

HB 4103-1
(LC 59)
2/8/18 (LHF/ps)

Requested by Representative ALONSO LEON

**PROPOSED AMENDMENTS TO
HOUSE BILL 4103**

1 On page 1 of the printed bill, line 2, after “735.530” insert “and 735.534”.

2 Delete lines 8 through 25 and insert:

3 “(2) Shall allow a contracted pharmacy the option to mail or deliver pre-
4 scription drugs to its patients;

5 “(3) May not require a patient signature as proof of delivery of a mailed
6 or delivered prescription drug if the pharmacy maintains a mail or delivery
7 log signed by a representative of the pharmacy or has delivery documenta-
8 tion by the United States Postal Service or a commercial delivery service;

9 “(4) May not require a licensed pharmacist or a retail pharmacy, as a
10 condition of payment, reimbursement or contracting with the pharmacy ben-
11 efit manager, to meet accreditation, certification or credentialing standards
12 in addition to those required by the State Board of Pharmacy or other state
13 or federal laws. This subsection does not prevent a pharmacy benefit man-
14 ager from denying reimbursement of a claim for a specialty drug if the
15 pharmacist or pharmacy does not have the training, facilities or systems in
16 place to meet the state dispensing requirements for the drug; and

17 “(5) Shall notify any person whose pharmacy benefits are administered
18 by the pharmacy benefit manager of any financial or ownership interests that
19 exist between the”.

20 On page 2, after line 25, insert:

21 “(9) ‘Specialty drug’ means a drug:

- 1 “(a) That requires difficult or unusual:
2 “(A) Preparation;
3 “(B) Handling;
4 “(C) Storage;
5 “(D) Inventory; or
6 “(E) Distribution;
7 “(b) That has difficult or unusual data collection or administrative re-
8 quirements associated with it;
9 “(c) For which the United States Food and Drug Administration requires
10 a Risk Evaluation and Mitigation Strategy; or
11 “(d) That requires patient management by a pharmacist, prior to or after
12 the dispensing of the drug, in the form of:
13 “(A) Monitoring; or
14 “(B) Disease or therapeutic support systems.”

15 In line 26, delete the boldfaced material and insert “(10)”.

16 After line 26, insert:

17 **“SECTION 4.** ORS 735.534 is amended to read:

18 “735.534. (1) As used in this section:

19 **“(a)(A) ‘Generally available for purchase’ means a drug is available**
20 **for purchase by similarly situated pharmacies from a national or re-**
21 **gional wholesaler at the time a claim for reimbursement is submitted**
22 **by a network pharmacy.**

23 **“(B) A drug is not generally available for purchase if the drug:**

24 **“(i) Must be dispensed at a hospital or in an institutional setting;**

25 **“(ii) Is only available at a price that is at or below the maximum**
26 **allowable cost if purchased in quantities that materially exceed the**
27 **dispensing needs of similarly situated pharmacies;**

28 **“(iii) Is only available at a price that is at or below the maximum**
29 **allowable cost if purchased at a discount due to a short expiration date**
30 **on the drug; or**

1 “(iv) **Is the subject of a recall notice.**

2 “[(a)] (b) ‘List’ means the list of drugs for which maximum allowable
3 costs have been established.

4 “[(b)] (c) ‘Maximum allowable cost’ means the maximum amount that a
5 pharmacy benefit manager will reimburse a **network** pharmacy for the cost
6 of a drug.

7 “[(c)] (d) ‘Multiple source drug’ means a therapeutically equivalent drug
8 that is available from at least two manufacturers.

9 “[(d)] (e) ‘Network pharmacy’ means a retail drug outlet registered under
10 ORS 689.305 that contracts with a pharmacy benefit manager.

11 “(f) **‘Similarly situated pharmacies’ means pharmacies that:**

12 “(A) **Are located in this state;**

13 “(B) **Are of like size and class of trade, such as independent, retail**
14 **chain, supermarket, mass merchandiser, mail order or specialty; and**

15 “(C) **Have a network agreement with a pharmacy benefit manager**
16 **with the same terms.**

17 “[(e)] (g) ‘Therapeutically equivalent’ has the meaning given that term in
18 ORS 689.515.

19 “(2) A pharmacy benefit manager:

20 “(a) May not place a drug on a list unless there are at least two
21 therapeutically equivalent, multiple source drugs, or at least one generic
22 drug **generally available for purchase** [*from only one manufacturer, gener-*
23 *ally available for purchase by network pharmacies from national or regional*
24 *wholesalers*].

