

SB 872-8
(LC 1366)
6/5/19 (LHF/ps)

Requested by Senator MONNES ANDERSON

**PROPOSED AMENDMENTS TO
SENATE BILL 872**

1 On page 1 of the printed bill, line 3, after “442.466,” insert “735.533,
2 743.018, 743.020,” and delete “section 2” and insert “sections 2, 3, 5, 11 and
3 12”.

4 On page 2, line 7, after “state” insert “while preserving the exemption of
5 trade secrets from disclosure under Oregon laws requiring the disclosure of
6 public records and reports”.

7 Delete lines 12 through 45 and delete pages 3 and 4.

8 On page 5, delete lines 1 through 25 and insert:

9 **“SECTION 1.** Section 2, chapter 7, Oregon Laws 2018, as amended by
10 sections 6 and 7, chapter 7, Oregon Laws 2018, is amended to read:

11 **“Sec. 2.** (1) As used in this section:

12 “(a) ‘Drug’ has the meaning given that term in ORS 689.005.

13 “(b) ‘Health care facility’ has the meaning given that term in ORS 442.015.

14 “(c) ‘Health care service contractor’ has the meaning given that term in
15 ORS 750.005.

16 “(d)(A) ‘Manufacture’ means:

17 “(i) The production, preparation, propagation, compounding, conversion
18 or processing of a drug, either directly or indirectly by extraction from sub-
19 stances of natural origin or independently by means of chemical synthesis,
20 or by a combination of extraction and chemical synthesis; and

21 “(ii) The packaging or repackaging of a drug or labeling or relabeling of

1 a drug container.

2 “(B) ‘Manufacture’ does not include the preparation or compounding of
3 a drug by an individual for the individual’s own use or the preparation,
4 compounding, packaging or labeling of a drug:

5 “(i) By a health care practitioner incidental to administering or dispens-
6 ing a drug in the course of professional practice;

7 “(ii) By a health care practitioner or at the practitioner’s authorization
8 and supervision for the purpose of or incidental to research, teaching or
9 chemical analysis activities and not for sale;

10 “(iii) By a health care service contractor for dispensing to a subscriber
11 or delivery to a health care facility or outpatient clinic owned or operated
12 by the health care service contractor or an affiliate of the health care service
13 contractor;

14 “(iv) By a centralized repackaging operation for distribution to subscrib-
15 ers of health care service contractors or to pharmacies, health care facilities
16 or outpatient clinics operated by or affiliated with a health care service
17 contractor; or

18 “(v) By a health care facility for dispensing to a patient or other person.

19 “(e) ‘Manufacturer’ means a person that manufactures a prescription drug
20 that is sold in this state.

21 “(f) ‘New prescription drug’ has the meaning prescribed by the Depart-
22 ment of Consumer and Business Services by rule.

23 “(g) ‘Patient assistance program’ means a program that a manufacturer
24 offers to the general public in which a consumer may reduce the consumer’s
25 out-of-pocket costs for prescription drugs by using coupons or discount cards,
26 receiving copayment assistance or by other means.

27 “(h) ‘Prescription drug’ means a drug that must:

28 “(A) Under federal law, be labeled ‘Caution: Federal law prohibits dis-
29 pensing without prescription’ prior to being dispensed or delivered; or

30 “(B) Under any applicable federal or state law or regulation, be dispensed

1 only by prescription or restricted to use only by health care practitioners.

2 “(i) ‘Price’ means the wholesale acquisition cost as defined in 42 U.S.C.
3 1395w-3a(c)(6)(B).

4 “(j) ‘Rebate’ means a retroactive abatement, credit, discount or re-
5 fund usually provided as consideration for a specified volume of busi-
6 ness.

7 “(2) No later than March 15 of each year, a manufacturer shall report the
8 information described in subsection (3) of this section to the department re-
9 garding each prescription drug for which:

10 “(a) The price was \$100 or more for a one-month supply or for a course
11 of treatment lasting less than one month; and

12 “(b)(A) There was a [*net*] **cumulative** increase of 10 percent or more in
13 the price of the prescription drug [*described in paragraph (a) of this sub-*
14 *section*] over the course of the previous calendar year; **or**

15 “(B) **During the previous calendar year, one or more increases in**
16 **the price of the drug resulted in the price being at least 10 percent**
17 **higher than the price of the drug at any other time during the calen-**
18 **dar year.**

19 “(3) For each prescription drug described in subsection (2) of this section,
20 a manufacturer shall report to the department, in the form and manner pre-
21 scribed by the department:

22 “(a) The name and price of the prescription drug and the [*net*] **cumula-**
23 **tive** increase, expressed as a percentage, in the price of the drug over the
24 course of the previous calendar year;

25 “(b) The length of time the prescription drug has been on the market;

26 “(c) The factors that contributed to the price increase;

27 “(d) The name of any generic version of the prescription drug available
28 on the market;

29 “(e) The research and development costs associated with the prescription
30 drug that were paid using public funds;

