

Requested by SENATE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO
SENATE BILL 1505**

1 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:

3

4

“FEES

5

6 **“SECTION 1.** ORS 735.532 is amended to read:

7 “735.532. (1) To conduct business in this state, a pharmacy benefit man-
8 ager must register with the Department of Consumer and Business Services
9 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
12 department by rule.

13 “(b) Pay a registration fee[, *not to exceed \$50,*] adopted by the department
14 by rule.

15 “(3) To renew a registration under this section, a pharmacy benefit man-
16 ager must pay a renewal fee[, *not to exceed \$50,*] adopted by the department
17 by rule.

18 **“(4) Fees adopted under subsections (2)(b) and (3) of this section**
19 **must be reasonably calculated to pay the costs incurred by the de-**
20 **partment under ORS 735.530 to 735.552.**

21 “[~~(4)~~] (5) The department shall deposit all moneys collected under this

1 section into the Consumer and Business Services Fund created in ORS
2 705.145. Moneys deposited into the fund pursuant to this section are
3 continuously appropriated to the department for purposes of adminis-
4 tering and enforcing ORS 735.530 to 735.552.

5
6 **“ENFORCEMENT**

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

10 **“SECTION 3. (1) Subject to the provisions of ORS chapter 183, the**
11 **Department of Consumer and Business Services, upon receiving a**
12 **complaint or upon the department’s own motion, may:**

13 **“(a) Condition, suspend, revoke or refuse to renew the registration**
14 **of a pharmacy benefit manager under ORS 735.532 for violating a pro-**
15 **vision of ORS 735.530 to 735.552; or**

16 **“(b) Impose a civil penalty not to exceed \$10,000 on a pharmacy**
17 **benefit manager for violating a provision of ORS 735.530 to 735.552.**

18 **“(2) The department shall deposit all moneys collected under this**
19 **section into the Consumer and Business Services Fund created in ORS**
20 **705.145. Moneys deposited into the fund pursuant to this section are**
21 **continuously appropriated to the department for purposes of adminis-**
22 **tering and enforcing ORS 735.530 to 735.552.**

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

30 **“SECTION 5. (1) Except as otherwise provided in ORS 735.530 to**

1 **735.552, or where the context requires otherwise, the provisions of ORS**
2 **731.236, 731.280, 731.300, 731.302, 731.304, 731.308, 731.312, 731.314 and**
3 **731.316 related to the functions, duties, powers and privileges of the**
4 **Department of Consumer and Business Services or the Director of the**
5 **Department of Consumer and Business Services related to the exam-**
6 **ination and investigation of insurers, including examinational duties**
7 **and powers, investigatory duties and powers, examiner appointment**
8 **procedures, examination and investigation procedures, examination**
9 **reporting, immunity from cause of action and liability and payment**
10 **of examination costs, confer the same functions, duties, powers and**
11 **privileges on the Department of Consumer and Business Services or**
12 **the Director of the Department of Consumer and Business Services**
13 **with respect to examining or investigating pharmacy benefit managers**
14 **for the purpose of enforcing ORS 735.530 to 735.552.**

15 **“(2) The department may adopt rules necessary to implement this**
16 **section.**

17 **“SECTION 6. (1) A pharmacy benefit manager shall provide to the**
18 **Department of Consumer and Business Services, in a form and manner**
19 **prescribed by the department, the telephone number at which a net-**
20 **work pharmacy may contact the pharmacy benefit manager and speak**
21 **with an individual who is responsible for processing appeals, as re-**
22 **quired by ORS 735.534 (4)(a).**

23 **“(2) The department shall post on the department’s website the**
24 **telephone number provided to the department under subsection (1) of**
25 **this section by each pharmacy benefit manager.**

26

27 **“OTHER AMENDMENTS**

28

29 **“SECTION 7. ORS 735.530 is amended to read:**

30 **“735.530. As used in ORS 735.530 to 735.552:**

1 “(1) ‘Claim’ means a request from a pharmacy or pharmacist to be reim-
2 bursed for the cost of filling or refilling a prescription for a drug or for
3 providing a medical supply or service.

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

5 “(3) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

6 “[4] (4)(a) ‘Pharmacy’ has the meaning given that term in ORS 689.005.

7 “(b) **‘Pharmacy’ includes an entity that provides or oversees ad-
8 ministrative services for two or more pharmacies.**

9 “(5)(a) ‘Pharmacy benefit manager’ means a person that contracts with
10 pharmacies on behalf of an insurer, a third party administrator or the
11 Oregon Prescription Drug Program established in ORS 414.312 to:

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

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

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

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

20 “(6) ‘Third party administrator’ means a person licensed under ORS
21 744.702.

22 “**SECTION 8.** ORS 735.544 is amended to read:

23 “735.544. An [entity’s] **entity or an independent third party that con-
24 tracts with an entity must base a finding** that a claim was incorrectly
25 presented or paid [*must be based*] on identified transactions and not [*based*]
26 on probability sampling, extrapolation or other means that project an error
27 using the number of patients served who have a similar diagnosis or the
28 number of similar prescriptions or refills for similar drugs.

29 “**SECTION 9.** ORS 735.550 is amended to read:

30 “735.550. (1)(a) After conducting an audit **or having an audit**

1 **conducted**, an entity must provide the pharmacy that is the subject of the
2 audit with a preliminary report of the audit. The preliminary report must
3 be received by the pharmacy no later than 45 days after the date on which
4 the audit was completed and must be sent:

5 “(A) By mail or common carrier with a return receipt requested; or

6 “(B) Electronically with electronic receipt confirmation.

7 “(b) An entity shall provide a pharmacy receiving a preliminary report
8 under this subsection no fewer than 45 days after receiving the report to
9 contest the report or any findings in the report in accordance with the ap-
10 peals procedure established under ORS 735.542 (1) and to provide additional
11 documentation in support of the claim. The entity shall consider a reasonable
12 request for an extension of time to submit documentation to contest the re-
13 port or any findings in the report.

14 “(2) If an audit results in the dispute or denial of a claim, the entity
15 conducting the audit shall allow the pharmacy to resubmit the claim using
16 any commercially reasonable method, including facsimile, mail or electronic
17 mail.

18 “(3) An entity must provide a pharmacy that is the subject of an audit
19 with a final report of the audit no later than 60 days after the later of the
20 date the preliminary report was received or the date the pharmacy contested
21 the report using the appeals procedure established under ORS 735.542 (1).
22 The final report must include a final accounting of all moneys to be recov-
23 ered by the entity.

24 “(4) Recoupment of disputed funds from a pharmacy by an entity or re-
25 payment of funds to an entity by a pharmacy, unless otherwise agreed to by
26 the entity and the pharmacy, shall occur after the audit and the appeals
27 procedure established under ORS 735.542 (1) are final. If the identified dis-
28 crepancy for an individual audit exceeds \$40,000, any future payments to the
29 pharmacy may be withheld by the entity until the audit and the appeals
30 procedure established under ORS 735.542 (1) are final.

