

House Bill 2080

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

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**.

Establishes Office of Pharmaceutical Purchasing in Oregon Health Authority and specifies duties. Requires office to administer multistate prescription drug purchasing consortium.

Authorizes Oregon Health Authority to require prior authorization for drugs under specified conditions.

A BILL FOR AN ACT

Relating to pharmaceuticals; creating new provisions; and amending ORS 413.032, 414.312, 414.314, 414.318, 414.320, 414.325, 414.326, 414.334, 414.337 and 689.185.

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

OFFICE OF PHARMACEUTICAL PURCHASING

SECTION 1. (1) The Office of Pharmaceutical Purchasing is established in the Oregon Health Authority to support multiagency and multistate collaborative purchasing of pharmaceuticals and drive down the cost of prescription drugs for residents of this state.

(2) The purpose of the office is to:

(a) Purchase prescription drugs, replenish prescription drugs dispensed or reimburse pharmacies for prescription drugs in order to receive discounted prices and negotiate and obtain all types of rebates;

(b) Make prescription drugs available at the lowest possible cost to participants in the program and the consortium as a means to promote health;

(c) Maintain a list of prescription drugs recommended as the most effective prescription drugs available at the best possible prices; and

(d) Promote health through the purchase and provision of discount prescription drugs and coordination of comprehensive prescription benefit services for eligible entities and members.

(3) The office shall:

(a) Coordinate statewide agreements for the purchase of prescription drugs;

(b) Administer the Oregon Prescription Drug Program;

(c) Establish and administer a multistate prescription drug purchasing consortium; and

(d) Administer all intergovernmental and interagency agreements necessary to achieve the office's purpose described in subsection (2) of this section.

(4) The Director of the Oregon Health Authority shall appoint an administrator for the office and all subordinate officers and employees of the office.

SECTION 2. ORS 413.032 is amended to read:

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.

- 1 413.032. (1) The Oregon Health Authority is established. The authority shall:
- 2 (a) Carry out policies adopted by the Oregon Health Policy Board;
- 3 (b) Administer the Oregon Integrated and Coordinated Health Care Delivery System established
4 in ORS 414.570;
- 5 (c) Administer the Oregon Prescription Drug Program **and a multistate prescription drug**
6 **purchasing consortium through the Office of Pharmaceutical Purchasing established in sec-**
7 **tion 1 of this 2021 Act;**
- 8 (d) Develop the policies for and the provision of publicly funded medical care and medical as-
9 sistance in this state;
- 10 (e) Develop the policies for and the provision of mental health treatment and treatment of ad-
11 dictions;
- 12 (f) Assess, promote and protect the health of the public as specified by state and federal law;
- 13 (g) Provide regular reports to the board with respect to the performance of health services
14 contractors serving recipients of medical assistance, including reports of trends in health services
15 and enrollee satisfaction;
- 16 (h) Guide and support, with the authorization of the board, community-centered health initiatives
17 designed to address critical risk factors, especially those that contribute to chronic disease;
- 18 (i) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the
19 Social Security Act and administer medical assistance under ORS chapter 414;
- 20 (j) In consultation with the Director of the Department of Consumer and Business Services, pe-
21 riodically review and recommend standards and methodologies to the Legislative Assembly for:
- 22 (A) Review of administrative expenses of health insurers;
- 23 (B) Approval of rates; and
- 24 (C) Enforcement of rating rules adopted by the Department of Consumer and Business Services;
- 25 (k) Structure reimbursement rates for providers that serve recipients of medical assistance to
26 reward comprehensive management of diseases, quality outcomes and the efficient use of resources
27 and to promote cost-effective procedures, services and programs including, without limitation, pre-
28 ventive health, dental and primary care services, web-based office visits, telephone consultations and
29 telemedicine consultations;
- 30 (L) Guide and support community three-share agreements in which an employer, state or local
31 government and an individual all contribute a portion of a premium for a community-centered health
32 initiative or for insurance coverage;
- 33 (m) Develop, in consultation with the Department of Consumer and Business Services, one or
34 more products designed to provide more affordable options for the small group market;
- 35 (n) Implement policies and programs to expand the skilled, diverse workforce as described in
36 ORS 414.018 (4); and
- 37 (o) Implement a process for collecting the health outcome and quality measure data identified
38 by the Health Plan Quality Metrics Committee and report the data to the Oregon Health Policy
39 Board.
- 40 (2) The Oregon Health Authority is authorized to:
- 41 (a) Create an all-claims, all-payer database to collect health care data and monitor and evaluate
42 health care reform in Oregon and to provide comparative cost and quality information to consumers,
43 providers and purchasers of health care about Oregon's health care systems and health plan net-
44 works in order to provide comparative information to consumers.
- 45 (b) Develop uniform contracting standards for the purchase of health care, including the fol-

