

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**

Behavioral health benefit reporting requirements, 2021 Or. Laws ch. 629

*Not more than 15 words.*

**In the Matter of:**

Establishing and specifying behavioral health benefit reporting requirements and information for individual and small group health benefit plans to report by March 1 annually as required by 2021 Or. Laws ch. 629 (2021 HB 3046).

**Statutory Authority:** 2021 Or. Laws ch. 629

**Other Authority:**

**Stats. Implemented:** 2021 Or. Laws ch. 629

**Need for the Rule(s):**

2021 House Bill 3046 (the law), enrolled at 2021 Oregon Laws Chapter 629, establishes new requirements for individual and small group health benefit plans providing behavioral health benefits to report to the Department of Consumer and Business Services (the department) annually on or before March 1 to the division.

The reporting requirements specify that the health benefit plans report on nonquantitative treatment limits including a comparative analysis to medical and surgical benefits. Nonquantitative treatment limits (NQTLs) are defined in law as a limitation that is not expressed numerically but otherwise limits the scope or duration of behavioral health benefits. NQTLs may include but are not limited to prior authorization, fail-first protocols, probability of improvement, and others. Documentation and reporting NQTLs and the comparative analysis to medical and surgical benefits is required by the Consolidated Appropriations Act, 2021 which amended the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008.

The law includes additional reporting requirements denials, claims, and the median maximum allowable reimbursement rate for behavioral health benefits and medical and surgical benefits. Finally insurers are required to report on findings or conclusions demonstrating compliance with the MHPAEA and ORS 743A.168 as well as any other data or information the department deems necessary.

The department is required to report to the interim committees of the Oregon Legislature no later than September 15 of each year on the comparison of carrier coverage of mental health treatment and services to coverage of medical and surgical treatment and services.

2021 Or. Laws 629 includes several other provisions related to requirements for behavioral health benefits and treatment which require rulemaking. The department will be pursuing these rules at a future date.

The proposed rules provide clarity to the form and manner for carriers offering individual and group health benefit plans to report on behavioral health benefits. Specifically, the rules clarify certain definitions and expectations for the reporting to be submitted to the department. Data elements are further expanded upon when additional clarity was determined to be necessary and helpful for vague terminology or information required by 2021 Or Laws 629.

DCBS requests public comment on the proposed rule.

## DRAFT FOR DISCUSSION PURPOSES ONLY

**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 629 (Enrolled House Bill 3046) may be found on the Oregon Legislative Assembly website at <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3046>.

ORS 743A.168 may be found on the Oregon Legislative Assembly website at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors743a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors743a.html).

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 as applied to the individual and group market are promulgated at 42 U.S.C. 300gg-26 which may be found on the Federal Government Publishing Office website at: <https://www.govinfo.gov/app/details/USCODE-2010-title42/USCODE-2010-title42-chap6A-subchapXXV-partA-subpart2-sec300gg-26>.

### **Fiscal and Economic Impact:**

2021 Oregon Laws Chapter 629 and the proposed rules will have a direct economic impact on health insurers required to report on behavioral health benefits. Based on the information available to DCBS, none of the impacted health insurers are small businesses.

Based on the information available to DCBS, the proposed rules would not have any additional fiscal or economic impact on state agencies, local governments, the public, nor small businesses beyond the underlying statutory requirements.

### **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 administrative and data analysis work for DCBS staff to report back to the Legislative Assembly on the behavioral health data submitted by insurers. 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 behavioral health data. Some state agencies are impacted by the underlying statutory provisions. However, these agencies as well as other state agencies and local governments are not expected to incur any fiscal impact from the proposed rules.

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 clarify the reporting requirements for health insurers to submit behavioral health data. 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.

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DCBS convened a rulemaking advisory committee, which included representatives of behavioral health care providers, insurers, and consumer and patient advocates.

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

The proposed rules provide clarity to the behavioral health benefit reporting and require additional compliance reporting for health insurers. The underlying statute provides authority for the department to require any other information to assess compliance. The proposed rules require additional information health insurers to report information about compliance with ORS 743A.168. The clarifications and additional information on behavioral health benefit may impose reporting and administrative costs on health insurers to comply with the requirements.

Based on the feedback of the rulemaking advisory committee, it is unlikely that any insurer subject to these rules is a small business (i.e., 50 or fewer employees).

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

The proposed rules provide clarity to the behavioral health benefit reporting and require additional compliance reporting for health insurers. The underlying statute provides authority for the department to require any other information to assess compliance. The proposed rules require additional information health insurers to report information about compliance with ORS 743A.168. The clarifications and additional information on behavioral health benefit may impose labor and administration costs on health insurers to comply with the requirements.

Based on the feedback of the rulemaking advisory committee, it is unlikely that any insurer subject to these rules is a small business.

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

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

**Administrative Rule Advisory Committee consulted?:**

**If not, why?:**

DCBS convened a rulemaking advisory committee, which included representatives of behavioral health care providers, insurers, and consumer and patient advocates. The rulemaking advisory committee met on August 26, Sept. 8, Sept. 23, and Sept. 30, 2021.

Andrew Stolfi, Director & Insurance Commissioner

Signature

Printed name

Date