

House Bill 2958

Sponsored by Representative NOSSE

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**.

Allows pharmacist to prescribe and dispense preexposure prophylactic antiretroviral drug to patient after completion of patient assessment. Directs State Board of Pharmacy to adopt rules.

Requires health insurance policies that have prescription drug benefit to cover cost of drugs prescribed and dispensed by pharmacists within their scope of practice, including cost of pharmacists' consultation fees associated with prescribing and dispensing drugs.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to prescription drugs; creating new provisions; amending ORS 689.005, 743A.064, 743B.425
3 and 743B.602; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 689.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"HIV test" has the meaning given that term in ORS 433.045.**

8 (b) **"Preexposure prophylactic antiretroviral drug" means a medication intended to pre-**
9 **vent the acquisition of human immunodeficiency virus.**

10 (2) **A pharmacist may prescribe and dispense preexposure prophylactic antiretroviral**
11 **drugs.**

12 (3) **Prior to prescribing a preexposure prophylactic antiretroviral drug under this section,**
13 **a pharmacist shall perform an assessment of the patient to determine the patient's risk of**
14 **acquiring HIV and that includes:**

15 (a)(A) **A rapid on-site HIV test; or**

16 (B) **An HIV test that requires the pharmacist to perform a blood draw on the patient and**
17 **submit the blood sample to a laboratory for an HIV test; and**

18 (b) **Providing information to the patient regarding HIV testing, HIV test results and**
19 **antiretroviral drugs, including preexposure and postexposure prophylactic antiretroviral**
20 **drugs.**

21 (3) **A pharmacist shall assess the results of the risk assessment, including the HIV test,**
22 **under subsection (2) of this section and may prescribe and dispense a preexposure**
23 **prophylactic antiretroviral drug based on the results.**

24 (4) **In prescribing and dispensing a preexposure prophylactic antiretroviral drug under**
25 **this section, a pharmacist shall provide a consultation to the patient that includes informa-**
26 **tion regarding the use of the preexposure prophylactic antiretroviral drug.**

27 (5)(a) **A pharmacist may order an HIV test described in subsection (2) of this section and**
28 **shall be provided the results of the HIV test.**

29 (b) **A pharmacist who orders or performs an HIV test under this section shall comply**

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 **with the requirements of ORS 433.045.**

2 **(6) The State Board of Pharmacy shall adopt rules to carry out this section.**

3 **SECTION 3.** ORS 689.005 is amended to read:

4 689.005. As used in this chapter:

5 (1) "Administer" means the direct application of a drug or device whether by injection,
6 inhalation, ingestion, or any other means, to the body of a patient or research subject by:

7 (a) A practitioner or the practitioner's authorized agent; or

8 (b) The patient or research subject at the direction of the practitioner.

9 (2) "Approved continuing pharmacy education program" means those seminars, classes,
10 meetings, workshops and other educational programs on the subject of pharmacy approved by the
11 board.

12 (3) "Board of pharmacy" or "board" means the State Board of Pharmacy.

13 (4) "Clinical pharmacy agreement" means an agreement between a pharmacist or pharmacy and
14 a health care organization or a physician as defined in ORS 677.010 or a naturopathic physician as
15 defined in ORS 685.010 that permits the pharmacist to engage in the practice of clinical pharmacy
16 for the benefit of the patients of the health care organization, physician or naturopathic physician.

17 (5) "Continuing pharmacy education" means:

18 (a) Professional, pharmaceutical post-graduate education in the general areas of socio-economic
19 and legal aspects of health care;

20 (b) The properties and actions of drugs and dosage forms; and

21 (c) The etiology, characteristics and therapeutics of the disease state.

22 (6) "Continuing pharmacy education unit" means the unit of measurement of credits for ap-
23 proved continuing education courses and programs.

24 (7) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or
25 device other than by administration from one person to another, whether or not for a consideration.

26 (8) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro
27 reagent or other similar or related article, including any component part or accessory, which is re-
28 quired under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

29 (9) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pur-
30 suant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent
31 administration to or use by a patient or other individual entitled to receive the prescription drug.

32 (10) "Distribute" means the delivery of a drug other than by administering or dispensing.

33 (11) "Drug" means:

34 (a) Articles recognized as drugs in the official United States Pharmacopoeia, official National
35 Formulary, official Homeopathic Pharmacopoeia, other drug compendium or any supplement to any
36 of them;

37 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of dis-
38 ease in a human or other animal;

39 (c) Articles, other than food, intended to affect the structure or any function of the body of hu-
40 mans or other animals; and

41 (d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c)
42 of this subsection.

