

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2123**

1 On page 1 of the printed bill, delete lines 4 through 27 and delete pages  
2 2 and 3.

3 On page 4, delete lines 1 through 9 and insert:

4 **“SECTION 1. Sections 2 to 4 of this 2013 Act are added to and made**  
5 **a part of ORS chapter 689.**

6 **“SECTION 2. (1) As used in this section and sections 3 and 4 of this**  
7 **2013 Act:**

8 **“(a) ‘Insurer’ has the meaning given that term in ORS 731.106.**

9 **“(b) ‘Pharmacy benefit manager’ means a person that contracts**  
10 **with pharmacies on behalf of an insurer, a third party administrator**  
11 **or the Oregon Prescription Drug Program established in ORS 414.312**  
12 **to:**

13 **“(A) Process claims for prescription drugs or medical supplies or**  
14 **provide retail network management for pharmacies or pharmacists;**

15 **“(B) Pay pharmacies or pharmacists for prescription drugs or med-**  
16 **ical supplies;**

17 **“(C) Contract with pharmacies or pharmacists for the procurement**  
18 **of prescription drugs or medical supplies; or**

19 **“(D) Negotiate rebates with manufacturers for drugs paid for or**  
20 **procured as described in subparagraphs (A) to (C) of this paragraph.**

21 **“(e) ‘Third party administrator’ means a person licensed under ORS**  
22 **744.702.**

1       **“(2) A person must obtain a license from the State Board of Phar-**  
2 **macy in order to act as a pharmacy benefit manager in this state. The**  
3 **license must be renewed annually. The board shall establish by rule**  
4 **the procedure and qualifications for obtaining and renewing a license**  
5 **under this section. The procedure must include a requirement to:**

6       **“(a) Submit an application, in a form prescribed by the board, that**  
7 **contains the name and address of an agent for the service of process;**

8       **“(b) Pay a fee established by the board; and**

9       **“(c) Verify that the applicant has obtained a surety bond.**

10       **“(3) The board may refuse to issue or renew, or may suspend or**  
11 **revoke, a pharmacy benefit manager license if the applicant or**  
12 **licensee:**

13       **“(a) Fails to comply with this section or section 3 or 4 of this 2013**  
14 **Act;**

15       **“(b) Engages in conduct likely to mislead, deceive or defraud the**  
16 **general public or the board;**

17       **“(c) Engages in unfair or deceptive business practices; or**

18       **“(d) Fails to pay fees or fines.**

19       **“(4) The board shall deposit all moneys collected under this section**  
20 **into the State Board of Pharmacy Account established in ORS 689.139.**  
21 **Moneys collected under this section may be used only for the purpose**  
22 **of administering this section and sections 3 and 4 of this 2013 Act.**

23       **“SECTION 3. (1) As used in this section:**

24       **“(a) ‘Audit’ means an on-site or remote review of the records of a**  
25 **pharmacy by or on behalf of an entity.**

26       **“(b) ‘Claim’ means a request from a pharmacy or pharmacist to be**  
27 **reimbursed for the cost of filling or refilling a prescription for a drug**  
28 **or for providing a medical supply or service.**

29       **“(c) ‘Clerical error’ means a minor error:**

30       **“(A) In the keeping, recording or transcribing of records or docu-**

1 **ments or in the handling of electronic or hard copies of correspond-**  
2 **ence;**

3 **“(B) That does not result in financial harm to an entity; and**

4 **“(C) That does not involve dispensing an incorrect dose, amount or**  
5 **type of medication or dispensing a prescription drug to the wrong**  
6 **person.**

7 **“(d) ‘Entity’ includes:**

8 **“(A) A pharmacy benefit manager;**

9 **“(B) An insurer;**

10 **“(C) A third party administrator;**

11 **“(D) A state agency; or**

12 **“(E) A person that represents or is employed by one of the entities**  
13 **described in subparagraphs (A) to (D) of this paragraph.**

