

# Senate Bill 439

Sponsored by Senator KNOPP (Presession filed.)

## 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**.

Requires insurer offering health plan, or person acting on behalf of insurer, to reduce enrollee cost sharing for prescription drugs by 85 percent of rebates received by insurer.

## A BILL FOR AN ACT

1 Relating to the cost of prescription drugs; creating new provisions; and amending ORS 243.144,  
2 243.877 and 750.055.

3  
4 Whereas residents of this state frequently rely on state-regulated commercial insurers to secure  
5 access to the prescription drugs needed to protect their health; and

6 Whereas commercial insurance benefit designs increasingly are requiring patients to bear sig-  
7 nificant out-of-pocket costs for prescription drugs; and

8 Whereas high out-of-pocket costs for prescription drugs impact the ability of patients to start  
9 new and necessary drug therapies and to stay adherent to their medication regimen; and

10 Whereas high or unpredictable deductible and coinsurance requirements are a main driver of  
11 high out-of-pocket costs for patients; and

12 Whereas the burdens of high or unpredictable deductibles and coinsurance are borne dispro-  
13 portionately by patients with chronic or debilitating conditions; and

14 Whereas drug manufacturers may offer sizeable rebates, discounts and price concessions in  
15 connection with dispensing or administering a drug therapy, but patients do not necessarily finan-  
16 cially benefit from these deductions at the point of sale and, instead, entities offering health plans  
17 or other intermediaries may retain the value of rebates, discounts or price concessions; and

18 Whereas restrictions are needed on the ability of entities offering health plans and their inter-  
19 mediaries to retain rebates, discounts and price concessions that instead should be directly passed  
20 on to enrollees as cost savings; and

21 Whereas health plan enrollees need equitable and accessible health care coverage that does not  
22 impose unfair cost-sharing burdens upon them; now, therefore,

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

24 **SECTION 1. Section 3 of this 2021 Act shall be known and may be cited as the Patients**  
25 **Pay Less Act of 2021.**

26 **SECTION 2. Section 3 of this 2021 Act is added to and made a part of the Insurance Code.**

27 **SECTION 3. (1) As used in this section:**

28 (a) **“Defined cost share” means any deductible or coinsurance applicable to the coverage**  
29 **of a prescription drug by a health plan.**

30 (b) **“Health plan” includes:**

31 (A) **A health benefit plan as defined in ORS 743B.005.**

**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 (B) A policy or certificate of health insurance, accident insurance or any other insurance  
 2 contract that reimburses the cost of prescription drugs, hospital care and other health care  
 3 services, equipment and supplies.

4 (C) A contract with a health care service contractor as defined in ORS 750.005.

5 (D) A contract or agreement with a preferred provider organization as described in ORS  
 6 743B.001.

7 (c) “Insurer” means an entity that offers a health plan in this state and any person  
 8 acting on behalf of the entity or that performs health care or administrative services for the  
 9 entity.

10 (d) “Price concession” means a discount or other reduction in price negotiated by or on  
 11 behalf of an insurer from a drug manufacturer, pharmacy or other party in connection with  
 12 selling, dispensing or administering a prescription drug.

13 (e) “Price protection rebate” means a price concession that directly or indirectly reduces  
 14 an insurer’s cost for a prescription drug if the wholesale acquisition cost of the drug in-  
 15 creases above a specified threshold.

16 (f) “Rebate” includes:

17 (A) Price concessions including but not limited to price protection rebates, reductions to  
 18 a base price and performance-based price reductions that reduce or are reasonably antic-  
 19 ipated to reduce, directly or indirectly, an insurer’s cost for a prescription drug during a plan  
 20 year.

21 (B) Fees or other administrative costs that reduce or are reasonably anticipated to re-  
 22 duce, directly or indirectly, an insurer’s cost for a prescription drug during a plan year.

23 (2) An insurer must reduce the defined cost share under a health plan for a prescription  
 24 drug at the point of sale by at least 85 percent of all rebates or 85 percent of a reasonable  
 25 estimate of all rebates to be received by the insurer for the prescription drug from a man-  
 26 ufacturer, pharmacy or other entity in connection with dispensing or administering the drug.

27 (3) The amount of rebates or a reasonable estimate of rebates received or to be received  
 28 for a prescription drug is a trade secret and is exempt from disclosure under ORS 192.311 to  
 29 192.478. An insurer is prohibited, and shall prohibit the insurer’s agents or any person that  
 30 performs health care or administrative services on behalf of the insurer that may have ac-  
 31 cess to the information, from publishing or revealing information regarding the amount of  
 32 or an estimate of rebates for any drugs that the insurer received or reasonably anticipates  
 33 to receive from a manufacturer or pharmacy.