1 “(f) The direct costs incurred by the manufacturer:
2 “(A) To manufacture the prescription drug;
3 “(B) To market the prescription drug;
4 “(C) To distribute the prescription drug; and
5 “(D) For ongoing safety and effectiveness research associated with the
6 prescription drug;
7 “(g) The total sales revenue for the prescription drug during the previous
8 calendar year;
9 “(h) The manufacturer’s profit attributable to the prescription drug dur-
10 ing the previous calendar year;
11 “(i) The introductory price of the prescription drug when it was approved
12 for marketing by the United States Food and Drug Administration and the
13 net yearly increase, by calendar year, in the price of the prescription drug
14 during the previous five years;
15 “(j) The 10 highest prices paid for the prescription drug during the pre-
16 vious calendar year in any country other than the United States;
17 “(k) Any other information that the manufacturer deems relevant to the
18 price increase described in subsection (2)(b) of this section; and
19 “(L) The documentation necessary to support the information reported
20 under this subsection.
21 “(4) The department may use any prescription drug price information the
22 department deems appropriate to verify that manufacturers have properly
23 reported price increases as required by subsections (2) and (3) of this section.
24 “(5) A manufacturer shall accompany the [*report*] **reports** provided under
25 [*subsection (2)*] **subsections (2) and (6)** of this section with:
26 “(a) The following information about each patient assistance program
27 offered by the manufacturer to consumers residing in this state for the pre-
28 scription drugs described in subsection (2) of this section:
29 “[*a*] (A) The number of consumers who participated in the program;
30 “[*b*] (B) The total value of the coupons, discounts, copayment assistance

1 or other reduction in costs provided to consumers in this state who partic-
2 ipated in the program;

3 **“(C) The total amount of money spent on the program by the**
4 **manufacturer;**

5 “[*c*] (D) For each drug, the number of refills that qualify for the pro-
6 gram, if applicable;

7 “[*d*] (E) If the program expires after a specified period of time, the pe-
8 riod of time that the program is available to each consumer; and

9 “[*e*] (F) The eligibility criteria for the program and how eligibility is
10 verified for accuracy[.];

11 **“(b) Information, as prescribed by the department by rule, regard-**
12 **ing any financial assistance, other than rebates, incentives and dis-**
13 **counts, provided by the manufacturer to pharmacies, government**
14 **agencies or patient advocacy organizations; and**

15 **“(c) The total amount of financial incentives, as defined by the de-**
16 **partment by rule, paid to each pharmacy benefit manager, as defined**
17 **in ORS 735.530, that administers a pharmacy benefit for residents of**
18 **this state. The report shall include but is not limited to financial in-**
19 **centives based on:**

20 **“(A) The percentage of enrollees whose benefits are administered**
21 **by the pharmacy benefit manager who are prescribed the**
22 **manufacturer’s drugs; and**

23 **“(B) The extent to which a manufacturer’s drugs have a preferred**
24 **or exclusive status on the prescription drug formulary administered**
25 **by the pharmacy benefit manager.**

26 **“(6) No later than 30 days after a manufacturer introduces a new pre-**
27 **scription drug for sale in the United States at a price that exceeds the**
28 **threshold established by the Centers for Medicare and Medicaid Services for**
29 **specialty drugs in the Medicare Part D program, the manufacturer shall no-**
30 **tify the department, in the form and manner prescribed by the department,**

1 of all the following information:

2 “(a) A description of the marketing used in the introduction of the new
3 prescription drug;

4 “(b) The methodology used to establish the price of the new prescription
5 drug;

6 “(c) Whether the United States Food and Drug Administration granted
7 the new prescription drug a breakthrough therapy designation or a priority
8 review;

9 “(d) If the new prescription drug was not developed by the manufacturer,
10 the date of and the price paid for acquisition of the new prescription drug
11 by the manufacturer;

12 “(e) The manufacturer’s estimate of the average number of patients who
13 will be prescribed the new prescription drug each month; and

14 “(f) The research and development costs associated with the new pre-
15 scription drug that were paid using public funds.

16 “(7)(a) After receiving the report or information described in subsections
17 (2), (3), (5) or (6) of this section, the department may make a written request
18 to the manufacturer for supporting documentation or additional information
19 concerning the report. The department shall prescribe by rule the periods:

20 “(A) Following the receipt of the report or information during which the
21 department may request additional information; and

22 “(B) Following a request by the department for additional information
23 during which a manufacturer may respond to the request.

24 “(b) The department may extend the period prescribed under paragraph
25 (a)(B) of this subsection, as necessary, on a case-by-case basis.

26 “(8) A manufacturer may be subject to a civil penalty, as provided in
27 section 3 [*of this 2018 Act*], **chapter 7, Oregon Laws 2018**, for:

28 “(a) Failing to submit timely reports or notices as required by this sec-
29 tion;

30 “(b) Failing to provide information required under this section;

1 “(c) Failing to respond in a timely manner to a written request by the
2 department for additional information under subsection (7) of this section;
3 or

4 “(d) Providing inaccurate or incomplete information under this section.

5 “(9) Except as provided in subsection (10) of this section, the department
6 shall post to its website all of the following information:

7 “(a) A list of the prescription drugs reported under subsection (2) of this
8 section and the manufacturers of those prescription drugs;

9 “(b) Information reported to the department under subsections (3) and (5)
10 to (7) of this section; and

11 “(c) Written requests by the department for additional information under
12 subsection (7) of this section.

