

Requested by Representative NATHANSON

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3013**

1 On page 1 of the printed bill, delete lines 5 through 25.

2 On page 2, delete lines 1 through 30 and insert:

3 **“SECTION 1.** ORS 735.530 is amended to read:

4 “735.530. As used in ORS 735.530 to 735.552:

5 “(1) ‘Claim’ means a request from a pharmacy or pharmacist to be reim-  
6 bursed for the cost of filling or refilling a prescription for a drug or for  
7 providing a medical supply or service.

8 “(2) ‘Enrollee’ means an individual who has enrolled for coverage in a  
9 health benefit plan for which a pharmacy benefit manager has contracted  
10 with the insurer to reimburse claims submitted by pharmacies or pharmacists  
11 for the costs of drugs prescribed for the individual.

12 “(3) ‘Health benefit plan’ has the meaning given that term in ORS  
13 743B.005.

14 “(4) ‘Insurer’ has the meaning given that term in ORS 731.106.

15 “(5) ‘Long term care pharmacy’ means a pharmacy for which the primary  
16 business is to serve a:

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

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

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

20 “(6) ‘Mail order pharmacy’ means a pharmacy for which the primary  
21 business is to receive prescriptions by mail, telephone or electronic trans-

1 mission and dispense drugs to patients through the use of the United States  
2 Postal Service, a package delivery service or home delivery.

3 “(7) ‘Network pharmacy’ means a pharmacy that contracts with a phar-  
4 macy benefit manager.

5 “(8) ‘Oregon Average Actual Acquisition Cost’ means the rate es-  
6 tablished by the Oregon Health Authority, in accordance with 42  
7 C.F.R. 447.518, that represents the average invoice amounts for indi-  
8 vidual drug products based on surveys conducted by or on behalf of  
9 the authority of pharmacies that participate in the state medical as-  
10 sistance program.

11 “[8] (9) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

12 “[9] (10) ‘Pharmacy’ includes:

13 “(a) A pharmacy as defined in ORS 689.005;

14 “(b) A long term care pharmacy; and

15 “(c) An entity that provides or oversees administrative services for two  
16 or more pharmacies.

17 “[10] (11) ‘Pharmacy benefit’ means the payment for or reimbursement  
18 of an enrollee’s cost for prescription drugs.

19 “[11(a)] (12)(a) ‘Pharmacy benefit manager’ means a person that con-  
20 tracts with pharmacies on behalf of [*an insurer offering a health benefit plan,*  
21 *a third party administrator*] **an insurer, an employer who is self-insured,**  
22 **entities that accept risk, third-party payers of claims, coordinated care**  
23 **organizations, as defined in ORS 414.025,** or the Oregon Prescription Drug  
24 Program established in ORS 414.312 to:

25 “(A) Process claims for prescription drugs or medical supplies or provide  
26 retail network management for pharmacies or pharmacists;

27 “(B) Pay pharmacies or pharmacists for prescription drugs or medical  
28 supplies; [*or*]

29 “(C) Negotiate rebates, **discounts or other financial incentives or ar-**  
30 **rangements** with manufacturers for drugs paid for or procured as described

1 in this paragraph;

2 **“(D) Receive payments for pharmacy services;**

3 **“(E) Disburse or distribute rebates;**

4 **“(F) Manage or participate in incentive programs or arrangements**  
5 **with manufacturers of drugs;**

6 **“(G) Negotiate or enter into contracts with pharmacies;**

7 **“(H) Develop formularies;**

8 **“(I) Design pharmacy benefit programs; or**

9 **“(J) Advertise or promote pharmacy services.**

10 “(b) ‘Pharmacy benefit manager’ does not include a health care service  
11 contractor as defined in ORS 750.005.

12 **“(13) ‘Pharmacy services’ means the provision of products, goods**  
13 **or services in the course of the practice of pharmacy.**

14 “[12] (14) ‘Specialty drug’ means a drug that:

15 “(a) Is subject to restricted distribution by the United States Food and  
16 Drug Administration; or

17 “(b) Requires special handling, provider coordination or patient education  
18 that cannot be provided by a retail pharmacy.

19 “[13] (15) ‘Specialty pharmacy’ means a pharmacy capable of meeting the  
20 requirements applicable to specialty drugs.

21 “[14] (16) ‘Third party administrator’ means a person licensed under  
22 ORS 744.702.

