

Requested by JOINT COMMITTEE ON WAYS AND MEANS

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
B-ENGROSSED HOUSE BILL 3013**

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**
3 **Act (amending ORS 735.534) is repealed and ORS 735.534, as amended**
4 **by section 1, chapter __, Oregon Laws 2023 (Enrolled House Bill 2725),**
5 **is amended to read:**

6 “735.534. (1) As used in this section:

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

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

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

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

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

18 “(iii) Is available to a pharmacy at a price that is at or below the maxi-
19 mum allowable cost only if purchased in substantial quantities that are in-
20 consistent with the business needs of a pharmacy;

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

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

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

4 “[*c*] (d) ‘Maximum allowable cost’ means the maximum amount that a
5 pharmacy benefit manager will reimburse a pharmacy for the cost of a drug.

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

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

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

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

13 “(b) Shall ensure that all drugs on a list are generally available for pur-
14 chase.

15 “(c) Shall ensure that no drug on a list is obsolete.

16 “(d) Shall make available to each network pharmacy at the beginning of
17 the term of a contract, and upon renewal of a contract, the specific author-
18 itative industry sources, other than proprietary sources, the pharmacy bene-
19 fit manager uses to determine the maximum allowable cost set by the
20 pharmacy benefit manager.

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

23 “(A) Is electronic;

24 “(B) Is computer accessible and searchable;

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

27 “(D) For each drug specifies:

28 “(i) The national drug code; and

29 “(ii) The maximum allowable cost.

30 “(f) Shall update each list maintained by the pharmacy benefit manager

1 every seven business days and make the updated lists, including all changes
2 in the price of drugs, available to network pharmacies in the format de-
3 scribed in paragraph (e) of this subsection.

4 “(g) Shall ensure that dispensing fees are not included in the calculation
5 of maximum allowable cost.

6 “(h) May not reimburse a 340B pharmacy differently than any other net-
7 work pharmacy based on its status as a 340B pharmacy.

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

9 “(j) **Shall pay a solo network pharmacy or a network pharmacy**
10 **chain a professional dispensing fee in an amount no less than the**
11 **dispensing fee established by the Oregon Health Authority by rule and**
12 **reimburse the cost of the ingredients of the drug in an amount that**
13 **is the lesser of the following, but in no event less than the fee-for-**
14 **service rate paid by the authority in the medical assistance program:**

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

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

17 “(ii) **If the drug is not on the Oregon Average Actual Acquisition**
18 **Cost rates list, the National Average Drug Acquisition Cost published**
19 **by the Centers for Medicare and Medicaid Services; or**

20 “(iii) **If the drug is not on the Oregon Average Actual Acquisition**
21 **Cost rates list or the National Average Drug Acquisition Cost rates**
22 **list, the wholesale acquisition cost.**

23 “[*i*] (k) **May not retroactively deny or reduce payment on a claim for**
24 **reimbursement of the cost of services after the claim has been adjudicated**
25 **by the pharmacy benefit manager unless the:**

26 “(A) **Adjudicated claim was submitted fraudulently;**

27 “(B) **Pharmacy benefit manager’s payment on the adjudicated claim was**
28 **incorrect because the pharmacy had already been paid for the services;**

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

1 “[(D) Pharmacy agrees to the denial or reduction prior to the pharmacy
2 benefit manager notifying the pharmacy that the claim has been denied or re-
3 duced; or]

4 “[(E)] **(D)** [The] Payment was incorrect due to an error that the pharmacy
5 and pharmacy benefit manager agree was a clerical error.

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

7 “[(k)] **(m)** Shall provide notice to a pharmacy of any claim for re-
8 imbursement of the cost of a prescription drug that is denied or reduced. The
9 notice shall identify the specific disaggregated claim that was denied or re-
10 duced and a detailed explanation for why the specific claim was denied or
11 reduced.

12 “(3) Subsection [(2)(i)] **(2)(k)** of this section may not be construed to limit
13 pharmacy claim audits under ORS 735.540 to 735.552.

14 “(4) A pharmacy benefit manager must establish a process by which a
15 network pharmacy may appeal its reimbursement for a drug [*subject to max-*
16 *imum allowable cost pricing*]. A network pharmacy may appeal [*a maximum*
17 *allowable cost if*] the reimbursement for the drug **if the reimbursement** is
18 less than the [*net amount that the network pharmacy paid to the supplier of*
19 *the drug*] **amount specified in subsection (2)(j) of this section**. The pro-
20 cess must allow a network pharmacy a period of no less than 60 days after
21 a claim is reimbursed in which to file the appeal. An appeal requested under
22 this section must be completed within 30 calendar days of the pharmacy
23 making the claim for which appeal has been requested.

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

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

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

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

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

5 “(a) A telephone number at which a network pharmacy may contact the
6 pharmacy benefit manager and speak with an individual who is responsible
7 for processing appeals;

8 “(b) A final response to an appeal of [*a maximum allowable cost*] **the re-**
9 **imbursement for a drug** within seven business days; and

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

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

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

17 “(B) Allow the pharmacy to reverse the claim and resubmit an adjusted
18 claim without any additional charges.

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

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

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

30 “(9) The Department of Consumer and Business Services may adopt rules

1 to carry out the provisions of this section.”.

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