

Enrolled House Bill 2725

Sponsored by Representative GOODWIN, Senator HANSELL, Representative NATHANSON; Representatives CATE, DEXTER, DIEHL, ELMER, GRAYBER, HIEB, JAVADI, LEVY B, MORGAN, NELSON, NOSSE, SCHARF, SMITH DB, WALLAN, WRIGHT, Senators DEMBROW, FINDLEY, PATTERSON, THATCHER, WEBER (Presession filed.)

CHAPTER

AN ACT

Relating to pharmacy benefit managers; amending ORS 735.534; and declaring an emergency.

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

SECTION 1. ORS 735.534 is amended to read:

735.534. (1) As used in this section:

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

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

- (i) May be dispensed only in a hospital or inpatient care facility;
- (ii) Is unavailable due to a shortage of the product or an ingredient;
- (iii) Is available to a pharmacy at a price that is at or below the maximum allowable cost only if purchased in substantial quantities that are inconsistent with the business needs of a pharmacy;
- (iv) Is sold at a discount due to a short expiration date on the drug; or
- (v) Is the subject of an active or pending recall.

(b) “List” means the list of drugs for which maximum allowable costs have been established.
(c) “Maximum allowable cost” means the maximum amount that a pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

(d) “Multiple source drug” means a therapeutically equivalent drug that is available from at least two manufacturers.

(e) “Therapeutically equivalent” has the meaning given that term in ORS 689.515.

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

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

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

(c) Shall ensure that no drug on a list is obsolete.

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

(e) Shall make a list available to a network pharmacy upon request in a format that:

(A) Is electronic;

- (B) Is computer accessible and searchable;
- (C) Identifies all drugs for which maximum allowable costs have been established; and
- (D) For each drug specifies:
 - (i) The national drug code; and
 - (ii) The maximum allowable cost.

(f) Shall update each list maintained by the pharmacy benefit manager every seven business days and make the updated lists, including all changes in the price of drugs, available to network pharmacies in the format described in paragraph (e) of this subsection.

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

(h) May not reimburse a 340B pharmacy differently than any other network pharmacy based on its status as a 340B pharmacy.

(i) May not retroactively deny or reduce **payment on** a claim for reimbursement of the cost of services after the claim has been adjudicated by the pharmacy benefit manager unless the:

(A) Adjudicated claim was submitted fraudulently;

(B) Pharmacy benefit manager's payment on the adjudicated claim was incorrect because the pharmacy [*or pharmacist*] had already been paid for the services;

(C) Services were improperly rendered by the pharmacy [*or pharmacist*]; [*or*]

(D) Pharmacy [*or pharmacist*] agrees to the denial or reduction prior to the pharmacy benefit manager notifying the pharmacy [*or pharmacist*] that the claim has been denied or reduced; **or**

(E) The payment was incorrect due to an error that the pharmacy and pharmacy benefit manager agree was a clerical error.

(j) May not impose a fee on a pharmacy after the point of sale.

(k) Shall provide notice to a pharmacy of any claim for reimbursement of the cost of a prescription drug that is denied or reduced. The notice shall identify the specific disaggregated claim that was denied or reduced and a detailed explanation for why the specific claim was denied or reduced.

(3) Subsection (2)(i) of this section may not be construed to limit pharmacy claim audits under ORS 735.540 to 735.552.

(4) A pharmacy benefit manager must establish a process by which a network pharmacy may appeal its reimbursement for a drug subject to maximum allowable cost pricing. A network pharmacy may appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug. The process must allow a network pharmacy a period of no less than 60 days after a claim is reimbursed in which to file the appeal. An appeal requested under this section must be completed within 30 calendar days of the pharmacy making the claim for which appeal has been requested.

(5) A pharmacy benefit manager shall allow a network pharmacy to submit the documentation in support of its appeal on paper or electronically and may not:

(a) Refuse to accept an appeal submitted by a person authorized to act on behalf of the network pharmacy;

(b) Refuse to adjudicate an appeal for the reason that the appeal is submitted along with other claims that are denied; or

(c) Impose requirements or establish procedures that have the effect of unduly obstructing or delaying an appeal.

(6) A pharmacy benefit manager must provide as part of the appeals process established under subsection (4) of this section:

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

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

(c) If the appeal is denied, the reason for the denial and the national drug code of a drug that may be purchased by similarly situated pharmacies at a price that is equal to or less than the maximum allowable cost.

- (7)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall:
- (A) Make an adjustment for the pharmacy that requested the appeal from the date of initial adjudication forward; and
 - (B) Allow the pharmacy to reverse the claim and resubmit an adjusted claim without any additional charges.
- (b) If the request for an adjustment has come from a critical access pharmacy, as defined by the Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the adjustment approved under paragraph (a) of this subsection shall apply only to critical access pharmacies.
- (8) This section does not apply to the state medical assistance program.
- (9) The Department of Consumer and Business Services may adopt rules to carry out the provisions of this section.

SECTION 2. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House June 14, 2023

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 Timothy G. Sekerak, Chief Clerk of House

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 Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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 Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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 Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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 Secretary of State