

# House Bill 3012

Sponsored by Representative NATHANSON; Representatives DEXTER, FAHEY, GOODWIN, LEVY B, MORGAN, NOSSE, Senators DEMBROW, FINDLEY, HANSELL, PATTERSON, THATCHER (Presession 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**.

Requires pharmacy benefit managers to annually report specified information to Department of Consumer and Business Services, including costs and rebates of prescription drugs for enrollees. Authorizes civil penalty, or refusal, revocation or suspension of registration, for failing to comply with reporting requirements.

## A BILL FOR AN ACT

1  
2 Relating to pharmacy benefit managers; creating new provisions; and amending ORS 705.137, 735.530  
3 and 735.533.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 735.530 to**  
6 **735.552.**

7 **SECTION 2. (1) No later than June 1 of each year, a pharmacy benefit manager regis-**  
8 **tered in this state shall submit a transparency report to the Department of Consumer and**  
9 **Business Services, in the form and manner prescribed by the department, containing data**  
10 **from the prior calendar year with respect to the pharmacy benefit manager's business con-**  
11 **ducted in this state. The report must contain the following information as prescribed by the**  
12 **department by rule:**

13 (a) **The aggregate wholesale acquisition costs charged by a prescription drug manufac-**  
14 **turer or a wholesale drug distributor for each therapeutic category of prescription drugs for**  
15 **all of the pharmacy benefit manager's plan sponsor clients, net of all rebates and other direct**  
16 **or indirect fees and payments from all sources;**

17 (b) **The aggregate amount of rebates that the pharmacy benefit manager received from**  
18 **all prescription drug manufacturers for all of the pharmacy benefit manager's plan sponsor**  
19 **clients, including any utilization discounts the pharmacy benefit manager received from a**  
20 **prescription drug manufacturer or wholesale drug distributor;**

21 (c) **The aggregate amount of fees that the pharmacy benefit manager received from all**  
22 **sources, directly or indirectly, that were not passed through to the pharmacy benefit**  
23 **manager's plan sponsor clients;**

24 (d) **The aggregate amount of rebates that the pharmacy benefit manager received from**  
25 **all sources, directly or indirectly, that were not passed through to the pharmacy benefit**  
26 **manager's plan sponsor clients;**

27 (e) **Claims level information, excluding personally identifying information, in an elec-**  
28 **tronic format prescribed by the department, that allows the department to sort and analyze**  
29 **the following information for each claim:**

30 (A) **The name of the drug and the quantity of that drug in each prescription;**

**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 (B) Whether a prescription required prior authorization;

2 (C) Cost-sharing amounts paid by an enrollee for each prescription;

3 (D) The amount paid to a pharmacy for each prescription;

4 (E) Any difference between the amount paid to the pharmacy under subparagraph (D)  
5 of this paragraph and the amount charged to the pharmacy benefit manager's plan sponsor  
6 client;

7 (F) The identity of the pharmacy for each prescription and whether enrollees are re-  
8 quired by the health benefit plan to use the pharmacy; and

9 (G) Whether a pharmacy is:

10 (i) Under the common control or ownership of the pharmacy benefit manager;

11 (ii) A preferred pharmacy under the health benefit plan; or

12 (iii) A mail order pharmacy; and

13 (f) Other data or information that the department determines will assist in the assess-  
14 ment of the benefit provided by the involvement of pharmacy benefit managers and the im-  
15 pact of pharmacy benefit managers on the price of prescription drugs.

16 (2) Not later than 60 days after receiving a transparency report, the department shall  
17 publish the report from each pharmacy benefit manager on the department's website, ex-  
18 cluding information that the department determines to be a trade secret. The transparency  
19 report must be published in a manner that does not disclose the identity of a specific plan  
20 sponsor client, the prices charged for a specific prescription drug or class of drugs or the  
21 amount of any rebates provided for a specific prescription drug or class of drugs.

22 **SECTION 3.** The Department of Consumer and Business Services may impose a civil  
23 penalty of up to \$1,000 per day for a pharmacy benefit manager's failure to submit a timely  
24 and complete transparency report in accordance with section 2 of this 2023 Act.

25 **SECTION 4.** ORS 735.530 is amended to read:

26 735.530. As used in ORS 735.530 to 735.552:

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

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

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

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

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

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

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

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

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

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

43 (8) "Plan sponsor client" means an employer or other entity that contracts with a phar-  
44 macy benefit manager to process claims for reimbursement of prescription drug costs.

45 [(8)] (9) "Pharmacist" has the meaning given that term in ORS 689.005.

1        [(9)] (10) “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)] (11) “Pharmacy benefit” means the payment for or reimbursement of an enrollee’s cost for  
6        prescription drugs.

7        [(11)(a)] (12)(a) “Pharmacy benefit manager” means a person that contracts with pharmacies on  
8        behalf of an insurer offering a health benefit plan, a third party administrator or the Oregon Pre-  
9        scription 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)] (13) “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)] (14) “Specialty pharmacy” means a pharmacy capable of meeting the requirements appli-  
22        cable to specialty drugs.

23        [(14)] (15) “Third party administrator” means a person licensed under ORS 744.702.

24        [(15)] (16) “340B pharmacy” means a pharmacy that is authorized to purchase drugs at a dis-  
25        count under 42 U.S.C. 256b.