14 **“(e) ‘Fraud’ means knowingly and willfully executing or attempting**  
15 **to execute a scheme, in connection with the delivery of or payment for**  
16 **health care benefits, items or services, that uses false or misleading**  
17 **pretenses, representations or promises to obtain any money or prop-**  
18 **erty owned by or under the custody or control of any person.**

19 **“(2) An entity that audits claims:**

20 **“(a) Must establish, in writing, a procedure for a pharmacy to ap-**  
21 **peal the entity’s findings with respect to a claim and must provide a**  
22 **pharmacy with a notice regarding the procedure, in writing or elec-**  
23 **tronically, prior to conducting an audit of the pharmacy’s claims;**

24 **“(b) Must give at least 15 days’ advance written notice of an audit**  
25 **to the pharmacy or corporate headquarters of the pharmacy;**

26 **“(c) Must conduct the audit in consultation with a pharmacist if the**  
27 **audit involves clinical or professional judgment;**

28 **“(d) May not conduct an audit of a claim more than 24 months after**  
29 **the date the claim was adjudicated by the entity;**

30 **“(e) May not conduct the audit during the first five days of any**

1 month without the pharmacy's consent;

2 “(f) May not review more than 200 claims of a pharmacy in any  
3 12-month period except in cases of alleged fraud;

4 “(g) May not conduct more than one on-site audit of a pharmacy  
5 in any 12-month period;

6 “(h) Must use the same standards and procedures for all pharmacies  
7 of a similar size and doing a similar volume of business;

8 “(i) Must pay any outstanding claims of a pharmacy no more than  
9 45 days after the earlier of the date all appeals are concluded or the  
10 date a final report is issued under subsection (8) of this section;

11 “(j) May not include dispensing fees or interest in the amount of  
12 any overpayment assessed on a claim unless the overpaid claim was  
13 for a prescription that was not filled correctly;

14 “(k) May not recoup costs associated with:

15 “(A) Clerical errors; or

16 “(B) Other errors that do not result in financial harm to the entity  
17 or a consumer;

18 “(L) May not charge a pharmacy for a denied or disputed claim  
19 until the audit and the appeals procedure established in paragraph (a)  
20 of this subsection are final;

21 “(m) May not offset the amount of an overpayment against future  
22 remittances; and

23 “(n) Must bill a pharmacy separately for the amount of the over-  
24 payment.

25 “(3) An entity's finding that a claim was incorrectly presented or  
26 paid must be based on identified transactions and not based on prob-  
27 ability sampling, extrapolation or other means that project an error  
28 using the number of patients served who have a similar diagnosis or  
29 the number of similar prescriptions or refills for similar drugs.

30 “(4) An entity that contracts with an independent third party to

1 **conduct audits may not:**

2 **“(a) Agree to compensate the independent third party based on a**  
3 **percentage of the amount of overpayments recovered; or**

4 **“(b) Disclose information obtained during an audit except to the**  
5 **contracting entity, the pharmacy subject to the audit or the holder**  
6 **of the policy or certificate of insurance that paid the claim.**

7 **“(5) For purposes of this section, an entity, or an independent third**  
8 **party that contracts with an entity to conduct audits, must accept as**  
9 **validation of a claim:**

10 **“(a) An electronic or physical copy of a prescription that complies**  
11 **with this chapter if the prescribed drug was, within 14 days of the**  
12 **dispensing date:**

13 **“(A) Picked up by the patient or the patient’s designee;**

14 **“(B) Delivered by the pharmacy to the patient; or**

15 **“(C) Sent by the pharmacy to the patient using the United States**  
16 **Postal Service or other common carrier;**

17 **“(b) Point of sale electronic register data showing purchase of the**  
18 **prescribed drug, medical supply or service by the patient or the**  
19 **patient’s designee; or**

20 **“(c) Electronic records, including electronic beneficiary signature**  
21 **logs, electronically scanned and stored patient records maintained at**  
22 **or accessible to the audited pharmacy’s central operations and any**  
23 **other reasonably clear and accurate electronic documentation that**  
24 **corresponds to a claim.**

