SENATE AMENDMENTS TO SENATE BILL 1505

By COMMITTEE ON HEALTH CARE

February 11

On page 1 of the printed bill, line 3, delete "735.534,".

2	Delete lines 5 through 27 and delete pages 2 through 5 and insert:
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4	"FEES
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6	"SECTION 1. ORS 735.532 is amended to read:
7	"735.532. (1) To conduct business in this state, a pharmacy benefit manager must register with
8	the Department of Consumer and Business Services and annually renew the registration.
9	"(2) To register under this section, a pharmacy benefit manager must:
10	"(a) Submit an application to the department on a form prescribed by the department by rule.
11	"(b) Pay a registration fee[, not to exceed \$50,] adopted by the department by rule.
12	"(3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal
13	fee[, not to exceed \$50,] adopted by the department by rule.
14	"(4) Fees adopted under subsections (2)(b) and (3) of this section must be reasonably
15	calculated to pay the costs incurred by the department under ORS 735.530 to 735.552.
16	"[(4)] (5) The department shall deposit all moneys collected under this section into the Consumer
17	and Business Services Fund created in ORS 705.145. Moneys deposited into the fund pursuant
18	to this section are continuously appropriated to the department for purposes of administer-
19	ing and enforcing ORS 735.530 to 735.552.
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21	"ENFORCEMENT
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23	"SECTION 2. Sections 3, 4, 5 and 6 of this 2016 Act are added to and made a part of ORS
24	735.530 to 735.552.
25	"SECTION 3. (1) Subject to the provisions of ORS chapter 183, the Department of Con-
26	sumer and Business Services, upon receiving a complaint or upon the department's own
27	motion, may:
28	"(a) Condition, suspend, revoke or refuse to renew the registration of a pharmacy benefit
29	manager under ORS 735.532 for violating a provision of ORS 735.530 to 735.552; or
30	"(b) Impose a civil penalty not to exceed \$10,000 on a pharmacy benefit manager for vio-
31	lating a provision of ORS 735.530 to 735.552.
32	"(2) The department shall deposit all moneys collected under this section into the Con-
33	sumer and Business Services Fund created in ORS 705.145. Moneys deposited into the fund
34	pursuant to this section are continuously appropriated to the department for purposes of
35	administering and enforcing ORS 735.530 to 735.552.

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"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 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.
 - "(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:
- "(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

SA to SB 1505 Page 2

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 discrepancy for an individual audit exceeds \$40,000, any future payments to the pharmacy may be withheld by the entity until the audit and the appeals procedure established under ORS 735.542 (1) are final.

"UNIT CAPTIONS

"SECTION 10. The unit captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.".

SA to SB 1505 Page 3