

A-Engrossed
House Bill 2638

Ordered by the Senate June 8
Including Senate Amendments dated June 8

Sponsored by Representatives LIVELY, GREENLICK; Representatives BARNHART, GOMBERG, Senators DEMBROW, GELSER (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.

Permits medical assistance recipients and coordinated care organizations to use Oregon Prescription Drug Program. [*Allows Oregon Health Authority to deny reimbursement of legend drug until six months after approval of drug by United States Food and Drug Administration.*]

A BILL FOR AN ACT

1
2 Relating to prescription drugs; amending ORS 414.312 and 414.325.

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

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

5 414.312. (1) As used in ORS 414.312 to 414.318:

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

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

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

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

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

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

22 (c) Maintain a list of prescription drugs recommended as the most effective prescription drugs
23 available at the best possible prices; and

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

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

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

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

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

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

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

10 (f) Develop a system for allocating and distributing the operational costs of the program and any
11 rebates obtained to participants of the program; and

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

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

14 (a) Public Employees' Benefit Board, Oregon Educators Benefit Board and Public Employees
15 Retirement System;

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

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

19 (d) State agencies that directly or indirectly purchase prescription drugs, including agencies that
20 dispense prescription drugs directly to persons in state-operated facilities;

21 (e) Residents of this state who lack or are underinsured for prescription drug coverage;

22 (f) Private entities; and

23 (g) Labor organizations.

24 [(5) *The authority may not purchase prescription drugs directly or indirectly through the program*
25 *for recipients of medical assistance.*]

26 [(6)] (5) The administrator may establish different program prices for pharmacies in rural areas
27 to maintain statewide access to the program.

28 [(7)] (6) The administrator may establish the terms and conditions for a pharmacy to enroll in
29 the program. A licensed pharmacy that is willing to accept the terms and conditions established by
30 the administrator may apply to enroll in the program.

31 [(8)] (7) Except as provided in subsection [(9)] (8) of this section, the administrator may not:

32 (a) Contract with a pharmacy benefit manager;

33 (b) Establish a state-managed wholesale or retail drug distribution or dispensing system; or

34 (c) Require pharmacies to maintain or allocate separate inventories for prescription drugs dis-
35 pensed through the program.

36 [(9)] (8) The administrator shall contract with one or more entities to perform any of the func-
37 tions of the program, including but not limited to:

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

40 (b) Negotiating with prescription drug manufacturers on behalf of the administrator.

41 [(10)] (9) Notwithstanding subsection (4)(e) of this section, individuals who are eligible for Med-
42 icare Part D prescription drug coverage may participate in the program.

43 [(11)] (10) The program may contract with vendors as necessary to utilize discount purchasing
44 programs, including but not limited to group purchasing organizations established to meet the cri-
45 teria of the Nonprofit Institutions Act, 15 U.S.C. 13c, or that are exempt under the Robinson-Patman

1 Act, 15 U.S.C. 13.

2 **SECTION 2.** ORS 414.325 is amended to read:

3 414.325. (1) As used in this section:

4 (a) "Legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS
5 689.005.

6 (b) "Mental health drug" means a type of legend drug defined by the Oregon Health Authority
7 by rule that includes, but is not limited to:

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

9 (B) Therapeutic class 11 psychostimulants-antidepressants.

10 (c) "Urgent medical condition" means a medical condition that arises suddenly, is not life-
11 threatening and requires prompt treatment to avoid the development of more serious medical prob-
12 lems.

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

15 (a) Is on the drug list of the Practitioner-Managed Prescription Drug Plan adopted under ORS
16 414.334;

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

19 (A) Asthma;

20 (B) Sinusitis;

21 (C) Rhinitis; or

22 (D) Allergies; or

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

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

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

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

29 (3) The authority shall pay only for drugs in the generic form unless an exception has been
30 granted by the authority through the prior authorization process adopted by the authority under
31 subsection (4) of this section.

32 (4) Notwithstanding subsection (2) of this section, the authority shall provide reimbursement for
33 a legend drug that does not meet the criteria in subsection (2) of this section if:

34 (a) It is a mental health drug.

35 (b) The authority grants approval through a prior authorization process adopted by the author-
36 ity by rule.

37 (c) The prescriber contacts the authority requesting prior authorization and the authority or its
38 agent fails to respond to the telephone call or to a prescriber's request made by electronic mail
39 within 24 hours.

40 (d) After consultation with the authority or its agent, the prescriber, in the prescriber's profes-
41 sional judgment, determines that the drug is medically appropriate.

42 (e) The original prescription was written prior to July 28, 2009, or the request is for a refill of
43 a prescription for:

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

45 (B) An immunosuppressant.

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

3 (5) Notwithstanding subsections (1) to (4) of this section, the authority is authorized to:

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

5 (b) Require prior authorization of payment for drugs that the authority has determined should
6 be limited to those conditions generally recognized as appropriate by the medical profession; and

7 (c) Withhold payment for a legend drug that is not a funded health service on the prioritized list
8 of health services established by the Health Evidence Review Commission under ORS [414.720]
9 **414.690**.

10 (6) Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization review
11 prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the pre-
12 ceding six-month period.

13 (7) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a par-
14 ticular brand name drug rather than the generic version of the drug after notifying the pharmacy
15 that the cost of the particular brand name drug, after receiving discounted prices and rebates, is
16 equal to or less than the cost of the generic version of the drug.

17 (8)(a) Within 180 days after the United States patent expires on an immunosuppressant drug
18 used in connection with an organ transplant, the authority shall determine whether the drug is a
19 narrow therapeutic index drug.

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

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

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