SB 872-12
(LC 1366)
6/17/19 (LHF/ps)

Requested by JOINT COMMITTEE ON WAYS AND MEANS

PROPOSED AMENDMENTS TO
SENATE BILL 872

On page 1 of the printed bill, line 3, after "442.466," insert "735.533, 743.018, 743.020," and delete "section 2" and insert "sections 2, 3, 5, 11 and 12".

On page 2, line 7, after "state" insert "while preserving the exemption of trade secrets from disclosure under Oregon laws requiring the disclosure of public records and reports".

Delete lines 12 through 45 and delete pages 3 and 4.

On page 5, delete lines 1 through 25 and insert:

"**SECTION 1.** Section 2, chapter 7, Oregon Laws 2018, as amended by sections 6 and 7, chapter 7, Oregon Laws 2018, is amended to read:

"**Sec. 2.** (1) As used in this section:

"(a) 'Drug' has the meaning given that term in ORS 689.005.

"(b) 'Health care facility' has the meaning given that term in ORS 442.015.

"(c) 'Health care service contractor' has the meaning given that term in ORS 750.005.

"(d)(A) 'Manufacture' means:

"(i) The production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and

"(ii) The packaging or repackaging of a drug or labeling or relabeling of

a drug container.

"(B) 'Manufacture' does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug:

"(i) By a health care practitioner incidental to administering or dispensing a drug in the course of professional practice;

"(ii) By a health care practitioner or at the practitioner's authorization and supervision for the purpose of or incidental to research, teaching or chemical analysis activities and not for sale;

"(iii) By a health care service contractor for dispensing to a subscriber or delivery to a health care facility or outpatient clinic owned or operated by the health care service contractor or an affiliate of the health care service contractor;

"(iv) By a centralized repackaging operation for distribution to subscribers of health care service contractors or to pharmacies, health care facilities or outpatient clinics operated by or affiliated with a health care service contractor; or

"(v) By a health care facility for dispensing to a patient or other person.

"(e) 'Manufacturer' means a person that manufactures a prescription drug that is sold in this state.

"(f) 'New prescription drug' has the meaning prescribed by the Department of Consumer and Business Services by rule.

"(g) 'Patient assistance program' means a program that a manufacturer offers to the general public in which a consumer may reduce the consumer's out-of-pocket costs for prescription drugs by using coupons or discount cards, receiving copayment assistance or by other means.

"(h) 'Prescription drug' means a drug that must:

"(A) Under federal law, be labeled 'Caution: Federal law prohibits dispensing without prescription' prior to being dispensed or delivered; or

"(B) Under any applicable federal or state law or regulation, be dispensed

only by prescription or restricted to use only by health care practitioners.

"(i) 'Price' means the wholesale acquisition cost as defined in 42 U.S.C. 1395w-3a(c)(6)(B).

"**(j) 'Rebate' means a retroactive abatement, credit, discount or refund usually provided as consideration for a specified volume of business.**

"(2) No later than March 15 of each year, a manufacturer shall report the information described in subsection (3) of this section to the department regarding each prescription drug for which:

"(a) The price was $100 or more for a one-month supply or for a course of treatment lasting less than one month; and

"(b)**(A)** There was a [*net*] **cumulative** increase of 10 percent or more in the price of the prescription drug [*described in paragraph (a) of this subsection*] over the course of the previous calendar year**; or**

"(B) During the previous calendar year, one or more increases in the price of the drug resulted in the price being at least 10 percent higher than the price of the drug at any other time during the calendar year.

"(3) For each prescription drug described in subsection (2) of this section, a manufacturer shall report to the department, in the form and manner prescribed by the department:

"(a) The name and price of the prescription drug and the [*net*] **cumulative** increase, expressed as a percentage, in the price of the drug over the course of the previous calendar year;

"(b) The length of time the prescription drug has been on the market;

"(c) The factors that contributed to the price increase;

"(d) The name of any generic version of the prescription drug available on the market;

"(e) The research and development costs associated with the prescription drug that were paid using public funds;

"(f) The direct costs incurred by the manufacturer:

"(A) To manufacture the prescription drug;

"(B) To market the prescription drug;

"(C) To distribute the prescription drug; and

"(D) For ongoing safety and effectiveness research associated with the prescription drug;

"(g) The total sales revenue for the prescription drug during the previous calendar year;

"(h) The manufacturer's profit attributable to the prescription drug during the previous calendar year;

"(i) The introductory price of the prescription drug when it was approved for marketing by the United States Food and Drug Administration and the net yearly increase, by calendar year, in the price of the prescription drug during the previous five years;

"(j) The 10 highest prices paid for the prescription drug during the previous calendar year in any country other than the United States;

"(k) Any other information that the manufacturer deems relevant to the price increase described in subsection (2)(b) of this section; and

"(L) The documentation necessary to support the information reported under this subsection.