34 **SECTION 4.** The Director of the Department of Consumer and Business Services may  
 35 impose a civil penalty, in accordance with ORS 183.745, in an amount not to exceed \$1 million  
 36 for each violation of section 3 of this 2021 Act or a rule or order that the director adopted  
 37 or issued under section 3 of this 2021 Act.

38 **SECTION 5.** ORS 243.144 is amended to read:

39 243.144. Benefit plans offered by the Public Employees’ Benefit Board that reimburse the cost  
 40 of medical and other health services and supplies must comply with the requirements for health  
 41 benefit plan coverage described in:

- 42 (1) ORS 743A.058;
- 43 (2) ORS 743B.601; *[and]*
- 44 (3) ORS 743B.810; **and**
- 45 (4) **Section 3 of this 2021 Act.**

**SECTION 6.** ORS 243.877 is amended to read:

243.877. Benefit plans offered by the Oregon Educators Benefit Board that reimburse the cost of medical and other health services and supplies must comply with the requirements for health benefit plan coverage described in:

- (1) ORS 743A.058;
- (2) ORS 743B.601; *[and]*
- (3) ORS 743B.810; **and**
- (4) **Section 3 of this 2021 Act.**

**SECTION 7.** ORS 750.055 is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

- (a) ORS 705.137, 705.138 and 705.139.
- (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.
- (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not including ORS 732.582.
- (d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.
- (e) ORS 734.014 to 734.440.
- (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.
- (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.022, 743.023, **743.025**, 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788 and 743.790.
- (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044, 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260 and section 2, chapter 771, Oregon Laws 2013.
- (i) ORS ~~[743.025,]~~ 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310, 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 **and section 3 of this 2021 Act.**
- (j) The following provisions of ORS chapter 744:
  - (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;
  - (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and
  - (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.
- (k) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,

1 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

2 (2) The following provisions of the Insurance Code apply to health care service contractors ex-  
3 cept in the case of group practice health maintenance organizations that are federally qualified  
4 pursuant to Title XIII of the Public Health Service Act:

5 (a) ORS 731.485, if the group practice health maintenance organization wholly owns and oper-  
6 ates an in-house drug outlet.

7 (b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse  
8 practitioner associated with a group practice health maintenance organization.

9 (3) For the purposes of this section, health care service contractors are insurers.

10 (4) Any for-profit health care service contractor organized under the laws of any other state that  
11 is not governed by the insurance laws of the other state is subject to all requirements of ORS  
12 chapter 732.

13 (5)(a) A health care service contractor is a domestic insurance company for the purpose of de-  
14 termining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

15 (b) A health care service contractor's classification as a domestic insurance company under  
16 paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510  
17 to 734.710.

18 (6) The Director of the Department of Consumer and Business Services may, after notice and  
19 hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025  
20 and 750.045 that are necessary for the proper administration of these provisions.

21 **SECTION 8.** ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section  
22 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59,  
23 Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws  
24 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, section  
25 30, chapter 515, Oregon Laws 2015, section 10, chapter 206, Oregon Laws 2017, section 6, chapter  
26 417, Oregon Laws 2017, section 22, chapter 479, Oregon Laws 2017, section 10, chapter 7, Oregon  
27 Laws 2018, section 69, chapter 13, Oregon Laws 2019, section 38, chapter 151, Oregon Laws 2019,  
28 and section 5, chapter 441, Oregon Laws 2019, is amended to read:

29 750.055. (1) The following provisions apply to health care service contractors to the extent not  
30 inconsistent with the express provisions of ORS 750.005 to 750.095:

31 (a) ORS 705.137, 705.138 and 705.139.

32 (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398  
33 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS  
34 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652,  
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36 (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not  
37 including ORS 732.582.

38 (d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695  
39 to 733.780.

40 (e) ORS 734.014 to 734.440.

41 (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to  
42 742.542.

43 (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.022, 743.023, **743.025**,  
44 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406,  
45 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650

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2 (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044,  
 3 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066,  
 4 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105,  
 5 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170,  
 6 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260.

7 (i) ORS [743.025,] 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204,  
 8 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256,  
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 10 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423,  
 11 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601,  
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 32 termining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

33 (b) A health care service contractor's classification as a domestic insurance company under  
 34 paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510  
 35 to 734.710.

36 (6) The Director of the Department of Consumer and Business Services may, after notice and  
 37 hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025  
 38 and 750.045 that are necessary for the proper administration of these provisions.

39