

# House Bill 2090

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Health Authority)

## 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 **as introduced**.

Repeals operative date provision to require Oregon Health Authority to continue to use Practitioner-Managed Prescription Drug Plan for prescription drug coverage in medical assistance program on and after January 2, 2014. Requires authority to use plan for mental health drugs subject to specified exception.

## A BILL FOR AN ACT

Relating to prescription drug coverage in the medical assistance program; amending ORS 414.325 and 414.334; and repealing ORS 414.337 and section 13, chapter 827, Oregon Laws 2009.

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

**SECTION 1.** ORS 414.325, as amended by section 8, chapter 827, Oregon Laws 2009, 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.**

*[(b)] (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) 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.]*

**(2) The Oregon Health 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**

**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 **ORS 414.334;**

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

4 (A) **Asthma;**

5 (B) **Sinusitis;**

6 (C) **Rhinitis; or**

7 (D) **Allergies; or**

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

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

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

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

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

17 (4) **The authority shall reimburse the cost of a legend drug that does not meet the cri-**  
 18 **teria in subsection (2) of this section if:**

19 (a) **The authority grants approval using a prior authorization process adopted by the**  
 20 **authority by rule;**

21 (b) **The prescriber contacts the authority requesting prior authorization and the author-**  
 22 **ity or its agent fails to respond within 24 hours to the telephone call or to a prescriber's**  
 23 **request made through the authority's secure pharmacy web portal;**

24 (c) **After consultation with the authority or the authority's agent, the prescriber, in the**  
 25 **prescriber's professional judgment, determines that the drug is medically appropriate;**

26 (d) **It is a continuing prescription for:**

27 (A) **A mental health drug;**

28 (B) **Treatment of seizures, cancer, HIV or AIDS; or**

29 (C) **An immunosuppressant; or**

30 (e) **The drug is in a class not evaluated for the Practitioner-Managed Prescription Drug**  
 31 **Plan adopted under ORS 414.334.**

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

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

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

39 (c) **Impose safety and quantity limits on prescriptions described in subsection (4)(d) of**  
 40 **this section; and**

41 (d) **Withhold payment for a legend drug that is not a funded health service on the pri-**  
 42 **oritized list of health services developed and updated by the Health Evidence Review Com-**  
 43 **mission under ORS 414.690.**

44 [(b)] *The authority may not require prior authorization for therapeutic classes of non-sedating*  
 45 *antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist*

1 for treatment of any of the following conditions, as described by the Health Evidence Review Commis-  
 2 sion on the funded portion of its prioritized list of services:]

3 [(A) Asthma;]

4 [(B) Sinusitis;]

5 [(C) Rhinitis; or]

6 [(D) Allergies.]

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

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

10 [(b) The prescription is dispensed for a patient outside of the normal business hours of any phar-  
 11 macy within 15 miles of the clinic; or]

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

13 [(7)] **(6)** Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization  
 14 review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in  
 15 the preceding six-month period.

16 [(8)] **(7)** Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a  
 17 particular brand name drug rather than the generic version of the drug after notifying the pharmacy  
 18 that the cost of the particular brand name drug, after receiving discounted prices and rebates, is  
 19 equal to or less than the cost of the generic version of the drug.

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

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

26 **(9) The authority shall appoint an advisory committee in accordance with ORS 183.333 for**  
 27 **any rulemaking conducted to carry out this section.**

28 **SECTION 2.** ORS 414.334, as amended by section 10, chapter 827, Oregon Laws 2009, and sec-  
 29 tion 139, chapter 720, Oregon Laws 2011, is amended to read:

30 414.334. (1) The Oregon Health Authority shall adopt **by rule** a Practitioner-Managed Pre-  
 31 scription Drug Plan for the medical assistance program. The purpose of the plan is to ensure that  
 32 enrollees in the medical assistance program receive the most effective prescription drug available  
 33 at the best possible price.

34 (2) In adopting the plan, the authority shall consider recommendations of the Pharmacy and  
 35 Therapeutics Committee.

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

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

43 [(5)] **(4)** An enrollee may appeal to the authority a decision of a practitioner or the authority  
 44 to not provide a prescription drug requested by the enrollee.

45 [(6)] **(5)** This section does not limit the decision of a practitioner as to the scope and duration

1 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

2 **SECTION 3. ORS 414.337 and section 13, chapter 827, Oregon Laws 2009, are repealed.**

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