

House Bill 2626

Sponsored by Representatives SCHOUTEN, WILDE (at the request of Coalition for a Healthy Oregon) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires agency to include economic impact on coordinated care organizations, including cost of compliance effect, in statement of fiscal impact required before agency adopts, amends or repeals administrative rule.

If statement shows that rule has significant adverse effect on coordinated care organizations, requires agency to reduce economic impact.

Requires agency to consider impacts on coordinated care organizations as part of review of administrative rules.

A BILL FOR AN ACT

1
2 Relating to impacts of administrative rules on coordinated care organizations; creating new pro-
3 visions; and amending ORS 183.333, 183.335, 183.336, 183.390, 183.405 and 183.540.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 183.335 is amended to read:

6 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
7 of its intended action:

8 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
9 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

10 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

11 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
12 subsection (8) of this section; and

13 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons
14 specified in subsection (15) of this section.

15 (2)(a) The notice required by subsection (1) of this section must include:

16 (A) A caption of not more than 15 words that reasonably identifies the subject matter of the
17 agency's intended action. The agency shall include the caption on each separate notice, statement,
18 certificate or other similar document related to the intended action.

19 (B) An objective, simple and understandable statement summarizing the subject matter and
20 purpose of the intended action in sufficient detail to inform a person that the person's interests may
21 be affected, and the time, place and manner in which interested persons may present their views on
22 the intended action.

23 (b) The agency shall include with the notice of intended action given under subsection (1) of this
24 section:

25 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
26 promulgation of the rule[;].

27 (B) A citation of the statute or other law the rule is intended to implement[;].

28 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 need[;].

2 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
3 the agency in considering the need for and in preparing the rule, and a statement of the location
4 at which those documents are available for public inspection. The list may be abbreviated if neces-
5 sary, and if so abbreviated there shall be identified the location of a complete list[;].

6 (E)(i) A statement of fiscal impact identifying state agencies, units of local government, **coor-**
7 **dinated care organizations as defined in ORS 414.025** and the public that may be economically
8 affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact
9 on state agencies, units of local government, **coordinated care organizations** and the public.

10 (ii) In considering the economic effect of the proposed action on the public, the agency shall
11 [*utilize*] **use** available information to project any significant economic effect of that action on busi-
12 nesses [*which shall include*], **including** a cost of compliance effect on small businesses affected. For
13 an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost
14 impact statement as described in ORS 183.534[;].

15 (iii) **In considering the economic impact of the proposed action on coordinated care or-**
16 **ganizations, the agency shall obtain information from each coordinated care organization in**
17 **this state and use available information to project any significant economic effect of that**
18 **action on coordinated care organizations, including a cost of compliance effect on coordi-**
19 **nated care organizations affected.**

20 (F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-
21 tion as to why no advisory committee was used to assist the agency in drafting the rule[; *and*].

22 (G) A request for public comment on whether other options should be considered for achieving
23 the rule's substantive goals while reducing the negative economic impact of the rule on business
24 **and coordinated care organizations.**

25 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
26 section from publication in the bulletin referred to in ORS 183.360.

27 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
28 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
29 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
30 show all changes to the rule by striking through material to be deleted and underlining all new
31 material, or by any other method that clearly shows all new and deleted material.

32 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
33 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
34 request received from 10 persons or from an association having not less than 10 members before the
35 earliest date that the rule could become effective after the giving of notice pursuant to subsection
36 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
37 notice of the hearing at least 21 days before the hearing to the person who has requested the
38 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
39 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
40 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
41 consider fully any written or oral submission.

42 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
43 and the rule for which the hearing is to be conducted applies only to a limited geographical area
44 within this state, or affects only a limited geographical area within this state, the hearing shall be
45 conducted within the geographical area at the place most convenient for the majority of the resi-

1 dents within the geographical area. At least 14 days before a hearing conducted under this para-
 2 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
 3 in a newspaper of general circulation published within the geographical area that is affected by the
 4 rule or to which the rule applies. If a newspaper of general circulation is not published within the
 5 geographical area that is affected by the rule or to which the rule applies, the publication shall be
 6 made in the newspaper of general circulation published closest to the geographical area.

