

House Bill 2689

Sponsored by Representative NOSSE, Senators LINTHICUM, STEINER HAYWARD; Representatives BARKER, DOHERTY, FAHEY, GOMBERG, GORSEK, HOLVEY, NERON, NOBLE, POWER, Senators GELSER, MANNING JR (Pre-session filed.)

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**.

Requires Oregon Health Authority to design and, with federal approval, implement program to import wholesale prescription drugs from Canada. Specifies conditions and requirements.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prescription drugs; creating new provisions; amending ORS 413.032; and declaring an
3 emergency.

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

5 **SECTION 1. The Oregon Health Authority, in consultation with stakeholders and appro-**
6 **priate federal officials, shall design a wholesale prescription drug importation program that**
7 **meets the criteria of section 3 of this 2019 Act.**

8 **SECTION 2. As used in sections 2 to 4 of this 2019 Act:**

9 (1) "Health plan" includes:

10 (a) An insurer with a certificate of authority to transact insurance that offers health
11 insurance, as defined in ORS 731.162, in this state.

12 (b) The Public Employees' Benefit Board.

13 (c) A pharmacy benefit manager, as defined in ORS 735.530.

14 (d) An employer offering a self-insured health benefit plan to its employees.

15 (e) A health care service contractor, as defined in ORS 750.005.

16 (f) A multiple employer welfare arrangement, as defined in ORS 750.301.

17 (2) "Pharmacy" has the meaning given that term in ORS 689.005.

18 (3) "Prescription drug" has the meaning given that term in section 2, chapter 7, Oregon
19 Laws 2018.

20 (4) "Provider" means an individual or an entity that is licensed or certified by a board
21 or state agency to provide health care in this state.

22 **SECTION 3. The Oregon Health Authority shall implement a wholesale prescription drug**
23 **importation program that includes the following features:**

24 (1) The authority acts as a licensed drug wholesaler or contracts with a licensed drug
25 wholesaler to import prescription drugs from Canada;

26 (2) Prescription drugs are imported only from high quality Canadian prescription drug
27 suppliers that are subject to regulation under and are in full compliance with the laws of
28 Canada or one or more Canadian provinces;

29 (3) Prescription drugs imported under the program:

30 (a) Meet the requirements for safety and effectiveness adopted by the United States De-

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 **partment of Health and Human Services and any requirements imposed by the laws of this**
 2 **state;**

3 **(b) Are only those that are determined, using a sound methodology, to generate sub-**
 4 **stantial savings for consumers in this state; and**

5 **(c) Are distributed only to pharmacies and providers that are licensed in this state to**
 6 **dispense or administer prescription drugs;**

7 **(4) The applicable requirements under 21 U.S.C. 360eee, 360eee-1 and 384 are met both**
 8 **before and after the importation of the prescription drugs;**

9 **(5) The distribution, dispensing or sale of imported prescription drugs outside of this**
 10 **state is prohibited;**

11 **(6) A fee, in an amount that is sufficient to pay for the administration of the program**
 12 **without significantly impacting savings for consumers, is imposed on the sale of each pre-**
 13 **scription drug imported under the program;**

14 **(7) There are effective systems and mechanisms in place to:**

15 **(a) Prevent any drugs imported under the program from being shipped, sold or dispensed**
 16 **outside of this state;**

17 **(b) Ensure that prescription drugs imported under the program are pure, unadulterated,**
 18 **potent and safe;**

19 **(c) Prevent participating pharmacies and providers from charging a consumer or health**
 20 **plan more than the actual acquisition cost for a prescription drug imported under the pro-**
 21 **gram;**

22 **(d) Ensure that participating health plans maintain formularies and claims processing**
 23 **systems that are up to date and compatible with the program;**

24 **(e) Ensure that any coinsurance or other cost sharing imposed by participating health**
 25 **plans is based on the actual acquisition cost for prescription drugs imported under the pro-**
 26 **gram;**

