

House Bill 2725

Sponsored by Representative GOODWIN, Senator HANSELL; Representatives CATE, DIEHL, ELMER, HIEB, LEVY B, MORGAN, SCHARF, SMITH DB, WRIGHT, Senators DEMBROW, FINDLEY, PATTERSON, THATCHER, WEBER (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**.

Prohibits pharmacy benefit manager from imposing fees on rural pharmacies after point of sale.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pharmacy benefit managers; amending ORS 735.534; and declaring an emergency.

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

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

5 735.534. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

21 (e) "**Rural pharmacy**" means a pharmacy that is:

22 (A) **The only pharmacy in an incorporated city or town where the average area median**
23 **income is below the state average; or**

24 (B) **Fifteen miles or more by car from the nearest other pharmacy.**

25 [(e)] (f) "Therapeutically equivalent" has the meaning given that term in ORS 689.515.

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

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

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

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

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

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

6 (A) Is electronic;

7 (B) Is computer accessible and searchable;

8 (C) Identifies all drugs for which maximum allowable costs have been established; and

9 (D) For each drug specifies:

10 (i) The national drug code; and

11 (ii) The maximum allowable cost.

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

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

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

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

21 (A) Adjudicated claim was submitted fraudulently;

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

24 (C) Services were improperly rendered by the pharmacy or pharmacist; or

25 (D) Pharmacy or pharmacist agrees to the denial or reduction prior to the pharmacy benefit
 26 manager notifying the pharmacy or pharmacist that the claim has been denied or reduced.

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

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

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

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

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

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

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

45 (6) A pharmacy benefit manager must provide as part of the appeals process established under

1 subsection (4) of this section:

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

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

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

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

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

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

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

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

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

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

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