7 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
 8 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by adults
 9 in custody in the proposed adoption, amendment or repeal of any rule to written submissions.

10 (d) If requested by at least five persons before the earliest date that the rule could become ef-
 11 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
 12 provide a statement that identifies the objective of the rule and a statement of how the agency will
 13 subsequently determine whether the rule is in fact accomplishing that objective.

14 (e) An agency that receives data or views concerning proposed rules from interested persons
 15 shall maintain a record of the data or views submitted. The record shall contain:

16 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
 17 amend or repeal a rule.

18 (B) A recording or summary of oral submissions received at hearings held for the purpose of
 19 receiving those submissions.

20 (C) Any public comment received in response to the request made under subsection (2)(b)(G) of
 21 this section and the agency's response to that comment.

22 (D) Any statements provided by the agency under paragraph (d) of this subsection.

23 (4) Upon request of an interested person received before the earliest date that the rule could
 24 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
 25 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
 26 requesting person an opportunity to submit data, views or arguments concerning the proposed
 27 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
 28 to subsection (5) of this section.

29 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
 30 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
 31 practicable, if the agency prepares:

32 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
 33 the public interest or the interest of the parties concerned and the specific reasons for its findings
 34 of prejudice;

35 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
 36 promulgation of the rule;

37 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
 38 need;

39 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
 40 the agency in considering the need for and in preparing the rule, and a statement of the location
 41 at which those documents are available for public inspection; and

42 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
 43 183.534.

44 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
 45 and may be effective for a period of not longer than 180 days. The adoption of a rule under this

1 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
 2 (4) of this section.

3 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
 4 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

5 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
 6 prior notice or hearing if the amendment is solely for the purpose of:

7 (a) Changing the name of an agency by reason of a name change prescribed by law;

8 (b) Changing the name of a program, office or division within an agency as long as the change
 9 in name does not have a substantive effect on the functions of the program, office or division;

10 (c) Correcting spelling;

11 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
 12 meaning of the rule;

13 (e) Correcting statutory or rule references; or

14 (f) Correcting addresses or telephone numbers referred to in the rules.

15 (8)(a) Any person may request in writing that an agency send to the person copies of the
 16 agency's notices of intended action issued under subsection (1) of this section. The person must
 17 provide an address where the person elects to receive notices. The address provided may be a postal
 18 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
 19 address.

20 (b) A request under this subsection must indicate that the person requests one of the following:

21 (A) The person may request that the agency mail paper copies of the proposed rule and other
 22 information required by subsection (2) of this section to the postal mailing address.

23 (B) If the agency posts notices of intended action on a website, the person may request that the
 24 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
 25 dress with a reference to the website where electronic copies of the proposed rule and other infor-
 26 mation required by subsection (2) of this section are posted.

27 (C) The person may request that the agency electronically mail the information required by
 28 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
 29 copies of the proposed rule and other information required by subsection (2) of this section or pro-
 30 vide a reference to a website where electronic copies of the proposed rule and other information
 31 required by subsection (2) of this section are posted.

32 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
 33 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
 34 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
 35 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
 36 the lists.

37 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
 38 tion may request that an agency furnish paper copies of the notices.

39 (9) This section does not apply to rules establishing an effective date for a previously effective
 40 rule or establishing a period during which a provision of a previously effective rule will apply.

41 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to
 42 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
 43 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
 44 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
 45 279C.800 to 279C.870 relating to public contracts and purchasing.

1 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
2 in substantial compliance with the provisions of this section in effect on the date that the notice
3 required under subsection (1) of this section is delivered to the Secretary of State for the purpose
4 of publication in the bulletin referred to in ORS 183.360.

5 (b) In addition to all other requirements with which rule adoptions must comply, a rule other
6 than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule
7 has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and
8 183.715.

9 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
10 subsection (2)(a)(A) of this section.

11 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
12 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
13 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
14 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
15 rule.

16 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
17 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
18 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
19 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS
20 183.333.

21 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
22 agency need not be based upon or supported by an evidentiary record.

23 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
24 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
25 agency or person unless the extension applies equally to all interested agencies and persons. An
26 agency shall not consider any submission made by another agency after the final deadline has
27 passed.

