

Requested by Representative DEXTER

**PROPOSED AMENDMENTS TO
HOUSE BILL 4012**

1 On page 1 of the printed bill, line 3, after “ORS” insert “646.608,
2 735.533.”.

3 Delete lines 6 through 27.

4 On page 2, delete lines 1 through 27 and insert:

5 **“SECTION 2. (1) As used in this section:**

6 **“(a) ‘Participating pharmacy’ means a pharmacy or pharmacist**
7 **that:**

8 **“(A) Contracts with an insurer or a pharmacy benefit manager to**
9 **provide prescription drugs to enrollees in policies or certificates of**
10 **health insurance issued by the insurer or administered by the phar-**
11 **macy benefit manager; or**

12 **“(B) Is under the ownership or control of an insurer or pharmacy**
13 **benefit manager.**

14 **“(b) ‘Participating provider’ means a health care provider that**
15 **contracts with an insurer or a pharmacy benefit manager to provide**
16 **health care items or services to enrollees in policies or certificates of**
17 **health insurance issued by the insurer or administered by the phar-**
18 **macy benefit manager and any clinic, hospital outpatient department**
19 **or pharmacy under the common ownership or control of the health**
20 **care provider.**

21 **“(c) ‘Physician-administered drug’ means a prescription drug, other**

1 than a vaccine, that requires administration by a licensed or certified
2 health care provider and is not approved for self-administration.

3 “(2) An insurer offering a policy or certificate of health insurance
4 in this state that reimburses the cost of prescription drugs, or a
5 pharmacy benefit manager registered in this state, may not deny or
6 in any way restrict the coverage of a physician-administered drug that
7 is obtained by a participating provider from a pharmacy that is not a
8 participating pharmacy if the drug:

9 “(a) Is a covered prescription drug under the terms of the policy,
10 certificate or contract;

11 “(b) Is medically necessary; and

12 “(c) Meets supply chain security controls and chain of distribution
13 requirements of federal law.

14 “(3) An insurer or pharmacy benefit manager restricts the coverage
15 of a drug under subsection (2) of this section if the insurer or phar-
16 macy benefit manager:

17 “(a) Refuses to authorize coverage of the drug;

18 “(b) Imposes a restriction or condition on the coverage that does
19 not apply to prescription drugs obtained by the participating provider
20 from a participating pharmacy;

21 “(c) Pays less reimbursement than the reimbursement paid for the
22 drug when obtained by the participating provider from a participating
23 pharmacy; or

24 “(d) Imposes higher copayments or other out-of-pocket costs on
25 enrollees receiving the drug from a participating provider than are
26 imposed when the participating provider administers the same drug
27 obtained from a participating pharmacy.

28 “(4) Medical necessity criteria for coverage of a physician-
29 administered drug may not be based, in whole or in part, on the lo-
30 cation of the health care provider administering the drug.

1 **“(5) This section does not prohibit an insurer from establishing, for**
2 **enrollees, centers of excellence based on nationally recognized, objec-**
3 **tive quality measures that are centered on specific drug treatments**
4 **and designed to improve the safety, quality, affordability and expertise**
5 **in the administration of the treatment.**

6 **“(6) Any contract provision that is contrary to the provisions of this**
7 **section or that purports to waive the provisions of this section is void**
8 **and unenforceable.**

9 **“(7) Violation of this section is an unlawful practice under ORS**
10 **646.608.**

11 **“SECTION 3.** ORS 646.608, as amended by section 6, chapter 410, Oregon
12 Laws 2023, is amended to read:

13 “646.608. (1) A person engages in an unlawful practice if in the course of
14 the person’s business, vocation or occupation the person does any of the
15 following:

16 “(a) Passes off real estate, goods or services as the real estate, goods or
17 services of another.

18 “(b) Causes likelihood of confusion or of misunderstanding as to the
19 source, sponsorship, approval, or certification of real estate, goods or ser-
20 vices.

21 “(c) Causes likelihood of confusion or of misunderstanding as to affil-
22 iation, connection, or association with, or certification by, another.

23 “(d) Uses deceptive representations or designations of geographic origin
24 in connection with real estate, goods or services.

25 “(e) Represents that real estate, goods or services have sponsorship, ap-
26 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
27 the real estate, goods or services do not have or that a person has a spon-
28 sorship, approval, status, qualification, affiliation, or connection that the
29 person does not have.

30 “(f) Represents that real estate or goods are original or new if the real

1 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
2 secondhand.

3 “(g) Represents that real estate, goods or services are of a particular
4 standard, quality, or grade, or that real estate or goods are of a particular
5 style or model, if the real estate, goods or services are of another.

