

HOUSE AMENDMENTS TO HOUSE BILL 2840

By COMMITTEE ON HEALTH CARE

April 12

1 In line 2 of the printed bill, delete the period and insert “; creating new provisions; and
2 amending ORS 735.530, 735.533 and 735.534.”.

3 Delete lines 4 through 24 and insert:

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

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

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

8 **“(b) Prohibit a pharmacist or pharmacy from providing to a patient information regard-
9 ing the patient’s cost share for a prescription drug and, if available, the clinical efficacy of
10 a lower cost alternative drug.**

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

13 **“(d) Prohibit a pharmacist or pharmacy from offering or providing delivery as an ancil-
14 lary service.**

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

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

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

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

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

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

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

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

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

33 **“(b) May not require a patient signature as proof of delivery of a mailed or shipped pre-
34 scription drug if the network pharmacy maintains a mailing or shipping log signed by a rep-
35 resentative of the pharmacy or maintains each notification of delivery provided by the United**

1 **States Postal Service or a package delivery service.**

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

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

5 **“735.530.** As used in ORS 735.530 to 735.552:

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

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

11 **“[(2)] (3) ‘Insurer’** has the meaning given that term in ORS 731.106.

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

16 **“[(3)] (5) ‘Pharmacist’** has the meaning given that term in ORS 689.005.

17 **“[(4)] (6) ‘Pharmacy’** includes:

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

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

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

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

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

26 **“(C)** Negotiate rebates with manufacturers for drugs paid for or procured as described in this
27 paragraph.

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

30 **“(8) ‘Specialty drug’** means a drug:

31 **“(a) That requires difficult or unusual:**

32 **“(A) Preparation;**

33 **“(B) Handling;**

34 **“(C) Storage;**

35 **“(D) Inventory; or**

36 **“(E) Distribution;**

37 **“(b) That has difficult or unusual data collection or administrative requirements associ-**
38 **ated with it;**

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

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

42 **“(A) Monitoring; or**

43 **“(B) Providing disease or therapeutic support systems.**

44 **“(9) ‘Specialty pharmacy’** means a pharmacy capable of meeting the requirements appli-
45 cable to specialty drugs.

1 “[(6)] (10) ‘Third party administrator’ means a person licensed under ORS 744.702.

2 “**SECTION 5.** ORS 735.533 is amended to read:

3 “735.533. (1) In accordance with ORS chapter 183, the Department of Consumer and Business
4 Services may deny an application for registration as a pharmacy benefit manager or an application
5 for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a regis-
6 tration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

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

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

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

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

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

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

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

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

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

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

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

32 “**SECTION 6.** ORS 735.534 is amended to read:

33 “735.534. (1) As used in this section:

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

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

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

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

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

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

45 “[a] **(b) ‘List’ means the list of drugs for which maximum allowable costs have been estab-**

1 lished.

2 “[*(b)*] (c) ‘Maximum allowable cost’ means the maximum amount that a pharmacy benefit man-
3 ager will reimburse a pharmacy for the cost of a drug.

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

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

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

9 “(A) Are located in this state;

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

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

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

14 “(2) A pharmacy benefit manager:

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

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

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

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

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

28 “(A) **Is electronic;**

29 “(B) **Is computer accessible and searchable;**

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

31 “(D) **For each drug specifies:**

32 “(i) **The national drug code;**

33 “(ii) **The maximum allowable cost; and**

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

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

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

41 “(3) A pharmacy benefit manager must establish a process by which a network pharmacy may
42 appeal [*its reimbursement for a drug subject to maximum allowable cost pricing. A network pharmacy*
43 *may appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount*
44 *that the network pharmacy paid to the supplier of the drug. An appeal requested under this section*
45 *must be completed within 30 calendar days of the pharmacy making the claim for which appeal has*

1 *been requested*] the reimbursement paid by the pharmacy benefit manager if the reimburse-
2 ment is less than the pharmacy's net cost of the drug as reflected on the invoice from the
3 supplier of the drug. The process must allow a pharmacy no less than 30 days after the claim
4 is reimbursed to file the appeal.

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

7 “(a) Refuse to accept an appeal submitted by a person acting on behalf of the network
8 pharmacy;

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

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

13 “[4] (5) A pharmacy benefit manager must provide as part of the appeals process established
14 under subsection (3) of this section:

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

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

18 “(c) If the appeal is denied[.];

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

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

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

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

30 “(B) **Allow the network pharmacy to submit an adjusted claim and reimburse the ad-**
31 **justed claim without any additional charges; or**

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

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

39 “[6] (7) This section does not apply to the state medical assistance program.

40 “**SECTION 7. Sections 2 and 3 of this 2019 Act and the amendments to ORS 735.530,**
41 **735.533 and 735.534 by sections 4 to 6 of this 2019 Act apply to contracts between pharmacies**
42 **or pharmacists and pharmacy benefit managers entered into, renewed or extended on or af-**
43 **ter the effective date of this 2019 Act.”.**