

# House Bill 2463

Sponsored by Representative NATHANSON (at the request of Oregon State Pharmacy Association, Gil Achertof, Randy Klemm, Jack Holt, Brian Crook, Steve Hirons) (Pre-session filed.)

## 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**.

Imposes new requirements on pharmacy benefit managers.

### A BILL FOR AN ACT

Relating to pharmacy benefit managers; amending ORS 735.530 and 735.536.

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

**SECTION 1.** ORS 735.536 is amended to read:

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

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

*[(a) May not require a prescription to be filled or refilled by a mail order pharmacy as a condition for reimbursing the cost of the drug.]*

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

*[(c)]* **(a)** Shall reimburse the cost of a specialty drug that is filled or refilled at a network pharmacy that is a long term care pharmacy.

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

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

**(c) For a solo pharmacy or a pharmacy chain with fewer than 100 locations, shall pay a dispensing fee, no less than the dispensing fee established by the Oregon Health Authority for the pharmacy, and reimburse the cost of the ingredients of the drug at a rate no less than the lowest of the National Average Drug Acquisition Cost published by the Centers for Medicare and Medicaid Services, the fee-for-service rate paid by the authority in the medical assistance program, the wholesale acquisition cost or the usual and customary price charged by the pharmacy.**

**(3) A pharmacy benefit manager registered under ORS 735.532 may not:**

**(a) Require a prescription to be filled or refilled by a mail order pharmacy as a condition for reimbursing the cost of the drug.**

**(b) Require a prescription for a specialty drug to be filled or refilled at a specialty phar-**

**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 **macy owned by the pharmacy benefit manager or in which the pharmacy benefit manager**  
 2 **has a financial interest, as a condition for the reimbursement of the cost a drug unless the**  
 3 **drug is a limited distribution drug that is exclusively available at a specialty pharmacy owned**  
 4 **by the pharmacy benefit manager or in which the pharmacy benefit manager has a financial**  
 5 **interest.**

6 [(e)] (c) [May not] Require a patient signature as proof of delivery of a mailed or shipped pre-  
 7 scription drug if the network pharmacy:

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

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

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

13 [(f)] (d) [May not] Penalize a network pharmacy **by imposing charges or fees, requiring con-**  
 14 **tract amendments, cancelling contracts or demanding recoupment or otherwise retaliate**  
 15 **against a network pharmacy** for [or otherwise directly or indirectly prevent a network pharmacy  
 16 from]:

17 (A) Informing an enrollee of the difference between the out-of-pocket cost to the enrollee to  
 18 purchase a prescription drug using the enrollee's pharmacy benefit and the pharmacy's usual and  
 19 customary charge for the prescription drug;

20 (B) **Filing an appeal;**

21 (C) **Filing a complaint against the pharmacy benefit manager with the Department of**  
 22 **Consumer and Business Services;**

23 (D) **Engaging in the legislative process; or**

24 (E) **Challenging the pharmacy benefit manager's practices or agreements.**

25 [(3)] (4) The Department of Consumer and Business Services may adopt rules to carry out the  
 26 provisions of this section.

27 **SECTION 2.** ORS 735.530 is amended to read:

28 735.530. As used in ORS 735.530 to 735.552:

29 (1) "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of  
 30 filling or refilling a prescription for a drug or for providing a medical supply or service.

31 (2) "Enrollee" means an individual who has enrolled for coverage in a health benefit plan for  
 32 which a pharmacy benefit manager has contracted with the insurer to reimburse claims submitted  
 33 by pharmacies or pharmacists for the costs of drugs prescribed for the individual.

34 (3) "Health benefit plan" has the meaning given that term in ORS 743B.005.

35 (4) "Insurer" has the meaning given that term in ORS 731.106.

36 (5) "Long term care pharmacy" means a pharmacy for which the primary business is to serve  
 37 a:

38 (a) Licensed long term care facility, as defined in ORS 442.015;

39 (b) Licensed residential facility, as defined in ORS 443.400; or

40 (c) Licensed adult foster home, as defined in ORS 443.705.

41 (6) "Mail order pharmacy" means a pharmacy for which the primary business is to receive pre-  
 42 scriptions by mail, telephone or electronic transmission and dispense drugs to patients through the  
 43 use of the United States Postal Service, a package delivery service or home delivery.

44 (7) "Network pharmacy" means a pharmacy that contracts with a pharmacy benefit manager.

45 (8) "Pharmacist" has the meaning given that term in ORS 689.005.

- 1 (9) "Pharmacy" includes:
- 2 (a) A pharmacy as defined in ORS 689.005;
- 3 (b) A long term care pharmacy; and
- 4 (c) An entity that provides or oversees administrative services for two or more pharmacies.
- 5 (10) "Pharmacy benefit" means the payment for or reimbursement of an enrollee's cost for pre-
- 6 scription drugs.
- 7 (11)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf
- 8 of an insurer offering a health benefit plan, a third party administrator or the Oregon Prescription
- 9 Drug Program established in ORS 414.312 to:
- 10 (A) Process claims for prescription drugs or medical supplies or provide retail network man-
- 11 agement for pharmacies or pharmacists;
- 12 (B) Pay pharmacies or pharmacists for prescription drugs or medical supplies; or
- 13 (C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this
- 14 paragraph.
- 15 (b) "Pharmacy benefit manager" does not include a health care service contractor as defined in
- 16 ORS 750.005.
- 17 (12) "Specialty drug" means a drug that:
- 18 (a) Is subject to restricted distribution by the United States Food and Drug Administration; or
- 19 (b) Requires special handling, provider coordination or patient education that cannot be pro-
- 20 vided by a retail pharmacy.
- 21 (13) "Specialty pharmacy" means a pharmacy capable of meeting the requirements applicable to
- 22 specialty drugs.
- 23 (14) "Third party administrator" means a person licensed under ORS 744.702.
- 24 (15) "340B pharmacy" means a pharmacy that is authorized to purchase drugs at a discount
- 25 under 42 U.S.C. 256b.
- 26 (16) **"Wholesale acquisition cost" has the meaning given that term in 42 U.S.C.**
- 27 **1395w-3a(c)(6)(B).**
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