13 “(10)(a) The department may not post to its website any information de-
14 scribed in subsection (9) of this section if:

15 “(A) The information is conditionally exempt from disclosure under ORS
16 192.345 as a trade secret; and

17 “(B) The public interest does not require disclosure of the information.

18 “(b) If the department withholds any information from public disclosure
19 pursuant to this subsection, the department shall post to its website a report
20 describing the nature of the information and the department’s basis for
21 withholding the information from disclosure.

22 “[*(c)*] **(11)(a)** A person may petition the Attorney General, as provided in
23 ORS 192.411, to review a decision by the department to withhold information
24 pursuant to [*paragraph (a)*] **subsection (10)(a)** of this [*subsection*] **section**.

25 “**(b) Notwithstanding ORS 192.311 to 192.478, information reported**
26 **by a manufacturer under this section is exempt from public disclosure**
27 **until the department posts to its website all of the information re-**
28 **quired by subsection (9) of this section.**

29 “**(12) The department and its officers, employees and agents are**
30 **immune from any claim or action based on the disclosure of a trade**

1 **secret made:**

2 **“(a) In compliance with this section;**

3 **“(b) In good faith reliance on any order of disclosure issued pursu-**
4 **ant to ORS 192.311 to 192.478; or**

5 **“(c) On the advice of an attorney authorized to advise the depart-**
6 **ment, its officers, employees or agents.**

7 “[~~(11)~~] (13)(a) The department shall make available to consumers, online
8 and by telephone, a process for consumers to notify the department about
9 an increase in the price of a prescription drug.

10 **“(b) The department may, upon request, disclose information about**
11 **consumer notifications of increases in prices of prescription drugs,**
12 **under this subsection, but may not disclose personally identifiable in-**
13 **formation about a consumer including the consumer’s name, address,**
14 **telephone number or electronic mail address.**

15 “[~~(12)~~] (14) The department may adopt rules as necessary for carrying out
16 the provisions of this section, including but not limited to rules establishing
17 fees to be paid by manufacturers to be used solely to pay the costs of the
18 department in carrying out the provisions of this section.

19 “[~~(13)~~] (15) No later than December 15 of each year, the department shall
20 compile and report the information collected by the department under this
21 section to the interim committees of the Legislative Assembly related to
22 health. The report shall include recommendations for legislative changes, if
23 any, to contain the cost of prescription drugs and reduce the impact of price
24 increases on consumers, the Department of Corrections, the Public
25 Employees’ Benefit Board, the Oregon Health Authority, the Department of
26 Human Services, the Oregon Educators Benefit Board and health insurance
27 premiums in the commercial market.”.

28 On page 19, delete lines 23 through 45.

29 On page 20, delete lines 1 through 5 and insert:

30 **“(17) A carrier that offers a small employer health benefit plan that re-**

1 imburses the cost of prescription drugs sold by a retail pharmacy or admin-
2 istered by a health care provider shall:

3 “(a) Submit a narrative report to the department describing how the car-
4 rier designed the carrier’s formulary and describing typical changes that the
5 carrier makes to the formulary.

6 “(b) Publish to the carrier’s website:

7 “(A) In a format that allows for easy comparison of the prescription drug
8 coverage under each small employer health benefit plan offered by the car-
9 rier:

10 “(i) The carrier’s prescription drug formulary;

11 “(ii) The tiers in the carrier’s prescription drug formulary; and

12 “(iii) The range of copayments, coinsurance or other cost-sharing within
13 each tier.

14 “(B) For each drug in the prescription drug formulary that is a brand
15 name drug, whether:

16 “(i) A generic alternative is available;

17 “(ii) Step therapy or prior authorization protocols are required and, if so,
18 whether the protocols require that a generic alternative be substituted; and

19 “(iii) Quantity limits are imposed on the drug.

20 “(C) Notification that an enrollee may purchase a drug from a pharmacy
21 at the retail price if the retail price is lower than the enrollee’s out-of-pocket
22 cost using the enrollee’s pharmacy benefit and, if the enrollee purchases the
23 drug at the retail price, the price paid must be applied to the enrollee’s
24 deductible or out-of-pocket maximum if requested by the enrollee.

25 “(c) At least 60 days in advance of a change to the prescription drug
26 formulary, provide written notice of the change to the department and to
27 each enrollee who will be adversely affected by the change. A change that
28 adversely affects an enrollee includes but is not limited to:

29 “(A) Imposition of new utilization review requirements;

30 “(B) Removal of a drug from the formulary for which a claim has been

1 submitted for the enrollee during the plan year; and

2 “(C) A modification to the formulary tiers or a change in a drug’s place-
3 ment on a tier that results in a higher out-of-pocket cost to an enrollee ex-
4 cept when the modification is due to the availability of a generic alternative.

5 “(d) Include in the notice required by paragraph (c) of this subsection the
6 information described in ORS 743B.250 (1)(b) and (d) and information about
7 how to request an internal review and external appeal.

8 “(e) Report to the department, in the form and manner prescribed by the
9 department, the information described in paragraph (b)(A) and (B) of this
10 subsection.

11 “(18) A carrier may provide the notice required by subsection (17)(c) of
12 this section less than 60 days prior to a change in a prescription drug
13 formulary if the change is necessary to ensure the safety of enrollees or in
14 other emergency circumstances as prescribed by the department by rule.”.

