

House Bill 4030

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care for Representative Andrea Salinas)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies and delays implementation of requirements for pharmacy benefit managers.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to pharmacy benefit managers; amending ORS 735.534 and 735.536 and section 5, chapter
3 526, Oregon Laws 2019; and prescribing an effective date.

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

5 **SECTION 1.** ORS 735.534 is amended to read:

6 735.534. (1) As used in this section:

7 (a)(A) "Generally available for purchase" means a drug is available for purchase in this state
8 by a pharmacy from a national or regional wholesaler at the time a claim for reimbursement is
9 submitted by a network pharmacy.

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

11 (i) May be dispensed only in a hospital or inpatient care facility;

12 (ii) Is unavailable due to a shortage of the product or an ingredient;

13 (iii) Is available to a pharmacy at a price that is at or below the maximum allowable cost only
14 if purchased in substantial quantities that are inconsistent with the business needs of a pharmacy;

15 (iv) Is sold at a discount due to a short expiration date on the drug; or

16 (v) Is the subject of an active or pending recall.

17 (b) "List" means the list of drugs for which maximum allowable costs have been established.

18 (c) "Maximum allowable cost" means the maximum amount that a pharmacy benefit manager
19 will reimburse a pharmacy for the cost of a drug.

20 (d) "Multiple source drug" means a therapeutically equivalent drug that is available from at
21 least two manufacturers.

22 (e) "Therapeutically equivalent" has the meaning given that term in ORS 689.515.

23 (2) A pharmacy benefit manager registered under ORS 735.532:

24 (a) May not place a drug on a list unless there are at least two multiple source drugs, or at least
25 one generic drug generally available for purchase.

26 (b) Shall ensure that all drugs on a list are generally available for purchase.

27 (c) Shall ensure that no drug on a list is obsolete.

28 (d) Shall [*make available to*] **inform** each network pharmacy at the beginning of the term of a
29 contract, and upon renewal of a contract, **of** the specific authoritative industry sources, other than
30 proprietary sources, the pharmacy benefit manager uses to determine the maximum allowable cost
31 set by the pharmacy benefit manager.

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 (e) Shall make a list available to a network pharmacy upon request in a format that:
- 2 (A) Is electronic;
- 3 (B) Is computer accessible and searchable;
- 4 (C) Identifies all drugs for which maximum allowable costs have been established; and
- 5 (D) For each drug specifies:
- 6 (i) The national drug code; and
- 7 (ii) The maximum allowable cost.
- 8 (f) Shall update each list maintained by the pharmacy benefit manager every seven business days
- 9 and make the updated lists, including all changes in the price of drugs, available to network phar-
- 10 macies in the format described in paragraph (e) of this subsection.
- 11 (g) Shall ensure that dispensing fees are not included in the calculation of maximum allowable
- 12 cost.
- 13 (h) May not reimburse a 340B pharmacy differently than any other network pharmacy based on
- 14 its status as a 340B pharmacy.
- 15 (i) May not retroactively deny or reduce a claim for reimbursement of the cost of services after
- 16 the claim has been adjudicated by the pharmacy benefit manager unless the:
- 17 (A) Adjudicated claim was submitted fraudulently;
- 18 (B) Pharmacy benefit manager's payment on the adjudicated claim was incorrect because the
- 19 pharmacy or pharmacist had already been paid for the services;
- 20 (C) Services were improperly rendered by the pharmacy or pharmacist; or
- 21 (D) Pharmacy or pharmacist agrees to the denial or reduction prior to the pharmacy benefit
- 22 manager notifying the pharmacy or pharmacist that the claim has been denied or reduced.
- 23 (3) Subsection (2)(i) of this section may not be construed to limit pharmacy claim audits under
- 24 ORS 735.540 to 735.552.
- 25 (4) A pharmacy benefit manager must establish a process by which a network pharmacy may
- 26 appeal its reimbursement for a drug subject to maximum allowable cost pricing. A network phar-
- 27 macy may appeal a maximum allowable cost if the reimbursement for the drug is less than the net
- 28 amount that the network pharmacy paid to the supplier of the drug. The process must allow a net-
- 29 work pharmacy a period of no less than 60 days after a claim is reimbursed in which to file the
- 30 appeal. An appeal requested under this section must be completed within 30 calendar days of the
- 31 pharmacy making the claim for which appeal has been requested.
- 32 (5) A pharmacy benefit manager shall allow a network pharmacy to submit the documentation
- 33 in support of its appeal on paper or electronically and may not:
- 34 (a) Refuse to accept an appeal submitted by a person authorized to act on behalf of the network
- 35 pharmacy;
- 36 (b) Refuse to adjudicate an appeal for the reason that the appeal is submitted along with other
- 37 claims that are denied; or
- 38 (c) Impose requirements or establish procedures that have the effect of unduly obstructing or
- 39 delaying an appeal.
- 40 (6) A pharmacy benefit manager must provide as part of the appeals process established under
- 41 subsection (4) of this section:
- 42 (a) A telephone number at which a network pharmacy may contact the pharmacy benefit man-
- 43 ager and speak with an individual who is responsible for processing appeals;
- 44 (b) A final response to an appeal of a maximum allowable cost within seven business days; and
- 45 (c) If the appeal is denied, the reason for the denial and the national drug code of a drug that