1 lowing:

2 (A) Uniform quality standards and performance measures;

3 (B) Evidence-based guidelines for major chronic disease management and health care services
4 with unexplained variations in frequency or cost;

5 (C) Evidence-based effectiveness guidelines for select new technologies and medical equipment;

6 (D) A statewide drug formulary that may be used by publicly funded health benefit plans; and

7 (E) Standards that accept and consider tribal-based practices for mental health and substance
8 abuse prevention, counseling and treatment for persons who are Native American or Alaska Native
9 as equivalent to evidence-based practices.

10 (3) The enumeration of duties, functions and powers in this section is not intended to be exclu-
11 sive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Au-
12 thority by ORS 413.006 to 413.042, 415.012 to 415.430 and 741.340 or by other statutes.

13 **SECTION 3.** ORS 414.312 is amended to read:

14 414.312. (1) As used in ORS 414.312 to 414.318:

15 (a) “Pharmacy benefit manager” means an entity that negotiates and executes contracts with
16 pharmacies, manages preferred drug lists, negotiates rebates with prescription drug manufacturers
17 and serves as an intermediary between the Oregon Prescription Drug Program, **a multistate pre-**
18 **scription drug purchasing consortium**, prescription drug manufacturers and pharmacies.

19 (b) “Prescription drug claims processor” means an entity that processes and pays prescription
20 drug claims, adjudicates pharmacy claims, transmits prescription drug prices and claims data be-
21 tween pharmacies and the Oregon Prescription Drug Program **or the multistate prescription drug**
22 **purchasing consortium** and processes related payments to pharmacies.

23 (c) “Program price” means the reimbursement rates and prescription drug prices established by
24 the administrator of the [*Oregon Prescription Drug Program*] **Office of Pharmaceutical**
25 **Purchasing**.

26 (2) The Oregon Prescription Drug Program [*is*] **and a multistate prescription drug purchasing**
27 **consortium are** established in the Oregon Health Authority[. *The purpose of the program is to:*]

28 [*(a) Purchase prescription drugs, replenish prescription drugs dispensed or reimburse pharmacies*
29 *for prescription drugs in order to receive discounted prices and rebates;*]

30 [*(b) Make prescription drugs available at the lowest possible cost to participants in the program*
31 *as a means to promote health;*]

32 [*(c) Maintain a list of prescription drugs recommended as the most effective prescription drugs*
33 *available at the best possible prices; and*]

34 [*(d) Promote health through the purchase and provision of discount prescription drugs and coor-*
35 *ordination of comprehensive prescription benefit services for eligible entities and members]* **to be ad-**
36 **ministered by the Office of Pharmaceutical Purchasing**.

37 (3) [*The Director of the Oregon Health Authority shall appoint an administrator of the Oregon*
38 *Prescription Drug Program.*] The administrator **of the office, appointed under section 1 of this**
39 **2021 Act**, may:

40 (a) Negotiate price discounts and rebates on prescription drugs with prescription drug man-
41 ufacturers or group purchasing organizations;

42 (b) Purchase prescription drugs on behalf of individuals and entities that participate in the
43 program **or consortium**;

44 (c) Contract with a prescription drug claims processor to adjudicate pharmacy claims and
45 transmit program prices to pharmacies;

1 (d) Determine program prices and reimburse or replenish pharmacies for prescription drugs
2 dispensed or transferred;

3 (e) Adopt and implement a preferred drug list for the program **and consortium**;

4 (f) Develop a system for allocating and distributing the operational costs of the program **and**
5 **consortium** and any rebates obtained to participants of the program **or consortium**; and

6 (g) Cooperate with other states or regional consortia in the bulk purchase of prescription drugs.