"(4) The department may use any prescription drug price information the department deems appropriate to verify that manufacturers have properly reported price increases as required by subsections (2) and (3) of this section.

"(5) A manufacturer shall accompany the [*report*] **reports** provided under [*subsection (2)*] **subsections (2) and (6)** of this section with**:**

"(a) The following information about each patient assistance program offered by the manufacturer to consumers residing in this state for the prescription drugs described in subsection (2) of this section:

"[*(a)*] **(A)** The number of consumers who participated in the program;

"[*(b)*] **(B)** The total value of the coupons, discounts, copayment assistance

or other reduction in costs provided to consumers in this state who participated in the program;

"**(C) The total amount of money spent on the program by the manufacturer;**

"[*(c)*] **(D)** For each drug, the number of refills that qualify for the program, if applicable;

"[*(d)*] **(E)** If the program expires after a specified period of time, the period of time that the program is available to each consumer; and

"[*(e)*] **(F)** The eligibility criteria for the program and how eligibility is verified for accuracy[.]**;**

"(b) Information, as prescribed by the department by rule, regarding any financial assistance, other than rebates, incentives and discounts, provided by the manufacturer to pharmacies, government agencies or patient advocacy organizations; and

"(c) The total amount of financial incentives, as defined by the department by rule, paid to each pharmacy benefit manager, as defined in ORS 735.530, that administers a pharmacy benefit for residents of this state. The report shall include but is not limited to financial incentives based on:

"(A) The percentage of enrollees whose benefits are administered by the pharmacy benefit manager who are prescribed the manufacturer's drugs; and

"(B) The extent to which a manufacturer's drugs have a preferred or exclusive status on the prescription drug formulary administered by the pharmacy benefit manager.

"(6) No later than 30 days after a manufacturer introduces a new prescription drug for sale in the United States at a price that exceeds the threshold established by the Centers for Medicare and Medicaid Services for specialty drugs in the Medicare Part D program, the manufacturer shall notify the department, in the form and manner prescribed by the department,

of all the following information:

"(a) A description of the marketing used in the introduction of the new prescription drug;

"(b) The methodology used to establish the price of the new prescription drug;

"(c) Whether the United States Food and Drug Administration granted the new prescription drug a breakthrough therapy designation or a priority review;

"(d) If the new prescription drug was not developed by the manufacturer, the date of and the price paid for acquisition of the new prescription drug by the manufacturer;

"(e) The manufacturer's estimate of the average number of patients who will be prescribed the new prescription drug each month; and

"(f) The research and development costs associated with the new prescription drug that were paid using public funds.

"(7)(a) After receiving the report or information described in subsections (2), (3), (5) or (6) of this section, the department may make a written request to the manufacturer for supporting documentation or additional information concerning the report. The department shall prescribe by rule the periods:

"(A) Following the receipt of the report or information during which the department may request additional information; and

"(B) Following a request by the department for additional information during which a manufacturer may respond to the request.

"(b) The department may extend the period prescribed under paragraph (a)(B) of this subsection, as necessary, on a case-by-case basis.

"(8) A manufacturer may be subject to a civil penalty, as provided in section 3 [*of this 2018 Act*]**, chapter 7, Oregon Laws 2018**, for:

"(a) Failing to submit timely reports or notices as required by this section;

"(b) Failing to provide information required under this section;

"(c) Failing to respond in a timely manner to a written request by the department for additional information under subsection (7) of this section; or

"(d) Providing inaccurate or incomplete information under this section.

"(9) Except as provided in subsection (10) of this section, the department shall post to its website all of the following information:

"(a) A list of the prescription drugs reported under subsection (2) of this section and the manufacturers of those prescription drugs;

"(b) Information reported to the department under subsections (3) and (5) to (7) of this section; and

"(c) Written requests by the department for additional information under subsection (7) of this section.

