

Senate Bill 572

Sponsored by Senator HANSELL, Representative SMITH G; Senator LINTHICUM (at the request of Oregon State Pharmacy Coalition) (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**.

Imposes new requirements on pharmacy benefit managers registered in this state.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pharmacy benefit managers; creating new provisions; amending ORS 735.530 and 735.534;
3 and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 735.530 to**
6 **735.552.**

7 **SECTION 2. A pharmacy benefit manager registered in this state:**

8 (1) **May not require an enrollee to fill or refill prescriptions at a mail order pharmacy.**

9 (2) **May require drugs that are specialty drugs to be dispensed at a network pharmacy**
10 **that is a specialty pharmacy.**

11 (3) **May not require a specialty drug to be dispensed at a specialty pharmacy based on the**
12 **cost of the drug.**

13 (4) **Shall allow a network pharmacy to choose to mail, ship or deliver prescription drugs**
14 **to its patients.**

15 (5) **May not require a patient signature as proof of delivery of a mailed or shipped pre-**
16 **scription drug if the network pharmacy maintains a mailing or shipping log signed by a rep-**
17 **resentative of the pharmacy or maintains each notification of delivery provided by the United**
18 **States Postal Service or a package delivery service.**

19 (6) **May not impose unreasonable requirements with respect to specialty pharmacies that**
20 **seek to contract with the pharmacy benefit manager.**

21 (7) **May require a specialty pharmacy to be accredited by no more than one nationally**
22 **recognized accrediting body. A specialty pharmacy that has an accreditation from any na-**
23 **tionally recognized accrediting body must be considered to have met the requirement for**
24 **accreditation and a pharmacy benefit manager may not require additional accreditation.**

25 **SECTION 3. 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 is a beneficiary under a policy or certificate of**
30 **health insurance or covered by a self-insured health benefit plan for which a pharmacy ben-**
31 **efit manager reimburses claims submitted by pharmacies for the costs of prescription drugs.**

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 **(3)(a) “Generally available for purchase” means a drug is available for purchase by simi-**
 2 **larly situated pharmacies from a national or regional wholesaler at the time a claim for re-**
 3 **imbursement is submitted by a network pharmacy.**

4 **(b) A drug is not generally available for purchase if the drug:**

5 **(A) Must be dispensed at a hospital or in an institutional setting;**

6 **(B) Is available at a price that is at or below the maximum allowable cost only if pur-**
 7 **chased in quantities that materially exceed the dispensing needs of similarly situated phar-**
 8 **macies;**

9 **(C) Is available at a price that is at or below the maximum allowable cost only if pur-**
 10 **chased at a discount due to a short expiration date on the drug; or**

11 **(D) Is the subject of a recall notice.**

12 [(2)] **(4) “Insurer” has the meaning given that term in ORS 731.106.**

13 **(5) “List” means the list of drugs for which maximum allowable costs have been estab-**
 14 **lished.**

15 **(6) “Mail order pharmacy” means a pharmacy for which the primary business is to re-**
 16 **ceive prescriptions by mail, telephone or electronic transmission and dispense drugs to pa-**
 17 **tients through the use of the United States Postal Service, a package delivery service or**
 18 **home delivery.**

19 **(7) “Maximum allowable cost” means the maximum amount that a pharmacy benefit**
 20 **manager will reimburse a pharmacy for the cost of a drug.**

21 **(8) “Multiple source drug” means a therapeutically equivalent drug that is available from**
 22 **at least two manufacturers.**

23 **(9) “Network pharmacy” means a retail drug outlet registered under ORS 689.305 that**
 24 **contracts with a pharmacy benefit manager.**

25 [(3)] **(10) “Pharmacist” has the meaning given that term in ORS 689.005.**

26 [(4)] **(11) “Pharmacy” includes:**

27 **(a) A pharmacy as defined in ORS 689.005; and**

28 **(b) An entity that provides or oversees administrative services for two or more pharmacies.**

