

**A-Engrossed**  
**Senate Bill 848**

Ordered by the Senate April 16  
Including Senate Amendments dated April 16

Sponsored by Senator PATTERSON, Representatives PRUSAK, NOSSE

**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.

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**

1  
2 Relating to pharmaceuticals; creating new provisions; amending ORS 413.032, 414.312, 414.314,  
3 414.318, 414.320, 414.325, 414.334 and 689.185; and repealing ORS 414.337.

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

5  
6 **OFFICE OF PHARMACEUTICAL PURCHASING**

7  
8 **SECTION 1. (1) The Office of Pharmaceutical Purchasing is established in the Oregon**  
9 **Health Authority to support multiagency and multistate collaborative purchasing of phar-**  
10 **maceuticals and drive down the cost of prescription drugs for residents of this state.**

11 **(2) The purpose of the office is to:**

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

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

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

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

22 **(3) The office shall, for participants in the program:**

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

24 **(b) Administer the Oregon Prescription Drug Program;**

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

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

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

3       **SECTION 2.** ORS 413.032 is amended to read:

4       413.032. (1) The Oregon Health Authority is established. The authority shall:

5       (a) Carry out policies adopted by the Oregon Health Policy Board;

6       (b) Administer the Oregon Integrated and Coordinated Health Care Delivery System established  
7 in ORS 414.570;

8       (c) Administer the Oregon Prescription Drug Program **and a multistate prescription drug**  
9 **purchasing consortium through the Office of Pharmaceutical Purchasing established in sec-**  
10 **tion 1 of this 2021 Act;**

11       (d) Develop the policies for and the provision of publicly funded medical care and medical as-  
12 sistance in this state;

13       (e) Develop the policies for and the provision of mental health treatment and treatment of ad-  
14 dictions;

15       (f) Assess, promote and protect the health of the public as specified by state and federal law;

16       (g) Provide regular reports to the board with respect to the performance of health services  
17 contractors serving recipients of medical assistance, including reports of trends in health services  
18 and enrollee satisfaction;

19       (h) Guide and support, with the authorization of the board, community-centered health initiatives  
20 designed to address critical risk factors, especially those that contribute to chronic disease;

21       (i) Be the state Medicaid agency for the administration of funds from Titles XIX and XXI of the  
22 Social Security Act and administer medical assistance under ORS chapter 414;

23       (j) In consultation with the Director of the Department of Consumer and Business Services, pe-  
24 riodically review and recommend standards and methodologies to the Legislative Assembly for:

25       (A) Review of administrative expenses of health insurers;

26       (B) Approval of rates; and

27       (C) Enforcement of rating rules adopted by the Department of Consumer and Business Services;

28       (k) Structure reimbursement rates for providers that serve recipients of medical assistance to  
29 reward comprehensive management of diseases, quality outcomes and the efficient use of resources  
30 and to promote cost-effective procedures, services and programs including, without limitation, pre-  
31 ventive health, dental and primary care services, web-based office visits, telephone consultations and  
32 telemedicine consultations;

33       (L) Guide and support community three-share agreements in which an employer, state or local  
34 government and an individual all contribute a portion of a premium for a community-centered health  
35 initiative or for insurance coverage;

36       (m) Develop, in consultation with the Department of Consumer and Business Services, one or  
37 more products designed to provide more affordable options for the small group market;

38       (n) Implement policies and programs to expand the skilled, diverse workforce as described in  
39 ORS 414.018 (4); and

40       (o) Implement a process for collecting the health outcome and quality measure data identified  
41 by the Health Plan Quality Metrics Committee and report the data to the Oregon Health Policy  
42 Board.

43       (2) The Oregon Health Authority is authorized to:

44       (a) Create an all-claims, all-payer database to collect health care data and monitor and evaluate  
45 health care reform in Oregon and to provide comparative cost and quality information to consumers,

1 providers and purchasers of health care about Oregon’s health care systems and health plan net-  
2 works in order to provide comparative information to consumers.