15 On page 22, delete lines 25 through 45.

16 On page 23, delete lines 1 through 4 and insert:

17 “(a) Submit a narrative report to the department describing how the car-
18 rier designed the carrier’s formulary and describing typical changes that the
19 carrier makes to the formulary.

20 “(b) Publish to the carrier’s website notification that an enrollee may
21 purchase a drug from a pharmacy at the retail price if the retail price is
22 lower than the enrollee’s out-of-pocket cost using the enrollee’s pharmacy
23 benefit and, if the enrollee purchases the drug at the retail price, the price
24 paid must be applied to the enrollee’s deductible or out-of-pocket maximum
25 if requested by the enrollee.

26 “(c) At least 60 days in advance of a change to the prescription drug
27 formulary, provide written notice of the change to the department and to
28 each enrollee who will be adversely affected by the change. A change that
29 adversely affects an enrollee includes but is not limited to:

30 “(A) Imposition of new utilization review requirements;

1 “(B) Removal of a drug from the formulary for which a claim has been
2 submitted for the enrollee during the plan year; and

3 “(C) A modification to the formulary tiers or a change in a drug’s place-
4 ment on a tier that results in a higher out-of-pocket cost to an enrollee.

5 “(d) Include in the notice required by paragraph (c) of this subsection the
6 information described in ORS 743B.250 (1)(b) and (d) and information about
7 how to request an internal review and external appeal.

8 “(e) Report to the department, in the form and manner prescribed by the
9 department, the information described in paragraph (b)(A) and (B) of this
10 subsection.

11 “(11) A carrier may provide the notice required by subsection (10)(c) of
12 this section less than 60 days prior to a change in a prescription drug
13 formulary if the change is necessary to ensure the safety of enrollees or in
14 other emergency circumstances as prescribed by the department by rule.”.

15 On page 25, delete lines 14 through 38 and insert:

16 “(a) Submit a narrative report to the department describing how the car-
17 rier designed the carrier’s formulary and describing typical changes that the
18 carrier makes to the formulary.

19 “(b) Publish to the carrier’s website:

20 “(A) In a format that allows for easy comparison of the prescription drug
21 coverage under each individual health benefit plan offered by the carrier:

22 “(i) The carrier’s prescription drug formulary;

23 “(ii) The tiers in the carrier’s prescription drug formulary; and

24 “(iii) The range of copayments, coinsurance or other cost-sharing within
25 each tier.

26 “(B) For each drug in the prescription drug formulary that is a brand
27 name drug, whether:

28 “(i) A generic alternative is available;

29 “(ii) Step therapy or prior authorization protocols are required and, if so,
30 whether the protocols require that a generic alternative be substituted; and

1 “(iii) Quantity limits are imposed on the drug.

2 “(C) Notification that an enrollee may purchase a drug from a pharmacy
3 at the retail price if the retail price is lower than the enrollee’s out-of-pocket
4 cost using the enrollee’s pharmacy benefit and, if the enrollee purchases the
5 drug at the retail price, the price paid must be applied to the enrollee’s
6 deductible or out-of-pocket maximum if requested by the enrollee.

7 “(c) At least 60 days in advance of a change to the prescription drug
8 formulary, provide written notice of the change to the department and to
9 each enrollee who will be adversely affected by the change. A change that
10 adversely affects an enrollee includes but is not limited to:

11 “(A) Imposition of new utilization review requirements;

12 “(B) Removal of a drug prescribed for the enrollee from the formulary;
13 and

14 “(C) A modification to the formulary tiers or a change in a drug’s place-
15 ment on a tier that results in a higher out-of-pocket cost to an enrollee.

16 “(d) Include in the notice required by paragraph (c) of this subsection the
17 information described in ORS 743B.250 (1)(b) and (d) and information about
18 how to request an internal review and external appeal.

19 “(e) Report to the department, in the form and manner prescribed by the
20 department, the information described in paragraph (b)(A) and (B) of this
21 subsection.

22 “(12) A carrier may provide the notice required by subsection (11)(c) of
23 this section less than 60 days prior to a change in a prescription drug
24 formulary if the change is necessary to ensure the safety of enrollees or in
25 other emergency circumstances as prescribed by the department by rule.”.

26 On page 26, line 13, after “may” delete the rest of the line and line 14 and
27 insert “purchase a prescription drug at the retail price if the retail price is
28 lower than the consumer’s out-of-pocket cost for the drug using the”.

29 In line 16, delete “pays the cash” and insert “purchases a drug at the re-
30 tail”.

1 In line 17, delete “price paid must” and insert “consumer may request that
2 the price paid”.

3 In line 23, after “(4)” insert “Upon the request of a consumer,”.

4 After line 26, insert:

5 “(5) The State Board of Pharmacy shall prescribe by rule a notice ex-
6 plaining consumers’ rights under this section and a requirement for each
7 pharmacy to prominently display the notice as prescribed the board. The
8 board shall translate the notice into multiple languages, as determined by
9 the board, and customers of each pharmacy must be provided the notice in
10 their primary language, if available.

