

# House Bill 2715

Sponsored by Representative SCHARF, Senator HANSELL; Representatives DIEHL, LEVY B, MORGAN, WRIGHT, Senators DEMBROW, FINDLEY, PATTERSON, THATCHER (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**.

Prohibits health insurers and pharmacy benefit managers from restricting coverage of physician-administered prescription drugs that are obtained by nonparticipating pharmacies. Designates violation of prohibition as unlawful practice.

## A BILL FOR AN ACT

1  
2 Relating to insurance coverage of prescription drugs; creating new provisions; and amending ORS  
3 646.608 and 735.533.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of the Insurance Code.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Participating pharmacy" means a pharmacy or pharmacist that:**

8 (A) **Contracts with an insurer or a pharmacy benefit manager to provide prescription**  
9 **drugs to enrollees in policies or certificates of health insurance issued by the insurer or ad-**  
10 **ministered by the pharmacy benefit manager; or**  
11 (B) **Is under the ownership or control of an insurer or pharmacy benefit manager.**

12 (b) **"Participating provider" means a health care provider that contracts with an insurer**  
13 **or a pharmacy benefit manager to provide health care items or services to enrollees in poli-**  
14 **cies or certificates of health insurance issued by the insurer or administered by the phar-**  
15 **macy benefit manager and any clinic, hospital outpatient department or pharmacy under the**  
16 **common ownership or control of the health care provider.**

17 (c) **"Physician-administered drug" means a prescription drug, other than a vaccine, that**  
18 **requires administration by a health professional and is not approved for self-administration.**

19 (2) **An insurer offering a policy or certificate of health insurance in this state that re-**  
20 **imburses the cost of prescription drugs or a pharmacy benefit manager registered in this**  
21 **state may not deny or in any way restrict the coverage of a physician-administered drug that**  
22 **is obtained by a participating provider from a pharmacy that is not a participating pharmacy**  
23 **if the drug:**

24 (a) **Is a covered prescription drug under the terms of the policy, certificate or contract;**

25 (b) **Is medically necessary; and**

26 (c) **Meets supply chain security controls and chain of distribution requirements of federal**  
27 **law.**

28 (3) **An insurer or pharmacy benefit manager restricts the coverage of a drug under sub-**  
29 **section (2) of this section if the insurer or pharmacy benefit manager:**

30 (a) **Refuses to authorize coverage of the drug;**

**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) Imposes a restriction or condition on the coverage that does not apply to prescription**  
2 **drugs obtained by the participating provider from a participating pharmacy;**

3       **(c) Pays less reimbursement than the reimbursement paid for the drug when obtained**  
4 **by the participating provider from a participating pharmacy; or**

5       **(d) Imposes higher copayments or other out-of-pocket costs on enrollees receiving the**  
6 **drug from a participating provider than are imposed when the participating provider admin-**  
7 **isters the same drug obtained from a participating pharmacy.**

8       **(4) Medical necessity criteria for coverage of a physician-administered drug may not be**  
9 **based, in whole or in part, on the location of the health care provider administering the drug.**

10       **(5) This section does not prohibit an insurer from establishing, for enrollees, centers of**  
11 **excellence based on nationally recognized, objective quality measures that are centered on**  
12 **specific drug treatments and designed to improve the safety, quality, affordability and ex-**  
13 **pertise in the administration of the treatment.**

14       **(6) Any contract provision that is contrary to the provisions of this section or that pur-**  
15 **ports to waive the provisions of this section is void and unenforceable.**

16       **(7) Violation of this section is an unlawful practice under ORS 646.608.**

17       **SECTION 3.** ORS 646.608 is amended to read:

18       646.608. (1) A person engages in an unlawful practice if in the course of the person's business,  
19 vocation or occupation the person does any of the following:

20       (a) Passes off real estate, goods or services as the real estate, goods or services of another.

21       (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
22 proval, or certification of real estate, goods or services.

23       (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
24 ciation with, or certification by, another.

25       (d) Uses deceptive representations or designations of geographic origin in connection with real  
26 estate, goods or services.

27       (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
28 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have  
29 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the  
30 person does not have.

31       (f) Represents that real estate or goods are original or new if the real estate or goods are de-  
32 teriorated, altered, reconditioned, reclaimed, used or secondhand.

33       (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
34 or that real estate or goods are of a particular style or model, if the real estate, goods or services  
35 are of another.

36       (h) Disparages the real estate, goods, services, property or business of a customer or another  
37 by false or misleading representations of fact.

38       (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or  
39 services as advertised, or with intent not to supply reasonably expectable public demand, unless the  
40 advertisement discloses a limitation of quantity.

41       (j) Makes false or misleading representations of fact concerning the reasons for, existence of,  
42 or amounts of price reductions.

43       (k) Makes false or misleading representations concerning credit availability or the nature of the  
44 transaction or obligation incurred.

45       (L) Makes false or misleading representations relating to commissions or other compensation to

1 be paid in exchange for permitting real estate, goods or services to be used for model or demon-  
 2 stration purposes or in exchange for submitting names of potential customers.

