

NOTICE OF 120-DAY (EMERGENCY) RULE

- The agency identified below in box 1 provides notice of a 120-day (emergency) rule pursuant to Utah Code Section 63G-3-304.
- Please address questions regarding information on this notice to the agency.

Agency Information

1. Agency: Insurance - Administration  
 Room no.: 3110  
 Building: STATE OFFICE BLDG  
 Street address 1: 450 N MAIN ST  
 Street address 2:  
 City, state, zip: SALT LAKE CITY UT 84114-1201  
 Mailing address 1: PO BOX 146901  
 Mailing address 2:  
 City, state, zip: SALT LAKE CITY UT 84114-6901

Contact person(s):

Name:	Phone:	Fax:	E-mail:
Steve Gooch	801-538-3803	801-538-3829	sgooch@utah.gov

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Information

DAR file no: 42038 Date filed: 08/24/2017 03:02 PM  
 State Admin Rule Filing Key: 159318  
 Utah Admin. Code ref. (R no.): R 590 - 275 -

Title

2. Title of rule or section (catchline):  
 Qualified Health Plan Alternate Enrollment

Effective Date

3. Effective Date (mm/dd/yyyy): 8/24/17

Rule Purpose

4. Purpose of the rule or reason for the change:  
 The purpose of this rule is to: select an alternate enrollment system for PPACA qualified health plans, as provided in 45 CFR 155.335(j)(3) that applies to situations where an issuer will have no individual Federal Exchange enrollment option for the upcoming plan year; take action in order to preserve state control over Utah's health insurance market by direction of the US Department of Health and Human Services to follow Utah's alternate enrollment process; and provide an alternate enrollment system that assists consumers in the most appropriate plan.

Rule Summary

5. Summary of the rule or change:

The rule establishes a state-directed process for the purpose of defining the hierarchy when an issuer leaves the individual Federal Marketplace as provided in 45 CFR 155.335(j)(3). Failure for a state to direct the alternate enrollment process will result in Utah enrollees' plan enrollments being directed by a default federal hierarchy.

6. Regular rulemaking procedures would:  
cause an imminent peril to the public health, safety, or welfare;

Justification: On August 2, 2017, Molina Healthcare of Utah announced it would no longer offer qualified health plans on the individual Federal Exchange as of January 1, 2018; this action leaves only two insurers on the Federal Exchange for 2018. It is estimated that Molina has ~40% of the enrollees who purchased their coverage on the Federal Exchange. In 2016, the United States Department of Health & Human Services (HHS) enacted an alternate enrollment hierarchy for enrollees whose plans will not be made available in the following plan year, but it also provides for a state-directed hierarchy. The department did not have a need to define such a hierarchy until the announcement was made by Molina in August. Once the department was able to determine that the federal hierarchy was at odds with Utah's defined terms for network plans, we worked quickly to identify what type of hierarchy could be established. During this shortened process, the department met with various stakeholders and carefully considered the process that would provide the greatest consumer protection, while preserving market competition. Utah must define the state hierarchy no later than September 1, 2017. However, we did not receive answers to all of the questions we posed to the Department of Health and Human Services until August 24, 2017. Failure to enact a state hierarchy will further erode Utah's ability to regulate Utah's insurance markets, disrupt the core of private market competition, and cause imminent peril to the public's ability to address their own healthcare needs. The emergency rule must be made in order to meet the September 1, 2017 deadline.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No

There is no anticipated cost or savings to the state budget. This rule does not affect the workload or budget of the state.

B) Local government:

Affected: No

There is no anticipated cost or savings to local governments. This rule does not affect the workloads or budgets of local governments.

C) Small businesses:

Affected: Yes

("small business" means a business employing fewer than 50 persons)

While the rule itself does not have direct cost or savings to small businesses, there is a potential cost to small businesses who are health care providers that contract with an issuer who will no longer offer a qualified health plan on the individual Federal Exchange. Such small businesses may see a decrease in patients. The department is unable to determine the potential decrease due to other underlying factors, including an enrollee's ability to switch to another plan that offers the same provider network; or in cases where the plan assigned by the alternate enrollment process may include the enrollee's current health care providers.

D) Persons other than small businesses, businesses, or local government entities:

Affected: Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

While the rule does not have direct cost or savings to any individual, partnership, association, government entity, or public organization, it may affect a corporation or private organization that offers health insurance based on the use of a state-defined process, rather than defaulting to the federal process. The cost or savings cannot be calculated at this time because it is not known which individuals will enroll in the default plan based on the rule's hierarchy; nor is it possible to know the health status of those individuals.

Compliance Cost Information

8. Compliance costs for affected persons:

There are no compliance costs for any affected persons as a result of this rule.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: While the rule does not have a direct cost or savings to any individual, partnership, association, government entity, or public organization, it may affect a corporation or private organization that offers health insurance based on the use of a state-defined process, rather than defaulting to the federal process. The cost or savings cannot be calculated at this time because it is not known which individuals will enroll in the default plan based on the rule's hierarchy; nor is it possible to know the health status of those individuals. Because the rule establishes a process to assign business, there is a potential cost to small business who are health care providers that contract with an issuer who will no longer offer a qualified health plan on the individual Federal Exchange; such small businesses may see a decrease in patients. The department is unable to determine the potential decrease due to other underlying factors , including an enrollee's ability to switch to another plan that offers the same provider network; or in cases where the plan assigned by the alternate enrollment process may include the enrollee's current health care providers.

II: AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The department is unable to determine the number of business establishments in Utah that may be affected by this rule. This rule may have an indirect impact on a portion of Utah's healthcare system, including physicians, clinics, health care facilities, and pharmacies, if an enrollee fails to select a new plan that includes their current health care providers. It is unknown how many enrollees will select which plans.

III: AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The department is unable to determine the number of business establishments in Utah that may be affected by this rule. This rule may have an indirect impact on a portion of Utah's healthcare system, including physicians, clinics, health care facilities, and pharmacies, if an enrollee fails to select a new plan that includes their current health care providers. It is unknown how many enrollees will select which plans.

IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The department is unable to determine the number of business establishments in Utah that may be affected by this rule. This rule may have an indirect impact on a portion of Utah's healthcare system, including physicians, clinics, health care facilities, and pharmacies, if an enrollee fails to select a new plan that includes their current health care providers. It is unknown how many enrollees will select which plans.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: When possible, Utah's leadership has always chosen to invoke the state's right to define processes required by the Affordable Care Act. In the past, the state has chosen its own Essential Health Benefit Plan, selected to run a SHOP Exchange, chosen not to expand Medicaid, and selected to perform plan management review, amongst other things. This rule invokes the state's right to define the alternate enrollment hierarchy based on the Utah marketplace. This rule preserves private competition in the marketplace, rather than federal assignment.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, Insurance Commissioner

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :  
Subsection 31A-22-212(5)

Section 31A-2-201

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page): Publisher: Date Issued: Issue, or version: ISBN Number: ISSN Number: Cost of Incorporated Reference: Adds, updates, removes:
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**Indexing Information**

12. Indexing information - keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):

insurance  
enrollment

**File Information**

13. Attach an RTF document containing the text of this rule change (filename):

There is a document associated with this rule filing.

**To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.**

**Agency Authorization**

Agency head or designee, and title:	Steve Gooch Information Specialist	Date (mm/dd/yyyy): 08/24/2017
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