

(Including Amendments to Resolve Conflicts)

## A-Engrossed House Bill 2126

Ordered by the House June 26  
Including House Amendments dated June 26

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)

### Corrected 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.

*[Requires Department of Human Services to review statutory laws governing programs administered by department and identify changes needed to reflect budget changes. Directs department to report changes to Legislative Assembly.]*

**Authorizes department to implement temporary changes to nursing home reimbursement formula and reductions in temporary assistance for needy families benefits to comply with reductions in legislatively adopted or approved budget. Temporarily reduces amount of monies allocated by statute from Administrative Services Economic Development Fund to Problem Gambling Treatment Fund.**

**Authorizes Department of Human Services to require prior authorization for prescribing any drug not on Practitioner-Managed Prescription Drug Plan. Exempts mental health drug. Declares emergency, effective [on passage] July 1, 2009.**

### A BILL FOR AN ACT

1  
2 Relating to Department of Human Services program changes caused by budget reductions; creating  
3 new provisions; amending ORS 414.325, 414.334 and 414.735 and section 2, chapter \_\_\_\_\_,  
4 Oregon Laws 2009 (Enrolled Senate Bill 876); repealing ORS 414.336 and section 300, chapter  
5 \_\_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009); and declaring an emergency.

#### 6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 414.325 is amended to read:

8 414.325. (1) As used in this section[,]:

9 (a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS  
10 689.005.

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

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

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

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

3 (A) Therapeutic class 7 ataractics-tranquilizers; and

4 (B) Therapeutic class 11 psychostimulants-antidepressants.

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

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

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

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

14 (A) Asthma;

15 (B) Sinusitis;

16 (C) Rhinitis; or

17 (D) Allergies; or

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

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

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

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

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

27 (4) Notwithstanding subsection (2) of this section, the department shall provide re-  
28 imbursement for a legend drug that does not meet the criteria in subsection (2) of this sec-  
29 tion if:

30 (a) It is a mental health drug.

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

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

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

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

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

41 (B) An immunosuppressant.

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

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

1 [(A)] (a) Withhold payment for a legend drug when federal financial participation is not avail-  
2 able; [and]

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

6 (c) **Withhold payment for a legend drug that is not a funded health service on the prior-**  
7 **itized list of health services established by the Health Services Commission under ORS**  
8 **414.720.**

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

13 [(A) *Asthma;*]

14 [(B) *Sinusitis;*]

15 [(C) *Rhinitis; or*]

16 [(D) *Allergies.*]

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

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

21 [(B) *The prescription is dispensed for a patient outside of the normal business hours of any phar-*  
22 *macy within 15 miles of the clinic; or]*

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

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

27 [(7)] (6) Notwithstanding ORS 414.334, the department may conduct prospective drug utilization  
28 review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in  
29 the preceding six-month period.

30 [(8)] (7) Notwithstanding subsection (3) of this section, the department may pay a pharmacy for  
31 a particular brand name drug rather than the generic version of the drug after notifying the phar-  
32 macy that the cost of the particular brand name drug, after receiving discounted prices and rebates,  
33 is equal to or less than the cost of the generic version of the drug.

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

36 **SECTION 2. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section**  
37 **1 of this 2009 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section**  
38 **1, chapter \_\_\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), and section 35, chapter**  
39 **\_\_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:**

40 414.325. (1) As used in this section[.]:

41 (a) “Legend drug” means any drug requiring a prescription by a practitioner, as defined in ORS  
42 689.005.

43 [(2) *A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the*  
44 *exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in*  
45 *the practitioner’s care and within the scope of practice. Prescriptions shall be dispensed in the generic*

1 form pursuant to ORS 689.515 and pursuant to rules of the Oregon Health Authority unless the prac-  
2 titioner prescribes otherwise and an exception is granted by the authority.]

