

House Bill 2057

Sponsored by Representative NOSSE (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Tells insurers and PBMs not to require that drugs be labeled as 340B drugs in a claim for repayment. (Flesch Readability Score: 62.8).

Prohibits insurers offering policies or certificates of health insurance and pharmacy benefit managers from requiring that a claim for reimbursement of a prescription drug include a modifier or other indicator that the drug is a 340B drug.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to prescription drugs; amending ORS 735.530, 735.534 and 743A.062; and prescribing an ef-
3 fective date.

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

5 **SECTION 1.** ORS 735.530, as amended by section 3, chapter 87, Oregon Laws 2024, is amended
6 to read:

7 735.530. As used in ORS 735.530 to 735.552:

8 (1) "Claim" means a request from a pharmacy or pharmacist to be reimbursed for the cost of
9 filling or refilling a prescription for a drug or for providing a medical supply or service.

10 (2) "Enrollee" means an individual who has enrolled for coverage in a health benefit plan for
11 which a pharmacy benefit manager has contracted with the insurer to reimburse claims submitted
12 by pharmacies or pharmacists for the costs of drugs prescribed for the individual.

13 (3) "Health benefit plan" has the meaning given that term in ORS 743B.005.

14 (4) "Insurer" has the meaning given that term in ORS 731.106.

15 (5) "Long term care pharmacy" means a pharmacy for which the primary business is to serve
16 a:

17 (a) Licensed long term care facility, as defined in ORS 442.015;

18 (b) Licensed residential facility, as defined in ORS 443.400; or

19 (c) Licensed adult foster home, as defined in ORS 443.705.

20 (6) "Mail order pharmacy" means a pharmacy for which the primary business is to receive pre-
21 scriptions by mail, telephone or electronic transmission and dispense drugs to patients through the
22 use of the United States Postal Service, a package delivery service or home delivery.

23 (7) "Network pharmacy" means a pharmacy that contracts with a pharmacy benefit manager.

24 (8) "Pharmacist" has the meaning given that term in ORS 689.005.

25 (9) "Pharmacy" includes:

26 (a) A pharmacy as defined in ORS 689.005;

27 (b) A long term care pharmacy; and

28 (c) An entity that provides or oversees administrative services for two or more pharmacies.

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 (10) “Pharmacy benefit” means the payment for or reimbursement of an enrollee’s cost for pre-
2 scription drugs.

3 (11)(a) “Pharmacy benefit manager” means a person that contracts with pharmacies on behalf
4 of an insurer, coordinated care organizations as defined in ORS 414.025 or the Oregon Prescription
5 Drug Program established in ORS 414.312 to:

6 (A) Process claims for prescription drugs or medical supplies or provide retail network man-
7 agement for pharmacies or pharmacists;

8 (B) Pay pharmacies or pharmacists for prescription drugs or medical supplies;

9 (C) Negotiate rebates, discounts or other financial incentives or arrangements with manufac-
10 turers for drugs paid for or procured as described in this paragraph;

11 (D) Receive payments for pharmacy services;

12 (E) Disburse or distribute rebates;

13 (F) Manage or participate in incentive programs or arrangements with manufacturers of drugs;

14 (G) Negotiate or enter into contracts with pharmacies;

15 (H) Develop formularies;

16 (I) Design pharmacy benefit programs; or

17 (J) Advertise or promote pharmacy services.

18 (b) “Pharmacy benefit manager” does not include a health care service contractor as defined in
19 ORS 750.005.

20 (12) “Pharmacy services” means the provision of products, goods or services in the course of the
21 practice of pharmacy.

22 (13) “Specialty drug” means a drug that:

23 (a) Is subject to restricted distribution by the United States Food and Drug Administration; or

24 (b) Requires special handling, provider coordination or patient education that cannot be pro-
25 vided by a retail pharmacy.

26 (14) “Specialty pharmacy” means a pharmacy capable of meeting the requirements applicable to
27 specialty drugs.

28 (15) “Third party administrator” means a person licensed under ORS 744.702.

29 **(16) “340B drug” means a covered drug that is subject to the cap on amounts required
30 to be paid in 42 U.S.C. 256b(a)(1) and that is dispensed at a 340B pharmacy.**

31 ~~[(16)]~~ (17) “340B pharmacy” means a pharmacy that is authorized to purchase drugs at a dis-
32 count under 42 U.S.C. 256b.

33 **SECTION 2.** ORS 735.534, as amended by section 6, chapter 87, Oregon Laws 2024, is amended
34 to read:

35 735.534. (1) As used in this section:

36 (a)(A) “Generally available for purchase” means a drug is available for purchase in this state
37 by a pharmacy from a national or regional wholesaler at the time a claim for reimbursement is
38 submitted by a network pharmacy.