"(10)(a) The department may not post to its website any information described in subsection (9) of this section if:

"(A) The information is conditionally exempt from disclosure under ORS 192.345 as a trade secret; and

"(B) The public interest does not require disclosure of the information.

"(b) If the department withholds any information from public disclosure pursuant to this subsection, the department shall post to its website a report describing the nature of the information and the department's basis for withholding the information from disclosure.

"[*(c)*] **(11)(a)** A person may petition the Attorney General, as provided in ORS 192.411, to review a decision by the department to withhold information pursuant to [*paragraph (a)*] **subsection (10)(a)** of this [*subsection*] **section**.

"**(b) Notwithstanding ORS 192.311 to 192.478, information reported by a manufacturer under this section is exempt from public disclosure until the department posts to its website all of the information required by subsection (9) of this section.**

"(12) The department and its officers, employees and agents are immune from any claim or action based on the disclosure of a trade

secret made:

"(a) In compliance with this section;

"(b) In good faith reliance on any order of disclosure issued pursuant to ORS 192.311 to 192.478; or

"(c) On the advice of an attorney authorized to advise the department, its officers, employees or agents.

"[*(11)*] **(13)(a)** The department shall make available to consumers, online and by telephone, a process for consumers to notify the department about an increase in the price of a prescription drug.

"**(b) The department may, upon request, disclose information about consumer notifications of increases in prices of prescription drugs, under this subsection, but may not disclose personally identifiable information about a consumer including the consumer's name, address, telephone number or electronic mail address.**

"[*(12)*] **(14)** The department may adopt rules as necessary for carrying out the provisions of this section, including but not limited to rules establishing fees to be paid by manufacturers to be used solely to pay the costs of the department in carrying out the provisions of this section.

"[*(13)*] **(15)** No later than December 15 of each year, the department shall compile and report the information collected by the department under this section to the interim committees of the Legislative Assembly related to health. The report shall include recommendations for legislative changes, if any, to contain the cost of prescription drugs and reduce the impact of price increases on consumers, the Department of Corrections, the Public Employees' Benefit Board, the Oregon Health Authority, the Department of Human Services, the Oregon Educators Benefit Board and health insurance premiums in the commercial market.".

On page 19, delete lines 23 through 45.

On page 20, delete lines 1 through 5 and insert:

"(17) A carrier that offers a small employer health benefit plan that re-

imburses the cost of prescription drugs sold by a retail pharmacy or administered by a health care provider shall:

"(a) Submit a narrative report to the department describing how the carrier designed the carrier's formulary and describing typical changes that the carrier makes to the formulary.

"(b) Publish to the carrier's website:

"(A) In a format that allows for easy comparison of the prescription drug coverage under each small employer health benefit plan offered by the carrier:

"(i) The carrier's prescription drug formulary;

"(ii) The tiers in the carrier's prescription drug formulary; and

"(iii) The range of copayments, coinsurance or other cost-sharing within each tier.

"(B) For each drug in the prescription drug formulary that is a brand name drug, whether:

"(i) A generic alternative is available;

"(ii) Step therapy or prior authorization protocols are required and, if so, whether the protocols require that a generic alternative be substituted; and

"(iii) Quantity limits are imposed on the drug.

"(C) Notification that an enrollee may purchase a drug from a pharmacy at the retail price if the retail price is lower than the enrollee's out-of-pocket cost using the enrollee's pharmacy benefit and, if the enrollee purchases the drug at the retail price, the price paid must be applied to the enrollee's deductible or out-of-pocket maximum if requested by the enrollee.

"(c) At least 60 days in advance of a change to the prescription drug formulary, provide written notice of the change to the department and to each enrollee who will be adversely affected by the change. A change that adversely affects an enrollee includes but is not limited to:

"(A) Imposition of new utilization review requirements;

"(B) Removal of a drug from the formulary for which a claim has been

submitted for the enrollee during the plan year; and

"(C) A modification to the formulary tiers or a change in a drug's placement on a tier that results in a higher out-of-pocket cost to an enrollee except when the modification is due to the availability of a generic alternative.

"(d) Include in the notice required by paragraph (c) of this subsection the information described in ORS 743B.250 (1)(b) and (d) and information about how to request an internal review and external appeal.

"(e) Report to the department, in the form and manner prescribed by the department, the information described in paragraph (b)(A) and (B) of this subsection.

