House Bill 3178

Sponsored by Representatives SMITH, BENTZ

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.**

Modifies requirements for pharmacy benefit managers with respect to maximum allowable cost lists.

A BILL FOR AN ACT

Relating to prescription drugs; amending ORS 735.530 and 735.534; and repealing ORS 735.540.

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

SECTION 1. ORS 735.530 is amended to read:

735.530. As used in ORS 735.530 to 735.552:

(1) "Audit" means an on-site or remote review of the records of a pharmacy by or on behalf of an entity.

[*(1)*] **(2)** "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of filling or refilling a prescription for a drug or for providing a medical supply or service.

(3) "Clerical error" means a minor error:

(a) In the keeping, recording or transcribing of records or documents or in the handling of electronic or hard copies of correspondence;

(b) That does not result in financial harm to an entity; and

(c) That does not involve dispensing an incorrect dose, amount or type of medication or dispensing a prescription drug to the wrong person.

(4) "Entity" includes:

(a) An insurer;

(b) A third party administrator;

(c) A state agency; or

(d) A person that represents or is employed by one of the entities described in this subsection.

(5) "Fraud" means the knowing and willful execution or attempted execution of a scheme, in connection with the delivery of or payment for health care benefits, items or services, that uses false or misleading pretenses, representations or promises to obtain any money or property owned by or under the custody or control of any person.

(6) "Health benefit plan" has the meaning given that term in ORS 743.730.

[*(2) "Insurer" has the meaning given that term in ORS 731.106.*]

(7) "Mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail, telephone, facsimile or electronic transmission and to dispense drugs to patients through the use of the United States Postal Service or a commercial delivery service.

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.

[*(3)*] **(8)** "Pharmacist" has the meaning given that term in ORS 689.005.

[*(4)*] **(9)** "Pharmacy" has the meaning given that term in ORS 689.005.

[*(5)(a)*] **(10)(a)** "Pharmacy benefit manager" means a [*person*] **third party administrator** that contracts with pharmacies on behalf of an insurer, [*a third party administrator*] **a self-insured plan** or the Oregon Prescription Drug Program established in ORS 414.312 to:

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

(B) Pay pharmacies or pharmacists for prescription drugs or medical supplies; or

(C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this paragraph.

(b) "Pharmacy benefit manager" does not include a health care service contractor as defined in ORS 750.005.

(11) "Retail pharmacy" means a pharmacy that is open to the public, serves walk-in customers and makes available an in-person consultation with a pharmacist.

[*(6)*] **(12)** "Third party administrator" means a person licensed under ORS 744.702.

SECTION 2. ORS 735.534, as amended by section 13, chapter 570, Oregon Laws 2013, is amended to read:

735.534. (1) As used in this section:

(a) "List" means [*the*] **a** list of **the** drugs for which **a pharmacy benefit manager has established a** maximum allowable [*costs have been established*] **cost**.

(b) "Maximum allowable cost" means the maximum amount that a pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

(c) "Multiple source drug" means a therapeutically equivalent drug that is available from at least two manufacturers.

(d) "Network pharmacy" means a retail [*drug outlet registered under ORS 689.305*] **pharmacy** that contracts with a pharmacy benefit manager.

(e) "Payer" means the entity that pays the claims that are processed by a pharmacy benefit manager for a self-insured plan.

[*(e)*] **(f)** "Therapeutically equivalent" has the meaning given that term in ORS 689.515.

(2) A pharmacy benefit manager:

(a) May not place a drug on a list**, or must promptly remove a drug from a list,** unless there are at least two therapeutically equivalent, multiple source drugs, or at least one generic drug [*available from only one manufacturer*], generally available for purchase by network pharmacies from national or regional wholesalers **at a significant cost difference**.

(b) Shall ensure that all drugs on a list are generally available for purchase by pharmacies in this state from national or regional wholesalers.

(c) Shall ensure that [*all*] **no** drugs on a list are [*not*] obsolete.

(d) Shall make available to each network pharmacy at the beginning of the term of a contract, and upon renewal of a contract, the **method and** sources utilized **by the pharmacy benefit manager** to determine the maximum allowable cost [*pricing of the pharmacy benefit manager*].

(e) Shall make [*a*] **each** list available to a network pharmacy upon request in a format that is readily accessible to and usable by the network pharmacy.

(f) Shall notify each network pharmacy of the procedure for making changes to a list or to the maximum allowable cost for any drug on a list.

[*(f)*] **(g)** Shall update each list [*maintained by the pharmacy benefit manager*] every seven [*busi-*

ness] **calendar** days and [*make*] **notify network pharmacies, insurers and payers of any changes to** the updated lists [*, including all changes in the price of drugs, available to network pharmacies in a readily accessible and usable format*].

(h) Shall establish a procedure for removing drugs from a list in a timely manner.

[*(g)*] **(i)** Shall ensure that dispensing fees are not included in the calculation of maximum allowable cost.

(j) Shall inform an insurer or payer if the pharmacy benefit manager applies a maximum allowable cost to drugs dispensed through a network pharmacy but not through a mail order pharmacy.

(k) Shall notify an insurer or payer if the pharmacy benefit manager does not use the same list for billing the insurer or payer as it uses in reimbursing network pharmacies. If there is a difference between the list used for billing an insurer or payer and the list used for reimbursing network pharmacies, the pharmacy benefit manager shall inform the insurer or payer of the difference between the maximum allowable cost charged to the insurer or payer and the maximum allowable cost paid to a network pharmacy.

(3) A pharmacy benefit manager must establish a process by which a network pharmacy may appeal its reimbursement for a drug subject to maximum allowable cost pricing. A network pharmacy may appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug. An appeal requested under this section must be completed within 30 calendar days of the pharmacy making the claim for which appeal has been requested.

(4) A pharmacy benefit manager must provide as part of the appeals process established under subsection (3) of this section:

(a) A telephone number at which a network pharmacy may contact the pharmacy benefit manager and speak with an individual who is responsible for processing appeals;

(b) A final response to an appeal of a maximum allowable cost within seven business days; and

(c) If the appeal is denied, the reason for the denial and the national drug code of a drug that may be purchased by similarly situated pharmacies at a price that is equal to or less than the maximum allowable cost.

(5)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall make an adjustment for the pharmacy that requested the appeal from the date of initial adjudication forward.

(b) If the request for an adjustment has come from a critical access pharmacy, as defined by the Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the adjustment approved under paragraph (a) of this subsection shall apply only to critical access pharmacies.

(6) This section does not apply to the state medical assistance program.

SECTION 3. ORS 735.540 is repealed.
