

Requested by Representative NOBLE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2840**

1 In line 2 of the printed bill, delete the period and insert “; creating new
2 provisions; and 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
5 made a part of ORS 735.530 to 735.552.**

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

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

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

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

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

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

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

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

4 “(h) Penalize a pharmacist or pharmacy or retaliate against a
5 pharmacist or pharmacy for providing information described in para-
6 graph (b) of this subsection, selling a lower cost alternative drug or
7 offering or providing delivery as described in paragraph (d) of this
8 subsection.

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

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

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

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

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

18 “(b) May not require a patient signature as proof of delivery of a
19 mailed or shipped prescription drug if the network pharmacy main-
20 tains a mailing or shipping log signed by a representative of the
21 pharmacy or maintains each notification of delivery provided by the
22 United States Postal Service or a package delivery service.

23 “(4) May not impose unreasonable requirements with respect to
24 specialty pharmacies that seek to contract with the pharmacy benefit
25 manager.

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

27 “735.530. As used in ORS 735.530 to 735.552:

28 “(1) ‘Claim’ means a request from a pharmacy or pharmacist to be reim-
29 bursed for the cost of filling or refilling a prescription for a drug or for
30 providing a medical supply or service.

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

5 “[(2)] (3) ‘Insurer’ has the meaning given that term in ORS 731.106.

6 “(4) ‘Mail order pharmacy’ means a pharmacy for which the pri-
7 mary business is to receive prescriptions by mail, telephone or elec-
8 tronic transmission and dispense drugs to patients through the use of
9 the United States Postal Service, a package delivery service or home
10 delivery.

11 “[(3)] (5) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

12 “[(4)] (6) ‘Pharmacy’ includes:

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

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

16 “[(5)(a)] (7)(a) ‘Pharmacy benefit manager’ means a person that contracts
17 with pharmacies on behalf of an insurer, a third party administrator or the
18 Oregon Prescription Drug Program established in ORS 414.312 to:

19 “(A) Process claims for prescription drugs or medical supplies or provide
20 retail network management for pharmacies or pharmacists;

21 “(B) Pay pharmacies or pharmacists for prescription drugs or medical
22 supplies; or

23 “(C) Negotiate rebates with manufacturers for drugs paid for or procured
24 as described in this paragraph.

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

27 “(8) ‘Specialty drug’ means a drug:

28 “(a) That requires difficult or unusual:

29 “(A) Preparation;

30 “(B) Handling;

- 1 **“(C) Storage;**
2 **“(D) Inventory; or**
3 **“(E) Distribution;**
4 **“(b) That has difficult or unusual data collection or administrative**
5 **requirements associated with it;**
6 **“(c) For which the United States Food and Drug Administration**
7 **requires a Risk Evaluation and Mitigation Strategy; or**
8 **“(d) That requires a pharmacist to manage the patient’s use of the**
9 **drug by:**
10 **“(A) Monitoring; or**
11 **“(B) Providing disease or therapeutic support systems.**
12 **“(9) ‘Specialty pharmacy’ means a pharmacy capable of meeting the**
13 **requirements applicable to specialty drugs.**

14 **“[(6)] (10) ‘Third party administrator’ means a person licensed under ORS**
15 **744.702.**

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

17 **“735.533. (1) In accordance with ORS chapter 183, the Department of**
18 **Consumer and Business Services may deny an application for registration**
19 **as a pharmacy benefit manager or an application for renewal of a registra-**
20 **tion as a pharmacy benefit manager, and may suspend or revoke a registra-**
21 **tion as a pharmacy benefit manager, if the department finds that an**
22 **applicant or registrant:**

23 **“(a) Falsified an application for registration or for the renewal of a reg-**
24 **istration or engaged in any dishonest act in relation to the application;**

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

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

30 **“(d) Was convicted under the laws of any state or of the United States**

1 of any crime of which an essential element is dishonesty or fraud;

