

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 In line 4, delete “sections 2 and 3 of this 2019 Act are” and insert “section
4 2 of this 2019 Act is”.

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

6 **“SECTION 2. (1) As used in this section, ‘out-of-pocket cost’ means**
7 **the amount paid by an enrollee under the enrollee’s coverage, includ-**
8 **ing deductibles, copayments, coinsurance or other expenses as pre-**
9 **scribed by the Department of Consumer and Business Services by rule.**

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

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

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

15 **“(c) Shall allow an enrollee who is residing in a long term care fa-**
16 **cility to fill or refill a prescription at a pharmacy that contracts with**
17 **the long term care facility to dispense drugs for the residents of the**
18 **facility if:**

19 **“(A) The contracted pharmacy is legally authorized to dispense; or**

20 **“(B) The pharmacist at the pharmacy is properly trained to dis-**
21 **pense.**

1 “(d)(A) Except for a specialty pharmacy as provided in paragraph
2 (b) of this subsection, shall allow a network pharmacy to mail, ship
3 or deliver prescription drugs to its patients.

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

9 “(C) Is not required to reimburse a delivery fee charged by a phar-
10 macy for a delivery described in subparagraph (A) of this paragraph
11 unless the fee is specified in the contract between the pharmacy ben-
12 efit manager and the pharmacy.

13 “(e) May not penalize a network pharmacy for or otherwise directly
14 or indirectly prevent a network pharmacy from informing an enrollee
15 of the difference between the out-of-pocket cost to the enrollee to
16 purchase a prescription drug using the enrollee’s pharmacy benefit
17 and the pharmacy’s retail price for the prescription drug.

18 “(3) The Department of Consumer and Business Services shall adopt
19 rules to carry out the provisions of this section.

20 “SECTION 3. ORS 735.530 is amended to read:

21 “735.530. As used in ORS 735.530 to 735.552:

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

25 “(2) ‘Enrollee’ means an individual who is a beneficiary under a
26 policy or certificate of health insurance, a multiple employer welfare
27 arrangement or a health care service contract or is covered by a self-
28 insured health benefit plan for which a pharmacy benefit manager
29 reimburses claims submitted by pharmacies or pharmacists for the
30 costs of prescription drugs.

1 **“(3) ‘Health care service contract’ means the coverage offered by a**
2 **health care service contractor as defined in ORS 750.005.**

3 “[(2)] (4) ‘Insurer’ has the meaning given that term in ORS 731.106.

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

9 **“(6) ‘Multiple employer welfare arrangement’ has the meaning**
10 **given that term in ORS 750.301.**

11 **“(7) ‘Network pharmacy’ means a retail drug outlet registered un-**
12 **der ORS 689.305 that contracts with a pharmacy benefit manager.**

13 “[(3)] (8) ‘Pharmacist’ has the meaning given that term in ORS 689.005.

14 “[(4)] (9) ‘Pharmacy’ includes:

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

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

18 **“(10) ‘Pharmacy benefit’ means the payment for or reimbursement**
19 **of an enrollee’s cost for prescription drugs.**

20 “[(5)(a)] (11)(a) ‘Pharmacy benefit manager’ means a person that contracts
21 with pharmacies **or pharmacists** on behalf of an insurer, third party ad-
22 ministrator, **a multiple employer welfare arrangement, a health care**
23 **service contractor, as defined in ORS 750.005, a person offering a self-**
24 **insured health benefit plan** or the Oregon Prescription Drug Program es-
25 tablished in ORS 414.312 to:

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

28 “(B) Pay pharmacies or pharmacists for prescription drugs or medical
29 supplies; or

30 “(C) Negotiate rebates with manufacturers for drugs paid for or procured

1 as described in this paragraph.

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

4 **“(12) ‘Specialty drug’ means a drug that meets two or more of the
5 following criteria:**

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

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

11 **“(c) A drug that requires:**

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

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

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

17 **“(13) ‘Specialty pharmacy’ means a pharmacy capable of meeting
18 the requirements applicable to specialty drugs.**

19 **“[(6)] (14) ‘Third party administrator’ means a person licensed under ORS
20 744.702.**

21 **“(15) ‘340B pharmacy’ means a pharmacy that is authorized to pur-
22 chase drugs at a discount under 42 U.S.C. 256b.**

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

24 **“735.534. (1) As used in this section:**

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

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

30 **“(i) Is dispensed by an institutional drug outlet, as defined in ORS**

1 **689.005;**

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

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

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

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

11 “[*b*] **(c)** ‘Maximum allowable cost’ means the maximum amount that a
12 pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

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

15 “[*d*] ‘*Network pharmacy*’ means a retail drug outlet registered under ORS
16 689.305 that contracts with a pharmacy benefit manager.]