6 “(h) Disparages the real estate, goods, services, property or business of a
7 customer or another by false or misleading representations of fact.

8 “(i) Advertises real estate, goods or services with intent not to provide
9 the real estate, goods or services as advertised, or with intent not to supply
10 reasonably expectable public demand, unless the advertisement discloses a
11 limitation of quantity.

12 “(j) Makes false or misleading representations of fact concerning the
13 reasons for, existence of, or amounts of price reductions.

14 “(k) Makes false or misleading representations concerning credit avail-
15 ability or the nature of the transaction or obligation incurred.

16 “(L) Makes false or misleading representations relating to commissions
17 or other compensation to be paid in exchange for permitting real estate,
18 goods or services to be used for model or demonstration purposes or in ex-
19 change for submitting names of potential customers.

20 “(m) Performs service on or dismantles any goods or real estate if the
21 owner or apparent owner of the goods or real estate does not authorize the
22 service or dismantling.

23 “(n) Solicits potential customers by telephone or door to door as a seller
24 unless the person provides the information required under ORS 646.611.

25 “(o) In a sale, rental or other disposition of real estate, goods or services,
26 gives or offers to give a rebate or discount or otherwise pays or offers to pay
27 value to the customer in consideration of the customer giving to the person
28 the names of prospective purchasers, lessees, or borrowers, or otherwise
29 aiding the person in making a sale, lease, or loan to another person, if
30 earning the rebate, discount or other value is contingent upon an event oc-

1 curring after the time the customer enters into the transaction.

2 “(p) Makes any false or misleading statement about a prize, contest or
3 promotion used to publicize a product, business or service.

4 “(q) Promises to deliver real estate, goods or services within a certain
5 period of time with intent not to deliver the real estate, goods or services
6 as promised.

7 “(r) Organizes or induces or attempts to induce membership in a pyramid
8 club.

9 “(s) Makes false or misleading representations of fact concerning the of-
10 fering price of, or the person’s cost for real estate, goods or services.

11 “(t) Concurrent with tender or delivery of any real estate, goods or ser-
12 vices, fails to disclose any known material defect or material nonconformity.

13 “(u) Engages in any other unfair or deceptive conduct in trade or com-
14 merce.

15 “(v) Violates any of the provisions relating to auction sales, consignment
16 sales, auctioneers, consignees or auction marts under ORS 698.640, whether
17 in a commercial or noncommercial situation.

18 “(w) Manufactures mercury fever thermometers.

19 “(x) Sells or supplies mercury fever thermometers unless the thermometer
20 is required by federal law, or is:

21 “(A) Prescribed by a person licensed under ORS chapter 677; and

22 “(B) Supplied with instructions on the careful handling of the
23 thermometer to avoid breakage and on the proper cleanup of mercury should
24 breakage occur.

25 “(y) Sells a thermostat that contains mercury, unless the thermostat is
26 labeled in a manner to inform the purchaser that mercury is present in the
27 thermostat and that the thermostat may not be disposed of until the mercury
28 is removed, reused, recycled or otherwise managed to ensure that the mer-
29 cury does not become part of the solid waste stream or wastewater. For
30 purposes of this paragraph, ‘thermostat’ means a device commonly used to

1 sense and, through electrical communication with heating, cooling or venti-
2 lation equipment, control room temperature.

3 “(z) Sells or offers for sale a motor vehicle manufactured after January
4 1, 2006, that contains mercury light switches.

5 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

6 “(bb) Violates ORS 646A.070 (1).

7 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.

8 “(dd) Violates the provisions of ORS 128.801 to 128.898.

9 “(ee) Violates ORS 646.883 or 646.885.

10 “(ff) Violates ORS 646.569 or 646A.374.

11 “(gg) Violates the provisions of ORS 646A.142.

12 “(hh) Violates ORS 646A.360.

13 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

14 “(jj) Violates ORS 646.563.

15 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

16 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
17 rule adopted pursuant thereto.

18 “(mm) Violates ORS 646A.210 or 646A.214.

19 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

20 “(oo) Violates ORS 646A.095.

21 “(pp) Violates ORS 822.046.

22 “(qq) Violates ORS 128.001.

23 “(rr) Violates ORS 646A.800 (2) to (4).

24 “(ss) Violates ORS 646A.090 (2) to (5).

25 “(tt) Violates ORS 87.686.

26 “(uu) Violates ORS 646A.803.

27 “(vv) Violates ORS 646A.362.

28 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
29 646A.054.

30 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

1 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
2 cate under ORS 822.005.

3 “(zz) Violates ORS 87.007 (2) or (3).

4 “(aaa) Violates ORS 92.405 (1), (2) or (3).

5 “(bbb) Engages in an unlawful practice under ORS 646.648.

