

# House Bill 2185

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes new requirements on pharmacy benefit managers registered in this state.

## A BILL FOR AN ACT

1  
2 Relating to pharmacy benefit managers; creating new provisions; and amending ORS 735.530 and  
3 735.534.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 735.530 to**  
6 **735.552.**

7 **SECTION 2. A pharmacy benefit manager registered in this state:**

8 (1) **May not require an enrollee to fill or refill prescriptions at a mail order pharmacy.**

9 (2) **May require specialty drugs to be filled or refilled at a specialty pharmacy.**

10 (3)(a) **Shall allow a network pharmacy, as defined in ORS 735.534, to choose to mail, ship**  
11 **or deliver prescription drugs to its patients.**

12 (b) **May not require a patient signature as proof of delivery of a mailed or shipped pre-**  
13 **scription drug if the network pharmacy maintains a mailing or shipping log signed by a rep-**  
14 **resentative of the pharmacy or maintains each notification of delivery provided by the United**  
15 **States Postal Service or a package delivery service.**

16 (4) **May not impose unreasonable requirements with respect to specialty pharmacies that**  
17 **seek to contract with the pharmacy benefit manager.**

18 **SECTION 3. ORS 735.530 is amended to read:**

19 735.530. As used in ORS 735.530 to 735.552:

20 (1) "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of  
21 filling or refilling a prescription for a drug or for providing a medical supply or service.

22 (2) "Enrollee" means an individual who is a beneficiary under a policy or certificate of  
23 health insurance or covered by a self-insured health benefit plan for which a pharmacy ben-  
24 efit manager reimburses claims submitted by pharmacies for the costs of prescription drugs.

25 [(2)] (3) "Insurer" has the meaning given that term in ORS 731.106.

26 (4) "Mail order pharmacy" means a pharmacy for which the primary business is to re-  
27 ceive prescriptions by mail, telephone or electronic transmission and dispense drugs to pa-  
28 tients through the use of the United States Postal Service, a package delivery service or  
29 home delivery.

30 [(3)] (5) "Pharmacist" has the meaning given that term in ORS 689.005.

31 [(4)] (6) "Pharmacy" includes:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) A pharmacy as defined in ORS 689.005; and

2 (b) An entity that provides or oversees administrative services for two or more pharmacies.

3 [(5)(a)] **(7)(a) “Pharmacy benefit manager” means a person that contracts with pharmacies on**  
4 **behalf of an insurer, a third party administrator or the Oregon Prescription Drug Program estab-**  
5 **lished in ORS 414.312 to:**

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

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

9 (C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this  
10 paragraph.

11 (b) “Pharmacy benefit manager” does not include a health care service contractor as defined in  
12 ORS 750.005.

13 **(8) “Specialty drug” means a drug:**

14 **(a) That requires difficult or unusual:**

15 **(A) Preparation;**

16 **(B) Handling;**

17 **(C) Storage;**

18 **(D) Inventory; or**

19 **(E) Distribution;**

20 **(b) That has difficult or unusual data collection or administrative requirements associ-**  
21 **ated with it;**

22 **(c) For which the United States Food and Drug Administration requires a Risk Evalu-**  
23 **ation and Mitigation Strategy; or**

24 **(d) That requires a pharmacist to manage the patient’s use of the drug by:**

25 **(A) Monitoring; or**

26 **(B) Providing disease or therapeutic support systems.**

27 **(9) “Specialty pharmacy” means a pharmacy capable of meeting the requirements appli-**  
28 **able to specialty drugs.**

29 [(6)] **(10) “Third party administrator” means a person licensed under ORS 744.702.**

30 **SECTION 4.** ORS 735.534 is amended to read:

31 735.534. (1) As used in this section:

32 **(a)(A) “Generally available for purchase” means a drug is available for purchase by sim-**  
33 **ilarly situated pharmacies from a national or regional wholesaler at the time a claim for**  
34 **reimbursement is submitted by a network pharmacy.**

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

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

37 **(ii) Is available at a price that is at or below the maximum allowable cost only if pur-**  
38 **chased in quantities that materially exceed the dispensing needs of similarly situated phar-**  
39 **macies;**

40 **(iii) Is available at a price that is at or below the maximum allowable cost only if pur-**  
41 **chased at a discount due to a short expiration date on the drug; or**

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

43 [(a)] **(b) “List” means the list of drugs for which maximum allowable costs have been estab-**  
44 **lished.**

45 [(b)] **(c) “Maximum allowable cost” means the maximum amount that a pharmacy benefit man-**

1 ager will reimburse a pharmacy for the cost of a drug.

2 [(c)] (d) “Multiple source drug” means a therapeutically equivalent drug that is available from  
3 at least two manufacturers.

4 [(d)] (e) “Network pharmacy” means a retail drug outlet registered under ORS 689.305 that  
5 contracts with a pharmacy benefit manager.

6 (f) “Similarly situated pharmacies” means pharmacies that:

7 (A) Are located in this state;

8 (B) Are similar in size and in the same type of trade, such as independent, retail chain,  
9 supermarket, mass merchandiser, mail order or specialty; and

10 (C) Have contracted with a pharmacy benefit manager on the same terms.