7 (4) The following individuals or entities may participate in the program **or consortium**:

8 (a) Public Employees' Benefit Board, Oregon Educators Benefit Board and Public Employees
9 Retirement System;

10 (b) Local governments as defined in ORS 174.116 and special government bodies as defined in
11 ORS 174.117 that directly or indirectly purchase prescription drugs;

12 (c) Oregon Health and Science University established under ORS 353.020;

13 (d) State agencies that directly or indirectly purchase prescription drugs, including agencies that
14 dispense prescription drugs directly to persons in state-operated facilities;

15 (e) Residents of this state who lack or are underinsured for prescription drug coverage;

16 (f) Private entities; and

17 (g) Labor organizations.

18 (5) The administrator may establish different program prices for pharmacies in rural areas to
19 maintain statewide access to the program **or consortium**.

20 (6) The administrator may establish the terms and conditions for a pharmacy to enroll in the
21 program **or consortium**. A licensed pharmacy that is willing to accept the terms and conditions
22 established by the administrator may apply to enroll in the program **or consortium**.

23 (7) Except as provided in subsection (8) of this section **or as necessary to achieve a purpose**
24 **described in section 1 of this 2021 Act**, the administrator may not:

25 (a) Contract with a pharmacy benefit manager;

26 (b) Establish a state-managed wholesale or retail drug distribution or dispensing system; or

27 (c) Require pharmacies to maintain or allocate separate inventories for prescription drugs dis-
28 pensed through the program **or consortium**.

29 (8) The administrator shall contract with one or more entities to perform any of the functions
30 of the program **or consortium**, including but not limited to:

31 (a) Contracting with a pharmacy benefit manager and directly or indirectly with such pharmacy
32 networks as the administrator considers necessary to maintain statewide access to the program **or**
33 **consortium**.

34 (b) Negotiating with prescription drug manufacturers on behalf of the administrator.

35 (9) Notwithstanding subsection (4)(e) of this section, individuals who are eligible for Medicare
36 Part D prescription drug coverage may participate in the program **or consortium**.

37 (10) The [program] **office** may contract with vendors as necessary to utilize discount purchasing
38 programs, including but not limited to group purchasing organizations established to meet the cri-
39 teria of the Nonprofit Institutions Act, 15 U.S.C. 13c, or that are exempt under the Robinson-Patman
40 Act, 15 U.S.C. 13.

41 **SECTION 4.** ORS 414.314 is amended to read:

42 414.314. (1) [*An individual or entity described in ORS 414.312 (4) may apply to participate in the*
43 *Oregon Prescription Drug Program. Participants shall apply on an application provided by the Oregon*
44 *Health Authority*] **The Office of Pharmaceutical Purchasing shall make available an application**
45 **form for individuals and entities that wish to participate in the:**

1 (a) Oregon Prescription Drug Program; or

2 (b) Multistate prescription drug purchasing consortium.

3 (2) The [authority] office may charge participants a nominal fee to participate in the program
4 or consortium. The [authority] office shall issue a prescription drug identification card to partic-
5 ipants of the program or consortium.

6 [(2)] (3) The [authority] office shall provide a mechanism to calculate and transmit the program
7 prices for prescription drugs to a pharmacy. The pharmacy shall charge the participant the program
8 price for a prescription drug.

9 [(3)] (4) A pharmacy may charge the participant the professional dispensing fee set by the [au-
10 thority] office.

11 [(4)] (5) [Prescription drug] Identification cards issued under this section must contain the in-
12 formation necessary for proper claims adjudication or transmission of price data.

13 **SECTION 5.** ORS 414.318 is amended to read:

14 414.318. The Prescription Drug Purchasing Fund is established separate and distinct from the
15 General Fund. The Prescription Drug Purchasing Fund shall consist of moneys appropriated to the
16 fund by the Legislative Assembly and moneys received by the Oregon Health Authority for the
17 purposes established in this section in the form of gifts, grants, bequests, endowments or donations.
18 The moneys in the Prescription Drug Purchasing Fund are continuously appropriated to the au-
19 thority **and available to the Office of Pharmaceutical Purchasing** and shall be used to purchase
20 prescription drugs, reimburse pharmacies for prescription drugs and reimburse the [authority] office
21 for the costs of administering the Oregon Prescription Drug Program **and a multistate pre-**
22 **scription drug purchasing consortium**, including contracted services costs, computer costs, pro-
23 fessional dispensing fees paid to retail pharmacies and other reasonable [program] costs. Interest
24 earned on the fund shall be credited to the fund.

