

House Bill 4012

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Behavioral Health and Health Care)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act does not allow an insurer to make a person enrolled in a health benefit plan go to a certain pharmacy in some circumstances for certain types of drugs. The Act also applies to other types of entities that pay for health care. (Flesch Readability Score: 65.2).

Prohibits issuers of health benefit plans, health care service contractors or multiple employer welfare arrangements from requiring that drugs that are administered by a health care provider be dispensed at a certain pharmacy or by a pharmacy that is in the provider's network, under specified circumstances.

A BILL FOR AN ACT

1
2 Relating to reimbursement of clinician-administered prescription drugs; creating new provisions; and
3 amending ORS 750.055 and 750.333.

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

5 **SECTION 1. Section 2 of this 2024 Act is added to and made a part of the Insurance Code.**

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

7 (a) **"Administer" means to directly apply a drug to the body of a patient by injection,**
8 **inhalation, ingestion or any other means.**

9 (b) **"Clinician-administered drug" means an outpatient prescription drug other than a**
10 **vaccine, a drug administered through a clinic affiliated with a hospital or a drug adminis-**
11 **tered in a hospital outpatient infusion center, that:**

12 (A) **Cannot reasonably be:**

13 (i) **Administered by a patient for whom the drug is prescribed; or**

14 (ii) **Administered by an individual other than a health care provider who is assisting the**
15 **patient with the self-administration of the drug; and**

16 (B) **Is typically administered in the office of a physician or other health care provider**
17 **authorized by law to administer the drug.**

18 (c) **"Health benefit plan" has the meaning given that term in ORS 743B.005.**

19 (d) **"Health care provider" means an individual who is licensed, certified or otherwise**
20 **authorized to provide health care services in this state.**

21 (2) **Subject to subsection (3) of this section, a health benefit plan that reimburses the cost**
22 **of hospital or medical expenses may not, for an enrollee with a chronic, complex, rare or**
23 **life-threatening medical condition:**

24 (a) **Require a covered clinician-administered drug to be dispensed only by certain phar-**
25 **macies or only by pharmacies participating in the health benefit plan issuer's provider net-**
26 **work;**

27 (b) **Limit or deny coverage of a covered clinician-administered drug based on the**

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 **enrollee's choice of pharmacy or because the drug was not dispensed by a pharmacy that**
 2 **participates in the health benefit plan issuer's provider network;**

3 **(c) Require a physician or health care provider participating in the health benefit plan**
 4 **issuer's provider network to bill for or be reimbursed for the delivery and administration of**
 5 **clinician-administered drugs as a pharmacy benefit instead of as a medical benefit under the**
 6 **plan unless:**

7 **(A) The patient has provided informed written consent; and**

8 **(B) The patient's physician or health care provider attests in writing that a delay in the**
 9 **administration of the drug will not place the patient at an increased health risk; or**

10 **(d) Require the enrollee to pay an additional fee or other increased cost for a clinician-**
 11 **administered drug based on the enrollee's choice of pharmacy or because the drug was not**
 12 **dispensed by a pharmacy that participates in the health benefit plan issuer's provider net-**
 13 **work.**

14 **(3) Subsection (2) of this section applies to a clinician-administered drug only if the**
 15 **enrollee's physician or health care provider determines that:**

16 **(a) A delay in care would make disease progression probable;**

17 **(b) The use of a pharmacy within the health benefit plan issuer's provider network would:**

18 **(A) Make death or patient harm probable; or**

19 **(B) Potentially cause a barrier to the enrollee's adherence to or compliance with the**
 20 **enrollee's plan of care; or**

21 **(c) The timeliness of the delivery or dosage requirements necessitate delivery by a**
 22 **pharmacy that is outside of the health benefit plan issuer's provider network.**

23 **(4) This section does not:**

24 **(a) Authorize a person to administer a drug when otherwise prohibited by state or federal**
 25 **law; or**

26 **(b) Modify drug administration requirements under state law, including any requirements**
 27 **related to the delegation and supervision of the administration of drugs.**

28 **SECTION 3.** ORS 750.055 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,
 35 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

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, and ORS 732.650 to 732.689.

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

1 to 743.656, 743.680 to 743.689, 743.788[,] **and** 743.790 [*and 743B.221*].

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.169,
6 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252, 743A.260, 743A.310
7 and 743A.315 and section 2, chapter 771, Oregon Laws 2013.

8 (i) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195, 743B.197, 743B.200,
9 743B.202, 743B.204, 743B.220, **743B.221**, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253,
10 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310,
11 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403,
12 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505,
13 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 **and section 2 of this 2024 Act**.