"(18) A carrier may provide the notice required by subsection (17)(c) of this section less than 60 days prior to a change in a prescription drug formulary if the change is necessary to ensure the safety of enrollees or in other emergency circumstances as prescribed by the department by rule.".

On page 22, delete lines 25 through 45.

On page 23, delete lines 1 through 4 and insert:

"(a) Submit a narrative report to the department describing how the carrier designed the carrier's formulary and describing typical changes that the carrier makes to the formulary.

"(b) Publish to the carrier's website notification that an enrollee may purchase a drug from a pharmacy at the retail price if the retail price is lower than the enrollee's out-of-pocket cost using the enrollee's pharmacy benefit and, if the enrollee purchases the drug at the retail price, the price paid must be applied to the enrollee's deductible or out-of-pocket maximum if requested by the enrollee.

"(c) At least 60 days in advance of a change to the prescription drug formulary, provide written notice of the change to the department and to each enrollee who will be adversely affected by the change. A change that adversely affects an enrollee includes but is not limited to:

"(A) Imposition of new utilization review requirements;

"(B) Removal of a drug from the formulary for which a claim has been submitted for the enrollee during the plan year; and

"(C) A modification to the formulary tiers or a change in a drug's placement on a tier that results in a higher out-of-pocket cost to an enrollee.

"(d) Include in the notice required by paragraph (c) of this subsection the information described in ORS 743B.250 (1)(b) and (d) and information about how to request an internal review and external appeal.

"(e) Report to the department, in the form and manner prescribed by the department, the information described in paragraph (b)(A) and (B) of this subsection.

"(11) A carrier may provide the notice required by subsection (10)(c) of this section less than 60 days prior to a change in a prescription drug formulary if the change is necessary to ensure the safety of enrollees or in other emergency circumstances as prescribed by the department by rule.".

On page 25, delete lines 14 through 38 and insert:

"(a) Submit a narrative report to the department describing how the carrier designed the carrier's formulary and describing typical changes that the carrier makes to the formulary.

"(b) Publish to the carrier's website:

"(A) In a format that allows for easy comparison of the prescription drug coverage under each individual health benefit plan offered by the carrier:

"(i) The carrier's prescription drug formulary;

"(ii) The tiers in the carrier's prescription drug formulary; and

"(iii) The range of copayments, coinsurance or other cost-sharing within each tier.

"(B) For each drug in the prescription drug formulary that is a brand name drug, whether:

"(i) A generic alternative is available;

"(ii) Step therapy or prior authorization protocols are required and, if so, whether the protocols require that a generic alternative be substituted; and

"(iii) Quantity limits are imposed on the drug.

"(C) Notification that an enrollee may purchase a drug from a pharmacy at the retail price if the retail price is lower than the enrollee's out-of-pocket cost using the enrollee's pharmacy benefit and, if the enrollee purchases the drug at the retail price, the price paid must be applied to the enrollee's deductible or out-of-pocket maximum if requested by the enrollee.

"(c) At least 60 days in advance of a change to the prescription drug formulary, provide written notice of the change to the department and to each enrollee who will be adversely affected by the change. A change that adversely affects an enrollee includes but is not limited to:

"(A) Imposition of new utilization review requirements;

"(B) Removal of a drug prescribed for the enrollee from the formulary; and

"(C) A modification to the formulary tiers or a change in a drug's placement on a tier that results in a higher out-of-pocket cost to an enrollee.

"(d) Include in the notice required by paragraph (c) of this subsection the information described in ORS 743B.250 (1)(b) and (d) and information about how to request an internal review and external appeal.

"(e) Report to the department, in the form and manner prescribed by the department, the information described in paragraph (b)(A) and (B) of this subsection.

"(12) A carrier may provide the notice required by subsection (11)(c) of this section less than 60 days prior to a change in a prescription drug formulary if the change is necessary to ensure the safety of enrollees or in other emergency circumstances as prescribed by the department by rule.".

On page 26, line 13, after "may" delete the rest of the line and line 14 and insert "purchase a prescription drug at the retail price if the retail price is lower than the consumer's out-of-pocket cost for the drug using the".

In line 16, delete "pays the cash" and insert "purchases a drug at the retail".

In line 17, delete "price paid must" and insert "consumer may request that the price paid".

In line 23, after "(4)" insert "Upon the request of a consumer,".