43 (12) "Drug order" means a written order, in a hospital or other inpatient care facility, for an
44 ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by
45 other means of communication from a practitioner, that is immediately reduced to writing by a

1 pharmacist, licensed nurse or other practitioner.

2 (13) "Drug outlet" means a pharmacy, nursing home, shelter home, convalescent home, extended
 3 care facility, drug abuse treatment center, penal institution, hospital, family planning clinic, student
 4 health center, retail store, wholesaler, manufacturer, mail-order vendor or other establishment with
 5 facilities located within or out of this state that is engaged in dispensing, delivery or distribution
 6 of drugs within this state.

7 (14) "Drug room" means a secure and lockable location within an inpatient care facility that
 8 does not have a licensed pharmacy.

9 (15) "Electronically transmitted" or "electronic transmission" means a communication sent or
 10 received through technological apparatuses, including computer terminals or other equipment or
 11 mechanisms linked by telephone or microwave relays, or similar apparatus having electrical, digital,
 12 magnetic, wireless, optical, electromagnetic or similar capabilities.

13 (16) "Injectable hormonal contraceptive" means a drug composed of a hormone or a combination
 14 of hormones that is approved by the United States Food and Drug Administration to prevent preg-
 15 nancy and that a health care practitioner administers to the patient by injection.

16 (17) "Institutional drug outlet" means hospitals and inpatient care facilities where medications
 17 are dispensed to another health care professional for administration to patients served by the hos-
 18 pitals or facilities.

19 (18) "Intern" means a person who is enrolled in or has completed a course of study at a school
 20 or college of pharmacy approved by the board and who is licensed with the board as an intern.

21 (19) "Internship" means a professional experiential program approved by the board under the
 22 supervision of a licensed pharmacist registered with the board as a preceptor.

23 (20) "Itinerant vendor" means a person who sells or distributes nonprescription drugs by passing
 24 from house to house, or by haranguing the people on the public streets or in public places, or who
 25 uses the customary devices for attracting crowds, recommending their wares and offering them for
 26 sale.

27 (21) "Labeling" means the process of preparing and affixing of a label to any drug container
 28 exclusive, however, of the labeling by a manufacturer, packer or distributor of a nonprescription
 29 drug or commercially packaged legend drug or device.

30 (22) "Manufacture" means the production, preparation, propagation, compounding, conversion
 31 or processing of a device or a drug, either directly or indirectly by extraction from substances of
 32 natural origin or independently by means of chemical synthesis or by a combination of extraction
 33 and chemical synthesis and includes any packaging or repackaging of the substances or labeling or
 34 relabeling of its container, except that this term does not include the preparation or compounding
 35 of a drug by an individual for their own use or the preparation, compounding, packaging or labeling
 36 of a drug:

37 (a) By a practitioner as an incident to administering or dispensing of a drug in the course of
 38 professional practice; or

39 (b) By a practitioner or by the practitioner's authorization under supervision of the practitioner
 40 for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

41 (23) "Manufacturer" means a person engaged in the manufacture of drugs.

42 (24) "Nonprescription drug outlet" means shopkeepers and itinerant vendors registered under
 43 ORS 689.305.

44 (25) "Nonprescription drugs" means drugs which may be sold without a prescription and which
 45 are prepackaged for use by the consumer and labeled in accordance with the requirements of the

1 statutes and regulations of this state and the federal government.

2 (26) "Person" means an individual, corporation, partnership, association or other legal entity.

3 (27) "Pharmacist" means an individual licensed by this state to engage in the practice of phar-
4 macy or to engage in the practice of clinical pharmacy.

5 (28) "Pharmacy" means a place that meets the requirements of rules of the board, is licensed
6 and approved by the board where the practice of pharmacy may lawfully occur and includes
7 apothecaries, drug stores, dispensaries, hospital outpatient pharmacies, pharmacy departments and
8 prescription laboratories but does not include a place used by a manufacturer or wholesaler.

9 (29) "Pharmacy technician" means a person licensed by the State Board of Pharmacy who assists
10 the pharmacist in the practice of pharmacy pursuant to rules of the board.

11 (30) "Practice of clinical pharmacy" means:

12 (a) The health science discipline in which, in conjunction with the patient's other practitioners,
13 a pharmacist provides patient care to optimize medication therapy and to promote disease pre-
14 vention and the patient's health and wellness;

15 (b) The provision of patient care services, including but not limited to post-diagnostic disease
16 state management services; and

17 (c) The practice of pharmacy by a pharmacist pursuant to a clinical pharmacy agreement.

