

**PROPOSED AMENDMENTS TO
HOUSE BILL 2875**

1 In line 2 of the printed bill, after the semicolon insert “creating new
2 provisions; amending ORS 735.530, 735.534 and 735.544; repealing ORS
3 735.540;”.

4 Delete lines 4 through 20 and insert:

5

6 **“MAXIMUM REIMBURSABLE AMOUNTS FOR DRUGS**

7

8 **“SECTION 1.** ORS 735.534, as amended by section 13, chapter 570, Oregon
9 Laws 2013, is amended to read:

10 “735.534. (1) As used in this section:

11 “(a) ‘List’ means *[the]* **a list of the drugs for which a pharmacy benefit**
12 **manager has established a** *[maximum allowable costs have been*
13 *established]* **maximum reimbursable amount.**

14 “(b) [*Maximum allowable cost*] **‘Maximum reimbursable amount’**
15 means the maximum amount that a pharmacy benefit manager will reimburse
16 a pharmacy for the cost of a drug.

17 “(c) ‘Multiple source drug’ means a therapeutically equivalent drug that
18 is available from at least two manufacturers.

19 “(d) ‘Network pharmacy’ means a retail drug outlet registered under ORS
20 689.305 that contracts with a pharmacy benefit manager **directly or through**
21 **an agent, such as a pharmacy services administrative organization or**
22 **a group purchasing organization.**

1 “(e) ‘Payer’ means the entity that pays the claims that are pro-
2 cessed by a pharmacy benefit manager for a self-insured plan.

3 “[~~(e)~~] (f) ‘Therapeutically equivalent’ has the meaning given that term in
4 ORS 689.515.

5 “(2) A pharmacy benefit manager:

6 “(a) May not place a drug on a list unless there are [*at least two*
7 *therapeutically equivalent*], **or must promptly remove a drug from a list**
8 **if there are not, at least three** multiple source drugs, or at least one ge-
9 neric drug [*available from only one manufacturer, generally*], **readily** avail-
10 able for purchase by network pharmacies from national or regional
11 wholesalers **at a significant cost savings.**

12 “(b) Shall ensure that all drugs on a list are [*generally*] **readily** available
13 for purchase [*by pharmacies in this state*] from national or regional whole-
14 salers **by network pharmacies in this state.**

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

16 “(d) Shall make available to each network pharmacy at the beginning of
17 the term of a contract, and upon renewal of a contract, the **basis of the**
18 **methodology and** sources utilized **by the pharmacy benefit manager** to
19 determine the [*maximum allowable cost pricing of the pharmacy benefit man-*
20 *ager*] **maximum reimbursable amount for a drug.**

21 “(e) Shall make [*a*] **each** list available to [*a network pharmacy upon re-*
22 *quest in a*] **network pharmacies in an electronic** format that is readily
23 accessible to and usable by the [*network pharmacy*] **pharmacies.**

24 “(f) **Shall notify each network pharmacy of the procedure for mak-**
25 **ing changes to the drugs on a list or to the maximum reimbursable**
26 **amounts for drugs.**

27 “[~~(f)~~] (g) Shall update each list [*maintained by the pharmacy benefit man-*
28 *ager*] every seven [*business*] **calendar** days and [*make*] **notify network**
29 **pharmacies, insurers and payers of any changes to** the updated lists[,
30 *including all changes in the price of drugs, available to network pharmacies*

1 *in a readily accessible and usable format*].

2 “(h) Shall reimburse a network pharmacy on the basis of informa-
3 tion updated as described in paragraph (g) of this subsection within
4 three calendar days of discovering that the network pharmacy paid an
5 amount for a drug that exceeds the maximum reimbursable amount
6 for the drug.

7 “(i) Shall establish a procedure for removing drugs from a list in a
8 timely manner.

9 “[g] (j) Shall ensure that dispensing fees and cost-sharing charges are
10 not included in the calculation of [*maximum allowable cost*] **maximum**
11 **reimbursable amounts**.

12 “(k) Shall notify an insurer or payer if the pharmacy benefit man-
13 ager does not use the same list for billing the insurer or payer as it
14 uses in reimbursing network pharmacies. If there is a difference be-
15 tween the list used for billing an insurer or payer and the list used for
16 reimbursing network pharmacies, the pharmacy benefit manager shall
17 inform the insurer or payer of each difference between the amount
18 charged to the insurer or payer for a drug and the amount reimbursed
19 to a network pharmacy for the drug.

20 “(3) A pharmacy benefit manager must establish a process by which a
21 network pharmacy may appeal its reimbursement for a drug [*subject to max-*
22 *imum allowable cost pricing. A network pharmacy may appeal a maximum*
23 *allowable cost*] if the reimbursement for the drug is less than the [*net*]
24 amount that the network pharmacy paid to the supplier of the drug. An ap-
25 peal requested under this section must be completed within 30 calendar days
26 of the **network** pharmacy making the claim for which appeal has been re-
27 quested.