26        **SECTION 5.** ORS 735.533 is amended to read:

27        735.533. (1) In accordance with ORS chapter 183, the Department of Consumer and Business  
28        Services may deny an application for registration as a pharmacy benefit manager or an application  
29        for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a regis-  
30        tration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

31        (a) Falsified an application for registration or for the renewal of a registration or engaged in  
32        any dishonest act in relation to the application;

33        (b) Engaged in dishonesty, fraud or gross negligence in the conduct of business as a pharmacy  
34        benefit manager;

35        (c) Engaged in conduct that resulted in a conviction of a felony under the laws of any state or  
36        of the United States, to the extent that such conduct may be considered under ORS 670.280;

37        (d) Was convicted under the laws of any state or of the United States of any crime of which an  
38        essential element is dishonesty or fraud;

39        (e) Had a certificate of authority or authority to conduct business as a pharmacy benefit man-  
40        ager denied, revoked or suspended in another state;

41        (f) Failed to pay a civil penalty imposed by final order of the department or to comply with the  
42        terms of suspension set by the department;

43        (g) Failed to meet the terms of a consent decree approved by a court of competent jurisdiction  
44        in this state, or a consent order made between the department and the pharmacy benefit manager;

45        (h) Refused to be examined or to produce accounts, records or files for examination, including

1 the refusal by any officer of the applicant or registrant to give information with respect to the af-  
 2 fairs of the pharmacy benefit manager, or refused to perform any other legal obligation with respect  
 3 to an examination by the department; [or]

4 **(i) Failed to submit a timely transparency report in accordance with section 2 of this 2023**  
 5 **Act or submitted a transparency report that was incomplete; or**

6 [(i)] (j) Violated any rule or order of the department or any provision of the Insurance Code.

7 (2) The department may prescribe by rule a procedure by which a pharmacy or an entity acting  
 8 on behalf of a pharmacy may file a complaint with the department alleging that a pharmacy benefit  
 9 manager has engaged in conduct described in this section. The department may restrict the right  
 10 of a pharmacy or entity to file a complaint only to the extent necessary to prevent abuse of the  
 11 complaint process.

12 **SECTION 6.** ORS 705.137 is amended to read:

13 705.137. (1) Except as provided in subsection (3) of this section, a document, material or other  
 14 information that the Department of Consumer and Business Services possesses or controls for the  
 15 purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to  
 16 697.842, 717.200 to 717.320, 717.900, 717.905 and 735.533 **and section 2 of this 2023 Act** and ORS  
 17 chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute  
 18 as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.311 to  
 19 192.478, is not subject to subpoena and is not subject to discovery or admissible in evidence in a  
 20 private civil action. The Director of the Department of Consumer and Business Services may use a  
 21 confidential document, material or other information in administering ORS 86A.095 to 86A.198,  
 22 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900, 717.905 and  
 23 735.533 **and section 2 of this 2023 Act** and ORS chapters 59, 723, 725 and 726, the Bank Act and  
 24 the Insurance Code and in furthering a regulatory or legal action the director brings as a part of  
 25 the director's duties.

26 (2) A document, material or other information to which subsection (1) of this section applies is  
 27 subject to the public officer privilege described in ORS 40.270.

28 (3) In order to assist in the performance of the director's duties, the director may:

29 (a) Authorize sharing a confidential document, material or other information that is subject to  
 30 subsection (1) of this section as appropriate among the administrative divisions and staff offices of  
 31 the department created under ORS 705.115 for the purpose of administering and enforcing the stat-  
 32 utes identified in subsection (1) of this section, in order to enable the administrative divisions and  
 33 staff offices to carry out the functions and responsibilities of the administrative divisions and staff  
 34 offices.

35 (b) Share a document, material or other information, including a confidential document, material  
 36 or other information that is subject to subsection (1) of this section or that is otherwise confidential  
 37 under ORS 192.345 or 192.355, with other state, federal, foreign and international regulatory and law  
 38 enforcement agencies, with the Federal Reserve Board and with the National Association of Insur-  
 39 ance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commis-  
 40 sioners, if the recipient agrees to maintain the confidentiality of the document, material or other  
 41 information.

42 (c) Receive a document, material or other information, including an otherwise confidential doc-  
 43 ument, material or other information, from state, federal, foreign and international regulatory and  
 44 law enforcement agencies, from the Federal Reserve Board and from the National Association of  
 45 Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance

1 Commissioners. As provided in this section, the director shall maintain the confidentiality of docu-  
2 ments, materials or other information the director receives if the director receives notice or has an  
3 understanding that the document, material or other information is confidential or privileged under  
4 the laws of the jurisdiction that is the source of the document, material or other information.

5 (4) Disclosing a document, material or other information to the director under this section or  
6 sharing a document, material or other information as authorized in subsection (3) of this section  
7 does not waive an applicable privilege or claim of confidentiality in the document, material or other  
8 information.

9 (5) This section does not prohibit the director from disclosing to a database or other clearing-  
10 house service maintained by the National Association of Insurance Commissioners or affiliates or  
11 subsidiaries of the National Association of Insurance Commissioners information about a final, ad-  
12 judicated action, including a suspension or revocation of a certificate of authority or a license, if  
13 the information is otherwise open to public inspection.

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