After line 26, insert:

"(5) The State Board of Pharmacy shall prescribe by rule a notice explaining consumers' rights under this section and a requirement for each pharmacy to prominently display the notice as prescribed the board. The board shall translate the notice into multiple languages, as determined by the board, and customers of each pharmacy must be provided the notice in their primary language, if available.

"SECTION 12. ORS 735.533 is amended to read:

"735.533. (1) In accordance with ORS chapter 183, the Department of Consumer and Business Services may deny an application for registration as a pharmacy benefit manager or an application for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a registration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

"(a) Falsified an application for registration or for the renewal of a registration or engaged in any dishonest act in relation to the application;

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

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

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

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

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

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

"(h) Refused to be examined or to produce accounts, records or files for examination, including the refusal by any officer of the applicant or registrant to give information with respect to the affairs of the pharmacy benefit manager, or refused to perform any other legal obligation with respect to an examination by the department; or

"(i) Violated any rule or order of the department or any provision of the Insurance Code.

"(2) The department may prescribe by rule a procedure by which a pharmacy or an entity acting on behalf of a pharmacy may file a complaint with the department alleging that a pharmacy benefit manager has engaged in conduct described in this section **or has, by contract, penalty or other means, interfered with the rights of consumers under section 11 of this 2019 Act**. The department may restrict the right of a pharmacy or entity to file a complaint only to the extent necessary to prevent abuse of the complaint process.".

Delete lines 31 through 45.

On page 27, delete lines 1 through 23 and insert:

"SECTION 13. (1) As used in this section:

"(a) 'Drug' means a prescription drug other than a:

"(A) Drug prescribed for or administered during an inpatient procedure; or

"(B) A 340B drug.

"(b) 'Insurer' has the meaning given that term in ORS 731.106.

"(c) 'Medical provider' means:

"(A) A hospital licensed under ORS 441.020.

"(B) An ambulatory surgical center licensed under ORS 441.020.

"(C) An outpatient renal dialysis facility licensed under ORS 441.020.

"(D) A health professional, other than a primary care provider, who is in independent practice and who receives more than 15 percent of the health professional's gross annual revenue from the sale of prescription drugs other than vaccines or immunizations administered for the purpose of preventing disease.

"(d) 'Primary care' means family medicine, general internal medicine, naturopathic medicine, obstetrics and gynecology, pediatrics or general psychiatry.

"(e) '340B drug' means a drug that is purchased at a discount under 42 U.S.C. 256b.

"(2) A medical provider shall report to the Oregon Health Authority, in the form and manner prescribed by the authority, the following information regarding the medical provider's 50 most prescribed drugs and the 50 most expensive drugs prescribed by the medical provider:

"(a) The total amount spent on each drug in the preceding three-month period; and

"(b) The total amount billed to insurers for each drug in the preceding three-month period.

"(3) The information reported under subsection (2) of this section shall be reported using the National Drug Code or successor drug identification standard.

"(4) The authority shall use the information reported under this section to display health care price information on its website, as described in ORS 442.466.

"(5) The reports required by this section are not intended to duplicate information reported to the authority under ORS 442.466.".

On page 28, line 24, delete "12" and insert "13".

On page 29, line 1, delete "12" and insert "13".

After line 22, insert:

"(10)(a) Notwithstanding subsection (9) of this section, in addition to the

comprehensive health care information system described in subsection (7) of this section, the Department of Consumer and Business Services shall be allowed to access, use and disclose data collected under this section by certifying, in writing, that the data will only be used to carry out the department's duties.

"(b) Personally identifiable information disclosed to the department under paragraph (a) of this subsection is confidential and not subject to further disclosure under ORS 192.311 to 192.478.".

In line 29, after "drugs" insert "in the preceding 12-month period".

In line 33, after "drugs" insert "and the total cost of the drugs".

In line 34, after "The" insert "name and manufacturer of the".

After line 35, insert:

"(c) Of the drugs reported in paragraph (b) of this subsection, the drug with the greatest total costs and the amount of the total costs;".

In line 36, delete "(c)" and insert "(d)" and delete "from".

In line 37, delete "the prior" and insert "over a".

In line 38, delete "(d)" and insert "(e)".

In line 42, delete "(2)(d)" and insert "(2)(e)".

On page 30, line 37, delete "(2)(d)" and insert "(2)(e)".

On page 31, line 23, after the second "organization" insert ", including but not limited to an organization".

In line 24, delete "and".

In line 29, delete "an annual budget" and insert "annual gross receipts".