11 **“SECTION 12.** ORS 735.533 is amended to read:

12 “735.533. (1) In accordance with ORS chapter 183, the Department of
13 Consumer and Business Services may deny an application for registration
14 as a pharmacy benefit manager or an application for renewal of a registra-
15 tion as a pharmacy benefit manager, and may suspend or revoke a registra-
16 tion as a pharmacy benefit manager, if the department finds that an
17 applicant or registrant:

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

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

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

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

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

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

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

4 “(h) Refused to be examined or to produce accounts, records or files for
5 examination, including the refusal by any officer of the applicant or regis-
6 trant to give information with respect to the affairs of the pharmacy benefit
7 manager, or refused to perform any other legal obligation with respect to an
8 examination by the department; or

9 “(i) Violated any rule or order of the department or any provision of the
10 Insurance Code.

11 “(2) The department may prescribe by rule a procedure by which a phar-
12 macy or an entity acting on behalf of a pharmacy may file a complaint with
13 the department alleging that a pharmacy benefit manager has engaged in
14 conduct described in this section **or has, by contract, penalty or other**
15 **means, interfered with the rights of consumers under section 11 of this**
16 **2019 Act.** The department may restrict the right of a pharmacy or entity to
17 file a complaint only to the extent necessary to prevent abuse of the com-
18 plaint process.”.

19 Delete lines 31 through 45.

20 On page 27, delete lines 1 through 23 and insert:

21 **“SECTION 13. (1) As used in this section:**

22 **“(a) ‘Drug’ means a prescription drug other than a:**

23 **“(A) Drug prescribed for or administered during an inpatient pro-**
24 **cedure; or**

25 **“(B) A 340B drug.**

26 **“(b) ‘Insurer’ has the meaning given that term in ORS 731.106.**

27 **“(c) ‘Medical provider’ means:**

28 **“(A) A hospital licensed under ORS 441.020.**

29 **“(B) An ambulatory surgical center licensed under ORS 441.020.**

30 **“(C) An outpatient renal dialysis facility licensed under ORS 441.020.**

1 **“(D) A health professional, other than a primary care provider, who**
2 **is in independent practice and who receives more than 15 percent of**
3 **the health professional’s gross annual revenue from the sale of pre-**
4 **scription drugs other than vaccines or immunizations administered for**
5 **the purpose of preventing disease.**

6 **“(d) ‘Primary care’ means family medicine, general internal medi-**
7 **cine, naturopathic medicine, obstetrics and gynecology, pediatrics or**
8 **general psychiatry.**

9 **“(e) ‘340B drug’ means a drug that is purchased at a discount under**
10 **42 U.S.C. 256b.**

11 **“(2) A medical provider shall report to the Oregon Health Author-**
12 **ity, in the form and manner prescribed by the authority, the following**
13 **information regarding the medical provider’s 50 most prescribed drugs**
14 **and the 50 most expensive drugs prescribed by the medical provider:**

15 **“(a) The total amount spent on each drug in the preceding three-**
16 **month period; and**

17 **“(b) The total amount billed to insurers for each drug in the pre-**
18 **ceding three-month period.**

19 **“(3) The information reported under subsection (2) of this section**
20 **shall be reported using the National Drug Code or successor drug**
21 **identification standard.**

22 **“(4) The authority shall use the information reported under this**
23 **section to display health care price information on its website, as de-**
24 **scribed in ORS 442.466.**

25 **“(5) The reports required by this section are not intended to dupli-**
26 **cate information reported to the authority under ORS 442.466.”.**

27 On page 28, line 24, delete “12” and insert “13”.

28 On page 29, line 1, delete “12” and insert “13”.

29 After line 22, insert:

30 “(10)(a) Notwithstanding subsection (9) of this section, in addition to the

1 comprehensive health care information system described in subsection (7) of
2 this section, the Department of Consumer and Business Services shall be al-
3 lowed to access, use and disclose data collected under this section by certi-
4 fying, in writing, that the data will only be used to carry out the
5 department's duties.

6 “(b) Personally identifiable information disclosed to the department under
7 paragraph (a) of this subsection is confidential and not subject to further
8 disclosure under ORS 192.311 to 192.478.”.

9 In line 29, after “drugs” insert “in the preceding 12-month period”.

10 In line 33, after “drugs” insert “and the total cost of the drugs”.

11 In line 34, after “The” insert “name and manufacturer of the”.

12 After line 35, insert:

13 “(c) Of the drugs reported in paragraph (b) of this subsection, the drug
14 with the greatest total costs and the amount of the total costs;”.

15 In line 36, delete “(c)” and insert “(d)” and delete “from”.

16 In line 37, delete “the prior” and insert “over a”.

17 In line 38, delete “(d)” and insert “(e)”.

18 In line 42, delete “(2)(d)” and insert “(2)(e)”.

19 On page 30, line 37, delete “(2)(d)” and insert “(2)(e)”.

20 On page 31, line 23, after the second “organization” insert “, including
21 but not limited to an organization”.

22 In line 24, delete “and”.

23 In line 29, delete “an annual budget” and insert “annual gross receipts”.

24 On page 32, delete lines 9 through 11 and insert:

25 “(3) The Oregon Government Ethics Commission shall provide to the At-
26 torney General, upon request, a copy of the statement containing the infor-
27 mation described in subsection (2) of this section.”.

