

Enrolled
House Bill 2126

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

CHAPTER

AN ACT

Relating to Department of Human Services program changes caused by budget reductions; creating new provisions; amending ORS 414.325, 414.334 and 414.735 and section 2, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 876); repealing ORS 414.336 and section 300, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2009); and declaring an emergency.

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

SECTION 1. ORS 414.325 is amended to read:

414.325. (1) As used in this section[,]:

(a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

[(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Department of Human Services unless the practitioner prescribes otherwise and an exception is granted by the department.]

[(3) Except as provided in subsections (4) and (5) of this section, the department shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the department shall pay only for drugs in the generic form unless an exception has been granted by the department.]

[(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the department is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the department.]

(b) "Mental health drug" means a type of legend drug defined by the Department of Human Services by rule that includes, but is not limited to:

(A) Therapeutic class 7 ataractics-tranquilizers; and

(B) Therapeutic class 11 psychostimulants-antidepressants.

(c) "Urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(2) The department shall reimburse the cost of a legend drug prescribed for a recipient of medical assistance only if the legend drug:

(a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334;

(b) Is in a therapeutic class of nonsedating antihistamines and nasal inhalers, as defined by the department by rule, and is prescribed by an allergist for the treatment of:

- (A) Asthma;
- (B) Sinusitis;
- (C) Rhinitis; or
- (D) Allergies; or

(c) Is prescribed and dispensed under this chapter by a licensed practitioner at a rural health clinic for an urgent medical condition and:

(A) There is no pharmacy within 15 miles of the clinic;

(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

(3) The department shall pay only for drugs in the generic form unless an exception has been granted by the department through the prior authorization process adopted by the department under subsection (4) of this section.

(4) Notwithstanding subsection (2) of this section, the department shall provide reimbursement for a legend drug that does not meet the criteria in subsection (2) of this section if:

(a) It is a mental health drug.

(b) The department grants approval through a prior authorization process adopted by the department by rule.

(c) The prescriber contacts the department requesting prior authorization and the department or its agent fails to respond to the telephone call or to a prescriber's request made by electronic mail within 24 hours.

(d) After consultation with the department or its agent, the prescriber, in the prescriber's professional judgment, determines that the drug is medically appropriate.

(e) The original prescription was written prior to the effective date of this 2009 Act or the request is for a refill of a prescription for:

(A) The treatment of seizures, cancer, HIV or AIDS; or

(B) An immunosuppressant.

(f) It is a drug in a class not evaluated for the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334.

(5)[(a)] Notwithstanding subsections (1) to (4) of this section [*and except as provided in paragraph (b) of this subsection*], the department is authorized to:

[(A)] (a) Withhold payment for a legend drug when federal financial participation is not available; [*and*]

[(B)] (b) Require prior authorization of payment for drugs that the department has determined should be limited to those conditions generally recognized as appropriate by the medical profession[.]; **and**

(c) **Withhold payment for a legend drug that is not a funded health service on the prioritized list of health services established by the Health Services Commission under ORS 414.720.**

[(b) *The department may not require prior authorization for therapeutic classes of nonsedating antihistamines and nasal inhalers, as defined by rule by the department, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:*]

[(A) *Asthma;*]

[(B) *Sinusitis;*]

[(C) *Rhinitis; or*]

[(D) *Allergies.*]

[(6)(a) *The department shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:*]

[(A) *There is not a pharmacy within 15 miles of the clinic;*]

[(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or]

[(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.]

[(b) As used in this subsection, "urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.]

[(7)] (6) Notwithstanding ORS 414.334, the department may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

[(8)] (7) Notwithstanding subsection (3) of this section, the department may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(8) The department shall appoint an advisory committee in accordance with ORS 183.333 for any rulemaking conducted pursuant to this section.

SECTION 2. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section 1 of this 2009 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section 1, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 876), and section 35, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

414.325. (1) As used in this section[.]:

(a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

[(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Oregon Health Authority unless the practitioner prescribes otherwise and an exception is granted by the authority.]