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

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

9 **(b) "Mental health drug" means a type of legend drug defined by the Oregon Health Au-  
10 thority by rule that includes, but is not limited to:**

11 **(A) Therapeutic class 7 ataractics-tranquilizers; and**

12 **(B) Therapeutic class 11 psychostimulants-antidepressants.**

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

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

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

20 **(b) Is in a therapeutic class of nonседating antihistamines and nasal inhalers, as defined  
21 by the authority by rule, and is prescribed by an allergist for the treatment of:**

22 **(A) Asthma;**

23 **(B) Sinusitis;**

24 **(C) Rhinitis; or**

25 **(D) Allergies; or**

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

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

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

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

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

35 **(4) Notwithstanding subsection (2) of this section, the authority shall provide re-  
36 imbursement for a legend drug that does not meet the criteria in subsection (2) of this sec-  
37 tion if:**

38 **(a) It is a mental health drug.**

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

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

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

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

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

4 (B) An immunosuppressant.

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

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

9 [(A)] (a) Withhold payment for a legend drug when federal financial participation is not avail-  
10 able; [*and*]

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

14 (c) **Withhold payment for a legend drug that is not a funded health service on the prior-**  
15 **itized list of health services established by the Health Services Commission under ORS**  
16 **414.720.**

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

21 [(A) *Asthma;*]

22 [(B) *Sinusitis;*]

23 [(C) *Rhinitis; or*]

24 [(D) *Allergies.*]

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

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

29 [(B) *The prescription is dispensed for a patient outside of the normal business hours of any phar-*  
30 *macy within 15 miles of the clinic; or]*

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

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

35 [(7)] (6) Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization  
36 review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in  
37 the preceding six-month period.

38 [(8)] (7) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a  
39 particular brand name drug rather than the generic version of the drug after notifying the pharmacy  
40 that the cost of the particular brand name drug, after receiving discounted prices and rebates, is  
41 equal to or less than the cost of the generic version of the drug.

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

45 (b) As used in this subsection, “narrow therapeutic index drug” means a drug that has a narrow

1 range in blood concentrations between efficacy and toxicity and requires therapeutic drug concen-  
2 tration or pharmacodynamic monitoring.

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

5 **SECTION 3.** ORS 414.334 is amended to read:

6 414.334. (1) The Department of Human Services shall adopt a Practitioner-Managed Prescription  
7 Drug Plan for the [*Oregon Health Plan*] **medical assistance program**. The purpose of the plan is  
8 to ensure that enrollees of the [*Oregon Health Plan*] **medical assistance program** receive the most  
9 effective prescription drug available at the best possible price.

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

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

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

19 *[(5)]* (4) An enrollee may appeal to the department a decision of a practitioner or the department  
20 to not provide a prescription drug requested by the enrollee.

21 *[(6)]* (5) This section does not limit the decision of a practitioner as to the scope and duration  
22 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

23 **SECTION 4. If House Bill 2009 becomes law, section 3 of this 2009 Act (amending ORS**  
24 **414.334) is repealed and ORS 414.334, as amended by section 299, chapter \_\_\_\_\_, Oregon**  
25 **Laws 2009 (Enrolled House Bill 2009), is amended to read:**

26 414.334. (1) The Oregon Health Authority shall adopt a Practitioner-Managed Prescription Drug  
27 Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees of the  
28 medical assistance program receive the most effective prescription drug available at the best possi-  
29 ble price.

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

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

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

39 *[(5)]* (4) An enrollee may appeal to the authority a decision of a practitioner or the authority  
40 to not provide a prescription drug requested by the enrollee.

41 *[(6)]* (5) This section does not limit the decision of a practitioner as to the scope and duration  
42 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

43 **SECTION 5. The Department of Human Services shall report to the health related com-**  
44 **mittees and the Joint Committee on Ways and Means of the Seventy-sixth Legislative As-**  
45 **sembly on the implementation and effectiveness of the amendments to ORS 414.325 and**

1 **414.334 by sections 1 and 3 of this 2009 Act.**

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

4 **Sec. 5.** The *[Department of Human Services]* **Oregon Health Authority** shall report to the  
5 health related committees and the Joint Committee on Ways and Means of the Seventy-sixth Legis-  
6 lative Assembly on the implementation and effectiveness of the amendments to ORS 414.325 and  
7 414.334 by sections *[1 and 3]* **2 and 4** of this 2009 Act.