18 (31) "Practice of pharmacy" means:

19 (a) The interpretation and evaluation of prescription orders;

20 (b) The compounding, dispensing and labeling of drugs and devices, except labeling by a man-
21 ufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs
22 and devices;

23 (c) The prescribing and administering of vaccines and immunizations and the providing of pa-
24 tient care services pursuant to ORS 689.645;

25 (d) The administering of drugs and devices to the extent permitted under ORS 689.655;

26 (e) The participation in drug selection and drug utilization reviews;

27 (f) The proper and safe storage of drugs and devices and the maintenance of proper records re-
28 garding the safe storage of drugs and devices;

29 (g) The responsibility for advising, where necessary or where regulated, of therapeutic values,
30 content, hazards and use of drugs and devices;

31 (h) The monitoring of therapeutic response or adverse effect to drug therapy;

32 (i) The optimizing of drug therapy through the practice of clinical pharmacy;

33 (j) Patient care services, including medication therapy management and comprehensive
34 medication review;

35 (k) The offering or performing of those acts, services, operations or transactions necessary in
36 the conduct, operation, management and control of pharmacy;

37 (L) The prescribing and administering of injectable hormonal contraceptives and the prescribing
38 and dispensing of self-administered hormonal contraceptives pursuant to ORS 689.689; *[and]*

39 (m) The prescribing and dispensing of emergency refills of insulin and associated insulin-related
40 devices and supplies pursuant to ORS 689.696[.]; **and**

41 **(n) The prescribing and dispensing of preexposure prophylactic antiretroviral drugs pur-**
42 **suant to section 2 of this 2021 Act.**

43 (32) "Practitioner" means a person licensed and operating within the scope of such license to
44 prescribe, dispense, conduct research with respect to or administer drugs in the course of profes-
45 sional practice or research:

1 (a) In this state; or

2 (b) In another state or territory of the United States if the person does not reside in Oregon and
3 is registered under the federal Controlled Substances Act.

4 (33) "Preceptor" means a pharmacist or a person licensed by the board to supervise the
5 internship training of a licensed intern.

6 (34) "Prescription drug" or "legend drug" means a drug which is:

7 (a) Required by federal law, prior to being dispensed or delivered, to be labeled with either of
8 the following statements:

9 (A) "Caution: Federal law prohibits dispensing without prescription"; or

10 (B) "Caution: Federal law restricts this drug to use by or on the order of a licensed
11 veterinarian"; or

12 (b) Required by any applicable federal or state law or regulation to be dispensed on prescription
13 only or is restricted to use by practitioners only.

14 (35) "Prescription" or "prescription drug order" means a written, oral or electronically trans-
15 mitted direction, given by a practitioner authorized to prescribe drugs, for the preparation and use
16 of a drug. When the context requires, "prescription" also means the drug prepared under such
17 written, oral or electronically transmitted direction.

18 (36) "Retail drug outlet" means a place used for the conduct of the retail sale, administering or
19 dispensing or compounding of drugs or chemicals or for the administering or dispensing of pre-
20 scriptions and licensed by the board as a place where the practice of pharmacy may lawfully occur.

21 (37) "Self-administered hormonal contraceptive" means a drug composed of a hormone or a
22 combination of hormones that is approved by the United States Food and Drug Administration to
23 prevent pregnancy and that the patient to whom the drug is prescribed may administer to oneself.
24 "Self-administered hormonal contraceptive" includes, but is not limited to, hormonal contraceptive
25 patches and hormonal contraceptive pills.

26 (38) "Shopkeeper" means a business or other establishment, open to the general public, for the
27 sale or nonprofit distribution of drugs.

28 (39) "Unit dose" means a sealed single-unit container so designed that the contents are admin-
29 istered to the patient as a single dose, direct from the container. Each unit dose container must bear
30 a separate label, be labeled with the name and strength of the medication, the name of the man-
31 ufacturer or distributor, an identifying lot number and, if applicable, the expiration date of the
32 medication.

33 (40) "Wholesale drug outlet" means a person who imports, stores, distributes or sells for resale
34 drugs, including legend drugs and nonprescription drugs.

35 **SECTION 4.** ORS 743A.064 is amended to read:

36 743A.064. (1) **As used in this section, "urgent medical condition" means a medical condi-**
37 **tion that arises suddenly, is not life-threatening and requires prompt treatment to avoid the**
38 **development of more serious medical problems.**

39 (2) All health insurance policies that provide a prescription drug benefit, except those policies
40 in which coverage is limited to expenses from accidents or specific diseases that are unrelated to
41 the coverage required by this subsection, must include coverage for prescription drugs:

42 (a) Dispensed by a licensed practitioner at a rural health clinic for an urgent medical condition
43 if there is not a pharmacy within 15 miles of the clinic or if the prescription is dispensed for a pa-
44 tient outside of the normal business hours of any pharmacy within 15 miles of the clinic[.]; **and**

45 (b) **Prescribed and dispensed by a licensed pharmacist if the State Board of Pharmacy**

1 or any state law authorizes the drug to be prescribed and dispensed by pharmacists licensed
2 under ORS chapter 689.