25 **SECTION 6.** ORS 414.320 is amended to read:

26 414.320. The [Oregon Health Authority] **Office of Pharmaceutical Purchasing** shall adopt rules
27 to implement and administer ORS 414.312 to 414.318 **and section 1 of this 2021 Act**. The rules shall
28 include but are not limited to establishing procedures for:

29 (1) Issuing prescription drug identification cards to individuals and entities that participate in
30 the Oregon Prescription Drug Program **or the multistate prescription drug purchasing consor-**
31 **tium**; and

32 (2) Enrolling pharmacies in the program **or the consortium**.

33 **SECTION 7.** ORS 414.326 is amended to read:

34 414.326. (1) The [Oregon Health Authority] **Office of Pharmaceutical Purchasing** shall negoti-
35 ate and enter into agreements with pharmaceutical manufacturers for supplemental rebates that are
36 in addition to the discount required under federal law to participate in the medical assistance pro-
37 gram.

38 [(2) The authority may participate in a multistate prescription drug purchasing pool for the purpose
39 of negotiating supplemental rebates.]

40 [(3)] (2) ORS 414.325 and 414.334 apply to prescription drugs purchased for the medical assist-
41 ance program under this section.

42
43 **PRACTITIONER-MANAGED**
44 **PRESCRIPTION DRUG PLAN**
45

SECTION 8. ORS 414.325 is amended to read:

414.325. (1) As used in this section:

(a) “Legend drug” means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(b) “Urgent medical condition” means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner’s care and within the scope of practice.

(3) Notwithstanding subsection (2) of this section:

(a) Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Oregon Health Authority unless the practitioner prescribes otherwise and *[an exception]* **prior authorization** is granted by the authority.

[(3) Except as provided in subsections (4) and (5) of this section, the authority shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the authority shall pay only for drugs in the generic form unless an exception has been granted by the authority.]

[(4) (b) [Notwithstanding subsection (3) of this section, an exception] **Prior authorization** must be applied for and granted before the authority is required to pay for:

(A) Minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the authority.

(B) Drugs for which prior authorization is required under rules adopted or amended by the authority pursuant to ORS 414.337.

[(5)(a) (c) [Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection,] The authority is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; *[and]*

(B) Require prior authorization of payment for drugs that the authority has determined should be limited to those conditions generally recognized as appropriate by the medical profession; **and**

(C) Withhold payment for a legend drug that is prescribed to treat a health condition that is not a funded health condition on the prioritized list of health services developed and maintained by the Health Evidence Review Commission under ORS 414.690.

[(b) The authority may not require prior authorization for therapeutic classes of nonsedating antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Evidence Review Commission on the funded portion of its prioritized list of services:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies.]

(4)(a) For a drug that is not on a preferred drug list, the authority shall approve a practitioner’s request for prior authorization of the drug for a specific patient if the authority determines that evidence submitted by the practitioner establishes that the requested drug is clinically superior to or more medically appropriate than a drug that is on the preferred drug list for the patient’s treatment regimen.

1 **(b) The authority shall respond by telephone or other telecommunication device within**
 2 **24 hours of a practitioner's request for prior authorization.**

3 [(6)] (5) The authority shall pay a rural health clinic for a legend drug prescribed and dispensed
 4 under this chapter by a licensed practitioner at the rural health clinic for an urgent medical con-
 5 dition if:

6 (a) There is not a pharmacy within 15 miles of the clinic;

7 (b) The prescription is dispensed for a patient outside of the normal business hours of any
 8 pharmacy within 15 miles of the clinic; or

9 (c) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

10 [(7)] (6) [Notwithstanding ORS 414.334,] **This section does not prohibit** the authority [may
 11 **conduct] from conducting** prospective drug utilization review in accordance with ORS 414.351 to
 12 414.414.

13 [(8)] (7) Notwithstanding subsection (3)(a) of this section, the authority may pay a pharmacy for
 14 a particular brand name drug rather than the generic version of the drug after notifying the phar-
 15 macy that the cost of the particular brand name drug, after receiving discounted prices and rebates,
 16 is equal to or less than the cost of the generic version of the drug.