28 (15) The notices required under subsections (1) and (3) of this section must be given by the
29 agency to the following persons:

30 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
31 within two years before notice is given under subsection (1) of this section, notice shall be given to
32 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
33 cochairs of all committees that reported the bill out, except for those committees whose sole action
34 on the bill was referral to another committee.

35 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
36 passed within two years before notice is given under subsection (1) of this section, notice shall be
37 given to the chair or cochairs of any interim or session committee with authority over the subject
38 matter of the rule.

39 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
40 to the Speaker of the House of Representatives and to the President of the Senate who are in office
41 on the date the notice is given.

42 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
43 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
44 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
45 with the legislation from which the proposed adoption, amendment or repeal results.

1 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
 2 to the agency proposing the adoption, amendment or repeal.

3 **SECTION 2.** ORS 183.333 is amended to read:

4 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
 5 whenever possible the public be involved in the development of public policy by agencies and in the
 6 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
 7 mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
 8 visory committee that will represent the interests of persons likely to be affected by the rule, or use
 9 any other means of obtaining public views that will assist the agency in drafting the rule.

10 (2) Any agency in its discretion may develop a list of interested parties and inform those parties
 11 of any issue that may be the subject of rulemaking and invite the parties to make comments on the
 12 issue.

13 (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
 14 of this section, the agency shall seek the committee's recommendations on whether the rule will
 15 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
 16 nificant adverse impact on small businesses **or coordinated care organizations as defined in ORS**
 17 **414.025**. If the committee indicates that the rule will have a significant adverse impact on small
 18 businesses **or coordinated care organizations**, the agency shall seek the committee's recommen-
 19 dations on compliance with ORS 183.540.

20 (4) An agency shall consider an advisory committee's recommendations provided under sub-
 21 section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335
 22 (2)(b)(E).

23 (5) If an agency does not appoint an advisory committee for consideration of a permanent rule
 24 under subsection (1) of this section and 10 or more persons likely to be affected by the rule object
 25 to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with
 26 at least 10 members likely to be affected by the rule objects to the statement, the agency shall ap-
 27 point a fiscal impact advisory committee to provide recommendations on whether the rule will have
 28 a fiscal impact and what the extent of that impact will be. An objection under this subsection must
 29 be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency
 30 determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall
 31 extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The
 32 agency shall include any recommendations from the committee in the record maintained by the
 33 agency for the rule.

34 (6) An agency may appoint the Small Business Rules Advisory Committee established in ORS
 35 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

36 (7) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with
 37 a judgment or a settlement of a judicial proceeding.

38 (8) If an agency is required by law to appoint an advisory committee under this section, the
 39 agency may not appoint an officer, employee or other agent of the agency to serve as a member of
 40 the advisory committee.

41 **SECTION 3.** ORS 183.336 is amended to read:

42 183.336. (1) The statement of cost of compliance effect on small businesses required by ORS
 43 183.335 (2)(b)(E) must include:

44 (a) An estimate of the number of small businesses subject to the proposed rule and identification
 45 of the types of businesses and industries with small businesses subject to the proposed rule;

1 (b) A brief description of the projected reporting, recordkeeping and other administrative activ-
2 ities required for compliance with the proposed rule, including costs of professional services;

3 (c) An identification of equipment, supplies, labor and increased administration required for
4 compliance with the proposed rule; and

5 (d) A description of the manner in which the agency proposing the rule involved small busi-
6 nesses in the development of the rule.

7 **(2) The statement of cost of compliance effect on coordinated care organizations required**
8 **by ORS 183.335 (2)(b)(E) must include:**

9 (a) **An estimate of the number of coordinated care organizations, as defined in ORS**
10 **414.025, subject to the proposed rule;**

11 (b) **A brief description of the projected reporting, recordkeeping and other administrative**
12 **activities required for compliance with the proposed rule, including costs of professional**
13 **services;**

14 (c) **An identification of equipment, supplies, labor and increased administration required**
15 **for compliance with the proposed rule; and**

16 (d) **A description of the manner in which the agency proposing the rule involved coordi-**
17 **nated care organizations in the development of the rule.**

18 [(2)] (3) An agency shall *[utilize]* use available information in complying with the requirements
19 of this section.

