

Requested by SENATE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2185**

1 On page 1 of the printed A-engrossed bill, line 2, after “managers” insert
2 “; creating new provisions; and amending ORS 735.530 and 735.534”.

3 Delete lines 6 through 28 and delete page 2 and insert:

4 **“SECTION 2. (1) A pharmacy benefit manager registered under ORS**
5 **735.532:**

6 **“(a) May not require an enrollee to fill or refill prescriptions at a**
7 **mail order pharmacy.**

8 **“(b) May require an enrollee to fill or refill a prescription for a**
9 **specialty drug at a specialty pharmacy.**

10 **“(c) Shall allow a pharmacy or pharmacist to provide an enrollee**
11 **information regarding the enrollee’s cost share for a prescription drug**
12 **and, if available, the clinical efficacy of a lower cost alternative drug.**

13 **“(d) May not prohibit an enrollee who is residing in a long term**
14 **care facility from filling or refilling prescription drugs at a pharmacy**
15 **that contracts with the long term care facility to dispense drugs for**
16 **the residents of the facility unless the prescription is for a drug that:**

17 **“(A) The contracted pharmacy is not legally authorized to dispense;**
18 **or**

19 **“(B) The pharmacist at the pharmacy is not properly trained to**
20 **dispense.**

21 **“(e)(A) Shall allow a network pharmacy to choose to mail, ship or**

1 deliver prescription drugs to its patients.

2 “(B) May not require a patient signature as proof of delivery of a
3 mailed or shipped prescription drug if the network pharmacy main-
4 tains a mailing or shipping log signed by a representative of the
5 pharmacy or maintains each notification of delivery provided by the
6 United States Postal Service or a package delivery service.

7 “(f) May require a specialty pharmacy, as a condition of contract-
8 ing, to be accredited by no more than two of the following independent
9 organizations or their successor organizations:

10 “(A) URAC;

11 “(B) The Joint Commission;

12 “(C) The Accreditation Commission for Health Care;

13 “(D) The Center for Pharmacy Practice Accreditation; or

14 “(E) The National Committee for Quality Assurance.

15 “(2) The Department of Consumer and Business Services shall adopt
16 rules to carry out the provisions of this section.

17 **“SECTION 3. (1) An enrollee has the right to be educated by a**
18 **pharmacy or pharmacist about all means available to the enrollee to**
19 **reduce the enrollee’s costs for a drug prescribed for the enrollee in-**
20 **cluding, but not limited to:**

21 “(a) Receiving information about the cost and efficacy of any less
22 costly alternative drug;

23 “(b) Being informed that the enrollee may purchase a prescription
24 drug directly when the enrollee’s out-of-pocket cost for the drug is
25 greater than the pharmacy’s retail price for the drug; and

26 “(c) Being informed that if an enrollee pays the retail price for a
27 drug, the price paid must be applied toward the enrollee’s deductible
28 or out-of-pocket maximum as provided in subsection (2) of this sec-
29 tion.

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

1 “(a) May not, by contract with a pharmacy or pharmacist or by
2 penalty imposed on a pharmacy or pharmacist, interfere with the right
3 of enrollees established in subsection (1) of this section.

4 “(b) Shall apply toward any deductible or out-of-pocket maximum
5 imposed under a pharmacy benefit the retail price paid by an enrollee
6 to purchase a prescription drug covered by the pharmacy benefit.

7 “(3) As used in this section, ‘out-of-pocket cost’ means the amount
8 paid by an enrollee under a pharmacy benefit administered by a
9 pharmacy benefit manager including deductibles, copayments,
10 coinsurance or other expense as prescribed by the Department of
11 Consumer and Business Services by rule.

12 “(4) The department shall adopt rules to carry out the provisions
13 of this section.

14 “**SECTION 4.** ORS 735.530 is amended to read:

15 “735.530. As used in ORS 735.530 to 735.552:

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

19 “(2) ‘Enrollee’ means an individual who is a beneficiary under a
20 policy or certificate of health insurance or covered by a self-insured
21 health benefit plan for which a pharmacy benefit manager reimburses
22 claims submitted by pharmacies or pharmacists for the costs of pre-
23 scription drugs.

24 “[(2)] (3) ‘Insurer’ has the meaning given that term in ORS 731.106.

25 “(4) ‘Mail order pharmacy’ means a pharmacy for which the pri-
26 mary business is to receive prescriptions by mail, telephone or elec-
27 tronic transmission and dispense drugs to patients through the use of
28 the United States Postal Service, a package delivery service or home
29 delivery.

30 “(5) ‘Network pharmacy’ means a retail drug outlet registered un-

1 **der ORS 689.305 that contracts with a pharmacy benefit manager.**

2 “[3] (6) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

3 “[4] (7) ‘Pharmacy’ includes:

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

5 “(b) An entity that provides or oversees administrative services for two
6 or more pharmacies.

