

Minority Report
A-Engrossed
Senate Bill 1535

Ordered by the Senate February 17
Including Senate Minority Report Amendments dated February 17

Sponsored by nonconcurring members of the Senate Committee on Health Care: Senators KNOPP, LINTHICUM

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.

[Requires Department of Consumer and Business Services to investigate methods for collecting information about rebates and markups used in pharmaceutical supply chain and to report to interim committees of Legislative Assembly recommendations for collecting information.]

[Authorizes department to access, use and disclose data from all payer, all claims database under specified conditions.]

[Modifies increase in price of prescription drug that triggers pharmaceutical manufacturer's obligation to report data under Prescription Drug Price Transparency Act.]

[Requires prescription drug manufacturers to respond promptly to requests by department in administering Prescription Drug Price Transparency Act.]

[Allows department to disclose information about consumers' notifications of increases in prices of prescription drugs but not personally identifiable information about consumers.]

[Provides immunity to department from liability in civil action for certain disclosures of trade secrets.]

Modifies membership of, charge to and reporting requirements for Task Force on the Fair Pricing of Prescription Drugs. Extends sunset of task force to December 31, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the cost of prescription drugs; amending sections 11 and 12, chapter 7, Oregon Laws
3 2018; and declaring an emergency.

4 Whereas price controls raise constitutional concerns because they restrict the goal of federal
5 patent law, which is to provide pharmaceutical patent holders with the economic value of exclusivity
6 during the life of a patent; and

7 Whereas in the case of Biotechnology Industry Organization v. District of Columbia, 496 F.3d
8 1362 (Fed. Cir. 2007), the court overturned a District of Columbia law imposing price controls on
9 branded drugs, reasoning that the District of Columbia law at issue conflicted with the underlying
10 objectives of the federal patent framework by undercutting a company's ability to set prices for its
11 patented products; and

12 Whereas current efforts to look at pharmaceutical drug costs are narrowly focused on drug
13 manufacturers and do not take into consideration the cost contributions of other components of the
14 drug supply chain such as distributors, pharmacy benefit managers and insurers; and

15 Whereas pharmaceutical manufacturers give rebates and discounts to pharmacy benefit manag-
16 ers and insurers that can lower the cost of medicines by up to 70 percent, yet these rebates and
17 discounts are not often passed through to patients at the pharmacy counter; and

18 Whereas nationally three pharmacy benefit managers manage health plans for millions of

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 Americans and control more than 70 percent of the pharmacy benefit manager market nationwide;
2 and

3 Whereas nationally more than half of commercially insured patients' out-of-pocket spending for
4 brand medicines is based on list price due to requirements to fulfill health plan deductibles and the
5 absence of rebate pass-throughs that could help lower costs at the pharmacy counter; and

6 Whereas nationally trends in insurer health plan design including higher deductibles and
7 coinsurance have shifted costs to patients such that growth in out-of-pocket spending has outpaced
8 increases in overall health plan costs; and

9 Whereas on average patients pay only four percent of costs for hospital stays yet pay 12 percent
10 of costs for prescription drugs; and

11 Whereas nationally in the last five years the percentage of commercial health plans that subject
12 prescription drugs to a deductible have doubled; and

13 Whereas nationally patients' out-of-pocket spending on prescription drugs due to health insur-
14 ance deductibles grew 229 percent between 2005 and 2015; and

15 Whereas the Legislative Assembly finds it is in the best interest of the residents of Oregon to
16 ensure drug rebates and discounts are utilized to lower patient out-of-pocket costs at the pharmacy
17 counter; and

18 Whereas the Legislative Assembly directs the Task Force on the Fair Pricing of Prescription
19 Drugs to identify and evaluate strategies that will ensure drug rebates and discounts are passed
20 through to patients in the form of lower out-of-pocket costs at the pharmacy counter; now, therefore,

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

22 **SECTION 1.** Section 11, chapter 7, Oregon Laws 2018, is amended to read:

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

24 (2) The task force consists of [18] **23** members appointed as follows:

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

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

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

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

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

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

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

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

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

34 (C) One representative from the Oregon Health Policy Board; [and]

35 **(D) Two consumer advocates; and**

36 [(D)] **(E)** Individuals representing:

37 (i) Pharmaceutical manufacturers;

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

39 (iii) Pharmacy benefit managers;

40 (iv) Prescription drug wholesalers;

41 (v) Consumers;

42 (vi) Independent pharmacies;

43 (vii) Large retail pharmacy chains;

44 (viii) Hospitals;

45 (ix) Biopharmaceutical companies based in Oregon;

1 **(x) Generic drug manufacturers;**

2 [(x)] **(xi) Coordinated care organizations; [and]**

3 [(xi)] **(xii) Medical providers[.];**

4 **(xiii) A large Oregon business that is self-insured; and**

5 **(xiv) A small Oregon business that offers health insurance coverage to the employees of**
6 **the business.**

7 (3) The task force shall [*develop a strategy to create transparency for drug prices across the entire*
8 *supply chain of pharmaceutical products, including but not limited to manufacturers, insurers, phar-*
9 *macy benefit managers, distributors, wholesalers and retail pharmacies]* **explore initiatives that will**
10 **ensure that drug rebates and discounts are passed through to patients at the point of sale**
11 **to lower patients' out-of-pocket costs.**

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

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

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

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

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

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

22 (10) The task force shall submit a report **of its findings under subsection (3) of this section**
23 **in the manner provided by ORS 192.245, and may include recommendations for legislation, to the**
24 **interim committees of the Legislative Assembly related to health no later than [November 1, 2018]**
25 **October 1, 2020.** The report must contain a cost-effective and enforceable solution that [*exposes the*
26 *cost factors that negatively impact prices paid by Oregonians for pharmaceutical products]* **ensures**
27 **that drug rebates and discounts are passed through to patients to lower patients' point of**
28 **sale costs and overall out-of-pocket costs. The task force shall provide a final report to the**
29 **committees no later than September 15, 2022.**

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

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

33 (13) Members of the task force who are not members of the Legislative Assembly are not enti-
34 tled to compensation or reimbursement for expenses and serve as volunteers on the task force.

35 (14) All agencies of state government, as defined in ORS 174.111, are directed to assist the task
36 force in the performance of the task force's duties and, to the extent permitted by laws relating to
37 confidentiality, to furnish information and advice the members of the task force consider necessary
38 to perform their duties.

39 **SECTION 2.** Section 12, chapter 7, Oregon Laws 2018, is amended to read:

40 **Sec. 12.** Section 11, [*of this 2018 Act*] **chapter 7, Oregon Laws 2018,** is repealed on December
41 31, [2020] **2022.**

42 **SECTION 3. This 2020 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
44 **on its passage.**