

Requested by Representative GOODWIN

**PROPOSED AMENDMENTS TO
HOUSE BILL 2725**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete page
2 2.

3 On page 3, delete lines 1 through 19 and insert:

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
7 purchase in this state by a pharmacy from a national or regional wholesaler
8 at the time a claim for reimbursement is 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 maxi-
13 mum allowable cost only if purchased in substantial quantities that are in-
14 consistent with the business needs of a pharmacy;

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

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

17 “(b) ‘List’ means the list of drugs for which maximum allowable costs
18 have been established.

19 “(c) ‘Maximum allowable cost’ means the maximum amount that a phar-
20 macy benefit manager will reimburse a pharmacy for the cost of a drug.

21 “(d) ‘Multiple source drug’ means a therapeutically equivalent drug that

1 is available from at least two manufacturers.

2 “(e) ‘Therapeutically equivalent’ has the meaning given that term in ORS
3 689.515.

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

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

7 “(b) Shall ensure that all drugs on a list are generally available for pur-
8 chase.

9 “(c) Shall ensure that no drug on a list is obsolete.

10 “(d) Shall make available to each network pharmacy at the beginning of
11 the term of a contract, and upon renewal of a contract, the specific author-
12 itative industry sources, other than proprietary sources, the pharmacy bene-
13 fit manager uses to determine the maximum allowable cost set by the
14 pharmacy benefit manager.

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

17 “(A) Is electronic;

18 “(B) Is computer accessible and searchable;

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

21 “(D) For each drug specifies:

22 “(i) The national drug code; and

23 “(ii) The maximum allowable cost.

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

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

30 “(h) May not reimburse a 340B pharmacy differently than any other net-

1 work pharmacy based on its status as a 340B pharmacy.

2 “(i) May not retroactively deny or reduce **payment on** a claim for re-
3 imbursement of the cost of services after the claim has been adjudicated by
4 the pharmacy benefit manager unless the:

5 “(A) Adjudicated claim was submitted fraudulently;

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

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

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

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

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

17 “(k) **Shall provide notice to a pharmacy of any claim for re-
18 imbursement of the cost of a prescription drug that is denied or re-
19 duced. The notice shall identify the specific disaggregated claim that
20 was denied or reduced and a detailed explanation for why the specific
21 claim was denied or reduced.**

22 “(3) Subsection (2)(i) of this section may not be construed to limit phar-
23 macy claim audits under ORS 735.540 to 735.552.

24 “(4) A pharmacy benefit manager must establish a process by which a
25 network pharmacy may appeal its reimbursement for a drug subject to max-
26 imum allowable cost pricing. A network pharmacy may appeal a maximum
27 allowable cost if the reimbursement for the drug is less than the net amount
28 that the network pharmacy paid to the supplier of the drug. The process
29 must allow a network pharmacy a period of no less than 60 days after a
30 claim is reimbursed in which to file the appeal. An appeal requested under

1 this section must be completed within 30 calendar days of the pharmacy
2 making the claim for which appeal has been requested.

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

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

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

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

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

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

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

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

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

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

26 “(B) Allow the pharmacy to reverse the claim and resubmit an adjusted
27 claim without any additional charges.

28 “(b) If the request for an adjustment has come from a critical access
29 pharmacy, as defined by the Oregon Health Authority by rule for purposes
30 related to the Oregon Prescription Drug Program, the adjustment approved

1 under paragraph (a) of this subsection shall apply only to critical access
2 pharmacies.

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

4 “(9) The Department of Consumer and Business Services may adopt rules
5 to carry out the provisions of this section.”.

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