3 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner  
 4 of the goods or real estate does not authorize the service or dismantling.

5 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-  
 6 vides the information required under ORS 646.611.

7 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give  
 8 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of  
 9 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or  
 10 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,  
 11 discount or other value is contingent upon an event occurring after the time the customer enters  
 12 into the transaction.

13 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-  
 14 cize a product, business or service.

15 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
 16 not to deliver the real estate, goods or services as promised.

17 (r) Organizes or induces or attempts to induce membership in a pyramid club.

18 (s) Makes false or misleading representations of fact concerning the offering price of, or the  
 19 person's cost for real estate, goods or services.

20 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any  
 21 known material defect or material nonconformity.

22 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

23 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,  
 24 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-  
 25 ation.

26 (w) Manufactures mercury fever thermometers.

27 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
 28 law, or is:

29 (A) Prescribed by a person licensed under ORS chapter 677; and

30 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
 31 on the proper cleanup of mercury should breakage occur.

32 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
 33 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
 34 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
 35 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
 36 graph, "thermostat" means a device commonly used to sense and, through electrical communication  
 37 with heating, cooling or ventilation equipment, control room temperature.

38 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
 39 mercury light switches.

40 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

41 (bb) Violates ORS 646A.070 (1).

42 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

43 (dd) Violates the provisions of ORS 128.801 to 128.898.

44 (ee) Violates ORS 646.883 or 646.885.

45 (ff) Violates ORS 646.569.

- 1 (gg) Violates the provisions of ORS 646A.142.
- 2 (hh) Violates ORS 646A.360.
- 3 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 4 (jj) Violates ORS 646.563.
- 5 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 6 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 7 thereto.
- 8 (mm) Violates ORS 646A.210 or 646A.214.
- 9 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 10 (oo) Violates ORS 646A.095.
- 11 (pp) Violates ORS 822.046.
- 12 (qq) Violates ORS 128.001.
- 13 (rr) Violates ORS 646A.800 (2) to (4).
- 14 (ss) Violates ORS 646A.090 (2) to (5).
- 15 (tt) Violates ORS 87.686.
- 16 (uu) Violates ORS 646A.803.
- 17 (vv) Violates ORS 646A.362.
- 18 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 19 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 20 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 21 (zz) Violates ORS 87.007 (2) or (3).
- 22 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 23 (bbb) Engages in an unlawful practice under ORS 646.648.
- 24 (ccc) Violates ORS 646A.365.
- 25 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.
- 26 (eee) Sells a gift card in violation of ORS 646A.276.
- 27 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 28 (ggg) Violates ORS 646A.430 to 646A.450.
- 29 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 30 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 31 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 32 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 33 subject of the violation.
- 34 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 35 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 36 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- 37 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 38 (nnn) Violates ORS 646A.082.
- 39 (ooo) Violates ORS 646.647.
- 40 (ppp) Violates ORS 646A.115.
- 41 (qqq) Violates a provision of ORS 646A.405.
- 42 (rrr) Violates ORS 646A.092.
- 43 (sss) Violates a provision of ORS 646.644.
- 44 (ttt) Violates a provision of ORS 646A.295.
- 45 (uuu) Violates ORS 646A.564.

1 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-  
 2 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to  
 3 do so or unless the person is an active member of the Oregon State Bar.

4 (www) Violates ORS 702.012, 702.029 or 702.054.

5 (xxx) Violates ORS 646A.806.

6 (yyy) Violates ORS 646A.810 (2).

7 (zzz) Violates ORS 443.376.

8 (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

9 **(bbbb) Violates section 2 of this 2023 Act.**

10 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
 11 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

12 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-  
 13 cuting attorney need not prove competition between the parties or actual confusion or misunder-  
 14 standing.

15 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
 16 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
 17 declaring the conduct to be unfair or deceptive in trade or commerce.

18 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or  
 19 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-  
 20 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney  
 21 fees.

22 **SECTION 4.** ORS 735.533 is amended to read:

23 735.533. (1) In accordance with ORS chapter 183, the Department of Consumer and Business  
 24 Services may deny an application for registration as a pharmacy benefit manager or an application  
 25 for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a regis-  
 26 tration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

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

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

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

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

35 (e) Had a certificate of authority or authority to conduct business as a pharmacy benefit man-  
 36 ager denied, revoked or suspended in another state;

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

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

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

45 (i) Violated any rule or order of the department or any provision of the Insurance Code, **in-**

1 **cluding but not limited to section 2 of this 2023 Act.**

2 (2) The department may prescribe by rule a procedure by which a pharmacy or an entity acting  
3 on behalf of a pharmacy may file a complaint with the department alleging that a pharmacy benefit  
4 manager has engaged in conduct described in this section. The department may restrict the right  
5 of a pharmacy or entity to file a complaint only to the extent necessary to prevent abuse of the  
6 complaint process.

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