27 **(f) Ensure that the program is adequately financed to support all administrative func-**
 28 **tions that generate significant cost savings for consumers; and**

29 **(g) Ensure that consumers are not put at higher risk than if the program did not exist;**

30 **(8) Subsection (7)(a) of this section does not prohibit an individual who purchases an**
 31 **imported drug for personal use to take the drug out of state; and**

32 **(9) An employer's self-insured health benefit plan may be exempt from any requirement**
 33 **described in subsection (7) of this section to the extent required by the Employee Retirement**
 34 **Income Security Act of 1974.**

35 **SECTION 4. On or before January 15 of each year, the Oregon Health Authority shall**
 36 **report, to the interim committees of the Legislative Assembly related to health, the following**
 37 **information from the previous calendar year regarding the wholesale prescription drug**
 38 **importation program described in section 3 of this 2019 Act:**

39 **(1) The drugs that were imported;**

40 **(2) The number of pharmacies, providers and health plans participating in the program;**

41 **(3) The number of prescriptions for drugs imported under the program that were dis-**
 42 **persed or administered in this state;**

43 **(4) The estimated savings for consumers and health plans in this state;**

44 **(5) The systems and mechanisms described in section 3 (7) of this 2019 Act;**

45 **(6) The findings of the Attorney General with respect to any anticompetitive behaviors**

1 demonstrated by industries affected by the program; and

2 (7) Any other information the authority deems pertinent and useful to the committees.

3 **SECTION 5.** (1) No later than 12 months after the effective date of this 2019 Act, the
4 Oregon Health Authority shall report to the interim committees of the Legislative Assembly
5 related to health, as provided in ORS 192.245, the design and plan for the implementation of
6 the wholesale prescription drug importation program described in section 3 of this 2019 Act.

7 (2) No later than six months after submitting the report described in subsection (1) of
8 this section to the interim committees of the Legislative Assembly, the Oregon Health Au-
9 thority shall submit a formal request to the United States Department of Health and Human
10 Services to certify that the wholesale prescription drug importation program described in
11 section 3 of this 2019 Act meets the requirements of 21 U.S.C. 384(b). The authority shall
12 also seek all federal approvals necessary to enable all covered entities enrolled in or eligible
13 for the federal 340B Drug Pricing Program to participate in the wholesale prescription drug
14 importation program without jeopardizing eligibility for the federal 340B Drug Pricing Pro-
15 gram.

16 (3) The wholesale prescription drug importation program must be in operation no later
17 than six months after the United States Department of Health and Human Services certifies
18 that the program meets the requirements of 21 U.S.C. 384(b).

19 **SECTION 6.** To implement the wholesale prescription drug importation program, the
20 Oregon Health Authority shall, in accordance with the requirements in section 3 of this 2019
21 Act:

22 (1) Obtain a wholesale license or contract with a licensed wholesaler operating in this
23 state;

24 (2) Contract with one or more licensed distributors of prescription drugs operating in this
25 state;

26 (3) Contract with one or more Canadian prescription drug suppliers;

27 (4) Conduct outreach to employers, health plans, providers and consumers in this state;

28 (5) Establish a process to register health plans, pharmacies and providers who wish to
29 participate in the wholesale prescription drug importation program;

30 (6) Develop an Internet website to make available to the public the prices of prescription
31 drugs imported under the program;

32 (7) Create a marketing plan to raise public awareness of the program;

33 (8) Establish a toll-free telephone hotline with staff trained to answer questions from
34 consumers, employers, health plans and providers about the program;

35 (9) Create the systems and mechanisms required by section 3 (7) of this 2019 Act; and

36 (10) Take any other actions that the authority deems necessary to begin operating the
37 wholesale prescription drug importation program on the date specified in section 5 (3) of this
38 2019 Act.

39 **SECTION 7.** (1) The Attorney General, in consultation with the Oregon Health Authority,
40 shall identify the potential for and shall monitor for anticompetitive behavior by industries
41 affected by the wholesale prescription drug importation program described in section 3 of
42 this 2019 Act.

