

Requested by HOUSE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2388**

1 In line 2 of the printed bill, after the first semicolon delete the rest of the
2 line and insert “creating new provisions; amending ORS 705.137, 735.530 and
3 735.532; and declaring an emergency.”.

4 Delete lines 4 through 16 and insert:

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

7 **“SECTION 2. (1) In accordance with ORS chapter 183, the Depart-**
8 **ment of Consumer and Business Services may deny an application for**
9 **registration as a pharmacy benefit manager or an application for re-**
10 **newal of a registration as a pharmacy benefit manager, and may sus-**
11 **pend or revoke a registration as a pharmacy benefit manager, if the**
12 **department finds that an applicant or registrant:**

13 **“(a) Falsified an application for registration or for the renewal of**
14 **a registration or engaged in any dishonest act in relation to the ap-**
15 **plication;**

16 **“(b) Engaged in dishonesty, fraud or gross negligence in the con-**
17 **duct of business as a pharmacy benefit manager;**

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

21 **“(d) Was convicted under the laws of any state or of the United**

1 States of any crime of which an essential element is dishonesty or
2 fraud;

3 “(e) Had a certificate of authority or authority to conduct business
4 as a pharmacy benefit manager denied, revoked or suspended in an-
5 other state;

6 “(f) Failed to pay a civil penalty imposed by final order of the de-
7 partment or to comply with the terms of suspension set by the de-
8 partment;

9 “(g) Failed to meet the terms of a consent decree approved by a
10 court of competent jurisdiction in this state, or a consent order made
11 between the department and the pharmacy benefit manager;

12 “(h) Refused to be examined or to produce accounts, records or files
13 for examination, including the refusal by any officer of the applicant
14 or registrant to give information with respect to the affairs of the
15 pharmacy benefit manager, or refused to perform any other legal ob-
16 ligation with respect to an examination by the department; or

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

19 “(2) The department may prescribe by rule a procedure by which a
20 pharmacy or an entity acting on behalf of a pharmacy may file a
21 complaint with the department alleging that a pharmacy benefit
22 manager has engaged in conduct described in this section. The de-
23 partment may restrict the right of a pharmacy or entity to file a
24 complaint only to the extent necessary to prevent abuse of the com-
25 plaint process.

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

27 “735.532. (1) To conduct business in this state, a pharmacy benefit man-
28 ager must register with the Department of Consumer and Business Services
29 and annually renew the registration.

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

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

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

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

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

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

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

14 “705.137. (1) Except as provided in subsection (3) of this section, a docu-
15 ment, material or other information that the Department of Consumer and
16 Business Services possesses or controls for the purpose of administering ORS
17 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842,
18 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726,
19 the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and
20 that is described in statute as confidential or as not subject to disclosure is
21 not subject to disclosure under ORS 192.410 to 192.505, is not subject to
22 subpoena and is not subject to discovery or admissible in evidence in a pri-
23 vate civil action. The Director of the Department of Consumer and Business
24 Services may use a confidential document, material or other information in
25 administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095,
26 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters
27 59, 723, 725 and 726, the Bank Act and the Insurance Code and in furthering
28 a regulatory or legal action the director brings as a part of the director’s
29 duties.

30 “(2) A document, material or other information to which subsection (1)

1 of this section applies is subject to the public officer privilege described in
2 ORS 40.270.

3 “(3) In order to assist in the performance of the director’s duties, the di-
4 rector may:

5 “(a) Authorize sharing a confidential document, material or other infor-
6 mation that is subject to subsection (1) of this section as appropriate among
7 the administrative divisions and staff offices of the department created under
8 ORS 705.115 for the purpose of administering and enforcing the statutes
9 identified in subsection (1) of this section, in order to enable the adminis-
10 trative divisions and staff offices to carry out the functions and responsibil-
11 ities of the administrative divisions and staff offices.

12 “(b) Share a document, material or other information, including a confi-
13 dential document, material or other information that is subject to subsection
14 (1) of this section or that is otherwise confidential under ORS 192.501 or
15 192.502, with other state, federal, foreign and international regulatory and
16 law enforcement agencies, with the Federal Reserve Board and with the
17 National Association of Insurance Commissioners and affiliates or subsid-
18 iaries of the National Association of Insurance Commissioners, if the recip-
19 ient agrees to maintain the confidentiality of the document, material or other
20 information.

21 “(c) Receive a document, material or other information, including an
22 otherwise confidential document, material or other information, from state,
23 federal, foreign and international regulatory and law enforcement agencies,
24 from the Federal Reserve Board and from the National Association of In-
25 surance Commissioners and affiliates or subsidiaries of the National Associ-
26 ation of Insurance Commissioners. As provided in this section, the director
27 shall maintain the confidentiality of documents, materials or other informa-
28 tion the director receives if the director receives notice or has an under-
29 standing that the document, material or other information is confidential or
30 privileged under the laws of the jurisdiction that is the source of the docu-

1 ment, material or other information.

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

7 “(5) This section does not prohibit the director from disclosing to a da-
8 tabase or other clearinghouse service maintained by the National Associ-
9 ation of Insurance Commissioners or affiliates or subsidiaries of the National
10 Association of Insurance Commissioners information about a final, adjudi-
11 cated action, including a suspension or revocation of a certificate of au-
12 thority or a license, if the information is otherwise open to public inspection.

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

14 “735.530. As used in ORS 735.530 to 735.552:

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

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

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

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

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

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

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

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

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

1 supplies; or

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

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

6 “(6) ‘Third party administrator’ means a person licensed under ORS
7 744.702.

8 **“SECTION 6. Section 2 of this 2017 Act and the amendments to ORS
9 705.137 and 735.532 by sections 3 and 4 of this 2017 Act become operative
10 on January 1, 2018.”.**

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

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