A-Engrossed Senate Bill 1505

Ordered by the Senate February 11 Including Senate Amendments dated February 11

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care)

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.

Authorizes Department of Consumer and Business Services to adopt by rule fees that are reasonably calculated to pay costs associated with administering laws regulating pharmacy benefit managers.

Provides department with power to civilly enforce laws regulating pharmacy benefit managers. [Requires pharmacy benefit managers to reimburse network pharmacies for drugs at rate that is not less than price of drugs specified in most recently updated version of list establishing maximum allowable costs for drugs.]

Provides department with power to examine and investigate pharmacy benefit managers. Updates and clarifies laws regulating pharmacy benefit managers.

A BILL FOR AN ACT 1 $\mathbf{2}$ Relating to pharmacy benefit managers; creating new provisions; and amending ORS 735.530, 735.532, 735.544 and 735.550. 3 Be It Enacted by the People of the State of Oregon: 5 **FEES** 6 SECTION 1. ORS 735.532 is amended to read: 9 735.532. (1) To conduct business in this state, a pharmacy benefit manager must register with the Department of Consumer and Business Services and annually renew the registration. 10 (2) To register under this section, a pharmacy benefit manager must: 11 (a) Submit an application to the department on a form prescribed by the department by rule. 12 (b) Pay a registration fee[, not to exceed \$50,] adopted by the department by rule. 13

- (3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal fee[, not to exceed \$50,] adopted by the department by rule.
- (4) Fees adopted under subsections (2)(b) and (3) of this section must be reasonably calculated to pay the costs incurred by the department under ORS 735.530 to 735.552.
- [(4)] (5) The department shall deposit all moneys collected under this section into the Consumer and Business Services Fund created in ORS 705.145. Moneys deposited into the fund pursuant to this section are continuously appropriated to the department for purposes of administering and enforcing ORS 735.530 to 735.552.

22

14

15

16

17

18

19 20

21

23

ENFORCEMENT

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.

SECTION 2. Sections 3, 4, 5 and 6 of this 2016 Act are added to and made a part of ORS 735.530 to 735.552.

<u>SECTION 3.</u> (1) Subject to the provisions of ORS chapter 183, the Department of Consumer and Business Services, upon receiving a complaint or upon the department's own motion, may:

- (a) Condition, suspend, revoke or refuse to renew the registration of a pharmacy benefit manager under ORS 735.532 for violating a provision of ORS 735.530 to 735.552; or
- (b) Impose a civil penalty not to exceed \$10,000 on a pharmacy benefit manager for violating a provision of ORS 735.530 to 735.552.
- (2) The department shall deposit all moneys collected under this section into the Consumer and Business Services Fund created in ORS 705.145. Moneys deposited into the fund pursuant to this section are continuously appropriated to the department for purposes of administering and enforcing ORS 735.530 to 735.552.

SECTION 4. The Director of the Department of Consumer and Business Services may inquire about the activities of a pharmacy benefit manager and about any matter connected to the transactions of a pharmacy benefit manager. A pharmacy benefit manager about whom the director inquires under this section must promptly and truthfully reply to the inquiry, in a form and manner prescribed by the director.

SECTION 5. (1) Except as otherwise provided in ORS 735.530 to 735.552, or where the context requires otherwise, the provisions of ORS 731.236, 731.280, 731.300, 731.302, 731.304, 731.308, 731.312, 731.314 and 731.316 related to the functions, duties, powers and privileges of the Department of Consumer and Business Services or the Director of the Department of Consumer and Business Services related to the examination and investigation of insurers, including examinatorial duties and powers, investigatory duties and powers, examiner appointment procedures, examination and investigation procedures, examination reporting, immunity from cause of action and liability and payment of examination costs, confer the same functions, duties, powers and privileges on the Department of Consumer and Business Services or the Director of the Department of Consumer and Business Services with respect to examining or investigating pharmacy benefit managers for the purpose of enforcing ORS 735.530 to 735.552.