29 [(5)(a)] **(12)(a) “Pharmacy benefit manager” means a person that contracts with pharmacies on**
 30 **behalf of an insurer, a third party administrator or the Oregon Prescription Drug Program estab-**
 31 **lished in ORS 414.312 to:**

32 **(A) Process claims for prescription drugs or medical supplies or provide retail network man-**
 33 **agement for pharmacies or pharmacists;**

34 **(B) Pay pharmacies or pharmacists for prescription drugs or medical supplies; or**

35 **(C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this**
 36 **paragraph.**

37 **(b) “Pharmacy benefit manager” does not include a health care service contractor as defined in**
 38 **ORS 750.005.**

39 **(13) “Similarly situated pharmacies” means pharmacies that:**

40 **(a) Are located in this state;**

41 **(b) Are similar in size and in the same type of trade, such as independent, retail chain,**
 42 **supermarket, mass merchandiser, mail order or specialty; and**

43 **(c) Have contracted with a pharmacy benefit manager on the same terms.**

44 **(14) “Specialty drug” means a drug, regardless of cost:**

45 **(a) That requires difficult or unusual:**

- 1 (A) Preparation;
- 2 (B) Handling;
- 3 (C) Storage;
- 4 (D) Inventory; or
- 5 (E) Distribution;
- 6 (b) That has difficult or unusual data collection or administrative requirements associ-
- 7 ated with it;
- 8 (c) For which the United States Food and Drug Administration requires a Risk Evalu-
- 9 ation and Mitigation Strategy; or
- 10 (d) That requires a pharmacist to manage the patient’s use of the drug by:
- 11 (A) Monitoring; or
- 12 (B) Providing disease or therapeutic support systems.
- 13 (15) “Specialty pharmacy” means a pharmacy capable of meeting the requirements ap-
- 14 plicable to specialty drugs.
- 15 (16) “Therapeutically equivalent” has the meaning given that term in ORS 689.515.
- 16 [(6)] (17) “Third party administrator” means a person licensed under ORS 744.702.
- 17 (18) “Wholesale acquisition cost” has the meaning given that term in 42 U.S.C.
- 18 1395w-3a(c)(6)(B).
- 19 **SECTION 4.** ORS 735.534 is amended to read:
- 20 735.534. [(1) As used in this section:]
- 21 [(a) “List” means the list of drugs for which maximum allowable costs have been established.]
- 22 [(b) “Maximum allowable cost” means the maximum amount that a pharmacy benefit manager will
- 23 reimburse a pharmacy for the cost of a drug.]
- 24 [(c) “Multiple source drug” means a therapeutically equivalent drug that is available from at least
- 25 two manufacturers.]
- 26 [(d) “Network pharmacy” means a retail drug outlet registered under ORS 689.305 that contracts
- 27 with a pharmacy benefit manager.]
- 28 [(e) “Therapeutically equivalent” has the meaning given that term in ORS 689.515.]
- 29 [(2)] (1) A pharmacy benefit manager:
- 30 (a) May not place a drug on a list unless there are at least two [*therapeutically equivalent,*]
- 31 multiple source drugs, or at least one generic drug **generally available for purchase** [*from only one*
- 32 *manufacturer, generally available for purchase by network pharmacies from national or regional*
- 33 *wholesalers*].
- 34 (b) Shall ensure that all drugs on a list are generally available for purchase [*by pharmacies in*
- 35 *this state from national or regional wholesalers*].
- 36 (c) Shall ensure that [*all drugs*] **no drug** on a list [*are not*] **is** obsolete.
- 37 (d) Shall make available to each network pharmacy at the beginning of the term of a contract,
- 38 and upon renewal of a contract, the [*sources utilized*] **specific authoritative industry sources,**
- 39 **other than proprietary sources, the pharmacy benefit manager uses** to determine the maximum
- 40 allowable cost [*pricing of*] **set by** the pharmacy benefit manager.
- 41 (e) Shall make a list available to a network pharmacy upon request in a format that [*is readily*
- 42 *accessible to and usable by the network pharmacy*].:
- 43 (A) **Is electronic;**
- 44 (B) **Is computer accessible and searchable;**
- 45 (C) **Identifies all drugs for which maximum allowable costs have been established; and**

