

HOUSE AMENDMENTS TO HOUSE BILL 2388

By COMMITTEE ON HEALTH CARE

April 3

1 In line 2 of the printed bill, after the first semicolon delete the rest of the line and insert “cre-
2 ating new provisions; amending ORS 705.137, 735.530 and 735.532; and declaring an emergency.”.

3 Delete lines 4 through 16 and insert:

4 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 735.530 to**
5 **735.552.**

6 **“SECTION 2. (1) In accordance with ORS chapter 183, the Department of Consumer and**
7 **Business Services may deny an application for registration as a pharmacy benefit manager**
8 **or an application for renewal of a registration as a pharmacy benefit manager, and may**
9 **suspend or revoke a registration as a pharmacy benefit manager, if the department finds**
10 **that an applicant or registrant:**

11 **“(a) Falsified an application for registration or for the renewal of a registration or en-**
12 **gaged in any dishonest act in relation to the application;**

13 **“(b) Engaged in dishonesty, fraud or gross negligence in the conduct of business as a**
14 **pharmacy benefit manager;**

15 **“(c) Engaged in conduct that resulted in a conviction of a felony under the laws of any**
16 **state or of the United States, to the extent that such conduct may be considered under ORS**
17 **670.280;**

18 **“(d) Was convicted under the laws of any state or of the United States of any crime of**
19 **which an essential element is dishonesty or fraud;**

20 **“(e) Had a certificate of authority or authority to conduct business as a pharmacy benefit**
21 **manager denied, revoked or suspended in another state;**

22 **“(f) Failed to pay a civil penalty imposed by final order of the department or to comply**
23 **with the terms of suspension set by the department;**

24 **“(g) Failed to meet the terms of a consent decree approved by a court of competent ju-**
25 **risdiction in this state, or a consent order made between the department and the pharmacy**
26 **benefit manager;**

27 **“(h) Refused to be examined or to produce accounts, records or files for examination,**
28 **including the refusal by any officer of the applicant or registrant to give information with**
29 **respect to the affairs of the pharmacy benefit manager, or refused to perform any other legal**
30 **obligation with respect to an examination by the department; or**

31 **“(i) Violated any rule or order of the department or any provision of the Insurance Code.**

32 **“(2) The department may prescribe by rule a procedure by which a pharmacy or an entity**
33 **acting on behalf of a pharmacy may file a complaint with the department alleging that a**
34 **pharmacy benefit manager has engaged in conduct described in this section. The department**
35 **may restrict the right of a pharmacy or entity to file a complaint only to the extent neces-**

1 **sary to prevent abuse of the complaint process.**

2 **“SECTION 3.** ORS 735.532 is amended to read:

3 “735.532. (1) To conduct business in this state, a pharmacy benefit manager must register with
4 the Department of Consumer and Business Services and annually renew the registration.

5 “(2) To register under this section, a pharmacy benefit manager must:

6 “(a) Submit an application to the department on a form prescribed by the department by rule.

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

8 “(3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal
9 fee[, *not to exceed \$50,*] **in an amount** adopted by the department by rule.

10 “(4) The department shall deposit all moneys collected under this section into the Consumer and
11 Business Services Fund created in ORS 705.145.

12 **“(5) Any fee adopted by the department under this section must be based on the**
13 **department’s reasonable costs in administering ORS 735.530 to 735.552.**

14 **“SECTION 4.** ORS 705.137 is amended to read:

15 “705.137. (1) Except as provided in subsection (3) of this section, a document, material or other
16 information that the Department of Consumer and Business Services possesses or controls for the
17 purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to
18 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726, the Bank
19 Act and the Insurance Code **and section 2 of this 2017 Act** and that is described in statute as
20 confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505,
21 is not subject to subpoena and is not subject to discovery or admissible in evidence in a private civil
22 action. The Director of the Department of Consumer and Business Services may use a confidential
23 document, material or other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992,
24 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59,
25 723, 725 and 726, the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and in
26 furthering a regulatory or legal action the director brings as a part of the director’s duties.

27 “(2) A document, material or other information to which subsection (1) of this section applies
28 is subject to the public officer privilege described in ORS 40.270.

29 “(3) In order to assist in the performance of the director’s duties, the director may:

30 “(a) Authorize sharing a confidential document, material or other information that is subject to
31 subsection (1) of this section as appropriate among the administrative divisions and staff offices of
32 the department created under ORS 705.115 for the purpose of administering and enforcing the stat-
33 utes identified in subsection (1) of this section, in order to enable the administrative divisions and
34 staff offices to carry out the functions and responsibilities of the administrative divisions and staff
35 offices.

36 “(b) Share a document, material or other information, including a confidential document, mate-
37 rial or other information that is subject to subsection (1) of this section or that is otherwise confi-
38 dential under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory
39 and law enforcement agencies, with the Federal Reserve Board and with the National Association
40 of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance
41 Commissioners, if the recipient agrees to maintain the confidentiality of the document, material or
42 other information.

43 “(c) Receive a document, material or other information, including an otherwise confidential
44 document, material or other information, from state, federal, foreign and international regulatory
45 and law enforcement agencies, from the Federal Reserve Board and from the National Association

1 of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance
2 Commissioners. As provided in this section, the director shall maintain the confidentiality of docu-
3 ments, materials or other information the director receives if the director receives notice or has an
4 understanding that the document, material or other information is confidential or privileged under
5 the laws of the jurisdiction that is the source of the document, material or other information.

6 “(4) Disclosing a document, material or other information to the director under this section or
7 sharing a document, material or other information as authorized in subsection (3) of this section
8 does not waive an applicable privilege or claim of confidentiality in the document, material or other
9 information.

10 “(5) This section does not prohibit the director from disclosing to a database or other clearing-
11 house service maintained by the National Association of Insurance Commissioners or affiliates or
12 subsidiaries of the National Association of Insurance Commissioners information about a final, ad-
13 judged action, including a suspension or revocation of a certificate of authority or a license, if
14 the information is otherwise open to public inspection.

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

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

17 “(1) ‘Claim’ means a request from a pharmacy or pharmacist to be reimbursed for the cost of
18 filling or refilling a prescription for a drug or for providing a medical supply or service.

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

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

21 “(4) ‘Pharmacy’ [*has the meaning given that term in ORS 689.005*] **includes:**

22 **“(a) A pharmacy as defined in ORS 689.005; and**

23 **“(b) An entity that provides or oversees administrative services for two or more phar-**
24 **macies.**

25 “(5)(a) ‘Pharmacy benefit manager’ means a person that contracts with pharmacies on behalf of
26 an insurer, a third party administrator or the Oregon Prescription Drug Program established in ORS
27 414.312 to:

28 “(A) Process claims for prescription drugs or medical supplies or provide retail network man-
29 agement for pharmacies or pharmacists;

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

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

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

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

36 **“SECTION 6. Section 2 of this 2017 Act and the amendments to ORS 705.137 and 735.532**
37 **by sections 3 and 4 of this 2017 Act become operative on January 1, 2018.”.**

38 In line 17, delete “2” and insert “7”.