14 (j) The following provisions of ORS chapter 744:

15 (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance produc-
16 ers;

17 (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and

18 (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

19 (k) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
20 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

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

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

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

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

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

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

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

40 **SECTION 4.** ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section
41 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59,
42 Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws
43 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, section
44 30, chapter 515, Oregon Laws 2015, section 10, chapter 206, Oregon Laws 2017, section 6, chapter
45 417, Oregon Laws 2017, section 22, chapter 479, Oregon Laws 2017, section 10, chapter 7, Oregon

1 Laws 2018, section 69, chapter 13, Oregon Laws 2019, section 38, chapter 151, Oregon Laws 2019,
 2 section 5, chapter 441, Oregon Laws 2019, section 85, chapter 97, Oregon Laws 2021, section 12,
 3 chapter 37, Oregon Laws 2022, section 5, chapter 111, Oregon Laws 2023, and section 2, chapter 152,
 4 Oregon Laws 2023, is amended to read:

5 750.055. (1) The following provisions apply to health care service contractors to the extent not
 6 inconsistent with the express provisions of ORS 750.005 to 750.095:

7 (a) ORS 705.137, 705.138 and 705.139.

8 (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398
 9 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS
 10 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652,
 11 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

12 (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not
 13 including ORS 732.582, and ORS 732.650 to 732.689.

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

16 (e) ORS 734.014 to 734.440.

17 (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to
 18 742.542.

19 (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.022, 743.023, 743.025,
 20 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406,
 21 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650
 22 to 743.656, 743.680 to 743.689, 743.788[,] **and** 743.790 [*and 743B.221*].

23 (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044,
 24 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066,
 25 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105,
 26 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.169,
 27 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252, 743A.260, 743A.310
 28 and 743A.315.

29 (i) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195, 743B.197, 743B.200,
 30 743B.202, 743B.204, 743B.220, **743B.221**, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253,
 31 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310,
 32 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403,
 33 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505,
 34 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 **and section 2 of this 2024 Act**.

35 (j) The following provisions of ORS chapter 744:

36 (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance produc-
 37 ers;

38 (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and

39 (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

40 (k) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
 41 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

45 (a) ORS 731.485, if the group practice health maintenance organization wholly owns and oper-

1 ates an in-house drug outlet.

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

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

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

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

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

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

16 **SECTION 5.** ORS 750.333 is amended to read:

17 750.333. (1) The following provisions apply to trusts carrying out a multiple employer welfare
18 arrangement:

19 (a) ORS 705.137, 705.138 and 705.139.

20 (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328,
21 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484,
22 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804, 731.808 and 731.844 to
23 731.992.

24 (c) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

25 (d) ORS 734.014 to 734.440.

26 (e) ORS 742.001 to 742.009, 742.013, 742.016, 742.061 and 742.065.

27 (f) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.023, 743.028, 743.029,
28 743.053, 743.405, 743.406, 743.524, 743.526, 743.535 and 743B.221.

29 (g) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.024, 743A.034, 743A.036, 743A.040,
30 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066,
31 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105,
32 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.169,
33 743A.170, 743A.175, 743A.180, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252, 743A.260
34 and 743A.310.

35 (h) ORS 743B.001, 743B.003 to 743B.127 (except 743B.125 to 743B.127), 743B.195, 743B.197,
36 743B.200, 743B.202, 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253,
37 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.310, 743B.320, 743B.321, 743B.330, 743B.340,
38 743B.341, 743B.342, 743B.343, 743B.344, 743B.345, 743B.347, 743B.400, 743B.403, 743B.407, 743B.420,
39 743B.423, 743B.451, 743B.453, 743B.470, 743B.505, 743B.550, 743B.555 and 743B.601 **and section 2 of**
40 **this 2024 Act.**

41 (i) The following provisions of ORS chapter 744:

42 (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance produc-
43 ers;

44 (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and

45 (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

- 1 (j) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.
2 (2) For the purposes of this section:
3 (a) A trust carrying out a multiple employer welfare arrangement is an insurer.
4 (b) References to certificates of authority are references to certificates of multiple employer
5 welfare arrangement.
6 (c) Contributions are premiums.
7 (3) The provision of health benefits under ORS 750.301 to 750.341 is the transaction of health
8 insurance.
9 (4) The Department of Consumer and Business Services may adopt rules that are necessary to
10 implement the provisions of ORS 750.301 to 750.341.

11 **SECTION 6. Section 2 of this 2024 Act and the amendments to ORS 750.055 and 750.333**
12 **by sections 3 to 5 of this 2024 Act apply to health benefit plans, health care service contracts**
13 **and multiple employer welfare arrangements issued, renewed or extended on or after the**
14 **effective date of this 2024 Act.**

15