[(3) Except as provided in subsections (4) and (5) of this section, the authority shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the authority shall pay only for drugs in the generic form unless an exception has been granted by the authority.]

[(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the authority is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the authority.]

(b) "Mental health drug" means a type of legend drug defined by the Oregon Health Authority by rule that includes, but is not limited to:

(A) Therapeutic class 7 ataractics-tranquilizers; and

(B) Therapeutic class 11 psychostimulants-antidepressants.

(c) "Urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(2) The authority shall reimburse the cost of a legend drug prescribed for a recipient of medical assistance only if the legend drug:

(a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334;

(b) Is in a therapeutic class of non-sedating antihistamines and nasal inhalers, as defined by the authority by rule, and is prescribed by an allergist for the treatment of:

(A) Asthma;

(B) Sinusitis;

(C) Rhinitis; or

(D) Allergies; or

(c) Is prescribed and dispensed under this chapter by a licensed practitioner at a rural health clinic for an urgent medical condition and:

(A) There is no pharmacy within 15 miles of the clinic;
(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

(3) The authority shall pay only for drugs in the generic form unless an exception has been granted by the authority through the prior authorization process adopted by the authority under subsection (4) of this section.

(4) Notwithstanding subsection (2) of this section, the authority shall provide reimbursement for a legend drug that does not meet the criteria in subsection (2) of this section if:

(a) It is a mental health drug.

(b) The authority grants approval through a prior authorization process adopted by the authority by rule.

(c) The prescriber contacts the authority requesting prior authorization and the authority or its agent fails to respond to the telephone call or to a prescriber's request made by electronic mail within 24 hours.

(d) After consultation with the authority or its agent, the prescriber, in the prescriber's professional judgment, determines that the drug is medically appropriate.

(e) The original prescription was written prior to the effective date of this 2009 Act or the request is for a refill of a prescription for:

(A) The treatment of seizures, cancer, HIV or AIDS; or

(B) An immunosuppressant.

(f) It is a drug in a class not evaluated for the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334.

(5)[(a)] Notwithstanding subsections (1) to (4) of this section [and except as provided in paragraph (b) of this subsection], the authority is authorized to:

[(A)] (a) Withhold payment for a legend drug when federal financial participation is not available; [and]

[(B)] (b) Require prior authorization of payment for drugs that the authority has determined should be limited to those conditions generally recognized as appropriate by the medical profession[.]; and

(c) Withhold payment for a legend drug that is not a funded health service on the prioritized list of health services established by the Health Services Commission under ORS 414.720.

[(b) The authority may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies.]

[(6)(a) The authority shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:]

[(A) There is not a pharmacy within 15 miles of the clinic;]

[(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or]

[(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.]

[(b) As used in this subsection, "urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.]

[(7)] (6) Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

[(8)] (7) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

[(9)(a)] (8)(a) Within 180 days after the United States patent expires on an immunosuppressant drug used in connection with an organ transplant, the authority shall determine whether the drug is a narrow therapeutic index drug.

(b) As used in this subsection, “narrow therapeutic index drug” means a drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring.

(9) The authority shall appoint an advisory committee in accordance with ORS 183.333 for any rulemaking conducted pursuant to this section.

SECTION 3. ORS 414.334 is amended to read:

414.334. (1) The Department of Human Services shall adopt a Practitioner-Managed Prescription Drug Plan for the [Oregon Health Plan] **medical assistance program**. The purpose of the plan is to ensure that enrollees of the [Oregon Health Plan] **medical assistance program** receive the most effective prescription drug available at the best possible price.

(2) Before adopting the plan, the department shall conduct public meetings and consult with the Health Resources Commission.

(3) The department shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the [Oregon Health Plan] **medical assistance program** and ensure that practitioners receive educational materials and have access to training on the Practitioner-Managed Prescription Drug Plan.