1 may be purchased by similarly situated pharmacies at a price that is equal to or less than the
 2 maximum allowable cost.

3 (7)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall:

4 (A) Make an adjustment for the pharmacy that requested the appeal from the date of initial
 5 adjudication forward; and

6 (B) Allow the pharmacy to reverse the claim and resubmit an adjusted claim without any addi-
 7 tional charges.

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

12 (8) This section does not apply to the state medical assistance program.

13 (9) The Department of Consumer and Business Services may adopt rules to carry out the pro-
 14 visions of this section.

15 **SECTION 2.** ORS 735.536 is amended to read:

16 735.536. (1) As used in this section, “out-of-pocket cost” means the amount paid by an enrollee
 17 under the enrollee’s coverage, including deductibles, copayments, coinsurance or other expenses as
 18 prescribed by the Department of Consumer and Business Services by rule.

19 (2) A pharmacy benefit manager registered under ORS 735.532:

20 (a) May not require a prescription to be filled or refilled by a mail order pharmacy as a condi-
 21 tion for reimbursing the cost of the drug.

22 (b) Except as provided in paragraph (c) of this subsection, may require a prescription for a
 23 specialty drug to be filled or refilled at a specialty pharmacy as a condition for the reimbursement
 24 of the cost a drug.

25 (c) Shall reimburse the cost of a specialty drug that is filled or refilled at a network pharmacy
 26 that is a long term care pharmacy **for specialty drugs provided to patients residing in the long**
 27 **term care facility.**

28 (d)(A) Shall allow a network pharmacy to mail, ship or deliver prescription drugs to its patients
 29 as an ancillary service.

30 (B) Is not required to reimburse a delivery fee charged by a pharmacy for a delivery described
 31 in subparagraph (A) of this paragraph unless the fee is specified in the contract between the phar-
 32 macy benefit manager and the pharmacy.

33 (e) May not require a patient signature as proof of delivery of a mailed or shipped prescription
 34 drug if the network pharmacy:

35 (A)(i) Maintains a mailing or shipping log signed by a representative of the pharmacy; or

36 (ii) Maintains each notification of delivery provided by the United States Postal Service or a
 37 package delivery service; and

38 (B) Is responsible for the cost of mailing, shipping or delivering a replacement for a drug that
 39 was mailed or shipped but not received by the enrollee.

40 (f) May not penalize a network pharmacy for or otherwise directly or indirectly prevent a net-
 41 work pharmacy from informing an enrollee of the difference between the out-of-pocket cost to the
 42 enrollee to purchase a prescription drug using the enrollee’s pharmacy benefit and the pharmacy’s
 43 usual and customary charge for the prescription drug.

44 (3) The Department of Consumer and Business Services may adopt rules to carry out the pro-
 45 visions of this section.

1 **SECTION 3.** Section 5, chapter 526, Oregon Laws 2019, is amended to read:

2 **Sec. 5.** [*Section 2 of this 2019 Act*] **ORS 735.536** and the amendments to ORS 735.530 and 735.534
3 by sections 3 and 4, [*of this 2019 Act*] **chapter 526, Oregon Laws 2019**, apply to pharmacy benefits
4 and to contracts between pharmacies or pharmacists and pharmacy benefit managers entered into,
5 renewed or extended on or after [*January*] **July 1, 2021**.

6 **SECTION 4.** **This 2020 Act takes effect on the 91st day after the date on which the 2020**
7 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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