On page 32, delete lines 9 through 11 and insert:

"(3) The Oregon Government Ethics Commission shall provide to the Attorney General, upon request, a copy of the statement containing the information described in subsection (2) of this section.".

In line 14, after "MANAGERS" insert "AND INSURERS".

In line 21, delete the comma and insert a colon and begin a new paragraph and insert "(a)".

After line 22, insert:

"(b) 'Rebate' means a retroactive abatement, credit, discount or refund usually as consideration for a specified volume of business.".

In line 23, delete the second "a" and insert "an annual".

Delete lines 34 and 35.

In line 36, delete "(c)" and insert "(b)".

In line 38, delete "(d)" and insert "(c)".

After line 42, insert:

"(5) The department may increase the registration fee paid by pharmacy benefit managers under ORS 735.532 if necessary to pay the expenses of the department in administering the reporting functions required by this section.".

On page 33, delete lines 11 through 22 and insert:

"SECTION 22. ORS 743.020 is amended to read:

"743.020. An insurer licensed by the Department of Consumer and Business Services shall include in any rate filing under ORS 743.018 with respect to individual and small employer health insurance policies**:**

"(1) A statement of administrative expenses in the form and manner prescribed by the department by rule[. *The statement must include*], **including** but [*is*] not limited to:

"[*(1)*] **(a)** A statement of administrative expenses on a per member per month basis; and

"[*(2)*] **(b)** An explanation of the basis for any proposed premium rate increases or decreases.

"**(2)(a) A certified statement of the percentage of rebates, as defined in section 2, chapter 7, Oregon Laws 2018, received by the insurer from manufacturers, as defined in section 2, chapter 7, Oregon Laws 2018, that were applied to directly offset premiums or out-of-pocket costs for enrollees or to otherwise directly benefit enrollees; and**

"(b) A certified statement of how the insurer spent the percentage

of rebates received from manufacturers that were not applied as described in paragraph (a) of this subsection.

"SECTION 23. Section 3, chapter 7, Oregon Laws 2018, is amended to read:

"**Sec. 3.** (1) A manufacturer **or pharmacy benefit manager** that fails to report or provide information as required by section 2**,** [*of this 2018 Act*] **chapter 7, Oregon Laws 2018, or section 20 of this 2019 Act,** may be subject to a civil penalty as provided in this section.

"(2) The Department of Consumer and Business Services shall adopt a schedule of penalties, not to exceed $10,000 per day of violation, based on the severity of each violation.

"(3) The department shall impose civil penalties under this section as provided in ORS 183.745.

"(4) The department may remit or mitigate civil penalties under this section upon terms and conditions the department considers proper and consistent with the public health and safety.

"(5) Civil penalties collected under this section shall be paid over to the State Treasurer and deposited in the General Fund to be made available for general governmental expenses.

"**TASK FORCE ON FAIR PRICING OF PRESCRIPTION DRUGS**

"SECTION 24. Section 11, chapter 7, Oregon Laws 2018, is amended to read:

"**Sec. 11.** (1) The Task Force on the Fair Pricing of Prescription Drugs is established.

"(2) The task force consists of 18 members appointed as follows:

"(a) The President of the Senate shall appoint:

"(A) One member from the Senate who is a member of the majority party.

"(B) One member from the Senate who is a member of the minority party.

"(b) The Speaker of the House of Representatives shall appoint:

"(A) One member from the House of Representatives who is a member of the majority party.

"(B) One member from the House of Representatives who is a member of the minority party.

"(c) The Governor shall appoint the following members:

"(A) One representative from the Department of Consumer and Business Services;

"(B) One representative from the Oregon Health Authority;

"(C) One representative from the Oregon Health Policy Board; and

"(D) Individuals representing:

"(i) Pharmaceutical manufacturers;

"(ii) Insurance companies offering health insurance in this state;

"(iii) Pharmacy benefit managers;

"(iv) Prescription drug wholesalers;

"(v) Consumers;

"(vi) Independent pharmacies;

"(vii) Large retail pharmacy chains;

"(viii) Hospitals;

"(ix) Biopharmaceutical companies based in Oregon;

"(x) Coordinated care organizations; and

"(xi) Medical providers.