25 **“(6)(a) After conducting an audit, an entity must provide the phar-**  
26 **macy that is the subject of the audit with a preliminary report of the**  
27 **audit. The preliminary report must be received by the pharmacy no**  
28 **later than 30 days after the date on which the audit was completed and**  
29 **must be sent:**

30 **“(A) By mail or common carrier with a return receipt requested;**

1 **or**

2 **“(B) Electronically with electronic receipt confirmation.**

3 **“(b) An entity shall provide a pharmacy receiving a preliminary**  
4 **report under paragraph (a) of this subsection no fewer than 45 days**  
5 **after receiving the report to contest the report or any findings in the**  
6 **report in accordance with the procedure established in subsection**  
7 **(2)(a) of this section and to provide additional documentation in sup-**  
8 **port of the claim. The entity shall approve a reasonable request for**  
9 **an extension of time to submit documentation to contest the report**  
10 **or any findings in the report.**

11 **“(7) If an audit results in a full or partial denial of a claim, the**  
12 **entity conducting the audit shall allow the pharmacy to resubmit the**  
13 **claim using any commercially reasonable method.**

14 **“(8) An entity must provide a pharmacy that is the subject of an**  
15 **audit with a final report of the audit no later than 60 days after the**  
16 **later of the date the preliminary report was received or the date the**  
17 **pharmacy contested the report using the procedure established in**  
18 **subsection (2)(a) of this section. The final report must include a final**  
19 **accounting of all moneys to be recovered by the entity.**

20 **“(9) This section does not preclude an entity from instituting an**  
21 **action for fraud against a pharmacy.**

22 **“(10) This section does not apply to any audit or investigation that**  
23 **follows a finding:**

24 **“(a) Of fraud;**

25 **“(b) That a claim was submitted for an item or service that was not**  
26 **provided;**

27 **“(c) That a pharmacy deliberately submitted duplicate claims for**  
28 **an item or service and the duplicate claims did not result from a**  
29 **clerical error;**

30 **“(d) That a pharmacy altered claim forms, electronic claim records**

1 or medical documentation for the purpose of receiving a greater  
2 amount of reimbursement;

3 “(e) Of soliciting, offering or receiving a kickback or bribe;

4 “(f) Of collusion between a pharmacy or pharmacist and a patient  
5 to defraud the entity;

6 “(g) That a pharmacy misrepresented a date or description of items  
7 or services furnished or the identity of the provider or recipient of  
8 items or services;

9 “(h) That a claim for a prescription was submitted without a  
10 prescription’s being on file or was submitted for an over-the-counter  
11 item;

12 “(i) That a pharmacy filled a prescription using an expired product;

13 “(j) That a claim was submitted using an incorrect national drug  
14 code number or claiming reimbursement for a brand name drug when  
15 a generic drug was dispensed;

16 “(k) That a pharmacy failed to credit the entity for a prescription  
17 or a portion of a prescription that was obtained by a patient more than  
18 14 days after the drug was dispensed, unless good cause exists for the  
19 delay; or

20 “(L) That a pharmacy submitted a claim without proof that the  
21 item or service was purchased.”.

22 In line 15, delete “available” and insert “unavailable”.

23 After line 15, insert:

24 “(c) ‘Retail community pharmacy’ means a pharmacy that is open to the  
25 public, serves walk-in customers and allows individuals to whom a pre-  
26 scription drug is being dispensed the opportunity to consult with a  
27 pharmacist face to face.”.

28 In line 16, delete “(c)” and insert “(d)”.

29 In line 27, delete “in a timely fashion” and insert “at least once every 14  
30 calendar days”.

1 In line 35, delete “prompt” and after “notification” insert “, at least once  
2 every 14 calendar days.”.

3 On page 5, line 12, after “pharmacy” delete the rest of the line and insert  
4 “; and”.

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