3 (b) Develop uniform contracting standards for the purchase of health care, including the fol-  
4 lowing:

5 (A) Uniform quality standards and performance measures;

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

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

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

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

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

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

17 414.312. (1) As used in ORS 414.312 to 414.318:

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

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

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

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

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

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

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

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

40 (3) [*The Director of the Oregon Health Authority shall appoint an administrator of the Oregon*  
41 *Prescription Drug Program.*] The administrator **of the office, appointed under section 1 of this**  
42 **2021 Act**, may:

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

45 (b) Purchase prescription drugs on behalf of individuals and entities that participate in the

1 program **or consortium**;

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

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

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

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

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

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

11 (a) Public Employees' Benefit Board, Oregon Educators Benefit Board and Public Employees  
12 Retirement System;

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

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

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

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

19 (f) Private entities; and

20 (g) Labor organizations.

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

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

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

28 (a) Contract with a pharmacy benefit manager;

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

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

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

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

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

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

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

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

45 414.314. (1) *[An individual or entity described in ORS 414.312 (4) may apply to participate in the*

1 *Oregon Prescription Drug Program. Participants shall apply on an application provided by the Oregon*  
2 *Health Authority]* **The Office of Pharmaceutical Purchasing shall make available an application**  
3 **form for individuals and entities that wish to participate in the:**

4 **(a) Oregon Prescription Drug Program; or**

5 **(b) Multistate prescription drug purchasing consortium.**

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

9 [(2)] **(3)** The [authority] **office** shall provide a mechanism to calculate and transmit the program  
10 prices for prescription drugs to a pharmacy. The pharmacy shall charge the participant the program  
11 price for a prescription drug.

12 [(3)] **(4)** A pharmacy may charge the participant the professional dispensing fee set by the [au-  
13 thority] **office.**

14 [(4)] **(5)** [Prescription drug] Identification cards issued under this section must contain the in-  
15 formation necessary for proper claims adjudication or transmission of price data.

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

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

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

29 414.320. The [Oregon Health Authority] **Office of Pharmaceutical Purchasing** shall adopt rules  
30 to implement and administer ORS 414.312 to 414.318 **and section 1 of this 2021 Act.** The rules shall  
31 include but are not limited to establishing procedures for:

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

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

36  
37 **PRACTITIONER-MANAGED**  
38 **PRESCRIPTION DRUG PLAN**  
39

40 **SECTION 7.** ORS 414.325 is amended to read:

41 414.325. (1) As used in this section:

42 (a) “Legend drug” means any drug requiring a prescription by a practitioner, as defined in ORS  
43 689.005.

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

1 lems.

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

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

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

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

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

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

16 (B) **Drugs for which prior authorization is required under rules adopted or amended by**  
17 **the authority.**

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

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

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

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

27 [(b) *The authority may not require prior authorization for therapeutic classes of non-sedating*  
28 *antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist*  
29 *for treatment of any of the following conditions, as described by the Health Evidence Review Commis-*  
30 *sion on the funded portion of its prioritized list of services:]*

31 [(A) *Asthma;*]

32 [(B) *Sinusitis;*]

33 [(C) *Rhinitis; or*]

34 [(D) *Allergies.*]

35 (4) **The authority shall provide a clear, readily accessible and convenient process for a**  
36 **practitioner to request prior authorization for a prescription drug. The authority shall post**  
37 **to the authority's website a clear explanation of the process that is easily accessible to**  
38 **practitioners and patients.**

39 (5) **The authority may not require prior authorization for a drug in a class not evaluated**  
40 **for the Practitioner-Managed Prescription Drug Plan under ORS 414.334, except to ensure**  
41 **that the drug is prescribed to treat a health condition that is a funded health condition on**  
42 **the prioritized list of health services developed and maintained by the Health Evidence Re-**  
43 **view Commission under ORS 414.690 and the treatment is consistent with rules adopted by**  
44 **the United States Food and Drug Administration related to labeling or packaging.**

45 (6) **The authority shall approve a practitioner's prior authorization request for a drug**