3 **(3) The coverage described in subsection (2)(b) of this section must include reimburse-**
4 **ment of a pharmacist's reasonable fees for consulting with a patient.**

5 [(2)] (4) The coverage required by subsection [(1)] (2) of this section is subject to the terms and
6 conditions of the prescription drug benefit provided under the policy.

7 [(3) As used in this section, "urgent medical condition" means a medical condition that arises
8 suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious
9 medical problems.]

10 **(5) This section is exempt from ORS 743A.001.**

11 **SECTION 5.** ORS 743B.425 is amended to read:

12 743B.425. (1) [In reimbursing the cost of medication prescribed for the purpose of treating opioid
13 or opiate withdrawal,] An insurer offering a health benefit plan as defined in ORS 743B.005 may
14 not:

15 (a) Require prior authorization [of payment];

16 (A) During the first [30] **60** days of treatment[.], **including medication therapy, prescribed for**
17 **opioid or opiate withdrawal; or**

18 **(B) For antiretroviral drugs, including preexposure and post-exposure prophylaxis**
19 **antiretroviral drugs; or**

20 **(b) Restrict the reimbursement for medication therapies or drugs described in this sub-**
21 **section to in-network pharmacists or pharmacies.**

22 (2) This section is not subject to ORS 743A.001.

23 (3) [Nothing in this section shall be interpreted to] **This section does not** prohibit prior author-
24 ization for [reimbursement for payment for prescribing] opioids or opiates **prescribed** for purposes
25 other than [medical management] **medication therapy** or treatment of opioid or opiate abuse or
26 addiction.

27 **SECTION 6.** ORS 743B.602 is amended to read:

28 743B.602. (1) As used in this section:

29 (a) "Health care coverage [plan]" includes **any of the following that reimburse the cost of**
30 **prescription drugs:**

31 (A) A health benefit plan, as defined in ORS 743B.005;

32 (B) An insurance policy or certificate [covering the cost of prescription drugs, hospital expenses,
33 health care services and medical expenses, equipment and supplies];

34 (C) A medical services contract, as defined in ORS 743B.001;

35 (D) A multiple employer welfare arrangement, as defined in ORS 750.301;

36 (E) A contract or agreement with a health care service contractor, as defined in ORS 750.005,
37 or a preferred provider organization;

38 (F) **Payment of claims by** a pharmacy benefit manager, as defined in ORS 735.530, or other
39 third party administrator [that pays prescription drug claims]; and

40 (G) An accident insurance policy or any other insurance contract [providing reimbursement for
41 the cost of prescription drugs, hospital expenses, health care services and medical expenses, equipment
42 and supplies].

43 (b) "Step therapy" means a drug protocol in which [a] **an entity that provides** health care
44 coverage [plan] will reimburse the cost of a prescribed drug only if the patient has first tried a
45 specified drug or series of drugs.

1 (2) [A] **An entity that provides** health care coverage [*plan*] that requires step therapy shall
2 make easily accessible to prescribing practitioners, clear explanations of:

3 (a) The clinical criteria for each step therapy protocol;

4 (b) The procedure by which a practitioner may submit to the [*plan*] **entity** the practitioner's
5 medical rationale for determining that a particular step therapy protocol is not appropriate for a
6 particular patient based on the patient's medical condition and history; and

7 (c) The documentation, if any, that a practitioner must submit to the [*plan*] **entity** for the
8 [*plan*] **entity** to determine the appropriateness of step therapy for a specific patient.

9 **SECTION 7. The amendments to ORS 743A.064, 743B.425 and 743B.602 by sections 4 to 6**
10 **of this 2021 Act apply to health insurance policies, health benefit plans and health care cov-**
11 **erage issued, renewed or extended on or after the effective date of this 2021 Act.**

12 **SECTION 8. (1) Section 2 of this 2021 Act and the amendments to ORS 689.005, 743A.064,**
13 **743B.425 and 743B.602 by sections 3 to 6 of this 2021 Act become operative on January 1, 2022.**

14 (2) **The State Board of Pharmacy may take any action before the operative date specified**
15 **in subsection (1) of this section that is necessary to enable the board to exercise, on and**
16 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
17 **and powers conferred on the board by section 2 of this 2021 Act and the amendments to ORS**
18 **689.005, 743A.064, 743B.425 and 743B.602 by sections 3 to 6 of this 2021 Act.**

19 **SECTION 9. This 2021 Act takes effect on the 91st day after the date on which the 2021**
20 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

21