20 **SECTION 4.** ORS 183.540 is amended to read:

21 183.540. If the statement of cost of compliance effect on small businesses required by ORS
22 183.335 (2)(b)(E) **or the statement of cost of compliance effect on coordinated care organiza-**
23 **tions required by ORS 183.335 (2)(b)(E)** shows that a rule has a significant adverse effect upon
24 small business **or coordinated care organizations**, to the extent consistent with the public health
25 and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small
26 business **or coordinated care organizations** by:

27 (1) Establishing differing compliance or reporting requirements or time tables for small business
28 **or coordinated care organizations;**

29 (2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the
30 rule for small business **or coordinated care organizations;**

31 (3) Utilizing objective criteria for standards;

32 (4) Exempting small businesses **or coordinated care organizations** from any or all require-
33 ments of the rule; or

34 (5) Otherwise establishing less intrusive or less costly alternatives applicable to small business
35 **or coordinated care organizations.**

36 **SECTION 5.** ORS 183.405 is amended to read:

37 183.405. (1) Not later than five years after adopting a rule, an agency shall review the rule for
38 the purpose of determining:

39 (a) Whether the rule has had the intended effect;

40 (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;

41 (c) Whether subsequent changes in the law require that the rule be repealed or amended;

42 (d) Whether there is continued need for the rule; and

43 (e) What impacts the rule has on small businesses **and coordinated care organizations, as**
44 **defined in ORS 414.025.**

45 (2) Upon request of an agency, the Small Business Rules Advisory Committee established in ORS

1 183.407 may agree to complete the review and reporting required by this section for the agency.

2 (3) An agency or the Small Business Rules Advisory Committee shall utilize available informa-
 3 tion in complying with the requirements of subsection (1) of this section.

4 (4) An agency or the Small Business Rules Advisory Committee shall provide a report on each
 5 review of a rule conducted under this section:

6 (a) To the Secretary of State;

7 (b) To the Small Business Rules Advisory Committee, unless the committee completed the review
 8 under subsection (2) of this section; and

9 (c) If the agency appointed an advisory committee pursuant to ORS 183.333 for consideration
 10 of a rule subject to the requirements of this section, to the advisory committee.

11 (5) The provisions of this section do not apply to the amendment or repeal of a rule.

12 (6) The provisions of this section do not apply to:

13 (a) Rules adopted to implement court orders or the settlement of civil proceedings;

14 (b) Rules that adopt federal laws or rules by reference;

15 (c) Rules adopted to implement legislatively approved fee changes; or

16 (d) Rules adopted to correct errors or omissions.

17 (7) The Secretary of State shall compile the reports submitted under this section during each
 18 calendar year and submit an annual report to the Legislative Assembly in the manner required by
 19 ORS 192.245 no later than February 1 of the following year.

20 **SECTION 6.** ORS 183.390 is amended to read:

21 183.390. (1) An interested person may petition an agency requesting the promulgation, amend-
 22 ment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions
 23 and the procedure for their submission, consideration and disposition. Not later than 90 days after
 24 the date of submission of a petition, the agency either shall deny the petition in writing or shall
 25 initiate rulemaking proceedings in accordance with ORS 183.335.

26 (2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under
 27 this section, the agency shall invite public comment upon the rule, and shall specifically request
 28 public comment on whether options exist for achieving the rule's substantive goals in a way that
 29 reduces the negative economic impact on businesses **or coordinated care organizations as defined**
 30 **in ORS 414.025.**

31 (3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

32 (a) The continued need for the rule;

33 (b) The nature of complaints or comments received concerning the rule from the public;

34 (c) The complexity of the rule;

35 (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or fed-
 36 eral regulations and, to the extent feasible, with local government regulations;

37 (e) The degree to which technology, economic conditions or other factors have changed in the
 38 subject area affected by the rule; and

39 (f) The statutory citation or legal basis for the rule.

40 **SECTION 7. (1) The amendments to ORS 183.333, 183.335, 183.336, 183.390 and 183.540 by**
 41 **sections 1 to 4 and 6 of this 2021 Act apply to notices of intended action issued on or after**
 42 **the effective date of this 2021 Act.**

43 **(2) The amendments to ORS 183.405 by section 5 of this 2021 Act apply to rules adopted**
 44 **on or after the effective date of this 2021 Act.**