

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO B-ENGROSSED HOUSE BILL 3013

By JOINT COMMITTEE ON WAYS AND MEANS

June 23

1 On page 6 of the printed B-engrossed bill, after line 24, insert:

2 **“SECTION 4a. If House Bill 2725 becomes law, section 4 of this 2023 Act (amending ORS**
3 **735.534) is repealed and ORS 735.534, as amended by section 1, chapter ___, Oregon Laws 2023**
4 **(Enrolled House Bill 2725), is amended to read:**

5 “735.534. (1) As used in this section:

6 **“(a) ‘Critical access pharmacy’ means a pharmacy that is farther than 10 miles from any**
7 **other pharmacy, as defined by the Oregon Health Authority by rule for purposes related to**
8 **the Oregon Prescription Drug Program.**

9 “[*(a)*](A) (b)(A) ‘Generally available for purchase’ means a drug is available for purchase in this
10 state by a pharmacy from a national or regional wholesaler at the time a claim for reimbursement
11 is submitted by a network pharmacy.

12 “(B) A drug is not ‘generally available for purchase’ if the drug:

13 “(i) May be dispensed only in a hospital or inpatient care facility;

14 “(ii) Is unavailable due to a shortage of the product or an ingredient;

15 “(iii) Is available to a pharmacy at a price that is at or below the maximum allowable cost only
16 if purchased in substantial quantities that are inconsistent with the business needs of a pharmacy;

17 “(iv) Is sold at a discount due to a short expiration date on the drug; or

18 “(v) Is the subject of an active or pending recall.

19 “[*(b)*] (c) ‘List’ means the list of drugs for which maximum allowable costs have been established.

20 “[*(c)*] (d) ‘Maximum allowable cost’ means the maximum amount that a pharmacy benefit man-
21 ager will reimburse a pharmacy for the cost of a drug.

22 “[*(d)*] (e) ‘Multiple source drug’ means a therapeutically equivalent drug that is available from
23 at least two manufacturers.

24 “[*(e)*] (f) ‘Therapeutically equivalent’ has the meaning given that term in ORS 689.515.

25 “(2) A pharmacy benefit manager [*registered*] **licensed** under ORS 735.532:

26 “(a) May not place a drug on a list unless there are at least two multiple source drugs, or at
27 least one generic drug generally available for purchase.

28 “(b) Shall ensure that all drugs on a list are generally available for purchase.

29 “(c) Shall ensure that no drug on a list is obsolete.

30 “(d) Shall make available to each network pharmacy at the beginning of the term of a contract,
31 and upon renewal of a contract, the specific authoritative industry sources, other than proprietary
32 sources, the pharmacy benefit manager uses to determine the maximum allowable cost set by the
33 pharmacy benefit manager.

34 “(e) Shall make a list available to a network pharmacy upon request in a format that:

35 “(A) Is electronic;

1 “(B) Is computer accessible and searchable;

2 “(C) Identifies all drugs for which maximum allowable costs have been established; and

3 “(D) For each drug specifies:

4 “(i) The national drug code; and

5 “(ii) The maximum allowable cost.

6 “(f) Shall update each list maintained by the pharmacy benefit manager every seven business

7 days and make the updated lists, including all changes in the price of drugs, available to network

8 pharmacies in the format described in paragraph (e) of this subsection.

9 “(g) Shall ensure that dispensing fees are not included in the calculation of maximum allowable

10 cost.

11 “(h) May not reimburse a 340B pharmacy differently than any other network pharmacy based

12 on its status as a 340B pharmacy.

13 “(i) **Shall comply with the provisions of ORS 743A.062.**

14 “(j) **Shall pay a solo network pharmacy or a network pharmacy chain a professional dis-**

15 **persing fee in an amount no less than the dispensing fee established by the Oregon Health**

16 **Authority by rule and reimburse the cost of the ingredients of the drug in an amount that**

17 **is the lesser of the following, but in no event less than the fee-for-service rate paid by the**

18 **authority in the medical assistance program:**

19 “(A) **The pharmacy’s usual charge to the public for the drug; and**

20 “(B)(i) **The Oregon Average Actual Acquisition Cost;**

21 “(ii) **If the drug is not on the Oregon Average Actual Acquisition Cost rates list, the**

22 **National Average Drug Acquisition Cost published by the Centers for Medicare and Medicaid**