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

9 414.325. (1) As used in this section:

10 (a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS  
11 689.005.

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

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

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

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

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

21 *[(a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS*  
22 *414.334;]*

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

25 *[(A) Asthma;]*

26 *[(B) Sinusitis;]*

27 *[(C) Rhinitis; or]*

28 *[(D) Allergies; or]*

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

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

32 *[(B) The prescription is dispensed for a patient outside of the normal business hours of any phar-*  
33 *macy within 15 miles of the clinic; or]*

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

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

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

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

41 *[(b) The department grants approval through a prior authorization process adopted by the depart-*  
42 *ment by rule.]*

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

1        *[(d) After consultation with the department or its agent, the prescriber, in the prescriber's profes-*  
2 *sional judgment, determines that the drug is medically appropriate.]*

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

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

6        *[(B) An immunosuppressant.]*

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

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

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

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

22        **(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in para-**  
23 **graph (b) of this subsection, the department is authorized to:**

24        *[(a)] (A) Withhold payment for a legend drug when federal financial participation is not avail-*  
25 *able; and*

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

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

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

35        **(A) Asthma;**

36        **(B) Sinusitis;**

37        **(C) Rhinitis; or**

38        **(D) Allergies.**

39        **(6) The department shall pay a rural health clinic for a legend drug prescribed and dis-**  
40 **persed under this chapter by a licensed practitioner at the rural health clinic for an urgent**  
41 **medical condition if:**

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

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

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



1        [(6)] (7) Notwithstanding ORS 414.334, the department may conduct prospective drug utilization  
2 review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in  
3 the preceding six-month period.

4        [(7)] (8) Notwithstanding subsection (3) of this section, the department may pay a pharmacy for  
5 a particular brand name drug rather than the generic version of the drug after notifying the phar-  
6 macy that the cost of the particular brand name drug, after receiving discounted prices and rebates,  
7 is equal to or less than the cost of the generic version of the drug.

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

10        **SECTION 8. If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section**  
11 **7 of this 2009 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section**  
12 **1, chapter \_\_\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), section 35, chapter**  
13 **\_\_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2129), and section 2 of this 2009 Act, is**  
14 **amended to read:**

15        414.325. (1) As used in this section:

16        (a) “Legend drug” means any drug requiring a prescription by a practitioner, as defined in ORS  
17 689.005.

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

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

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

22        [(c)] (b) “Urgent medical condition” means a medical condition that arises suddenly, is not life-  
23 threatening and requires prompt treatment to avoid the development of more serious medical prob-  
24 lems.

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

27        [(a) *Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS*  
28 *414.334;*]

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

31        [(A) *Asthma;*]

32        [(B) *Sinusitis;*]

33        [(C) *Rhinitis; or*]

34        [(D) *Allergies; or*]

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

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

38        [(B) *The prescription is dispensed for a patient outside of the normal business hours of any phar-*  
39 *macy within 15 miles of the clinic; or*]

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

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

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

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

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

4        *[(c) The prescriber contacts the authority requesting prior authorization and the authority or its*  
5 *agent fails to respond to the telephone call or to a prescriber's request made by electronic mail within*  
6 *24 hours.]*

7        *[(d) After consultation with the authority or its agent, the prescriber, in the prescriber's profes-*  
8 *sional judgment, determines that the drug is medically appropriate.]*

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

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

12        *[(B) An immunosuppressant.]*

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

15        **(2) A licensed practitioner may prescribe such drugs under this chapter as the practi-**  
16 **tioner in the exercise of professional judgment considers appropriate for the diagnosis or**  
17 **treatment of the patient in the practitioner's care and within the scope of practice. Pre-**  
18 **scriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to**  
19 **rules of the Oregon Health Authority unless the practitioner prescribes otherwise and an**  
20 **exception is granted by the authority.**

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

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

28        **(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in para-**  
29 **graph (b) of this subsection, the authority is authorized to:**

