

A-Engrossed
Senate Bill 1577

Ordered by the Senate February 9
Including Senate Amendments dated February 9

Sponsored by Senators ROSENBAUM, BATES; Senators BEYER, BURDICK, COURTNEY, DINGFELDER, EDWARDS, HASS, MONROE, SHIELDS, VERGER (Pre-session filed.)

SUMMARY

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

Requires state agencies to participate in Oregon Prescription Drug Program subject to exceptions. **Specifies that Oregon Health Authority may not participate in program with respect to prescription drugs purchased for recipients of medical assistance.** Authorizes administrator of Oregon Prescription Drug Program to contract with pharmacy benefit manager. Requires administrator to contract with entity to negotiate with drug manufacturers to extend rebates to participants in program. Directs Oregon Health Authority to apply for federal approval necessary to obtain federal financial participation in costs of drugs purchased through program.

[Declares emergency, effective on passage.]

Takes effect July 1, 2012.

A BILL FOR AN ACT

1
2 Relating to prescription drugs; creating new provisions; amending ORS 414.312; and prescribing an
3 effective date.

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

5 **SECTION 1.** ORS 414.312 is amended to read:

6 414.312. (1) As used in ORS 414.312 to 414.318:

7 (a) "Pharmacy benefit manager" means an entity that negotiates and executes contracts with
8 pharmacies, manages preferred drug lists, negotiates rebates with prescription drug manufacturers
9 and serves as an intermediary between the Oregon Prescription Drug Program, prescription drug
10 manufacturers and pharmacies.

11 (b) "Prescription drug claims processor" means an entity that processes and pays prescription
12 drug claims, adjudicates pharmacy claims, transmits prescription drug prices and claims data be-
13 tween pharmacies and the Oregon Prescription Drug Program and processes related payments to
14 pharmacies.

15 (c) "Program price" means the reimbursement rates and prescription drug prices established by
16 the administrator of the Oregon Prescription Drug Program.

17 (2) The Oregon Prescription Drug Program is established in the Oregon Health Authority. The
18 purpose of the program is to:

19 (a) Purchase prescription drugs, replenish prescription drugs dispensed or reimburse pharmacies
20 for prescription drugs in order to receive discounted prices and rebates;

21 (b) Make prescription drugs available at the lowest possible cost to participants in the program
22 as a means to promote health;

23 (c) Maintain a list of prescription drugs recommended as the most effective prescription drugs

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 available at the best possible prices; and

2 (d) Promote health through the purchase and provision of discount prescription drugs and co-
3 ordination of comprehensive prescription benefit services for eligible entities and members.

4 (3) The Director of the Oregon Health Authority shall appoint an administrator of the Oregon
5 Prescription Drug Program. The administrator may:

6 (a) Negotiate price discounts and rebates on prescription drugs with prescription drug man-
7 ufacturers or group purchasing organizations;

8 (b) Purchase prescription drugs on behalf of individuals and entities that participate in the
9 program;

10 (c) Contract with a prescription drug claims processor to adjudicate pharmacy claims and
11 transmit program prices to pharmacies;

12 (d) Determine program prices and reimburse or replenish pharmacies for prescription drugs
13 dispensed or transferred;

14 (e) Adopt and implement a preferred drug list for the program;

15 (f) Develop a system for allocating and distributing the operational costs of the program and any
16 rebates obtained to participants [*of*] **in** the program; and

17 (g) Cooperate with other states or regional consortia in the bulk purchase of prescription drugs.

18 (4) The following individuals or entities may participate in the program:

19 (a) [*Public Employees' Benefit Board, Oregon Educators Benefit Board and*] Public Employees
20 Retirement System;

21 (b) Local governments as defined in ORS 174.116 and special government bodies as defined in
22 ORS 174.117 that directly or indirectly purchase prescription drugs;

23 (c) Oregon Health and Science University established under ORS 353.020;

24 [*(d) State agencies that directly or indirectly purchase prescription drugs, including agencies that*
25 *dispense prescription drugs directly to persons in state-operated facilities;*]

26 [*(e)*] **(d)** Residents of this state who lack or are underinsured for prescription drug coverage;

27 [*(f)*] **(e)** Private entities; and

28 [*(g)*] **(f)** Labor organizations.