43 (2) The Attorney General shall report to the Oregon Health Authority the Attorney
44 General's findings under subsection (1) of this section for the purpose of the report described
45 in section 4 (6) of this 2019 Act.

1 **SECTION 8. Section 4 of this 2019 Act becomes operative on January 1 in the second year**
 2 **after the implementation of the wholesale prescription drug importation program in accord-**
 3 **ance with section 5 (3) of this 2019 Act.**

4 **SECTION 9.** ORS 413.032 is amended to read:

5 413.032. (1) The Oregon Health Authority is established. The authority shall:

6 (a) Carry out policies adopted by the Oregon Health Policy Board;

7 (b) Administer the Oregon Integrated and Coordinated Health Care Delivery System established
 8 in ORS 414.620;

9 (c) Administer the Oregon Prescription Drug Program **and the wholesale prescription drug**
 10 **importation program described in section 3 of this 2019 Act;**

11 (d) Develop the policies for and the provision of publicly funded medical care and medical as-
 12 sistance in this state;

13 (e) Develop the policies for and the provision of mental health treatment and treatment of ad-
 14 dictions;

15 (f) Assess, promote and protect the health of the public as specified by state and federal law;

16 (g) Provide regular reports to the board with respect to the performance of health services
 17 contractors serving recipients of medical assistance, including reports of trends in health services
 18 and enrollee satisfaction;

19 (h) Guide and support, with the authorization of the board, community-centered health initiatives
 20 designed to address critical risk factors, especially those that contribute to chronic disease;

21 (i) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the
 22 Social Security Act and administer medical assistance under ORS chapter 414;

23 (j) In consultation with the Director of the Department of Consumer and Business Services, pe-
 24 riodically review and recommend standards and methodologies to the Legislative Assembly for:

25 (A) Review of administrative expenses of health insurers;

26 (B) Approval of rates; and

27 (C) Enforcement of rating rules adopted by the Department of Consumer and Business Services;

28 (k) Structure reimbursement rates for providers that serve recipients of medical assistance to
 29 reward comprehensive management of diseases, quality outcomes and the efficient use of resources
 30 and to promote cost-effective procedures, services and programs including, without limitation, pre-
 31 ventive health, dental and primary care services, web-based office visits, telephone consultations and
 32 telemedicine consultations;

33 (L) Guide and support community three-share agreements in which an employer, state or local
 34 government and an individual all contribute a portion of a premium for a community-centered health
 35 initiative or for insurance coverage;

36 (m) Develop, in consultation with the Department of Consumer and Business Services, one or
 37 more products designed to provide more affordable options for the small group market;

38 (n) Implement policies and programs to expand the skilled, diverse workforce as described in
 39 ORS 414.018 (4); and

40 (o) Implement a process for collecting the health outcome and quality measure data identified
 41 by the Health Plan Quality Metrics Committee and report the data to the Oregon Health Policy
 42 Board.

43 (2) The Oregon Health Authority is authorized to:

44 (a) Create an all-claims, all-payer database to collect health care data and monitor and evaluate
 45 health care reform in Oregon and to provide comparative cost and quality information to consumers,

1 providers and purchasers of health care about Oregon's health care systems and health plan net-
2 works in order to provide comparative information to consumers.

3 (b) Develop uniform contracting standards for the purchase of health care, including the fol-
4 lowing:

5 (A) Uniform quality standards and performance measures;

6 (B) Evidence-based guidelines for major chronic disease management and health care services
7 with unexplained variations in frequency or cost;

8 (C) Evidence-based effectiveness guidelines for select new technologies and medical equipment;
9 and

10 (D) A statewide drug formulary that may be used by publicly funded health benefit plans.

11 (3) The enumeration of duties, functions and powers in this section is not intended to be exclu-
12 sive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Au-
13 thority by ORS 413.006 to 413.042 and 741.340 or by other statutes.

14 **SECTION 10. This 2019 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
16 **on its passage.**

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