"(3) The task force shall [*develop a strategy to create transparency for drug prices across the entire supply chain of pharmaceutical products, including but not limited to manufacturers, insurers, pharmacy benefit managers, distributors, wholesalers and retail pharmacies.*]**:**

"(a) Evaluate legislation enacted during the 2019 regular session of the Eightieth Legislative Assembly that was intended to address transparency in the cost of prescription drugs and any similar legislation that has been enacted in other states; and

"(b) Evaluate additional strategies that may be used to reduce the cost of prescription drugs for Oregonians.

"(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

"(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

"(6) The task force shall elect one of its members to serve as chairperson.

"(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

"(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

"(9) The task force may adopt rules necessary for the operation of the task force.

"(10) The task force shall submit a report **of its findings under subsection (3) of this section** in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to health no later than [*November 1, 2018*] **September 15, 2020**. The report must contain a cost-effective and enforceable solution that exposes the cost factors that negatively impact prices paid by Oregonians for pharmaceutical products.

"(11) The Legislative Policy and Research Director shall provide staff support to the task force.

"(12) Members of the Legislative Assembly appointed to the task force are nonvoting members of the task force and may act in an advisory capacity only.

"(13) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

"(14) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of the task force's duties

and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

"SECTION 25. Section 12, chapter 7, Oregon Laws 2018, is amended to read:

"**Sec. 12.** Section 11**,** [*of this 2018 Act*] **chapter 7, Oregon Laws 2018,** is repealed on December 31, [*2020*] **2021**.

"**INSURER PRESCRIPTION DRUG PRICES**

"SECTION 26. Section 5, chapter 7, Oregon Laws 2018, is amended to read:

"**Sec. 5.** (1) An insurer shall [*include with any filing under ORS 743.018*] **annually report to the Department of Consumer and Business Services, in the manner and format prescribed by the department,** the following information regarding drugs reimbursed by [*the insurer under policies or certificates*] **health benefit plans, as defined in ORS 743B.005,** issued **by the insurer** in this state:

"(a) The [*25*] **50** most frequently prescribed drugs;

"(b) The [*25*] **50** most costly drugs as a portion of total annual spending**, both before and after any rebates received from manufacturers**;

"(c) The [*25*] **50** drugs that have caused the greatest increase in total plan spending from one year to the next; and

"**(d) Any drug for which the price is $10,000 or more for a one-month supply or for a course of treatment lasting less than one month.**

"(2) For the drugs specified in subsection (1) of this section, the report must include:

"(a) The average out-of-pocket cost to an enrollee for a one-month supply or a course of treatment;

"(b) The average cost paid by the insurer to a pharmacy benefit

manager or third party administrator; and

"[*(d)*] **(c)** The impact of the costs of prescription drugs on premium rates.

"[*(2)*] **(3)** The Department of Consumer and Business Services shall conduct a public hearing annually on**:**

"(a) Prescription drug prices[*,*]**;**

"(b) Information reported to the department under section 2**,** [*of this 2018 Act*] **chapter 7, Oregon Laws 2018;** [*and*]

"**(c)** Information described in [*subsection (1)*] **subsections (1) and (2)** of this section**;**

"(d) Information reported by carriers under ORS 743B.013 (17), 743B.105 (10) and 743B.125 (11); and

"(e) Information reported by pharmacy benefit managers under section 20 of this 2019 Act.

"[*(3)*] **(4)** The department shall regularly update the interim committees of the Legislative Assembly related to health on the information described in [*subsection (1)*] **subsections (1) and (2)** of this section.

"[*(4) Subsection (1) of this section applies to an insurer that issues policies or certificates of health insurance for sale in this state that include a prescription drug benefit.*]

"SECTION 27. ORS 743.018, as amended by section 8, chapter 7, Oregon Laws 2018, is amended to read:

"743.018. (1) Except for group life and health insurance, and except as provided in ORS 743.015, every insurer shall file with the Director of the Department of Consumer and Business Services all schedules and tables of premium rates for life and health insurance to be used on risks in this state, and shall file any amendments to or corrections of such schedules and tables. Premium rates are subject to approval, disapproval or withdrawal of approval by the director as provided in ORS 742.003, 742.005, 742.007 and 743.019.

"(2) Except as provided in ORS 743B.013 and subsection (3) of this section,

a rate filing by a carrier for any of the following health benefit plans subject to ORS 743.004, 743.022, 743.535 and 743B.003 to 743B.127 shall be available for public inspection immediately upon submission of the filing to the director:

"(a) Health benefit plans for small employers.