(2) The department may adopt rules necessary to implement this section.

SECTION 6. (1) A pharmacy benefit manager shall provide to the Department of Consumer and Business Services, in a form and manner prescribed by the department, the telephone number at which a network pharmacy may contact the pharmacy benefit manager and speak with an individual who is responsible for processing appeals, as required by ORS 735.534 (4)(a).

(2) The department shall post on the department's website the telephone number provided to the department under subsection (1) of this section by each pharmacy benefit manager.

OTHER AMENDMENTS

SECTION 7. ORS 735.530 is amended to read:

735.530. As used in ORS 735.530 to 735.552:

(1) "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of

- 1 filling or refilling a prescription for a drug or for providing a medical supply or service.
 - (2) "Insurer" has the meaning given that term in ORS 731.106.

2

3

4 5

6

7

8 9

12

13

14

15 16

17 18

19

20

21 22

23

2425

2627

28

29 30

31

32

33 34

35

36 37

38

39

40

41

42

43

44

45

- (3) "Pharmacist" has the meaning given that term in ORS 689.005.
- [(4)] (4)(a) "Pharmacy" has the meaning given that term in ORS 689.005.
 - (b) "Pharmacy" includes an entity that provides or oversees administrative services for two or more pharmacies.
- (5)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf of an insurer, a third party administrator or the Oregon Prescription Drug Program established in ORS 414.312 to:
- 10 (A) Process claims for prescription drugs or medical supplies or provide retail network man-11 agement 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.
 - (6) "Third party administrator" means a person licensed under ORS 744.702.
 - **SECTION 8.** ORS 735.544 is amended to read:
 - 735.544. An [entity's] entity or an independent third party that contracts with an entity must base a finding that a claim was incorrectly presented or paid [must be based] on identified transactions and not [based] on probability sampling, extrapolation or other means that project an error using the number of patients served who have a similar diagnosis or the number of similar prescriptions or refills for similar drugs.

SECTION 9. ORS 735.550 is amended to read:

- 735.550. (1)(a) After conducting an audit **or having an audit conducted**, an entity must provide the pharmacy that is the subject of the audit with a preliminary report of the audit. The preliminary report must be received by the pharmacy no later than 45 days after the date on which the audit was completed and must be sent:
 - (A) By mail or common carrier with a return receipt requested; or
 - (B) Electronically with electronic receipt confirmation.
- (b) An entity shall provide a pharmacy receiving a preliminary report under this subsection no fewer than 45 days after receiving the report to contest the report or any findings in the report in accordance with the appeals procedure established under ORS 735.542 (1) and to provide additional documentation in support of the claim. The entity shall consider a reasonable request for an extension of time to submit documentation to contest the report or any findings in the report.
- (2) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow the pharmacy to resubmit the claim using any commercially reasonable method, including facsimile, mail or electronic mail.
- (3) An entity must provide a pharmacy that is the subject of an audit with a final report of the audit no later than 60 days after the later of the date the preliminary report was received or the date the pharmacy contested the report using the appeals procedure established under ORS 735.542 (1). The final report must include a final accounting of all moneys to be recovered by the entity.
- (4) Recoupment of disputed funds from a pharmacy by an entity or repayment of funds to an entity by a pharmacy, unless otherwise agreed to by the entity and the pharmacy, shall occur after the audit and the appeals procedure established under ORS 735.542 (1) are final. If the identified

A-Eng. SB 1505

1	discrepancy for an individual audit exceeds \$40,000, any future payments to the pharmacy may be
2	withheld by the entity until the audit and the appeals procedure established under ORS 735.542 (1
3	are final.
4	
5	UNIT CAPTIONS
6	
7	SECTION 10. The unit captions used in this 2016 Act are provided only for the conven
8	ience of the reader and do not become part of the statutory law of this state or express any
9	legislative intent in the enactment of this 2016 Act.
10	