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

18 **“(A) Are located in this state;**

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

22 **“(C) Have contracted with a pharmacy benefit manager on the same**
23 **terms.**

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

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

27 **“(a) May not place a drug on a list unless there are at least two**
28 **[*therapeutically equivalent*,] multiple source drugs, or at least one generic**
29 **drug generally available for purchase [from only one manufacturer, gener-**
30 **ally available for purchase by network pharmacies from national or regional**

1 *wholesalers*].

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

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

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

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

12 “(A) **Is electronic;**

13 “(B) **Is computer accessible and searchable;**

14 “(C) **Identifies all drugs for which maximum allowable costs have**
15 **been established; and**

16 “(D) **For each drug specifies:**

17 “(i) **The national drug code;**

18 “(ii) **The maximum allowable cost; and**

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

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

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

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

1 “(i) May not retroactively deny or reduce a claim for reimburse-
2 ment of the cost of services after the claim has been adjudicated by
3 the pharmacy benefit manager unless the:

4 “(A) Adjudicated claim was submitted fraudulently;

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

8 “(C) Services were improperly rendered by the pharmacy or
9 pharmacist; or

10 “(D) The pharmacy or pharmacist agrees to the denial or reduction
11 prior to the pharmacy benefit manager notifying the pharmacy or
12 pharmacist that the claim has been denied or reduced.

13 “(3) Subsection (2)(i) of this section may not be construed to limit
14 pharmacy claim audits under ORS 735.540 to 735.552.

15 “[(3)] (4) A pharmacy benefit manager must establish a process by which
16 a network pharmacy may appeal *[its reimbursement for a drug subject to*
17 *maximum allowable cost pricing. A network pharmacy may appeal a maximum*
18 *allowable cost if the reimbursement for the drug is less than the net amount*
19 *that the network pharmacy paid to the supplier of the drug. An appeal re-*
20 *quested under this section must be completed within 30 calendar days of the*
21 *pharmacy making the claim for which appeal has been requested]* **the re-**
22 **imbursement paid by the pharmacy benefit manager if the reimburse-**
23 **ment is less than the pharmacy’s net cost of the drug as reflected on**
24 **the invoice from the supplier of the drug. The process must allow a**
25 **pharmacy no less than 60 days after the claim is reimbursed to file the**
26 **appeal.**

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

30 “(a) Refuse to accept an appeal submitted by a person acting on

1 **behalf of the network pharmacy;**

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

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

6 **“[(4)] (6) A pharmacy benefit manager must provide as part of the appeals**
7 **process established under subsection [(3)] (4) of this section:**

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

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

13 **“(c) If the appeal is denied[,]:**

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

18 **“(B) If the reason for the denial is that the drug was generally**
19 **available for purchase at a price that was at or below the maximum**
20 **allowable cost, the location where the drug was available at that price**
21 **when the claim for reimbursement was submitted by the network**
22 **pharmacy.**

23 **“[(5)(a)] (7)(a) If an appeal is upheld under this section, the pharmacy**
24 **benefit manager shall [make an adjustment for the pharmacy that requested**
25 **the appeal from the date of initial adjudication forward]:**

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

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

29 **“(C) For all subsequent claims for reimbursement of the cost of the**
30 **drug submitted by the network pharmacy and all similarly situated**

1 **pharmacies under the same ownership as the network pharmacy, pay**
2 **the pharmacy's net cost for the drug as reflected on the invoice from**
3 **the supplier of the drug.**

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

9 “[~~(6)~~] (8) This section does not apply to the state medical assistance pro-
10 gram.

11 “(9) The Department of Consumer and Business Services shall adopt
12 rules to carry out the provisions of this section.

13 **“SECTION 5. Section 2 of this 2019 Act and the amendments to ORS**
14 **735.530 and 735.534 by sections 3 and 4 of this 2019 Act apply to phar-**
15 **macy benefits and to contracts between pharmacies or pharmacists**
16 **and pharmacy benefit managers entered into, renewed or extended on**
17 **or after the effective date of this 2019 Act.”.**

18