[(4) *Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the department, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.*]

[(5)] (4) An enrollee may appeal to the department a decision of a practitioner or the department to not provide a prescription drug requested by the enrollee.

[(6)] (5) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 4. If House Bill 2009 becomes law, section 3 of this 2009 Act (amending ORS 414.334) is repealed and ORS 414.334, as amended by section 299, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

414.334. (1) The Oregon Health Authority shall adopt a Practitioner-Managed Prescription Drug Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees of the medical assistance program receive the most effective prescription drug available at the best possible price.

(2) Before adopting the plan, the authority shall conduct public meetings and consult with the Health Resources Commission.

(3) The authority shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the medical assistance program and ensure that practitioners receive educational materials and have access to training on the Practitioner-Managed Prescription Drug Plan.

[(4) *Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the authority, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.*]

[(5)] (4) An enrollee may appeal to the authority a decision of a practitioner or the authority to not provide a prescription drug requested by the enrollee.

[(6)] (5) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 5. The Department of Human Services shall report to the health related committees and the Joint Committee on Ways and Means of the Seventy-sixth Legislative Assembly on the implementation and effectiveness of the amendments to ORS 414.325 and 414.334 by sections 1 and 3 of this 2009 Act.

SECTION 6. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section 5 of this 2009 Act is amended to read:

Sec. 5. The [Department of Human Services] **Oregon Health Authority** shall report to the health related committees and the Joint Committee on Ways and Means of the Seventy-sixth Legislative Assembly on the implementation and effectiveness of the amendments to ORS 414.325 and 414.334 by sections [1 and 3] **2 and 4** of this 2009 Act.

SECTION 7. ORS 414.325, as amended by section 1 of this 2009 Act, is amended to read:

414.325. (1) As used in this section:

(a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

[(b) "Mental health drug" means a type of legend drug defined by the Department of Human Services by rule that includes, but is not limited to:]

[(A) Therapeutic class 7 ataractics-tranquilizers; and]

[(B) Therapeutic class 11 psychostimulants-antidepressants.]

[(c)] (b) "Urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

[(2) The department shall reimburse the cost of a legend drug prescribed for a recipient of medical assistance only if the legend drug:]

[(a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334;]

[(b) Is in a therapeutic class of non-sedating antihistamines and nasal inhalers, as defined by the department by rule, and is prescribed by an allergist for the treatment of any of:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies; or]

[(c) Is prescribed and dispensed under this chapter by a licensed practitioner at a rural health clinic for an urgent medical condition and:]

[(A) There is no pharmacy within 15 miles of the clinic;]

[(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or]

[(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.]

[(3) The department shall pay only for drugs in the generic form unless an exception has been granted by the department through the prior authorization process adopted by the department under subsection (4) of this section.]

[(4) Notwithstanding subsection (2) of this section, the department shall provide reimbursement for a legend drug that does not meet the criteria in subsection (2) of this section if:]

[(a) It is a mental health drug.]

[(b) The department grants approval through a prior authorization process adopted by the department by rule.]

[(c) The prescriber contacts the department requesting prior authorization and the department or its agent fails to respond to the telephone call or to a prescriber's request made by electronic mail within 24 hours.]

[(d) After consultation with the department or its agent, the prescriber, in the prescriber's professional judgment, determines that the drug is medically appropriate.]

[(e) The original prescription was written prior to the effective date of this 2009 Act or the request is for a refill of a prescription for:]

[(A) The treatment of seizures, cancer, HIV or AIDS; or]

[(B) An immunosuppressant.]

[(f) It is a drug in a class not evaluated for the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334.]

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Department of Human Services unless the practitioner prescribes otherwise and an exception is granted by the department.

(3) Except as provided in subsections (4) and (5) of this section, the department shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the department shall pay only for drugs in the generic form unless an exception has been granted by the department.

(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the department is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the department.

