

A-Engrossed
House Bill 2840

Ordered by the House April 12
Including House Amendments dated April 12

Sponsored by Representative NOBLE, Senator STEINER HAYWARD, Representative NOSSE; Representatives ALONSO LEON, KENY-GUYER, Senator LINTHICUM

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.

Establishes prohibitions for registered pharmacy benefit managers.

Imposes new requirements on registered pharmacy benefit managers with respect to preferred drug lists and reimbursement of prescription drugs. Modifies procedures for appeal by pharmacy of reimbursement paid by pharmacy benefit manager and remedies for successful appeal.

A BILL FOR AN ACT

1
2 Relating to pharmacy benefit managers; creating new provisions; and amending ORS 735.530, 735.533
3 and 735.534.

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

5 **SECTION 1. Sections 2 and 3 of this 2019 Act are added to and made a part of ORS 735.530**
6 **to 735.552.**

7 **SECTION 2. (1) A pharmacy benefit manager registered under ORS 735.532 may not:**

8 **(a) Require an insured to fill or refill prescriptions using a mail-order service.**

9 **(b) Prohibit a pharmacist or pharmacy from providing to a patient information regarding**
10 **the patient's cost share for a prescription drug and, if available, the clinical efficacy of a**
11 **lower cost alternative drug.**

12 **(c) Prohibit a pharmacist or pharmacy from selling an insured a lower cost alternative**
13 **drug.**

14 **(d) Prohibit a pharmacist or pharmacy from offering or providing delivery as an ancillary**
15 **service.**

16 **(e) Charge or collect from an insured a copayment for a drug in an amount that exceeds**
17 **the reimbursement the pharmacy benefit manager pays to the pharmacist or pharmacy for**
18 **the drug.**

19 **(f) Hold a pharmacist or pharmacy responsible for a fee for the adjudication of a claim**
20 **for reimbursement.**

21 **(g) Recoup from a pharmacist or pharmacy costs associated with claims for which the**
22 **pharmacist or pharmacy has already been paid, unless otherwise required by law.**

23 **(h) Penalize a pharmacist or pharmacy or retaliate against a pharmacist or pharmacy for**
24 **providing information described in paragraph (b) of this subsection, selling a lower cost al-**
25 **ternative drug or offering or providing delivery as described in paragraph (d) of this sub-**
26 **section.**

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 **(2) The Department of Consumer and Business Services may adopt rules necessary to**
2 **enforce this section.**

3 **SECTION 3. A pharmacy benefit manager registered in this state:**

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

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

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

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

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

14 **SECTION 4. ORS 735.530 is amended to read:**

15 735.530. As used in ORS 735.530 to 735.552:

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

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

21 **[(2)] (3) “Insurer” has the meaning given that term in ORS 731.106.**

22 **(4) “Mail order pharmacy” means a pharmacy for which the primary business is to re-**
23 **ceive prescriptions by mail, telephone or electronic transmission and dispense drugs to pa-**
24 **tients through the use of the United States Postal Service, a package delivery service or**
25 **home delivery.**

26 **[(3)] (5) “Pharmacist” has the meaning given that term in ORS 689.005.**

27 **[(4)] (6) “Pharmacy” includes:**

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

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

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

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

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

36 **(C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this**
37 **paragraph.**

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

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

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

42 **(A) Preparation;**

43 **(B) Handling;**

44 **(C) Storage;**

45 **(D) Inventory; or**

1 **(E) Distribution;**

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

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

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

7 **(A) Monitoring; or**

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

9 **(9) "Specialty pharmacy" means a pharmacy capable of meeting the requirements appli-**
10 **cable to specialty drugs.**

11 [(6)] **(10) "Third party administrator" means a person licensed under ORS 744.702.**

12 **SECTION 5.** ORS 735.533 is amended to read:

13 735.533. (1) In accordance with ORS chapter 183, the Department of Consumer and Business
14 Services may deny an application for registration as a pharmacy benefit manager or an application
15 for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a regis-
16 tration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

17 (a) Falsified an application for registration or for the renewal of a registration or engaged in
18 any dishonest act in relation to the application;

19 (b) Engaged in dishonesty, fraud or gross negligence in the conduct of business as a pharmacy
20 benefit manager;