17 [(9)(a) *Within 180 days after the United States patent expires on an immunosuppressant drug used*
 18 *in connection with an organ transplant, the authority shall determine whether the drug is a narrow*
 19 *therapeutic index drug.*]

20 [(b) *As used in this subsection, "narrow therapeutic index drug" means a drug that has a narrow*
 21 *range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration*
 22 *or pharmacodynamic monitoring.*]

23 **SECTION 9.** ORS 414.334 is amended to read:

24 414.334. (1) The Oregon Health Authority shall adopt **and maintain** a Practitioner-Managed
 25 Prescription Drug Plan [for] **consisting of:**

26 **(a) A preferred drug list for drugs prescribed in the medical assistance program for which**
 27 **the costs are reimbursed on a fee-for-service basis; and**

28 **(b) A partially aligned preferred drug list for coordinated care organizations that consists**
 29 **of portions of the Practitioner-Managed Prescription Drug Plan preferred drug list that apply**
 30 **to certain drugs or therapeutic classes of prescription drugs paid for from a coordinated care**
 31 **organization's global budget.**

32 (2) The purpose of the plan is to [ensure that enrollees in the medical assistance program receive
 33 the most effective prescription drug available at the best possible price]:

34 **(a) Improve the health of medical assistance recipients;**

35 **(b) Simplify the administrative burden on practitioners;**

36 **(c) Reduce costs to the state medical assistance program; and**

37 **(d) Minimize disruptions to recipients' treatment regimens.**

38 [(2)] (3) In adopting the plan, the authority shall consider recommendations of the Pharmacy and
 39 Therapeutics Committee.

40 [(3)] (4) The authority shall consult with representatives of the regulatory boards and associ-
 41 ations representing practitioners who are prescribers under the medical assistance program and
 42 ensure that practitioners receive educational materials and have access to training on the
 43 Practitioner-Managed Prescription Drug Plan.

44 [(4)] (5) Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the au-
 45 thority, a practitioner may prescribe any drug that the practitioner indicates is medically necessary

1 for an enrollee as being the most effective available.

2 [(5)] (6) [An enrollee] **A recipient** may appeal to the authority a decision of a practitioner, a
 3 **coordinated care organization** or the authority to [not provide] **deny coverage of** a prescription
 4 drug requested by the [enrollee] **recipient**.

5 [(6)] (7) This section does not limit the decision of a practitioner as to the scope and duration
 6 of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

7 **(8) The authority shall update the partially aligned preferred drug list regularly through**
 8 **a collaborative process engaging all of the coordinated care organizations.**

9 **SECTION 10.** ORS 414.337 is amended to read:

10 414.337. The Oregon Health Authority may [not] adopt or amend [any] a rule that requires a
 11 prescribing practitioner to contact the authority to request [an exception] **prior authorization** for
 12 a [medically appropriate or medically necessary] **prescription** drug that is not listed on the
 13 Practitioner-Managed Prescription Drug Plan drug list **adopted under ORS 414.334 (1)(a)** for that
 14 class of drugs [adopted under ORS 414.334, unless otherwise authorized by enabling legislation setting
 15 forth the requirement for prior authorization].

16
 17 **CONFORMING AMENDMENT**

18
 19 **SECTION 11.** ORS 689.185 is amended to read:

20 689.185. (1) The State Board of Pharmacy shall meet at least once every three months to trans-
 21 act its business. One such meeting held during each fiscal year of the state shall be designated by
 22 rule as the annual meeting and shall be for the purpose of electing officers and for the reorganiza-
 23 tion of the board. The board shall meet at such additional times as it may determine. Such addi-
 24 tional meetings may be called by the president of the board or by majority of members of the board.

25 (2) The board shall meet at such place as it may from time to time determine. The place for each
 26 meeting shall be determined prior to giving notice of such meeting and shall not be changed after
 27 such notice is given without adequate subsequent notice.

28 (3) Notice of all meetings of the board shall be given in the manner and pursuant to require-
 29 ments prescribed by the state’s applicable rules.

30 (4) A majority of the members of the board shall constitute a quorum for the conduct of a board
 31 meeting and, except where a greater number is required by ORS 167.203, [414.325,] 430.405, 435.010,
 32 453.025, 475.005, 475.135, 475.185, 475.752, 475.906 and 616.855 and this chapter, or by any rule of the
 33 board, all actions of the board shall be by a majority of a quorum.

34 (5) All board meetings and hearings shall be open to the public. The board may, in its discretion
 35 and according to law, conduct any portion of its meeting in executive session closed to the public.

36
 37 **UNIT CAPTIONS**

38
 39 **SECTION 12.** **The unit captions used in this 2021 Act are provided only for the conven-**
 40 **ience of the reader and do not become part of the statutory law of this state or express any**
 41 **legislative intent in the enactment of this 2021 Act.**