6 “(ccc) Violates ORS 646A.365.

7 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.

8 “(eee) Sells a gift card in violation of ORS 646A.276.

9 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

10 “(ggg) Violates ORS 646A.430 to 646A.450.

11 “(hhh) Violates a provision of ORS 744.318 to 744.384.

12 “(iii) Violates a provision of ORS 646A.702 to 646A.720.

13 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
14 or declaration described in ORS 646A.530 is issued for the children’s product,
15 as defined in ORS 646A.525, that is the subject of the violation.

16 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
17 697.682, 697.692 or 697.707.

18 “(LLL) Violates the consumer protection provisions of the
19 Servicemembers Civil Relief Act, 50 U.S.C. 3901 et seq., as in effect on Jan-
20 uary 1, 2010.

21 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.

22 “(nnn) Violates ORS 646A.082.

23 “(ooo) Violates ORS 646.647.

24 “(ppp) Violates ORS 646A.115.

25 “(qqq) Violates a provision of ORS 646A.405.

26 “(rrr) Violates ORS 646A.092.

27 “(sss) Violates a provision of ORS 646.644.

28 “(ttt) Violates a provision of ORS 646A.295.

29 “(uuu) Engages in the business of, or acts in the capacity of, an immi-
30 gration consultant, as defined in ORS 9.280, in this state and for compen-

1 sation, unless federal law authorizes the person to do so or unless the person
2 is an active member of the Oregon State Bar.

3 “(vvv) Violates ORS 702.012, 702.029 or 702.054.

4 “(www) Violates ORS 646A.806.

5 “(xxx) Violates ORS 646A.810 (2).

6 “(yyy) Violates ORS 443.376.

7 “(zzz) Violates a provision of ORS 646A.770 to 646A.787.

8 “(aaaa) Violates ORS 815.077.

9 “**(bbbb) Violates section 2 of this 2024 Act.**

10 “(2) A representation under subsection (1) of this section or ORS 646.607
11 may be any manifestation of any assertion by words or conduct, including,
12 but not limited to, a failure to disclose a fact.

13 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
14 to 646.652, a prosecuting attorney need not prove competition between the
15 parties or actual confusion or misunderstanding.

16 “(4) An action or suit may not be brought under subsection (1)(u) of this
17 section unless the Attorney General has first established a rule in accord-
18 ance with the provisions of ORS chapter 183 declaring the conduct to be
19 unfair or deceptive in trade or commerce.

20 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
21 646.652, if an action or suit is brought under subsection (1)(xx) of this section
22 by a person other than a prosecuting attorney, relief is limited to an in-
23 junction, and the prevailing party may be awarded reasonable attorney fees.

24 “**SECTION 4.** ORS 735.533 is amended to read:

25 “735.533. (1) In accordance with ORS chapter 183, the Department of
26 Consumer and Business Services may deny an application for registration
27 as a pharmacy benefit manager or an application for renewal of a registra-
28 tion as a pharmacy benefit manager, and may suspend or revoke a registra-
29 tion as a pharmacy benefit manager, if the department finds that an
30 applicant or registrant:

1 “(a) Falsified an application for registration or for the renewal of a reg-
2 istration or engaged in any dishonest act in relation to the application;

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

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

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

10 “(e) Had a certificate of authority or authority to conduct business as a
11 pharmacy benefit manager denied, revoked or suspended in another state;

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

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

17 “(h) Refused to be examined or to produce accounts, records or files for
18 examination, including the refusal by any officer of the applicant or regis-
19 trant to give information with respect to the affairs of the pharmacy benefit
20 manager, or refused to perform any other legal obligation with respect to an
21 examination by the department; or

22 “(i) Violated any rule or order of the department or any provision of the
23 Insurance Code, **including but not limited to section 2 of this 2024 Act.**

24 “(2) The department may prescribe by rule a procedure by which a phar-
25 macy or an entity acting on behalf of a pharmacy may file a complaint with
26 the department alleging that a pharmacy benefit manager has engaged in
27 conduct described in this section. The department may restrict the right of
28 a pharmacy or entity to file a complaint only to the extent necessary to
29 prevent abuse of the complaint process.”.

30 In line 28, delete “3” and insert “5”.

1 On page 3, line 40, delete “4” and insert “6”.

2 On page 5, line 16, delete “5” and insert “7”.

3 On page 6, line 11, delete “6” and insert “8” and after “ORS” insert
4 “646.608, 735.533.”.

5 In line 12, delete “5” and insert “7” and after “plans” delete the rest of
6 the line.

7 Delete line 13 and insert “issued, renewed or extended and contracts be-
8 tween pharmacy benefit managers and pharmacists entered into or extended,
9 on or after the”.

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