25 “(b) Shall ensure that all drugs on a list are generally available for pur-
26 chase [*by pharmacies in this state from national or regional wholesalers*].

27 “(c) Shall ensure that all drugs on a list are not obsolete.

28 “(d) Shall make available to each network pharmacy at the beginning of
29 the term of a contract, and upon renewal of a contract, the [*sources*
30 *utilized*] **specific nonproprietary and authoritative industry resources**

1 **the pharmacy benefit manager uses** to determine the maximum allowable
2 cost [*pricing of*] **set by** the pharmacy benefit manager.

3 “(e) Shall make a list available to a network pharmacy upon request in
4 a format that is [*readily accessible to and usable by the network pharmacy.*]
5 **electronic, computer accessible and searchable, identifies all drugs for**
6 **which maximum allowable costs have been established and for each**
7 **drug specifies:**

8 “(A) **The national drug code;**

9 “(B) **The maximum allowable cost; and**

10 “(C) **The effective date and time for the maximum allowable cost.**

11 “(f) Shall update each list maintained by the pharmacy benefit manager
12 every seven business days and make the updated lists, including all changes
13 in the price of drugs, available to network pharmacies in a [*readily accessible*
14 *and usable*] format **that is electronic, computer accessible and**
15 **searchable.**

16 “(g) Shall ensure that dispensing fees are not included in the calculation
17 of maximum allowable cost.

18 “(3) A pharmacy benefit manager must establish a process by which a
19 network pharmacy may appeal [*its reimbursement*] **the maximum allowable**
20 **cost** for a drug [*subject to maximum allowable cost pricing. A network phar-*
21 *macy may appeal a maximum allowable cost*] if the reimbursement for the
22 drug is less than the [*net amount that the network pharmacy paid to*] **net cost**
23 **of the drug to the network pharmacy as reflected on the invoice from**
24 the supplier of the drug. An appeal requested under this section must be
25 completed within 30 calendar days of the **network** pharmacy making the
26 claim for which appeal has been requested.

27 “(4) **A pharmacy benefit manager shall allow a network pharmacy**
28 **to submit an appeal and the documentation in support of the appeal**
29 **in paper or electronically and may not:**

30 “(a) **Refuse to accept an appeal submitted by a person acting on**

1 **behalf of the network pharmacy;**

2 **“(b) Refuse to accept an appeal for the reason that the appeal is**
3 **submitted along with other claims or appeals; or**

4 **“(c) Impose requirements or establish procedures that have the ef-**
5 **fect of unduly obstructing or delaying an appeal.**

6 **“[(4)] (5) A pharmacy benefit manager must provide as part of the appeals**
7 **process established under subsection (3) of this section:**

8 **“(a) A telephone number at which a network pharmacy may contact the**
9 **pharmacy benefit manager and speak with an individual who is responsible**
10 **for processing appeals;**

11 **“(b) A final response to an appeal of a maximum allowable cost within**
12 **seven business days; and**

13 **“(c) If the appeal is denied:**

14 **“(A) The reason for the denial and the national drug code of a drug that**
15 **may be purchased by similarly situated pharmacies at a price that is [equal**
16 **to or less than] at or below the maximum allowable cost.**

17 **(B) The location where the drug was available, if the reason for the**
18 **denial is that the drug was generally available for purchase in this**
19 **state at a price that is at or below the maximum allowable cost at the**
20 **time the claim was submitted by a pharmacy.**

21 **“[(5)(a)] (6)(a) If an appeal is upheld under this section, the pharmacy**
22 **benefit manager shall [make an adjustment for the pharmacy that requested**
23 **the appeal from the date of initial adjudication forward] allow the network**
24 **pharmacy’s claim or allow resubmission of the claim by the network**
25 **pharmacy and shall adjust the reimbursement of the claim without**
26 **any additional charges.**

27 **“(b) If the request for an adjustment has come from a critical access**
28 **pharmacy, as defined by the Oregon Health Authority by rule for purposes**
29 **related to the Oregon Prescription Drug Program, the adjustment approved**
30 **under paragraph (a) of this subsection shall apply only to critical access**

1 pharmacies.

2 “[6] (7) This section does not apply to the state medical assistance pro-
3 gram.”.

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