7 **“(8) ‘Pharmacy benefit’ means the payment for or reimbursement**
8 **of an individual’s cost for prescription drugs under a policy or certif-**
9 **icate of health insurance or a self-insured health benefit plan admin-**
10 **istered by a pharmacy benefit manager.**

11 “[5(a)] (9)(a) ‘Pharmacy benefit manager’ means a person that contracts
12 with pharmacies **or pharmacists** on behalf of an insurer, a third party ad-
13 ministrator, **a self-insured health benefit plan** or the Oregon Prescription
14 Drug Program established in ORS 414.312 to:

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

17 “(B) Pay pharmacies or pharmacists for prescription drugs or medical
18 supplies; or

19 “(C) Negotiate rebates with manufacturers for drugs paid for or procured
20 as described in this paragraph.

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

23 **“(10) ‘Specialty drug’ means a drug that meets two or more of the**
24 **following criteria:**

25 **“(a) A drug that cannot be routinely dispensed at a majority of local**
26 **retail drug outlets, as defined in ORS 689.005.**

27 **“(b) A drug that is designated by the United States Food and Drug**
28 **Administration as a drug for a rare disease or condition under 21**
29 **U.S.C. 360bb.**

30 **“(c) A drug that requires:**

1 **“(A) A difficult or unusual method of delivery to a patient;**

2 **“(B) The pharmacy or pharmacist to manage the patient’s adher-**
3 **ence to the drug regimen; and**

4 **“(C) The pharmacy or pharmacist to provide therapeutic support to**
5 **the patient prior to or following the administration of the drug.**

6 **“(11) ‘Specialty pharmacy’ means a pharmacy capable of meeting**
7 **the requirements applicable to specialty drugs.**

8 **“[(6)] (12) ‘Third party administrator’ means a person licensed under ORS**
9 **744.702.**

10 **“(13) ‘340B pharmacy’ means a pharmacy that is authorized to pur-**
11 **chase drugs at a discount under 42 U.S.C. 256b.**

12 **“SECTION 5. ORS 735.534 is amended to read:**

13 **“735.534. (1) As used in this section:**

14 **“(a)(A) ‘Generally available for purchase’ means a drug is available**
15 **for purchase by similarly situated pharmacies from a national or re-**
16 **gional wholesaler at the time a claim for reimbursement is submitted**
17 **by a network pharmacy.**

18 **“(B) A drug is not generally available for purchase if the drug:**

19 **“(i) Is dispensed by an institutional drug outlet, as defined in ORS**
20 **689.005;**

21 **“(ii) Is available at a price that is at or below the maximum allow-**
22 **able cost only if purchased in quantities that materially exceed the**
23 **dispensing needs of similarly situated pharmacies;**

24 **“(iii) Is available at a price that is at or below the maximum al-**
25 **lowable cost only if purchased at a discount due to a short expiration**
26 **date on the drug; or**

27 **“(iv) Is the subject of a recall notice.**

28 **“[(a)] (b) ‘List’ means the list of drugs for which maximum allowable**
29 **costs have been established.**

30 **“[(b)] (c) ‘Maximum allowable cost’ means the maximum amount that a**

1 pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

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

4 “[(d)] ‘Network pharmacy’ means a retail drug outlet registered under ORS
5 689.305 that contracts with a pharmacy benefit manager.]

6 “(e) ‘Similarly situated pharmacies’ means pharmacies that:

7 “(A) Are located in this state;

8 “(B) Are similar in size and in the same type of trade, such as in-
9 dependent, retail chain, supermarket, mass merchandiser, mail order
10 or specialty; and

11 “(C) Have contracted with a pharmacy benefit manager on the same
12 terms.

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

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

16 “(a) May not place a drug on a list unless there are at least two
17 [*therapeutically equivalent,*] multiple source drugs, or at least one generic
18 drug **generally available for purchase** [*from only one manufacturer, gener-
19 ally available for purchase by network pharmacies from national or regional
20 wholesalers*].

21 “(b) Shall ensure that all drugs on a list are generally available for pur-
22 chase [*by pharmacies in this state from national or regional wholesalers*].

23 “(c) Shall ensure that [*all drugs*] **no drug** on a list [*are not*] **is** obsolete.

24 “(d) Shall make available to each network pharmacy at the beginning of
25 the term of a contract, and upon renewal of a contract, the [*sources
26 utilized*] **specific authoritative industry sources, other than proprietary
27 sources, the pharmacy benefit manager uses** to determine the maximum
28 allowable cost [*pricing of*] **set by** the pharmacy benefit manager.