23 “[15] (17) ‘340B pharmacy’ means a pharmacy that is authorized to pur-  
24 chase drugs at a discount under 42 U.S.C. 256b.

25 **“(18) ‘Wholesale acquisition cost’ has the meaning given that term**  
26 **in 42 U.S.C. 1395w-3a(c)(6)(B).”.**

27 On page 3, delete lines 36 through 45 and delete pages 4 and 5.

28 On page 6, delete lines 1 through 4 and insert:

29 **“SECTION 4. ORS 735.534 is amended to read:**

30 **“735.534. (1) As used in this section:**

1       “(a) ‘Critical access pharmacy’ means a pharmacy that is farther  
2 than 10 miles from any other pharmacy, as defined by the Oregon  
3 Health Authority by rule for purposes related to the Oregon Pre-  
4 scription Drug Program.

5       “[(a)(A)] (b)(A) ‘Generally available for purchase’ means a drug is avail-  
6 able for purchase in this state by a pharmacy from a national or regional  
7 wholesaler at the time a claim for reimbursement is submitted by a network  
8 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)] (c) ‘List’ means the list of drugs for which maximum allowable costs  
18 have been established.

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

21       “[(d)] (e) ‘Multiple source drug’ means a therapeutically equivalent drug  
22 that is available from at least two manufacturers.

23       “[(e)] (f) ‘Therapeutically equivalent’ has the meaning given that term in  
24 ORS 689.515.

25       “(2) A pharmacy benefit manager [*registered*] **licensed** under ORS 735.532:

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

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

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

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

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

8 “(A) Is electronic;

9 “(B) Is computer accessible and searchable;

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

12 “(D) For each drug specifies:

13 “(i) The national drug code; and

14 “(ii) The maximum allowable cost.

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

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

21 “(h) May not reimburse a 340B pharmacy differently than any other net-  
22 work pharmacy based on its status as a 340B pharmacy.

23 “(i) **Shall comply with the provisions of ORS 743A.062.**

24 “(j) **Shall pay a solo network pharmacy or a network pharmacy**  
25 **chain a professional dispensing fee in an amount no less than the**  
26 **dispensing fee established by the Oregon Health Authority by rule and**  
27 **reimburse the cost of the ingredients of the drug in an amount that**  
28 **is the lesser of the following, but in no event less than the fee-for-**  
29 **service rate paid by the authority in the medical assistance program:**

30 “(A) **The pharmacy’s usual charge to the public for the drug; and**

1       **“(B)(i) The Oregon Average Actual Acquisition Cost;**

2       **“(ii) If the drug is not on the Oregon Average Actual Acquisition**  
3 **Cost rates list, the National Average Drug Acquisition Cost published**  
4 **by the Centers for Medicare and Medicaid Services; or**

5       **“(iii) If the drug is not on the Oregon Average Actual Acquisition**  
6 **Cost rates list or the National Average Drug Acquisition Cost rates**  
7 **list, the wholesale acquisition cost.**

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

11       **“(A) Adjudicated claim was submitted fraudulently;**

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

15       **“(C) Services were improperly rendered by the pharmacy [or pharmacist;**  
16 **or] in violation of state or federal law.**

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

20       **“(3) Subsection [(2)(i)] (2)(k) of this section may not be construed to limit**  
21 **pharmacy claim audits under ORS 735.540 to 735.552.**

22       **“(4) A pharmacy benefit manager must establish a process by which a**  
23 **network pharmacy may appeal its reimbursement for a drug [subject to max-**  
24 **imum allowable cost pricing]. A network pharmacy may appeal [a maximum**  
25 **allowable cost if] the reimbursement for the drug if the reimbursement is**  
26 **less than the [net amount that the network pharmacy paid to the supplier of**  
27 **the drug] amount specified in subsection (2)(j) of this section.** The pro-  
28 cess must allow a network pharmacy a period of no less than 60 days after  
29 a claim is reimbursed in which to file the appeal. An appeal requested under  
30 this section must be completed within 30 calendar days of the pharmacy

1 making the claim for which appeal has been requested.

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

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

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

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

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

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

16 “(b) A final response to an appeal of [*a maximum allowable cost*] **the re-**  
17 **imbursement for a drug** within seven business days; and

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

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

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

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

27 “(b) If the request for an adjustment has come from a critical access  
28 pharmacy, [*as defined by the Oregon Health Authority by rule for purposes*  
29 *related to the Oregon Prescription Drug Program,*] the adjustment approved  
30 under paragraph (a) of this subsection shall apply only to critical access

1 pharmacies.