"(b) Individual health benefit plans.

"(3) The director may by rule:

"(a) Specify all information a carrier must submit as part of a rate filing under this section; and

"(b) Identify the information submitted that will be exempt from disclosure under this section because the information constitutes a trade secret and would, if disclosed, harm competition.

"(4) The director, after conducting an actuarial review of the rate filing, may approve a proposed premium rate for a health benefit plan for small employers or for an individual health benefit plan if, in the director's discretion, the proposed rates are:

"(a) Actuarially sound;

"(b) Reasonable and not excessive, inadequate or unfairly discriminatory; and

"(c) Based upon reasonable administrative expenses.

"(5) In order to determine whether the proposed premium rates for a health benefit plan for small employers or for an individual health benefit plan are reasonable and not excessive, inadequate or unfairly discriminatory, the director may consider:

"(a) The insurer's financial position, including but not limited to profitability, surplus, reserves and investment savings.

"(b) Historical and projected administrative costs and medical and hospital expenses[*, including expenses for drugs reported under section 5, chapter 7, Oregon Laws 2018*].

"(c) Historical and projected loss ratio between the amounts spent on

medical services and earned premiums.

"(d) Any anticipated change in the number of enrollees if the proposed premium rate is approved.

"(e) Changes to covered benefits or health benefit plan design.

"(f) Changes in the insurer's health care cost containment and quality improvement efforts since the insurer's last rate filing for the same category of health benefit plan.

"(g) Whether the proposed change in the premium rate is necessary to maintain the insurer's solvency or to maintain rate stability and prevent excessive rate increases in the future.

"(h) Any public comments received under ORS 743.019 pertaining to the standards set forth in subsection (4) of this section and this subsection.

"(6) The requirements of this section do not supersede other provisions of law that require insurers, health care service contractors or multiple employer welfare arrangements providing health insurance to file schedules or tables of premium rates or proposed premium rates with the director or to seek the director's approval of rates or changes to rates.

"**PHARMACEUTICAL MANUFACTURER REGISTRATION WITH DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

"SECTION 28. (1) As used in this section:

"(a) 'Manufacturer' has the meaning given that term in section 2, chapter 7, Oregon Laws 2018.

"(b) 'Wholesale acquisition cost' has the meaning given that term in 42 U.S.C. 1395w-3a(c)(6)(B).

"(2) A manufacturer shall annually register with the Department of Consumer and Business Services, as provided in this section, if the manufacturer:

"(a) Is required to register with the State Board of Pharmacy as a

manufacturing drug outlet under ORS 689.305; and

"(b) Has established or changed the wholesale acquisition cost for a drug that it manufactures.

"(3) To register with the department, the manufacturer shall submit an application as prescribed by the department by rule and pay the registration fee adopted by the department.

"(4) A registration may be renewed upon payment of a registration fee.

"(5) The department shall adopt by rule the fees required for registration and for the annual renewal of a registration, based upon the department's reasonable costs in administering sections 2 and 3, chapter 7, Oregon Laws 2018, and this section.

"(6) Moneys collected by the department under subsections (3) and (4) of this section shall be deposited in the Consumer and Business Services Fund created in ORS 705.145.

"SECTION 29. The Department of Consumer and Business Services may request information from any manufacturer, as defined in section 2, chapter 7, Oregon Laws 2018, regarding any matter related to the administration of sections 2 and 3, chapter 7, Oregon Laws 2018, and section 28 of this 2019 Act. The manufacturer must respond promptly and in the format requested by the department. The department may require any response to be verified by an officer of a manufacturer. A response from a manufacturer is subject to ORS 731.260.".

In line 26, delete "23" and insert "30".

In line 29, delete "24" and insert "31".

Delete lines 32 through 36 and insert:

"SECTION 32. The report described in section 20 of this 2019 Act is first due on March 15, 2020.

"SECTION 33. The amendments to ORS 243.135, 414.312 and 414.625 by sections 2 to 6 of this 2019 Act apply to plan years beginning on and

after January 1, 2021.

"SECTION 34. Section 13 of this 2019 Act and the amendments to ORS 442.466 by section 14 of this 2019 Act become operative on July 1, 2022.

"**APPROPRIATION**

"SECTION 35. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2019, out of the General Fund, the amount of $390,534, which may be expended for carrying out the provisions of this 2019 Act.".

In line 40, delete "27" and insert "36".