23 **Services; or**

24 “(iii) **If the drug is not on the Oregon Average Actual Acquisition Cost rates list or the**

25 **National Average Drug Acquisition Cost rates list, the wholesale acquisition cost.**

26 “[i] (k) May not retroactively deny or reduce payment on a claim for reimbursement of the

27 cost of services after the claim has been adjudicated by the pharmacy benefit manager unless the:

28 “(A) Adjudicated claim was submitted fraudulently;

29 “(B) Pharmacy benefit manager’s payment on the adjudicated claim was incorrect because the

30 pharmacy had already been paid for the services;

31 “(C) Services were improperly rendered by the pharmacy **in violation of state or federal law;**

32 **or**

33 “[D] *Pharmacy agrees to the denial or reduction prior to the pharmacy benefit manager notifying*

34 *the pharmacy that the claim has been denied or reduced; or]*

35 “[E] (D) [The] Payment was incorrect due to an error that the pharmacy and pharmacy benefit

36 manager agree was a clerical error.

37 “[j] (L) May not impose a fee on a pharmacy after the point of sale.

38 “[k] (m) Shall provide notice to a pharmacy of any claim for reimbursement of the cost of a

39 prescription drug that is denied or reduced. The notice shall identify the specific disaggregated

40 claim that was denied or reduced and a detailed explanation for why the specific claim was denied

41 or reduced.

42 “(3) Subsection [(2)/i] (2)(k) of this section may not be construed to limit pharmacy claim audits

43 under ORS 735.540 to 735.552.

44 “(4) A pharmacy benefit manager must establish a process by which a network pharmacy may

45 appeal its reimbursement for a drug [*subject to maximum allowable cost pricing*]. A network phar-

1 macy may appeal [*a maximum allowable cost if*] the reimbursement for the drug **if the reimburse-**
2 **ment** is less than the [*net amount that the network pharmacy paid to the supplier of the drug*]
3 **amount specified in subsection (2)(j) of this section.** The process must allow a network pharmacy
4 a period of no less than 60 days after a claim is reimbursed in which to file the appeal. An appeal
5 requested under this section must be completed within 30 calendar days of the pharmacy making the
6 claim for which appeal has been requested.

7 “(5) A pharmacy benefit manager shall allow a network pharmacy to submit the documentation
8 in support of its appeal on paper or electronically and may not:

9 “(a) Refuse to accept an appeal submitted by a person authorized to act on behalf of the network
10 pharmacy;

11 “(b) Refuse to adjudicate an appeal for the reason that the appeal is submitted along with other
12 claims that are denied; or

13 “(c) Impose requirements or establish procedures that have the effect of unduly obstructing or
14 delaying an appeal.

15 “(6) A pharmacy benefit manager must provide as part of the appeals process established under
16 subsection (4) of this section:

17 “(a) A telephone number at which a network pharmacy may contact the pharmacy benefit man-
18 ager and speak with an individual who is responsible for processing appeals;

19 “(b) A final response to an appeal of [*a maximum allowable cost*] **the reimbursement for a drug**
20 within seven business days; and

21 “(c) If the appeal is denied, the reason for the denial [*and the national drug code of a drug that*
22 *may be purchased by similarly situated pharmacies at a price that is equal to or less than the maximum*
23 *allowable cost*].

24 “(7)(a) If an appeal is upheld under this section, the pharmacy benefit manager shall:

25 “(A) Make an adjustment for the pharmacy that requested the appeal from the date of initial
26 adjudication forward; and

27 “(B) Allow the pharmacy to reverse the claim and resubmit an adjusted claim without any ad-
28 ditional charges.

29 “(b) If the request for an adjustment has come from a critical access pharmacy, [*as defined by*
30 *the Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program,*]
31 the adjustment approved under paragraph (a) of this subsection shall apply only to critical access
32 pharmacies.

33 “[*(8) This section does not apply to the state medical assistance program.*]

34 “**(8) A pharmacy may file a complaint with the Department of Consumer and Business**
35 **Services to contest a finding of a pharmacy benefit manager in response to an appeal under**
36 **subsection (4) of this section or a pharmacy benefit manager’s failure to comply with the**
37 **provisions of this section.**

38 “(9) The Department of Consumer and Business Services may adopt rules to carry out the pro-
39 visions of this section.”.