28 In line 14, after “MANAGERS” insert “AND INSURERS”.

29 In line 21, delete the comma and insert a colon and begin a new para-
30 graph and insert “(a)”.

1 After line 22, insert:

2 “(b) ‘Rebate’ means a retroactive abatement, credit, discount or refund
3 usually as consideration for a specified volume of business.”.

4 In line 23, delete the second “a” and insert “an annual”.

5 Delete lines 34 and 35.

6 In line 36, delete “(c)” and insert “(b)”.

7 In line 38, delete “(d)” and insert “(c)”.

8 After line 42, insert:

9 “(5) The department may increase the registration fee paid by pharmacy
10 benefit managers under ORS 735.532 if necessary to pay the expenses of the
11 department in administering the reporting functions required by this
12 section.”.

13 On page 33, delete lines 11 through 22 and insert:

14 **“SECTION 22.** ORS 743.020 is amended to read:

15 “743.020. An insurer licensed by the Department of Consumer and Busi-
16 ness Services shall include in any rate filing under ORS 743.018 with respect
17 to individual and small employer health insurance policies:

18 “(1) A statement of administrative expenses in the form and manner pre-
19 scribed by the department by rule[. *The statement must include*], **including**
20 but [*is*] not limited to:

21 “[*1*] (a) A statement of administrative expenses on a per member per
22 month basis; and

23 “[*2*] (b) An explanation of the basis for any proposed premium rate in-
24 creases or decreases.

25 “(2)(a) **A certified statement of the percentage of rebates, as defined**
26 **in section 2, chapter 7, Oregon Laws 2018, received by the insurer from**
27 **manufacturers, as defined in section 2, chapter 7, Oregon Laws 2018,**
28 **that were applied to directly offset premiums or out-of-pocket costs**
29 **for enrollees or to otherwise directly benefit enrollees; and**

30 “(b) **A certified statement of how the insurer spent the percentage**

1 **of rebates received from manufacturers that were not applied as de-**
2 **scribed in paragraph (a) of this subsection.**

3 **“SECTION 23.** Section 3, chapter 7, Oregon Laws 2018, is amended to
4 read:

5 **“Sec. 3.** (1) A manufacturer **or pharmacy benefit manager** that fails to
6 report or provide information as required by section 2, [*of this 2018 Act*]
7 **chapter 7, Oregon Laws 2018, or section 20 of this 2019 Act,** may be
8 subject to a civil penalty as provided in this section.

9 “(2) The Department of Consumer and Business Services shall adopt a
10 schedule of penalties, not to exceed \$10,000 per day of violation, based on the
11 severity of each violation.

12 “(3) The department shall impose civil penalties under this section as
13 provided in ORS 183.745.

14 “(4) The department may remit or mitigate civil penalties under this sec-
15 tion upon terms and conditions the department considers proper and con-
16 sistent with the public health and safety.

17 “(5) Civil penalties collected under this section shall be paid over to the
18 State Treasurer and deposited in the General Fund to be made available for
19 general governmental expenses.

20

21 **“TASK FORCE ON FAIR PRICING OF PRESCRIPTION DRUGS**

22

23 **“SECTION 24.** Section 11, chapter 7, Oregon Laws 2018, is amended to
24 read:

25 **“Sec. 11.** (1) The Task Force on the Fair Pricing of Prescription Drugs
26 is established.

27 “(2) The task force consists of 18 members appointed as follows:

28 “(a) The President of the Senate shall appoint:

29 “(A) One member from the Senate who is a member of the majority party.

30 “(B) One member from the Senate who is a member of the minority party.

1 “(b) The Speaker of the House of Representatives shall appoint:
2 “(A) One member from the House of Representatives who is a member of
3 the majority party.
4 “(B) One member from the House of Representatives who is a member of
5 the minority party.
6 “(c) The Governor shall appoint the following members:
7 “(A) One representative from the Department of Consumer and Business
8 Services;
9 “(B) One representative from the Oregon Health Authority;
10 “(C) One representative from the Oregon Health Policy Board; and
11 “(D) Individuals representing:
12 “(i) Pharmaceutical manufacturers;
13 “(ii) Insurance companies offering health insurance in this state;
14 “(iii) Pharmacy benefit managers;
15 “(iv) Prescription drug wholesalers;
16 “(v) Consumers;
17 “(vi) Independent pharmacies;
18 “(vii) Large retail pharmacy chains;
19 “(viii) Hospitals;
20 “(ix) Biopharmaceutical companies based in Oregon;
21 “(x) Coordinated care organizations; and
22 “(xi) Medical providers.
23 “(3) The task force shall [*develop a strategy to create transparency for drug*
24 *prices across the entire supply chain of pharmaceutical products, including but*
25 *not limited to manufacturers, insurers, pharmacy benefit managers, distribu-*
26 *tors, wholesalers and retail pharmacies.]:*

27 **“(a) Evaluate legislation enacted during the 2019 regular session of**
28 **the Eightieth Legislative Assembly that was intended to address**
29 **transparency in the cost of prescription drugs and any similar legis-**
30 **lation that has been enacted in other states; and**

1 **“(b) Evaluate additional strategies that may be used to reduce the**
2 **cost of prescription drugs for Oregonians.**

3 “(4) A majority of the voting members of the task force constitutes a
4 quorum for the transaction of business.

