393.17, part III of chapter 401, or part IV of chapter 468; a provider with an active health care clinic exemption under s. 400.9935; an optical establishment permitted under s. 484.007; a massage establishment licensed under s. 480.043; a pharmacy as defined in s. 465.003; or an office registered under s. 458.328 or s. 459.0138.

(e) "Office" means an office maintained for the practice of a health care practitioner's profession, as provided in his or her practice act.

(2) (a) By July 1, 2023, the agency and the department shall jointly develop standards for the appropriate use of facial coverings for infection control in health care settings.

(b) The agency and the department shall adopt emergency rules for the standards developed under paragraph (a). Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.

(c) The agency and the department shall publish the standards developed under paragraph (a) on their respective websites and provide a link for persons to report violations of the standards.

(3) By August 1, 2023, each health care practitioner who owns or operates an office and each health care provider shall establish facial covering policies and procedures for their respective health care settings, if such health care practitioner or health care provider requires any individual to wear a facial covering for any reason. Such policies and procedures must comply with the standards developed under subsection (2) and must be accessible from the home page of such health care practitioner's or health care provider's website or conspicuously displayed in the lobby of its health care service setting or settings.

(4) Effective August 1, 2023:

(a) Health care practitioners and health care providers may not require any person to wear a facial covering for any reason unless the requirement is in accordance with the standards developed under subsection (2) and the policies and procedures established under subsection (3).

(b) A health care practitioner or a health care provider in violation of paragraph (a) or subsection (3) is subject to disciplinary action by the agency or a board as defined in s. 456.001, or the department if there is no board, as applicable.

Fla. Stat. § 408.824 Added by 2023 Fla. Laws, ch. 43,s 5, eff. 5/11/2023.

59AER23-2 Standards for the Appropriate Use of Facial Coverings for Infection Control.

(1) Health care practitioners and health care providers may choose to require a patient to wear a facial covering only when the patient is in a common area of the health care setting and is exhibiting signs or symptoms of or has a diagnosed infectious disease that can be spread through droplet or airborne transmission.

(2) Health care practitioners and health care providers may choose to require a visitor to wear a facial covering only when the visitor is:

(a) Exhibiting signs or symptoms of or has a diagnosed infectious disease that can be spread through droplet or airborne transmission,

(b) In sterile areas of the health care setting or an area where sterile procedures are being performed,

(c) In an in-patient or clinical room with a patient who is exhibiting signs or symptoms of or has a diagnosed infectious disease that can be spread through droplet or airborne transmission, or

(d) Visiting a patient whose treating health care practitioner has diagnosed the patient with or confirmed a condition affecting the immune system in a manner which is known to increase risk of transmission of an infection from employees without signs or symptoms of infection to a patient and whose treating practitioner has determined that the use of facial coverings is necessary for the patient's safety.

(3) Opt-Out Requirements are as follows:

(a) Pursuant to 59AER23-2(1), health care practitioners and health care providers who choose to require a facial covering for any patient must include in the policy a provision for the opting-out of wearing a facial covering. Such policy must be in accordance with the Florida Patient Bill of Rights and Responsibilities, section 381.026, F.S.

(b) Pursuant to 59AER23-2(2), health care practitioners and health care providers who choose to require a facial covering for any visitor must include in the policy a provision for the opting-out of wearing a facial covering if an alternative method of infection control or infectious disease prevention is available.

(4) Health care practitioners and health care providers must allow an employee to opt out of facial covering requirements unless an employee is:

(a) Conducting sterile procedures,

(b) Working in a sterile area,

(c) Working with a patient whose treating health care practitioner has diagnosed the patient with or confirmed a condition affecting the immune system in a manner which is known to increase risk of transmission of an infection from employees without signs or symptoms of infection to a patient and whose treating practitioner has determined that the use of facial coverings is necessary for the patient's safety,

(d) With a patient on droplet or airborne isolation, or

(e) Engaging in non-clinical potentially hazardous activities that require facial coverings to prevent physical injury or harm in accordance with industry standards.

381.0261 Summary of patient's bill of rights; distribution; penalty.—

(1) The Department of Health shall publish on its Internet website a summary of the Florida Patient's Bill of Rights and Responsibilities. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which the department publishes the summary.

(2) Health care providers and health care facilities, if requested, shall inform patients of the address and telephone number of each state agency responsible for responding to patient complaints about a health care provider or health care facility's alleged noncompliance with state licensing requirements established pursuant to law.

(3) Health care facilities shall adopt policies and procedures to ensure that inpatients are provided the opportunity during the course of admission to receive information regarding their rights and how to file complaints with the facility and appropriate state agencies.

(4)(a) An administrative fine may be imposed by the Agency for Health Care Administration when any health care facility fails to make available to patients a summary of their rights, pursuant to s. 381.026 and this section. Initial nonwillful violations shall be subject to corrective action and shall not be subject to an administrative fine. The Agency for Health Care Administration may levy a fine against a health care facility of up to \$5,000 for nonwillful violations and up to \$25,000 for intentional and willful violations. Each intentional and willful violation constitutes a separate violation and is subject to a separate fine.

(b) An administrative fine may be imposed by the appropriate regulatory board, or the department if there is no board, when any health care provider fails to make available to patients a summary of their rights, pursuant to s. 381.026 and this section. Initial nonwillful violations shall be subject to corrective action and shall not be subject to an administrative fine. The appropriate regulatory board or department may levy a fine against a health care provider of up to \$100 for nonwillful violations and up to \$500 for willful violations. Each intentional and willful violation constitutes a separate violation and is subject to a separate fine.

(5) In determining the amount of fine to be levied for a violation, as provided in subsection (4), the following factors shall be considered:

(a) The scope and severity of the violation, including the number of patients found to not have received notice of patient rights, and whether the failure to provide notice to patients was willful.

(b) Actions taken by the health care provider or health care facility to correct the violations or to remedy complaints.

(c) Any previous violations of this section by the health care provider or health care facility.