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

30 “(a) A telephone number at which a network pharmacy may contact the

1 pharmacy benefit manager and speak with an individual who is responsible
2 for processing appeals;

3 “(b) A final response to an appeal [*of a maximum allowable cost*] within
4 seven business days; and

5 “(c) If the appeal is denied, the reason for the denial and the national
6 drug code of a drug that may be purchased by similarly situated pharmacies
7 at a price that is equal to or less than the [*maximum allowable cost*] **maxi-**
8 **mum reimbursable amount for the drug.**

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

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

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

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19 “ENFORCEMENT

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21 “**SECTION 2. The Department of Consumer and Business Services**
22 **shall adopt rules necessary for the administration of ORS 735.530 to**
23 **735.552.**

24 “**SECTION 3. (1) In addition to any other liability or penalty pro-**
25 **vided by law, the Department of Consumer and Business Services may**
26 **impose for each violation of a provision of ORS 735.530 to 735.552, and**
27 **for each violation of a rule adopted under ORS 735.530 to 735.552, a civil**
28 **penalty that does not exceed \$10,000.**

29 “**(2) The department shall impose the civil penalties under this**
30 **section in the manner provided by ORS 183.745.**

1 **“(3) All moneys collected by the department pursuant to this sec-**
2 **tion shall be deposited in the Consumer and Business Services Fund**
3 **created in ORS 705.145.**

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5 **“ATTORNEY FEES**

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7 **“SECTION 4. If a pharmacist or pharmacy brings a civil action**
8 **against a pharmacy benefit manager under a provision of ORS 735.530**
9 **to 735.552, and if the pharmacist or pharmacy is the prevailing party**
10 **in the action, the court may award the pharmacist or pharmacy rea-**
11 **sonable attorney fees.**

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13 **“TECHNICAL CHANGES**

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15 **“SECTION 5. ORS 735.530 is amended to read:**

16 **“735.530. As used in ORS 735.530 to 735.552:**

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

19 **“[(1)] (2) ‘Claim’ means a request from a pharmacy or pharmacist to be**
20 **reimbursed for the cost of filling or refilling a prescription for a drug or for**
21 **providing a medical supply or service.**

22 **“(3) ‘Clerical error’ means a minor error:**

23 **“(a) In the keeping, recording or transcribing of records or docu-**
24 **ments or in the handling of electronic or hard copies of correspond-**
25 **ence;**

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

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

30 **“(4) ‘Entity’ includes:**

1 “(a) An insurer;
2 “(b) A third party administrator;
3 “(c) A state agency; or
4 “(d) A person that represents or is employed by one of the entities
5 described in this subsection.

6 “(5) ‘Fraud’ means the knowing and willful execution or attempted
7 execution of a scheme, in connection with the delivery of or payment
8 for health care benefits, items or services, that uses false or mislead-
9 ing pretenses, representations or promises to obtain any money or
10 property owned by or under the custody or control of any person.

11 “[(2) ‘Insurer’ has the meaning given that term in ORS 731.106.]

12 “[(3)] (6) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

13 “[(4)] (7) ‘Pharmacy’ has the meaning given that term in ORS 689.005.

14 “[(5)(a)] (8)(a) ‘Pharmacy benefit manager’ means a [*person*] **third party**
15 **administrator** that contracts with pharmacies on behalf of an insurer, [*a*
16 *third party administrator*] **a self-insured plan** or the Oregon Prescription
17 Drug Program established in ORS 414.312 to:

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

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

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

24 “(b) ‘Pharmacy benefit manager’ does not include a health care service
25 contractor as defined in ORS 750.005.

26 “[(6)] (9) ‘Third party administrator’ means a person licensed under ORS
27 744.702.

28 “**SECTION 6.** ORS 735.544 is amended to read:

29 “735.544. [*An entity’s*] **The finding of an entity or an independent third**
30 **party** that a claim was incorrectly presented or paid must be based on

1 identified transactions and not based on probability sampling, extrapolation
2 or other means that project an error using the number of patients served
3 who have a similar diagnosis or the number of similar prescriptions or refills
4 for similar drugs.

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6 **“REPEALS**

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8 **“SECTION 7. ORS 735.540 is repealed.**

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10 **“SERIES PLACEMENT**

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12 **“SECTION 8. Sections 2, 3 and 4 of this 2015 Act are added to and
13 made a part of ORS 735.530 to 735.552.**

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15 **“OPERATIVE DATE**

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17 **“SECTION 9. (1) Sections 2, 3 and 4 of this 2015 Act, the amend-
18 ments to ORS 735.530, 735.534 and 735.544 by sections 1, 5 and 6 of this
19 2015 Act and the repeal of ORS 735.540 by section 7 of this 2015 Act
20 become operative on January 1, 2016.**

21 **“(2) The Department of Consumer and Business Services may take
22 any action before the operative date specified in subsection (1) of this
23 section that is necessary to enable the department to exercise, on and
24 after the operative date specified in subsection (1) of this section, all
25 the duties, powers and functions conferred on the department by
26 sections 2, 3 and 4 of this 2015 Act and the amendments to ORS 735.530,
27 735.534 and 735.544 by sections 1, 5 and 6 of this 2015 Act.**

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29 **“CAPTIONS**

1 **“SECTION 10. The unit captions used in this 2015 Act are provided**
2 **only for the convenience of the reader and do not become part of the**
3 **statutory law of this state or express any legislative intent in the**
4 **enactment of this 2015 Act.**

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“EMERGENCY CLAUSE

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8 **“SECTION 11. This 2015 Act being necessary for the immediate**
9 **preservation of the public peace, health and safety, an emergency is**
10 **declared to exist, and this 2015 Act takes effect on its passage.”.**

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