

**Enrolled**  
**Senate Bill 876**

Sponsored by Senator TELFER, Representative WHISNANT; Senators ATKINSON, BOQUIST, DEVLIN, FERRIOLI, GEORGE, GIROD, HASS, JOHNSON, KRUSE, METSGER, MORRISETTE, MORSE, NELSON, ROSENBAUM, STARR, VERGER, WALKER, WHITSETT, WINTERS, Representatives BARKER, BARNHART, BENTZ, BERGER, BEYER, BOONE, BRUUN, CAMERON, CLEM, C EDWARDS, D EDWARDS, ESQUIVEL, FREEMAN, GARRARD, GILLIAM, GILMAN, HANNA, HARKER, HUFFMAN, JENSON, KAHL, KENNEMER, KOMP, KRIEGER, MATTHEWS, MAURER, OLSON, ROBLAN, SCHAUFLE, G SMITH, SPRENGER, STIEGLER, THATCHER, THOMPSON, VANORMAN, WEIDNER, WINGARD, WITT

CHAPTER .....

AN ACT

Relating to immunosuppressant drugs; creating new provisions; amending ORS 414.325; 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, "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.

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

(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.

(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) 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) 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.

**(9)(a) Within 180 days after the United States patent expires on an immunosuppressant drug used in connection with an organ transplant, the department 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.**

**SECTION 2.** Notwithstanding ORS 414.325 (9)(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 this 2009 Act, the Department of Human Services shall determine whether the drug is a narrow therapeutic index drug as defined in ORS 414.325 (9)(b) before January 1, 2010.

**SECTION 3.** 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 on its passage.

---

**Passed by Senate May 7, 2009**

**Repassed by Senate June 8, 2009**

.....  
Secretary of Senate

.....  
President of Senate

**Passed by House June 3, 2009**

.....  
Speaker of House

**Received by Governor:**

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

**Approved:**

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

.....  
Governor

**Filed in Office of Secretary of State:**

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

.....  
Secretary of State