2 “[8] *This section does not apply to the state medical assistance program.*]

3 **“(8) A pharmacy may file a complaint with the Department of**  
4 **Consumer and Business Services to contest a finding of a pharmacy**  
5 **benefit manager in response to an appeal under subsection (4) of this**  
6 **section or a pharmacy benefit manager’s failure to comply with the**  
7 **provisions of this section.**

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

10 On page 7, delete lines 19 through 45.

11 On page 8, delete lines 1 through 7 and insert:

12 **“SECTION 7.** ORS 735.542 is amended to read:

13 “735.542. An entity that audits claims or an independent third party that  
14 contracts with an entity to audit claims:

15 “(1) Must establish, in writing, a procedure for a pharmacy to appeal the  
16 entity’s findings with respect to a claim and must provide a pharmacy with  
17 a notice regarding the procedure, in writing or electronically, prior to con-  
18 ducting an audit of the pharmacy’s claims;

19 **“(2) Must submit requests for records from a pharmacy for the**  
20 **purpose of an audit by:**

21 **“(a) Electronic mail; and**

22 **“(b) Facsimile or certified mail;**

23 “[2] (3) May not conduct an audit of a claim more than [24] **12** months  
24 after the date the claim was adjudicated by the entity;

25 “[3] (4) Must give at least 15 days’ advance written notice of an  
26 [on-site] audit to the pharmacy or corporate headquarters of the pharmacy  
27 **by electronic mail;**

28 “[4] (5) May not conduct an on-site audit during the first five days of  
29 any month without the pharmacy’s consent;

30 “[5] (6) Must conduct the audit in consultation with a pharmacist who



1 is licensed by this or another state if the audit involves clinical or profes-  
2 sional judgment;

3 “[~~(6)~~] **(7)** May not [*conduct an on-site*] audit, [*of more than 250 unique*  
4 *prescriptions of a pharmacy*] in any 12-month period, except in cases of al-  
5 leged fraud[;], **more than:**

6 **“(a) 250 unique prescriptions during an on-site audit; or**

7 **“(b) 250 unique prescriptions through a remote audit;**

8 “[~~(7)~~] **(8)** May not conduct more than one on-site audit of a pharmacy in  
9 any 12-month period;

10 **“(9) Must give a pharmacy at least 30 days to respond to an audit;**

11 “[~~(8)~~] **(10)** Must audit each pharmacy under the same standards and pa-  
12 rameters that the entity uses to audit other similarly situated pharmacies;

13 “[~~(9)~~] **(11)** Must pay any outstanding claims of a pharmacy no more than  
14 45 days after the earlier of the date all appeals are concluded or the date a  
15 final report is issued under ORS 735.550 (3);

16 “[~~(10)~~] **(12)** May not include dispensing fees or interest in the amount of  
17 any overpayment assessed on a claim unless the overpaid claim was for a  
18 prescription that was not filled correctly;

19 “[~~(11)~~] **(13)** May not recoup costs associated with:

20 **“(a)** Clerical errors; or

21 **“(b)** Other errors that do not result in financial harm to the entity or a  
22 consumer; and

23 “[~~(12)~~] **(14)** May not charge a pharmacy for a denied or disputed claim  
24 until the audit and the appeals procedure established under subsection (1)  
25 of this section are final.”.

26 In line 42, delete “or”.

27 Delete lines 43 through 45.

28 On page 9, delete line 1 and insert:

29 **“(e)** May not discriminate in the reimbursement of a prescription for 340B  
30 drugs from other prescription drugs;

1       “(f) May not assess a fee, chargeback, clawback or other adjustment for  
2 the dispensing of a 340B drug;

3       “(g) May not exclude a pharmacy from a pharmacy network on the basis  
4 that the pharmacy dispenses a 340B drug;

5       “(h) May not restrict the methods by which a 340B drug may be dispensed  
6 or delivered; or

7       “(i) May not restrict the number of pharmacies within a pharmacy net-  
8 work that may dispense or deliver 340B drugs.”.

9       After line 10, insert:

10       “(7) Notwithstanding ORS 750.055 (1)(h), this section does not apply to a  
11 health maintenance organization as defined in ORS 750.005.”.

12       In line 11, delete “(7)” and insert “(8)”.

13       On page 10, line 37, delete “or pharmacists”.

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