1 **(D) For each drug specifies:**

2 **(i) The national drug code;**

3 **(ii) The maximum allowable cost; and**

4 **(iii) The date and time when the maximum allowable cost goes into effect.**

5 (f) Shall update each list maintained by the pharmacy benefit manager every seven business days
6 and make the updated lists, including all changes in the price of drugs, available to network phar-
7 macies in [*a readily accessible and usable format*] **the format described in paragraph (e) of this**
8 **subsection.**

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

11 [(3)] **(2) A pharmacy benefit manager must establish a process by which a network pharmacy**
12 **may appeal** [*its reimbursement for a drug subject to maximum allowable cost pricing. A network*
13 *pharmacy may appeal a maximum allowable cost if the reimbursement for the drug is less than the net*
14 *amount that the network pharmacy paid to the supplier of the drug. An appeal requested under this*
15 *section must be completed within 30 calendar days of the pharmacy making the claim for which appeal*
16 *has been requested*] **the reimbursement paid by the pharmacy benefit manager if the re-**
17 **imbursement is less than the pharmacy's net cost of the drug as reflected on the invoice**
18 **from the supplier of the drug. The process must allow a pharmacy no less than 60 days after**
19 **the claim is reimbursed to file the appeal.**

20 **(3) A pharmacy benefit manager shall allow a network pharmacy to submit the doc-**
21 **umentation in support of its appeal in paper or electronically and may not:**

22 **(a) Refuse to accept an appeal submitted by a person acting on behalf of the network**
23 **pharmacy;**

24 **(b) Refuse to accept an appeal for the reason that the appeal is submitted along with**
25 **other claims or appeals; or**

26 **(c) Impose requirements or establish procedures that have the effect of unduly ob-**
27 **structing or delaying an appeal.**

28 (4) A pharmacy benefit manager must provide as part of the appeals process established under
29 subsection [(3)] (2) of this section:

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

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

33 (c) If the appeal is denied[,];

34 **(A) The reason for the denial and the national drug code of a multiple source drug or generic**
35 **drug that may be purchased by similarly situated pharmacies at a price that is** [*equal to or less*
36 *than*] **at or below the maximum allowable cost.**

37 **(B) If the reason for the denial is that the drug was generally available for purchase at**
38 **a price that was at or below the maximum allowable cost, the location where the drug was**
39 **available at that price when the claim for reimbursement was submitted by the network**
40 **pharmacy.**

41 (5)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall [*make an*
42 *adjustment for the pharmacy that requested the appeal from the date of initial adjudication forward*]:

43 **(A) Reimburse the network pharmacy's claim as submitted;**

44 **(B) Allow the network pharmacy to submit an adjusted claim and reimburse the adjusted**
45 **claim without any additional charges; and**

1 **(C) Increase the reimbursement to equal to the network pharmacy’s net cost of the drug,**
2 **as reflected on the invoice from the supplier of the drug, for all subsequent claims for the**
3 **drug by the network pharmacy and all similarly situated pharmacies under the same own-**
4 **ership, until the wholesale acquisition cost of the drug changes.**

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

9 (6) This section does not apply to the state medical assistance program.

10 **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 735.530 and 735.534**
11 **by sections 3 and 4 of this 2019 Act apply to contracts between pharmacies or pharmacists**
12 **and pharmacy benefit managers that are entered into, renewed or extended on or after the**
13 **effective date of this 2019 Act.**

14 **SECTION 6. This 2019 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
16 **on its passage.**

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