

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

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Department of Consumer and Business Services, Health Insurance Marketplace
Agency and Division

945
Administrative Rules Chapter Number

Director's authority to automatically enroll in a new plan a consumer who has lost coverage

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Adopting OAR 945-020-0030 and amending OAR 945-001-0002

Statutory Authority:

ORS 705.135, 741.002, and 741.003

Other Authority:

Statutes Implemented:

ORS 741.002

Need for the Rule(s):

To the extent permitted by state law, 45 CFR 155.335(j)(2) and (j)(3) allow the Federally Facilitated Marketplace (FFM) to automatically enroll a qualified individual into a new plan at renewal when the individual's previous carrier ceases to offer qualified health plan coverage through the exchange or ceases to offer a plan under the individual's previous qualified health plan product (automatic enrollment under these conditions is known as a "cross-walk"). Despite an agreement with the Oregon Health Insurance Marketplace (the Marketplace) not to cross-walk affected individuals during the 2017 plan year, the FFM cross-walked several such individuals into plans with new carriers without notifying the Marketplace, causing significant carrier, consumer, and agent confusion.

ORS 741.002(2)(f) requires the Marketplace to assist individuals to enroll in qualified health plans through the health insurance exchange. The Director, acting through the Marketplace, is in the best position to determine whether individuals who lose coverage under a qualified health plan offered through the health insurance exchange should be cross-walked to a new plan, or whether targeted marketing urging these individuals to shop for new plan would be more beneficial. Moreover, in the event that the Director determines that these individuals should be cross-walked to a new plan, the Director, acting through the Marketplace, is in the best position to determine to which plans these individuals should be cross-walked.

Enactment of OAR 945-020-0030, which gives the director the sole authority to determine whether cross-walking should occur and if so, to which plans individuals should be cross-walked, will prevent the FFM from cross-walking individuals into plans that are not the best plans for these individuals or for the market. It will also prevent the federal government from cross-walking these individuals without their knowledge and without the knowledge of the Marketplace. The amendment to 945-001-0002 adds the definition of "automatically enroll" to chapter 945 for the newly adopted rule.

Documents Relied Upon, and where they are available:

ORS 705.135, 741.002, and 741.003. These documents are available in public libraries and on the Oregon Legislature website, currently: https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

Fiscal and Economic Impact:

Absent this rule, the federal government cross-walked Oregon consumers into plans that may not have been well-suited for these individuals. Moreover, the federal government did this without the knowledge of the consumers, the insurers, and the Marketplace. In some cases, insurers have sent unnecessary communications to members who were cross-walked to other plans, resulting in unnecessary costs to the insurers, confusion to the consumers, and the use of additional resources by the Marketplace to alleviate the confusion. Some consumers have incurred expenses changing plans to which they were cross-walked because these plans were not well-suited to their needs. This rule is expected to result in a reduction in expenses for consumers, insurers, and the Department because the Director is best-suited to determine whether and to which plans (if any) consumers should be cross-walked. Moreover, the Director can provide targeted communications to affected consumers and insurers.

Statement of Cost of Compliance:

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

As noted above, this rule is expected to reduce costs for the Department because the Department will no longer need to devote staff and resources to "undo" the difficulties created by unsuitable cross-walking. Expenses incurred by members of the public changing plans to which they were cross-walked because these plans were not well-suited to their needs should be reduced.

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

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

None

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

None

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

None

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

Small business owners were part of the advisory committee for this rule.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

07-31-2017 Close of Business	Victor Garcia	victor.a.garcia@oregon.gov
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address