(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection, the department is authorized to:

[(a)] (A) Withhold payment for a legend drug when federal financial participation is not available; and

[(b)] (B) Require prior authorization of payment for drugs that the department has determined should be limited to those conditions generally recognized as appropriate by the medical profession[; and].

[(c) Withhold payment for a legend drug that is not a funded health service on the prioritized list of health services established by the Health Services Commission under ORS 414.720.]

(b) The department may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the department, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

(A) Asthma;

(B) Sinusitis;

(C) Rhinitis; or

(D) Allergies.

(6) The department shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:

(a) There is not a pharmacy within 15 miles of the clinic;

(b) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(c) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

[(6)] (7) Notwithstanding ORS 414.334, the department may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

[(7)] (8) Notwithstanding subsection (3) of this section, the department may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

[(8) The department shall appoint an advisory committee in accordance with ORS 183.333 for any rulemaking conducted pursuant to this section.]

SECTION 8. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section 7 of this 2009 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section 1, chapter _____, Oregon Laws 2009 (Enrolled Senate Bill 876), section 35, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2129), and section 2 of this 2009 Act, is amended to read:

414.325. (1) As used in this section:

(a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

[(b) "Mental health drug" means a type of legend drug defined by the Oregon Health Authority by rule that includes, but is not limited to:]

[(A) Therapeutic class 7 ataractics-tranquilizers; and]

[(B) Therapeutic class 11 psychostimulants-antidepressants.]

[(c) (b) "Urgent medical condition" means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

[(2) The authority shall reimburse the cost of a legend drug prescribed for a recipient of medical assistance only if the legend drug:]

[(a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334;]

[(b) Is in a therapeutic class of non-sedating antihistamines and nasal inhalers, as defined by the authority by rule, and is prescribed by an allergist for the treatment of:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies; or]

[(c) Is prescribed and dispensed under this chapter by a licensed practitioner at a rural health clinic for an urgent medical condition and:]

[(A) There is no pharmacy within 15 miles of the clinic;]

[(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or]

[(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.]

[(3) The authority shall pay only for drugs in the generic form unless an exception has been granted by the authority through the prior authorization process adopted by the authority under subsection (4) of this section.]

[(4) Notwithstanding subsection (2) of this section, the authority shall provide reimbursement for a legend drug that does not meet the criteria in subsection (2) of this section if:]

[(a) It is a mental health drug.]

[(b) The authority grants approval through a prior authorization process adopted by the authority by rule.]

[(c) The prescriber contacts the authority requesting prior authorization and the authority or its agent fails to respond to the telephone call or to a prescriber's request made by electronic mail within 24 hours.]

[(d) After consultation with the authority or its agent, the prescriber, in the prescriber's professional judgment, determines that the drug is medically appropriate.]

[(e) The original prescription was written prior to the effective date of this 2009 Act or the request is for a refill of a prescription for:]

[(A) The treatment of seizures, cancer, HIV or AIDS; or]

[(B) An immunosuppressant.]

[(f) It is a drug in a class not evaluated for the Practitioner-Managed Prescription Drug Plan adopted under ORS 414.334.]

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or

treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Oregon Health Authority unless the practitioner prescribes otherwise and an exception is granted by the authority.

(3) Except as provided in subsections (4) and (5) of this section, the authority shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the authority shall pay only for drugs in the generic form unless an exception has been granted by the authority.

(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the authority is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the authority.

(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection, the authority is authorized to:

[(a)] (A) Withhold payment for a legend drug when federal financial participation is not available; and

[(b)] (B) Require prior authorization of payment for drugs that the authority has determined should be limited to those conditions generally recognized as appropriate by the medical profession[; and].

[(c) *Withhold payment for a legend drug that is not a funded health service on the prioritized list of health services established by the Health Services Commission under ORS 414.720.*]

(b) The authority may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

- (A) Asthma;
- (B) Sinusitis;
- (C) Rhinitis; or
- (D) Allergies.