5 “(5) Official action by the task force requires the approval of a majority
6 of the voting members of the task force.

7 “(6) The task force shall elect one of its members to serve as chairperson.

8 “(7) If there is a vacancy for any cause, the appointing authority shall
9 make an appointment to become immediately effective.

10 “(8) The task force shall meet at times and places specified by the call
11 of the chairperson or of a majority of the voting members of the task force.

12 “(9) The task force may adopt rules necessary for the operation of the
13 task force.

14 “(10) The task force shall submit a report **of its findings under sub-**
15 **section (3) of this section** in the manner provided by ORS 192.245, and may
16 include recommendations for legislation, to the interim committees of the
17 Legislative Assembly related to health no later than [*November 1, 2018*]
18 **September 15, 2020**. The report must contain a cost-effective and enforceable
19 solution that exposes the cost factors that negatively impact prices paid by
20 Oregonians for pharmaceutical products.

21 “(11) The Legislative Policy and Research Director shall provide staff
22 support to the task force.

23 “(12) Members of the Legislative Assembly appointed to the task force are
24 nonvoting members of the task force and may act in an advisory capacity
25 only.

26 “(13) Members of the task force who are not members of the Legislative
27 Assembly are not entitled to compensation or reimbursement for expenses
28 and serve as volunteers on the task force.

29 “(14) All agencies of state government, as defined in ORS 174.111, are di-
30 rected to assist the task force in the performance of the task force’s duties

1 and, to the extent permitted by laws relating to confidentiality, to furnish
2 information and advice the members of the task force consider necessary to
3 perform their duties.

4 **“SECTION 25.** Section 12, chapter 7, Oregon Laws 2018, is amended to
5 read:

6 **“Sec. 12.** Section 11, *[of this 2018 Act]* **chapter 7, Oregon Laws 2018,** is
7 repealed on December 31, *[2020]* **2021.**

8

9 **“INSURER PRESCRIPTION DRUG PRICES**

10

11 **“SECTION 26.** Section 5, chapter 7, Oregon Laws 2018, is amended to
12 read:

13 **“Sec. 5.** (1) An insurer shall *[include with any filing under ORS 743.018]*
14 **annually report to the Department of Consumer and Business Ser-**
15 **vices, in the manner and format prescribed by the department,** the
16 following information regarding drugs reimbursed by *[the insurer under pol-*
17 *icies or certificates]* **health benefit plans, as defined in ORS 743B.005,** is-
18 sued **by the insurer** in this state:

19 **“(a)** The *[25]* **50** most frequently prescribed drugs;

20 **“(b)** The *[25]* **50** most costly drugs as a portion of total annual spending,
21 **both before and after any rebates received from manufacturers;**

22 **“(c)** The *[25]* **50** drugs that have caused the greatest increase in total plan
23 spending from one year to the next; and

24 **“(d)** Any drug for which the price is \$10,000 or more for a one-month
25 supply or for a course of treatment lasting less than one month.

26 **“(2)** For the drugs specified in subsection (1) of this section, the
27 report must include:

28 **“(a)** The average out-of-pocket cost to an enrollee for a one-month
29 supply or a course of treatment;

30 **“(b)** The average cost paid by the insurer to a pharmacy benefit

1 **manager or third party administrator; and**

2 “[*d*] (c) The impact of the costs of prescription drugs on premium rates.

3 “[*2*] (3) The Department of Consumer and Business Services shall con-
4 duct a public hearing annually on:

5 “(a) Prescription drug prices[.];

6 “(b) Information reported to the department under section 2, [*of this 2018*
7 *Act*] **chapter 7, Oregon Laws 2018; [and]**

8 “(c) Information described in [*subsection (1)*] **subsections (1) and (2)** of
9 this section;

10 “(d) **Information reported by carriers under ORS 743B.013 (17),**
11 **743B.105 (10) and 743B.125 (11); and**

12 “(e) **Information reported by pharmacy benefit managers under**
13 **section 20 of this 2019 Act.**

14 “[*3*] (4) The department shall regularly update the interim committees
15 of the Legislative Assembly related to health on the information described
16 in [*subsection (1)*] **subsections (1) and (2)** of this section.

17 “[*4 Subsection (1) of this section applies to an insurer that issues policies*
18 *or certificates of health insurance for sale in this state that include a pre-*
19 *scription drug benefit.*]

20 “**SECTION 27.** ORS 743.018, as amended by section 8, chapter 7, Oregon
21 Laws 2018, is amended to read:

22 “743.018. (1) Except for group life and health insurance, and except as
23 provided in ORS 743.015, every insurer shall file with the Director of the
24 Department of Consumer and Business Services all schedules and tables of
25 premium rates for life and health insurance to be used on risks in this state,
26 and shall file any amendments to or corrections of such schedules and tables.
27 Premium rates are subject to approval, disapproval or withdrawal of ap-
28 proval by the director as provided in ORS 742.003, 742.005, 742.007 and
29 743.019.

30 “(2) Except as provided in ORS 743B.013 and subsection (3) of this section,

1 a rate filing by a carrier for any of the following health benefit plans subject
2 to ORS 743.004, 743.022, 743.535 and 743B.003 to 743B.127 shall be available
3 for public inspection immediately upon submission of the filing to the di-
4 rector:

5 “(a) Health benefit plans for small employers.