29 “(e) Shall make a list available to a network pharmacy upon request in
30 a format that [*is readily accessible to and usable by the network pharmacy*].:

1 **“(A) Is electronic;**
2 **“(B) Is computer accessible and searchable;**
3 **“(C) Identifies all drugs for which maximum allowable costs have**
4 **been established; and**

5 **“(D) For each drug specifies:**
6 **“(i) The national drug code;**
7 **“(ii) The maximum allowable cost; and**
8 **“(iii) The date and time when the maximum allowable cost goes into**
9 **effect.**

10 “(f) Shall update each list maintained by the pharmacy benefit manager
11 every seven business days and make the updated lists, including all changes
12 in the price of drugs, available to network pharmacies in [*a readily accessible*
13 *and usable format*] **the format described in paragraph (e) of this sub-**
14 **section.**

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

17 **“(h) May not reimburse a 340B pharmacy for dispensing a pre-**
18 **scription drug at a rate that is lower than the rate paid to other net-**
19 **work pharmacies for dispensing the prescription drug.**

20 **“(i) May not charge a remuneration fee to a pharmacy after adju-**
21 **dicating a claim or attempt to recoup a remuneration fee that was**
22 **paid to a pharmacy at the time a claim was initially adjudicated unless**
23 **the pharmacy benefit manager provides the pharmacy evidence of**
24 **fraud or intentional misrepresentation related to the claim that re-**
25 **sulted in financial harm to the enrollee or insurer.**

26 “(3) A pharmacy benefit manager must establish a process by which a
27 network pharmacy may appeal [*its reimbursement for a drug subject to max-*
28 *imum allowable cost pricing. A network pharmacy may appeal a maximum*
29 *allowable cost if the reimbursement for the drug is less than the net amount*
30 *that the network pharmacy paid to the supplier of the drug. An appeal re-*

1 *requested under this section must be completed within 30 calendar days of the*
2 *pharmacy making the claim for which appeal has been requested]* **the re-**
3 **imbursement paid by the pharmacy benefit manager if the reimburse-**
4 **ment is less than the pharmacy's net cost of the drug as reflected on**
5 **the invoice from the supplier of the drug. The process must allow a**
6 **pharmacy no less than 60 days after the claim is reimbursed to file the**
7 **appeal.**

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

11 “(a) Refuse to accept an appeal submitted by a person acting on
12 behalf of the network pharmacy;

13 “(b) Refuse to accept an appeal for the reason that the appeal is
14 submitted along with other claims or appeals; or

15 “(c) Impose requirements or establish procedures that have the ef-
16 fect of unduly obstructing or delaying an appeal.

17 “[~~(4)~~] (5) A pharmacy benefit manager must provide as part of the appeals
18 process established under subsection (3) of this section:

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

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

24 “(c) If the appeal is denied[,]:

25 “(A) The reason for the denial and the national drug code of a **multiple**
26 **source drug or generic** drug that may be purchased by similarly situated
27 pharmacies at a price that is [*equal to or less than*] **at or below** the maxi-
28 mum allowable cost.

29 “(B) **If the reason for the denial is that the drug was generally**
30 **available for purchase at a price that was at or below the maximum**

1 **allowable cost, the location where the drug was available at that price**
2 **when the claim for reimbursement was submitted by the network**
3 **pharmacy.**

4 “[5)(a)] **(6)(a)** If an appeal is upheld under this section, the pharmacy
5 benefit manager shall [*make an adjustment for the pharmacy that requested*
6 *the appeal from the date of initial adjudication forward*]:

7 **“(A) Reimburse the network pharmacy’s claim as submitted;**

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

10 **“(C) For all subsequent claims for reimbursement of the cost of the**
11 **drug submitted by the network pharmacy and all similarly situated**
12 **pharmacies under the same ownership as the network pharmacy, pay**
13 **the pharmacy’s net cost for the drug as reflected on the invoice from**
14 **the supplier of the drug.**

15 **“(b)** If the request for an adjustment has come from a critical access
16 pharmacy, as defined by the Oregon Health Authority by rule for purposes
17 related to the Oregon Prescription Drug Program, the adjustment approved
18 under paragraph (a) of this subsection shall apply only to critical access
19 pharmacies.

20 “[6)] **(7)** This section does not apply to the state medical assistance pro-
21 gram.

22 **“(8) The Department of Consumer and Business Services shall adopt**
23 **rules to carry out the provisions of this section.**

24 **“SECTION 6. Sections 2 and 3 of this 2019 Act and the amendments**
25 **to ORS 735.534 by section 5 of this 2019 Act apply to pharmacy benefits**
26 **and to contracts between pharmacies or pharmacists and pharmacy**
27 **benefit managers entered into, renewed or extended on or after the**
28 **effective date of this 2019 Act.”.**

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