(6) The authority shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:

(a) There is not a pharmacy within 15 miles of the clinic;

(b) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(c) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

[(6)] (7) Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

[(7)] (8) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

[(8)(a)] (9)(a) Within 180 days after the United States patent expires on an immunosuppressant drug used in connection with an organ transplant, the authority shall determine whether the drug is a narrow therapeutic index drug.

(b) As used in this subsection, "narrow therapeutic index drug" means a drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring.

[(9) *The authority shall appoint an advisory committee in accordance with ORS 183.333 for any rulemaking conducted pursuant to this section.*]

SECTION 9. ORS 414.334, as amended by section 3 of this 2009 Act, is amended to read:

414.334. (1) The Department of Human Services shall adopt a Practitioner-Managed Prescription Drug Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees of the medical assistance program receive the most effective prescription drug available at the best possible price.

(2) Before adopting the plan, the department shall conduct public meetings and consult with the Health Resources Commission.

(3) The department shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the medical assistance program and ensure that practitioners receive educational materials and have access to training on the Practitioner-Managed Prescription Drug Plan.

(4) Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the department, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.

[4] (5) An enrollee may appeal to the department a decision of a practitioner or the department to not provide a prescription drug requested by the enrollee.

[5] (6) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 10. If House Bill 2009 becomes law, section 9 of this 2009 Act (amending ORS 414.334) is repealed and ORS 414.334, as amended by section 299, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2009), and section 4 of this 2009 Act, is amended to read:

414.334. (1) The Oregon Health Authority shall adopt a Practitioner-Managed Prescription Drug Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees of the medical assistance program receive the most effective prescription drug available at the best possible price.

(2) Before adopting the plan, the authority shall conduct public meetings and consult with the Health Resources Commission.

(3) The authority shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the medical assistance program and ensure that practitioners receive educational materials and have access to training on the Practitioner-Managed Prescription Drug Plan.

(4) Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the authority, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.

[4] (5) An enrollee may appeal to the authority a decision of a practitioner or the authority to not provide a prescription drug requested by the enrollee.

[5] (6) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 11. The Department of Human Services may not adopt or amend any rule that requires a prescribing practitioner to contact the department to request an exception for a medically appropriate or medically necessary drug that is not listed on the Practitioner-Managed Prescription Drug Plan drug list for that class of drugs adopted under ORS 414.334, unless otherwise authorized by enabling legislation setting forth the requirement for prior authorization.

SECTION 12. If House Bill 2009 becomes law, section 11 of this 2009 Act is amended to read:

Sec. 11. The [Department of Human Services] **Oregon Health Authority** may not adopt or amend any rule that requires a prescribing practitioner to contact the [department] **authority** to request an exception for a medically appropriate or medically necessary drug that is not listed on the Practitioner-Managed Prescription Drug Plan drug list for that class of drugs adopted under ORS 414.334, unless otherwise authorized by enabling legislation setting forth the requirement for prior authorization.

SECTION 13. The amendments to ORS 414.325 and 414.334 by sections 7 to 10 of this 2009 Act become operative on January 2, 2014.

SECTION 14. ORS 414.336 is repealed.

SECTION 15. If House Bill 2009 becomes law, section 300, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 414.336), is repealed.

SECTION 16. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section 2, chapter ____, Oregon Laws 2009 (Enrolled Senate Bill 876), as amended by section 36, chapter ____, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

Sec. 2. Notwithstanding ORS 414.325 [(9)(a)] (8)(a), if the United States patent on an immunosuppressant drug used in connection with an organ transplant expired on or after July 1, 2007, and before the effective date of chapter ____, Oregon Laws 2009 (Enrolled Senate Bill 876), the Oregon Health Authority shall determine whether the drug is a narrow therapeutic index drug as defined in ORS 414.325 [(9)(b)] (8)(b) before January 1, 2010.