11 [(e)] (g) “Therapeutically equivalent” has the meaning given that term in ORS 689.515.

12 (2) A pharmacy benefit manager:

13 (a) May not place a drug on a list unless there are at least two [*therapeutically equivalent,*]  
14 multiple source drugs, or at least one generic drug **generally available for purchase** [*from only one*  
15 *manufacturer, generally available for purchase by network pharmacies from national or regional*  
16 *wholesalers*].

17 (b) Shall ensure that all drugs on a list are generally available for purchase [*by pharmacies in*  
18 *this state from national or regional wholesalers*].

19 (c) Shall ensure that [*all drugs*] **no drug** on a list [*are not*] **is** obsolete.

20 (d) Shall make available to each network pharmacy at the beginning of the term of a contract,  
21 and upon renewal of a contract, the [*sources utilized*] **specific authoritative industry sources,**  
22 **other than proprietary sources, the pharmacy benefit manager uses** to determine the maximum  
23 allowable cost [*pricing of*] **set by** the pharmacy benefit manager.

24 (e) Shall make a list available to a network pharmacy upon request in a format that [*is readily*  
25 *accessible to and usable by the network pharmacy.*]:

26 (A) **Is electronic;**

27 (B) **Is computer accessible and searchable;**

28 (C) **Identifies all drugs for which maximum allowable costs have been established; and**

29 (D) **For each drug specifies:**

30 (i) **The national drug code;**

31 (ii) **The maximum allowable cost; and**

32 (iii) **The date and time when the maximum allowable cost goes into effect.**

33 (f) Shall update each list maintained by the pharmacy benefit manager every seven business days  
34 and make the updated lists, including all changes in the price of drugs, available to network phar-  
35 macies in [*a readily accessible and usable format*] **the format described in paragraph (e) of this**  
36 **subsection.**

37 (g) Shall ensure that dispensing fees are not included in the calculation of maximum allowable  
38 cost.

39 (3) A pharmacy benefit manager must establish a process by which a network pharmacy may  
40 appeal [*its reimbursement for a drug subject to maximum allowable cost pricing. A network pharmacy*  
41 *may appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount*  
42 *that the network pharmacy paid to the supplier of the drug. An appeal requested under this section*  
43 *must be completed within 30 calendar days of the pharmacy making the claim for which appeal has*  
44 *been requested*] **the reimbursement paid by the pharmacy benefit manager if the reimburse-**  
45 **ment is less than the pharmacy’s net cost of the drug as reflected on the invoice from the**

1 **supplier of the drug. The process must allow a pharmacy no less than 30 days after the claim**  
 2 **is reimbursed to file the appeal.**

3 **(4) A pharmacy benefit manager shall allow a network pharmacy to submit the doc-**  
 4 **umentation in support of its appeal in paper or electronically and may not:**

5 **(a) Refuse to accept an appeal submitted by a person acting on behalf of the network**  
 6 **pharmacy;**

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

9 **(c) Impose requirements or establish procedures that have the effect of unduly ob-**  
 10 **structing or delaying an appeal.**

11 *[(4)]* **(5) A pharmacy benefit manager must provide as part of the appeals process established**  
 12 **under subsection (3) of this section:**

13 **(a) A telephone number at which a network pharmacy may contact the pharmacy benefit man-**  
 14 **ager and speak with an individual who is responsible for processing appeals;**

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

16 **(c) If the appeal is denied[,];**

17 **(A) The reason for the denial and the national drug code of a **multiple source drug or generic****  
 18 **drug that may be purchased by similarly situated pharmacies at a price that is *[equal to or less***  
 19 ***than]* at or below the maximum allowable cost.**

20 **(B) If the reason for the denial is that the drug was generally available for purchase at**  
 21 **a price that was at or below the maximum allowable cost, the location where the drug was**  
 22 **available at that price when the claim for reimbursement was submitted by the network**  
 23 **pharmacy.**

24 *[(5)(a)]* **(6)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall**  
 25 ***[make an adjustment for the pharmacy that requested the appeal from the date of initial adjudication***  
 26 ***forward]:***

27 **(A) Reimburse the network pharmacy's claim as submitted;**

28 **(B) Allow the network pharmacy to submit an adjusted claim and reimburse the adjusted**  
 29 **claim without any additional charges; or**

30 **(C) Increase the reimbursement of all of the network pharmacy's subsequent claims for**  
 31 **the drug until the network pharmacy has been fully reimbursed based on the net cost of the**  
 32 **drug as reflected on the invoice from the supplier of the drug.**

33 **(b) If the request for an adjustment has come from a critical access pharmacy, as defined by the**  
 34 **Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the**  
 35 **adjustment approved under paragraph (a) of this subsection shall apply only to critical access**  
 36 **pharmacies.**

37 *[(6)]* **(7) This section does not apply to the state medical assistance program.**

38 **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 735.530 and 735.534**  
 39 **by sections 3 and 4 of this 2019 Act apply to contracts between pharmacies or pharmacists**  
 40 **and pharmacy benefit managers entered into, renewed or extended on or after the effective**  
 41 **date of this 2019 Act.**