2 “(e) Had a certificate of authority or authority to conduct business as a
3 pharmacy benefit manager denied, revoked or suspended in another state;

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

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

9 “(h) Refused to be examined or to produce accounts, records or files for
10 examination, including the refusal by any officer of the applicant or regis-
11 trant to give information with respect to the affairs of the pharmacy benefit
12 manager, or refused to perform any other legal obligation with respect to an
13 examination by the department; [*or*]

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

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

17 “(2) The department may prescribe by rule a procedure by which a phar-
18 macy or an entity acting on behalf of a pharmacy may file a complaint with
19 the department alleging that a pharmacy benefit manager has engaged in
20 conduct described in this section. The department may restrict the right of
21 a pharmacy or entity to file a complaint only to the extent necessary to
22 prevent abuse of the complaint process.

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

24 “735.534. (1) As used in this section:

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

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

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

1 “(ii) Is available at a price that is at or below the maximum allow-
2 able cost only if purchased in quantities that materially exceed the
3 dispensing needs of similarly situated pharmacies;

4 “(iii) Is available at a price that is at or below the maximum al-
5 lowable cost only if purchased at a discount due to a short expiration
6 date on the drug; or

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

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

10 “[(b)] (c) ‘Maximum allowable cost’ means the maximum amount that a
11 pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

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

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

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

17 “(A) Are located in this state;

18 “(B) Are similar in size and in the same type of trade, such as in-
19 dependent, retail chain, supermarket, mass merchandiser, mail order
20 or specialty; and

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

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

25 “(2) A pharmacy benefit manager:

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

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

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

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

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

10 **“(A) Is electronic;**

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

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

14 **“(D) For each drug specifies:**

15 **“(i) The national drug code;**

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

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

19 “(f) Shall update each list maintained by the pharmacy benefit manager
20 every seven business days and make the updated lists, including all changes
21 in the price of drugs, available to network pharmacies in [a readily accessible
22 and usable format] **the format described in paragraph (e) of this sub-
23 section.**

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

26 “(3) A pharmacy benefit manager must establish a process by which a
27 network pharmacy may appeal [its reimbursement for a drug subject to max-
28 imum allowable cost pricing. A network pharmacy may appeal a maximum
29 allowable cost if the reimbursement for the drug is less than the net amount
30

1 *that the network pharmacy paid to the supplier of the drug. An appeal re-*
2 *quested under this section must be completed within 30 calendar days of the*
3 *pharmacy making the claim for which appeal has been requested]* **the re-**
4 **imbursement paid by the pharmacy benefit manager if the reimburse-**
5 **ment is less than the pharmacy’s net cost of the drug as reflected on**
6 **the invoice from the supplier of the drug. The process must allow a**
7 **pharmacy no less than 30 days after the claim is reimbursed to file the**
8 **appeal.**

9 “(4) A pharmacy benefit manager shall allow a network pharmacy
10 to submit the documentation in support of its appeal in paper or
11 electronically and may not:

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

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

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

18 “[4)] (5) A pharmacy benefit manager must provide as part of the appeals
19 process established under subsection (3) of this section:

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

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

25 “(c) If the appeal is denied[,]:

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

30 “(B) If the reason for the denial is that the drug was generally

1 available for purchase at a price that was at or below the maximum
2 allowable cost, the location where the drug was available at that price
3 when the claim for reimbursement was submitted by the network
4 pharmacy.

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

8 “(A) Reimburse the network pharmacy’s claim as submitted;

9 “(B) Allow the network pharmacy to submit an adjusted claim and
10 reimburse the adjusted claim without any additional charges; or

11 “(C) Increase the reimbursement of all of the network pharmacy’s
12 subsequent claims for the drug until the network pharmacy has been
13 fully reimbursed based on the net cost of the drug as reflected on the
14 invoice from the supplier of the drug.

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

20 “[6)] (7) This section does not apply to the state medical assistance pro-
21 gram.

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

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