SECTION 17. ORS 414.735 is amended to read:

414.735. (1) If insufficient resources are available during a contract period:

(a) The population of eligible persons determined by law shall not be reduced.

(b) The reimbursement rate for providers and plans established under the contractual agreement shall not be reduced.

(2) In the circumstances described in subsection (1) of this section, reimbursement shall be adjusted by reducing the health services for the eligible population by eliminating services in the order of priority recommended by the Health Services Commission, starting with the least important and progressing toward the most important.

(3) The Department of Human Services shall obtain the approval of the Legislative Assembly, or **the** Emergency Board[,] if the Legislative Assembly is not in session, before instituting the reductions. In addition, providers contracting to provide health services under ORS 414.705 to 414.750 must be notified at least two weeks prior to any legislative consideration of such reductions. Any reductions made under this section shall take effect no sooner than 60 days following final legislative action approving the reductions.

(4) This section does not apply to reductions made by the Legislative Assembly in a legislatively adopted or approved budget.

SECTION 18. If House Bill 2009 becomes law, section 17 of this 2009 Act (amending ORS 414.735) is repealed and ORS 414.735, as amended by 328, chapter _____, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

414.735. (1) If insufficient resources are available during a contract period:

(a) The population of eligible persons determined by law shall not be reduced.

(b) The reimbursement rate for providers and plans established under the contractual agreement shall not be reduced.

(2) In the circumstances described in subsection (1) of this section, reimbursement shall be adjusted by reducing the health services for the eligible population by eliminating services in the order of priority recommended by the Health Services Commission, starting with the least important and progressing toward the most important.

(3) The Oregon Health Policy Board shall obtain the approval of the Legislative Assembly, or **the** Emergency Board[,] if the Legislative Assembly is not in session, before instituting the reductions. In addition, providers contracting to provide health services under ORS 414.705 to 414.750 must be notified at least two weeks prior to any legislative consideration of such reductions. Any reductions made under this section shall take effect no sooner than 60 days following final legislative action approving the reductions.

(4) This section does not apply to reductions made by the Legislative Assembly in a legislatively adopted or approved budget.

SECTION 19. Notwithstanding section 24, chapter 736, Oregon Laws 2003, for the biennium beginning July 1, 2009, the Department of Human Services may limit the administrative cost and property expense components of the allowable costs that are reimbursed pursuant to section 24 (4)(f), chapter 736, Oregon Laws 2003, in accordance with the legislatively adopted budget.

SECTION 20. Section 19 of this 2009 Act is repealed on June 30, 2011.

SECTION 21. Notwithstanding ORS 461.549, the amount allocated from the Administrative Services Economic Development Fund to the Problem Gambling Treatment Fund under ORS 461.549, in the fiscal year beginning July 1, 2009, is reduced by \$2,120,912.

SECTION 22. For the biennium beginning July 1, 2009, the Department of Human Services is authorized to implement one or more of the following reductions in temporary assistance for needy families. The department may, notwithstanding ORS 411.070 and 412.009:

(1) Deny aid to a family in which a caretaker relative is disqualified from receiving unemployment insurance based upon the reason for the separation from employment.

(2) Reduce the monthly aid paid to a family under ORS 412.124 to \$100 for the period ending September 30, 2010, and to \$50 for the period beginning October 1, 2010.

(3) Establish an income eligibility limit equal to 185 percent of the federal poverty guidelines for aid to a dependent child residing with a caretaker relative who is not the child's parent.

(4) Restrict access to activities that promote family stability and financial independence described in ORS 412.006 (5).

(5) Deny employment-related day care assistance to a parent who is self-employed.

(6) Eliminate the reduced copayment required for employment-related day care assistance in the first month of employment.

(7) Beginning July 1, 2010, restrict employment-related day care assistance to those families that have received temporary assistance for needy families in the 24-month period prior to the date of application for employment-related day care assistance.

SECTION 23. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect July 1, 2009.

Passed by House June 26, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 29, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State