

DRAFT FOR DISCUSSION PURPOSES ONLY
STATEMENT OF NEED AND FISCAL IMPACT WORKSHEET

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.
For internal agency use only. Not a valid filing form.

Dept. of Consumer & Business Services, Division of Financial Regulation

836

Agency and Division

Administrative Rules Chapter Number

RULE CAPTION

Prior authorization rule updates and new reporting requirements established by 2021 Or. Laws ch. 154

Not more than 15 words.

In the Matter of:

Updating existing administrative rules establishing requirements for health insurer prior authorization practices and updating existing reporting requirements for health insurers to align with new requirements established by 2021 Or. Laws ch. 154 (2021 HB 2517).

Statutory Authority: ORS 743B.250, ORS 743B.420, 743B.422, 743B.423, 746.233, and 2021 Or. Laws ch. 154

Other Authority:

Stats. Implemented: ORS 743B.250, ORS 743B.420, 743B.422, 743B.423, 746.233, and 2021 Or. Laws ch. 154

Need for the Rule(s):

2021 House Bill 2517 (the law), enrolled at 2021 Oregon Laws Chapter 154, establishes new requirements for health insurance prior authorization processes and adds new reporting requirements related to prior authorization to existing annual reporting requirements for health insurers.

Prior authorization requirements are included in many health insurance plans. If a covered benefit requires prior authorization, the health insurer may review a patient's condition and medical history, as well as any evidence of medical necessity supplied by the medical provider or patient, before approving or denying coverage. Oregon law prohibits health benefit plans from imposing prior authorization requirements on some services, such as emergency services (ORS 743A.012), but many non-emergency services may be subject to such requirements.

The law creates new provisions and amends a variety of statutes to create a wide variety of new requirements for health insurers and coordinated care organizations. Most of the statutory changes in the law do not require additional rules or changes to existing rules administered by the division, with two exceptions:

- The law amends existing requirements for prior authorization codified in ORS 743B.422 and ORS 743B.423. These requirements are implemented through OAR 836-053-1200 for health benefit plans, and largely mirrored in OAR 836-053-1203 to ensure aligned requirements for health insurance other than health benefit plans. Changes include extending the period of time a prior authorization determination is binding on an insurer from 30 to 60 days, and requiring yearlong prior authorizations for prescription drugs under specified circumstances.
- The law amends requirements for an annual report on appeals and grievances established by ORS 743B.250 to require information on prior authorization requests. The reporting requirements of ORS 743B.250 are implemented through OAR 836-053-1070, which specifies the required elements of the report, and OAR 836-053-1080, which requires insurers to track and keep adequate records of the required elements.

The law also revises ORS 743B.001 to make technical amendments to the existing definitions of "prior authorization."

Four rule amendments are proposed to implement this new law:

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- Revisions to OAR 836-053-1200 and OAR 836-053-1203 to align existing requirements with the new revisions to ORS 743B.422 and ORS 743B.423.
- Revisions to OAR 836-053-1070 to add the new required data elements to the annual report required by ORS 743B.250.
- Revisions to OAR 836-053-1080 to specify that insurers must adequately track the new required data elements for the annual report.

The proposed rules are necessary to correct inconsistencies between existing administrative rules and the new law and to establish uniform standards for compliance regarding timelines and reporting related to prior authorization that will help ensure fairness and consistent treatment for consumers, health care providers, and issuers of all lines of health insurance.

DCBS requests public comment on the proposed rule.

Documents Relied Upon, and where they are available: Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on DCBS's Web site at: <http://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

2021 Oregon Laws Chapter 154 (Enrolled House Bill 2517) may be found on the Oregon Legislative Assembly website at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2517/Enrolled>.

ORSs 743B.250, 743B.420, 743B.422 and 743B.423 may be found on the Oregon Legislative Assembly website at https://www.oregonlegislature.gov/bills_laws/ors/ors743b.html. ORS 746.233 may be found on the Oregon Legislative Assembly website at https://www.oregonlegislature.gov/bills_laws/ors/ors746.html.

Fiscal and Economic Impact:

2021 Oregon Laws Chapter 154 and the proposed rules will have a significant direct economic impact on health insurers and an indirect economic impact on health care providers. Some health care providers are small businesses.

Based on the information available to DCBS, the proposed rules will not likely have a fiscal or economic impact on state agencies, local governments, or the public.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public.

The underlying statutory provisions have an impact on DCBS through expanding the scope of reports received by the department, which may lead to additional administrative and data analysis work for DCBS staff, and making changes to the department's regulatory authority in the area of prior authorization, which may lead to changes in the pattern and frequency of complaints or requests for external review received, or compliance and enforcement actions undertaken. However, the proposed rule will not have these impacts. The proposed rules provide finer details regarding the implementation of the law's requirements and are expected to have a negligible impact on costs to the department.

The proposed rules do not add any new requirements on public entities, but instead clarify DCBS's supervisory expectations with regard to health insurers' reporting and prior authorization practices. Other state agencies and local governments are not expected to incur any fiscal impact, because the requirements established by the law are not applicable to these entities.

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Based on the information currently available to DCBS, the proposed rule does not have an economic impact on the general public beyond the underlying statutory requirements.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The proposed rules establish new reporting requirements for health insurers and modify requirements for health insurers' practices in the area of prior authorization. Compliance with these requirements may require significant costs for insurers. DCBS does not have data on the specific number of employees employed by insurers authorized to transact insurance in Oregon, but it is unlikely that any of the health insurers to which this rule applies are small businesses.

DCBS convened a rulemaking advisory committee, which included representatives of health care providers, insurers, and consumer and patient advocates. Committee feedback suggested that the proposed rules would have impact on small businesses in Oregon (i.e., businesses with 50 or fewer employees).

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed rules require additional reporting and recordkeeping for health insurers. However, the proposed rules solely provide clarification of the statutory requirements and do not impose additional requirements.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed rules provide clarification of the statutory requirements and do not impose additional requirements.

How were small businesses involved in the development of this rule?:

DFR convened a rulemaking advisory committee, which included representatives of health care providers, insurers, and consumer and patient advocates. Some health care providers are small businesses.

Administrative Rule Advisory Committee consulted?:

If not, why?:

DCBS convened a rulemaking advisory committee, which included representatives of health care providers, insurers, and consumer and patient advocates. The rulemaking advisory committee met on September 3,

Andrew Stolfi, Administrator

Signature

Printed name

Date