29 [*(5) The state agency that receives federal Medicaid funds and is responsible for implementing the*
30 *state's medical assistance program may not participate in the program.*]

31 **(5) The Oregon Health Authority may not participate in the program to purchase pre-**
32 **scription drugs directly or indirectly for recipients of medical assistance.**

33 **(6)(a) Except as provided in subsection (5) of this section, state agencies that directly or**
34 **indirectly purchase prescription drugs, including agencies that dispense prescription drugs**
35 **directly to persons in state-operated facilities, shall participate in the program.**

36 **(b) A state agency is exempt from the requirements of this subsection only if the agency**
37 **can demonstrate to the administrator that the availability of federal programs or the**
38 **agency's other purchasing arrangements will result in greater discounts and aggregate cost**
39 **savings than would be realized through participation in the program.**

40 **(c) A state agency that contracts with a health maintenance organization, as defined in**
41 **ORS 750.005, to provide coverage that includes prescription drugs may not require the or-**
42 **ganization to participate in the program.**

43 [*(6)*] **(7)** The administrator may establish different program prices for pharmacies in rural areas
44 to maintain statewide access to the program.

45 [*(7)*] **(8)** The administrator may establish the terms and conditions for a pharmacy to enroll in

1 the program. A licensed pharmacy that is willing to accept the terms and conditions established by
2 the administrator may apply to enroll in the program.

3 [(8)] (9) [Except as provided in subsection (9) of this section,] The administrator may not:

4 [(a) Contract with a pharmacy benefit manager;]

5 [(b)] (a) Establish a state-managed wholesale or retail drug distribution or dispensing system;
6 or

7 [(c)] (b) Require pharmacies to maintain or allocate separate inventories for prescription drugs
8 dispensed through the program.

9 [(9)] (10) The administrator shall contract with one or more entities to perform any of the
10 functions of the program, including but not limited to:

11 (a) Contracting with a pharmacy benefit manager and directly or indirectly with such pharmacy
12 networks as the administrator considers necessary to maintain statewide access to the program.

13 (b) Negotiating with prescription drug manufacturers on behalf of the administrator **on the ex-**
14 **ension of drug manufacturer rebates to all participants in the program that purchase pre-**
15 **scription drugs directly or indirectly for medical assistance recipients.**

16 [(10)] (11) Notwithstanding subsection [(4)(e)] (4)(d) of this section, individuals who are eligible
17 for Medicare Part D prescription drug coverage may participate in the program.

18 [(11)] (12) The program may contract with vendors as necessary to utilize discount purchasing
19 programs, including but not limited to group purchasing organizations established to meet the cri-
20 teria of the Nonprofit Institutions Act, 15 U.S.C. 13c, or that are exempt under the Robinson-Patman
21 Act, 15 U.S.C. 13.

22 **SECTION 2. (1) The Oregon Health Authority shall apply to the Centers for Medicare and**
23 **Medicaid Services for any approval necessary to obtain federal financial participation in the**
24 **costs of drugs purchased directly or indirectly through the Oregon Prescription Drug Pro-**
25 **gram.**

26 (2) The amendments to ORS 414.312 by section 1 of this 2012 Act become operative upon
27 receipt by the authority of federal approval under subsection (1) of this section or, if no
28 federal approval is required, on January 1, 2013.

29 (3) The authority shall notify the Legislative Counsel upon receipt of federal approval or
30 denial of federal approval under subsection (1) of this section or, if the authority determines
31 that no federal approval is required, at the time the authority makes that determination.

32 (4) The administrator of the Oregon Prescription Drug Program and any state agency
33 that will participate in the program may take any actions before the operative date specified
34 in subsection (2) of this section that are necessary to implement the amendments to ORS
35 414.312 by section 1 of this 2012 Act on the operative date specified in subsection (2) of this
36 section.

37 **SECTION 3. This 2012 Act takes effect on July 1, 2012.**

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