1 **that is not on a preferred drug list if:**

2 (a) **The request is for a refill of a prescription drug for the treatment of seizures, cancer,**  
3 **HIV or AIDS; or**

4 (b) **The practitioner, after consultation with the authority or an agent of the authority,**  
5 **determines that the prescribed drug is more appropriate for the patient than the products**  
6 **on the preferred drug list for treatment of the patient's condition.**

7 (7) **The authority shall approve or deny a request for prior authorization no later 72**  
8 **hours or two business days after receipt of the request, whichever is later, unless exigent**  
9 **circumstances exist. If exigent circumstances exist, the authority shall respond no later than**  
10 **one business day after receipt of the request. A request for prior authorization shall be**  
11 **deemed approved if the authority fails to deny the request within the time frames specified**  
12 **in this paragraph.**

13 [(6)] (8) The authority shall pay a rural health clinic for a legend drug prescribed and dispensed  
14 under this chapter by a licensed practitioner at the rural health clinic for an urgent medical con-  
15 dition if:

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

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

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

20 [(7)] (9) [Notwithstanding ORS 414.334,] **This section does not prohibit** the authority [may  
21 *conduct*] **from conducting** prospective drug utilization review in accordance with ORS 414.351 to  
22 414.414.

23 [(8)] (10) Notwithstanding subsection (3)(a) of this section, the authority may pay a pharmacy  
24 for a particular brand name drug rather than the generic version of the drug after notifying the  
25 pharmacy that the cost of the particular brand name drug, after receiving discounted prices and  
26 rebates, is equal to or less than the cost of the generic version of the drug.

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

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

33 **SECTION 8.** ORS 414.334 is amended to read:

34 414.334. (1) The Oregon Health Authority shall adopt **and maintain** a Practitioner-Managed  
35 Prescription Drug Plan [*for the medical assistance program*] **consisting of a preferred drug list for**  
36 **drugs other than those that are purchased by coordinated care organizations.** The purpose of  
37 the plan is to ensure that enrollees in the medical assistance program receive the most effective  
38 prescription drug available at the best possible price.

39 (2) In adopting the plan, the authority shall consider recommendations of the Pharmacy and  
40 Therapeutics Committee.

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

45 (4) Notwithstanding the Practitioner-Managed Prescription Drug Plan adopted by the authority,

1 a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an  
2 enrollee as being the most effective available.

3 (5) [An enrollee] **A patient** may appeal to the authority a decision of a practitioner or the au-  
4 thority to not provide a prescription drug requested by the enrollee.

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

7 (7) **The authority, in collaboration with coordinated care organizations, shall evaluate**  
8 **prescription drug purchasing to:**

9 (a) **Improve the quality of care from the perspective of members of coordinated care or-**  
10 **ganizations and practitioners; and**

11 (b) **Reduce costs to the state.**

12 (8) **The authority may not require a coordinated care organization to adhere to a single**  
13 **or partially aligned preferred drug list. A coordinated care organization may voluntarily**  
14 **participate in a single or partially aligned preferred drug list.**

15  
16 **CONFORMING AMENDMENT**

17  
18 **SECTION 9.** ORS 689.185 is amended to read:

19 689.185. (1) The State Board of Pharmacy shall meet at least once every three months to trans-  
20 act its business. One such meeting held during each fiscal year of the state shall be designated by  
21 rule as the annual meeting and shall be for the purpose of electing officers and for the reorganiza-  
22 tion of the board. The board shall meet at such additional times as it may determine. Such addi-  
23 tional meetings may be called by the president of the board or by majority of members of the board.

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

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

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

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

35  
36 **REPEAL**

37  
38 **SECTION 10.** ORS 414.337 is repealed.

39  
40 **UNIT CAPTIONS**

41  
42 **SECTION 11.** The unit captions used in this 2021 Act are provided only for the conven-  
43 ience of the reader and do not become part of the statutory law of this state or express any  
44 legislative intent in the enactment of this 2021 Act.