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

23 (d) Was convicted under the laws of any state or of the United States of any crime of which an
24 essential element is dishonesty or fraud;

25 (e) Had a certificate of authority or authority to conduct business as a pharmacy benefit man-
26 ager denied, revoked or suspended in another state;

27 (f) Failed to pay a civil penalty imposed by final order of the department or to comply with the
28 terms of suspension set by the department;

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

31 (h) Refused to be examined or to produce accounts, records or files for examination, including
32 the refusal by any officer of the applicant or registrant to give information with respect to the af-
33 fairs of the pharmacy benefit manager, or refused to perform any other legal obligation with respect
34 to an examination by the department; [or]

35 **(i) Violated section 2 of this 2019 Act; or**

36 [(i)] **(j) Violated any rule or order of the department or any provision of the Insurance Code.**

37 (2) The department may prescribe by rule a procedure by which a pharmacy or an entity acting
38 on behalf of a pharmacy may file a complaint with the department alleging that a pharmacy benefit
39 manager has engaged in conduct described in this section. The department may restrict the right
40 of a pharmacy or entity to file a complaint only to the extent necessary to prevent abuse of the
41 complaint process.

42 **SECTION 6.** ORS 735.534 is amended to read:

43 735.534. (1) As used in this section:

44 **(a)(A) "Generally available for purchase" means a drug is available for purchase by sim-**
45 **ilarly situated pharmacies from a national or regional wholesaler at the time a claim for**

1 reimbursement is submitted by a network pharmacy.

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

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

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

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

9 (iv) Is the subject of a recall notice.

10 [(a)] (b) "List" means the list of drugs for which maximum allowable costs have been estab-
11 lished.

12 [(b)] (c) "Maximum allowable cost" means the maximum amount that a pharmacy benefit man-
13 ager will reimburse a pharmacy for the cost of a drug.

14 [(c)] (d) "Multiple source drug" means a therapeutically equivalent drug that is available from
15 at least two manufacturers.

16 [(d)] (e) "Network pharmacy" means a retail drug outlet registered under ORS 689.305 that
17 contracts with a pharmacy benefit manager.

18 (f) "Similarly situated pharmacies" means pharmacies that:

19 (A) Are located in this state;

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

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

23 [(e)] (g) "Therapeutically equivalent" has the meaning given that term in ORS 689.515.

24 (2) A pharmacy benefit manager:

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

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

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

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

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

38 (A) **Is electronic;**

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

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

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

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

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

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

45 (f) Shall update each list maintained by the pharmacy benefit manager every seven business days

1 and make the updated lists, including all changes in the price of drugs, available to network phar-
2 macies in [*a readily accessible and usable format*] **the format described in paragraph (e) of this**
3 **subsection.**

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

6 (3) A pharmacy benefit manager must establish a process by which a network pharmacy may
7 appeal [*its reimbursement for a drug subject to maximum allowable cost pricing. A network pharmacy*
8 *may appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount*
9 *that the network pharmacy paid to the supplier of the drug. An appeal requested under this section*
10 *must be completed within 30 calendar days of the pharmacy making the claim for which appeal has*
11 *been requested*] **the reimbursement paid by the pharmacy benefit manager if the reimburse-**
12 **ment is less than the pharmacy's net cost of the drug as reflected on the invoice from the**
13 **supplier of the drug. The process must allow a pharmacy no less than 30 days after the claim**
14 **is reimbursed to file the appeal.**

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

17 (a) Refuse to accept an appeal submitted by a person acting on behalf of the network
18 pharmacy;

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

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

23 [(4)] (5) A pharmacy benefit manager must provide as part of the appeals process established
24 under subsection (3) of this section:

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

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

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

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

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

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

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

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

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

45 (b) If the request for an adjustment has come from a critical access pharmacy, as defined by the

1 Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the
2 adjustment approved under paragraph (a) of this subsection shall apply only to critical access
3 pharmacies.

4 ~~[(6)]~~ (7) This section does not apply to the state medical assistance program.

5 **SECTION 7. Sections 2 and 3 of this 2019 Act and the amendments to ORS 735.530, 735.533**
6 **and 735.534 by sections 4 to 6 of this 2019 Act apply to contracts between pharmacies or**
7 **pharmacists and pharmacy benefit managers entered into, renewed or extended on or after**
8 **the effective date of this 2019 Act.**

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