6 “(b) Individual health benefit plans.

7 “(3) The director may by rule:

8 “(a) Specify all information a carrier must submit as part of a rate filing
9 under this section; and

10 “(b) Identify the information submitted that will be exempt from disclo-
11 sure under this section because the information constitutes a trade secret
12 and would, if disclosed, harm competition.

13 “(4) The director, after conducting an actuarial review of the rate filing,
14 may approve a proposed premium rate for a health benefit plan for small
15 employers or for an individual health benefit plan if, in the director’s dis-
16 cretion, the proposed rates are:

17 “(a) Actuarially sound;

18 “(b) Reasonable and not excessive, inadequate or unfairly discriminatory;
19 and

20 “(c) Based upon reasonable administrative expenses.

21 “(5) In order to determine whether the proposed premium rates for a
22 health benefit plan for small employers or for an individual health benefit
23 plan are reasonable and not excessive, inadequate or unfairly discriminatory,
24 the director may consider:

25 “(a) The insurer’s financial position, including but not limited to profit-
26 ability, surplus, reserves and investment savings.

27 “(b) Historical and projected administrative costs and medical and hospi-
28 tal expenses[, *including expenses for drugs reported under section 5, chapter*
29 *7, Oregon Laws 2018*].

30 “(c) Historical and projected loss ratio between the amounts spent on

1 medical services and earned premiums.

2 “(d) Any anticipated change in the number of enrollees if the proposed
3 premium rate is approved.

4 “(e) Changes to covered benefits or health benefit plan design.

5 “(f) Changes in the insurer’s health care cost containment and quality
6 improvement efforts since the insurer’s last rate filing for the same category
7 of health benefit plan.

8 “(g) Whether the proposed change in the premium rate is necessary to
9 maintain the insurer’s solvency or to maintain rate stability and prevent
10 excessive rate increases in the future.

11 “(h) Any public comments received under ORS 743.019 pertaining to the
12 standards set forth in subsection (4) of this section and this subsection.

13 “(6) The requirements of this section do not supersede other provisions
14 of law that require insurers, health care service contractors or multiple em-
15 ployer welfare arrangements providing health insurance to file schedules or
16 tables of premium rates or proposed premium rates with the director or to
17 seek the director’s approval of rates or changes to rates.

18

19 **“PHARMACEUTICAL MANUFACTURER REGISTRATION WITH**
20 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

21

22 **“SECTION 28. (1) As used in this section:**

23 **“(a) ‘Manufacturer’ has the meaning given that term in section 2,**
24 **chapter 7, Oregon Laws 2018.**

25 **“(b) ‘Wholesale acquisition cost’ has the meaning given that term**
26 **in 42 U.S.C. 1395w-3a(c)(6)(B).**

27 **“(2) A manufacturer shall annually register with the Department**
28 **of Consumer and Business Services, as provided in this section, if the**
29 **manufacturer:**

30 **“(a) Is required to register with the State Board of Pharmacy as a**

1 **manufacturing drug outlet under ORS 689.305; and**

2 **“(b) Has established or changed the wholesale acquisition cost for**
3 **a drug that it manufactures.**

4 **“(3) To register with the department, the manufacturer shall sub-**
5 **mit an application as prescribed by the department by rule and pay the**
6 **registration fee adopted by the department.**

7 **“(4) A registration may be renewed upon payment of a registration**
8 **fee.**

9 **“(5) The department shall adopt by rule the fees required for regis-**
10 **tration and for the annual renewal of a registration, based upon the**
11 **department’s reasonable costs in administering sections 2 and 3,**
12 **chapter 7, Oregon Laws 2018, and this section.**

13 **“(6) Moneys collected by the department under subsections (3) and**
14 **(4) of this section shall be deposited in the Consumer and Business**
15 **Services Fund created in ORS 705.145.**

16 **“SECTION 29. The Department of Consumer and Business Services**
17 **may request information from any manufacturer, as defined in section**
18 **2, chapter 7, Oregon Laws 2018, regarding any matter related to the**
19 **administration of sections 2 and 3, chapter 7, Oregon Laws 2018, and**
20 **section 28 of this 2019 Act. The manufacturer must respond promptly**
21 **and in the format requested by the department. The department may**
22 **require any response to be verified by an officer of a manufacturer.**
23 **A response from a manufacturer is subject to ORS 731.260.”.**

24 In line 26, delete “23” and insert “30”.

25 In line 29, delete “24” and insert “31”.

26 Delete lines 32 through 36 and insert:

27 **“SECTION 32. The report described in section 20 of this 2019 Act is**
28 **first due on March 15, 2020.**

29 **“SECTION 33. The amendments to ORS 243.135, 414.312 and 414.625**
30 **by sections 2 to 6 of this 2019 Act apply to plan years beginning on and**

1 after January 1, 2021.

2 **“SECTION 34. Section 13 of this 2019 Act and the amendments to**
3 **ORS 442.466 by section 14 of this 2019 Act become operative on July 1,**
4 **2022.”.**

5 In line 40, delete “27” and insert “35”.

6 _____