30        *[(a)]* **(A) Withhold payment for a legend drug when federal financial participation is not avail-**  
31 **able; and**

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

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

37        **(b) The authority may not require prior authorization for therapeutic classes of nonse-**  
38 **dating antihistamines and nasal inhalers, as defined by rule by the authority, when pre-**  
39 **scribed by an allergist for treatment of any of the following conditions, as described by the**  
40 **Health Services Commission on the funded portion of its prioritized list of services:**

41        **(A) Asthma;**

42        **(B) Sinusitis;**

43        **(C) Rhinitis; or**

44        **(D) Allergies.**

45        **(6) The authority shall pay a rural health clinic for a legend drug prescribed and dis-**

1 **pensed under this chapter by a licensed practitioner at the rural health clinic for an urgent**  
2 **medical condition if:**

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

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

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

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

10 [(7)] (8) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a  
11 particular brand name drug rather than the generic version of the drug after notifying the pharmacy  
12 that the cost of the particular brand name drug, after receiving discounted prices and rebates, is  
13 equal to or less than the cost of the generic version of the drug.

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

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

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

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

23 414.334. (1) The Department of Human Services shall adopt a Practitioner-Managed Prescription  
24 Drug Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees  
25 of the medical assistance program receive the most effective prescription drug available at the best  
26 possible price.

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

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

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

36 [(4)] (5) An enrollee may appeal to the department a decision of a practitioner or the department  
37 to not provide a prescription drug requested by the enrollee.

38 [(5)] (6) This section does not limit the decision of a practitioner as to the scope and duration  
39 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

40 **SECTION 10.** **If House Bill 2009 becomes law, section 9 of this 2009 Act (amending ORS**  
41 **414.334) is repealed and ORS 414.334, as amended by section 299, chapter \_\_\_\_\_, Oregon**  
42 **Laws 2009 (Enrolled House Bill 2009), and section 4 of this 2009 Act, is amended to read:**

43 414.334. (1) The Oregon Health Authority shall adopt a Practitioner-Managed Prescription Drug  
44 Plan for the medical assistance program. The purpose of the plan is to ensure that enrollees of the  
45 medical assistance program receive the most effective prescription drug available at the best possi-

1 ble price.

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

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

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

11 [(4)] (5) An enrollee may appeal to the authority a decision of a practitioner or the authority  
12 to not provide a prescription drug requested by the enrollee.

13 [(5)] (6) This section does not limit the decision of a practitioner as to the scope and duration  
14 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

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

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

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

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

30 **SECTION 14. ORS 414.336 is repealed.**

31 **SECTION 15. If House Bill 2009 becomes law, section 300, chapter \_\_\_\_\_, Oregon Laws**  
32 **2009 (Enrolled House Bill 2009) (amending ORS 414.336), is repealed.**

33 **SECTION 16.** If House Bill 2009, House Bill 2129 and Senate Bill 876 all become law, section  
34 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), as amended by section 36, chapter \_\_\_,  
35 Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

36 **Sec. 2.** Notwithstanding ORS 414.325 [(9)(a)] **(8)(a)**, if the United States patent on an  
37 immunosuppressant drug used in connection with an organ transplant expired on or after July 1,  
38 2007, and before the effective date of chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), the  
39 Oregon Health Authority shall determine whether the drug is a narrow therapeutic index drug as  
40 defined in ORS 414.325 [(9)(b)] **(8)(b)** before January 1, 2010.

41 **SECTION 17.** ORS 414.735 is amended to read:

42 414.735. (1) If insufficient resources are available during a contract period:

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

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

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

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

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

13 **SECTION 18. If House Bill 2009 becomes law, section 17 of this 2009 Act (amending ORS**  
14 **414.735) is repealed and ORS 414.735, as amended by 328, chapter \_\_\_\_\_, Oregon Laws 2009**  
15 **(Enrolled House Bill 2009), is amended to read:**

16 414.735. (1) If insufficient resources are available during a contract period:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9       **(6) Eliminate the reduced copayment required for employment-related day care assist-**  
10 **ance in the first month of employment.**

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

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

17 \_\_\_\_\_