39 (B) A drug is not “generally available for purchase” if the drug:

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

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

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

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

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

- 1 (b) "List" means the list of drugs for which maximum allowable costs have been established.
- 2 (c) "Maximum allowable cost" means the maximum amount that a pharmacy benefit manager
3 will reimburse a pharmacy for the cost of a drug.
- 4 (d) "Multiple source drug" means a therapeutically equivalent drug that is available from at
5 least two manufacturers.
- 6 (e) "Therapeutically equivalent" has the meaning given that term in ORS 689.515.
- 7 (2) A pharmacy benefit manager licensed under ORS 735.532:
- 8 (a) May not place a drug on a list unless there are at least two multiple source drugs, or at least
9 one generic drug generally available for purchase.
- 10 (b) Shall ensure that all drugs on a list are generally available for purchase.
- 11 (c) Shall ensure that no drug on a list is obsolete.
- 12 (d) Shall make available to each network pharmacy at the beginning of the term of a contract,
13 and upon renewal of a contract, the specific authoritative industry sources, other than proprietary
14 sources, the pharmacy benefit manager uses to determine the maximum allowable cost set by the
15 pharmacy benefit manager.
- 16 (e) Shall make a list available to a network pharmacy upon request in a format that:
- 17 (A) Is electronic;
- 18 (B) Is computer accessible and searchable;
- 19 (C) Identifies all drugs for which maximum allowable costs have been established; and
- 20 (D) For each drug specifies:
- 21 (i) The national drug code; and
- 22 (ii) The maximum allowable cost.
- 23 (f) Shall update each list maintained by the pharmacy benefit manager every seven business days
24 and make the updated lists, including all changes in the price of drugs, available to network phar-
25 macies in the format described in paragraph (e) of this subsection.
- 26 (g) Shall ensure that dispensing fees are not included in the calculation of maximum allowable
27 cost.
- 28 (h) May not reimburse a 340B pharmacy differently than any other network pharmacy based on
29 its status as a 340B pharmacy **or require a claim for reimbursement of a prescription drug to**
30 **include a modifier or other indicator that the drug is a 340B drug unless:**
- 31 **(A) The claim is for payment, directly or indirectly, by the state medical assistance pro-**
32 **gram; or**
- 33 **(B) The modifier or other indicator is required by law to prevent a duplicate discount or**
34 **rebate.**
- 35 (i) Shall comply with the provisions of ORS 743A.062.
- 36 (j) May not retroactively deny or reduce payment on a claim for reimbursement of the cost of
37 services after the claim has been adjudicated by the pharmacy benefit manager unless the:
- 38 (A) Adjudicated claim was submitted fraudulently;
- 39 (B) Pharmacy benefit manager's payment on the adjudicated claim was incorrect because the
40 pharmacy had already been paid for the services;
- 41 (C) Services were improperly rendered by the pharmacy in violation of state or federal law; or
- 42 (D) Payment was incorrect due to an error that the pharmacy and pharmacy benefit manager
43 agree was a clerical error.
- 44 (k) May not impose a fee on a pharmacy after the point of sale.
- 45 (L) Shall provide notice to a pharmacy of any claim for reimbursement of the cost of a pre-

1 prescription drug that is denied or reduced. The notice shall identify the specific disaggregated claim
 2 that was denied or reduced and a detailed explanation for why the specific claim was denied or re-
 3 duced.

4 (3) Subsection (2)(j) of this section may not be construed to limit pharmacy claim audits under
 5 ORS 735.540 to 735.552.

6 (4) A pharmacy benefit manager must establish a process by which a network pharmacy may
 7 appeal its reimbursement for a drug subject to maximum allowable cost pricing. A network phar-
 8 macy may appeal a maximum allowable cost if the reimbursement for the drug is less than the net
 9 amount that the network pharmacy paid to the supplier of the drug. The process must allow a net-
 10 work pharmacy a period of no less than 60 days after a claim is reimbursed in which to file the
 11 appeal. An appeal requested under this section must be completed within 30 calendar days of the
 12 pharmacy making the claim for which appeal has been requested.

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

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

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

19 (c) Impose requirements or establish procedures that have the effect of unduly obstructing or
 20 delaying an appeal.

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

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

25 (b) A final response to an appeal of the reimbursement for a drug within seven business days;
 26 and

27 (c) If the appeal is denied, the reason for the denial and the national drug code of a drug that
 28 may be purchased by similarly situated pharmacies at a price that is equal to or less than the
 29 maximum allowable cost.

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

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

33 (B) Allow the pharmacy to reverse the claim and resubmit an adjusted claim without any addi-
 34 tional charges.

35 (b) If the request for an adjustment has come from a critical access pharmacy, as defined by the
 36 Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the
 37 adjustment approved under paragraph (a) of this subsection shall apply only to critical access
 38 pharmacies.

39 (8) A pharmacy may file a complaint with the Department of Consumer and Business Services
 40 to contest a finding of a pharmacy benefit manager in response to an appeal under subsection (4)
 41 of this section or a pharmacy benefit manager's failure to comply with the provisions of this section.

42 (9) The Department of Consumer and Business Services may adopt rules to carry out the pro-
 43 visions of this section.

44 **SECTION 3.** ORS 743A.062, as amended by section 11, chapter 87, Oregon Laws 2024, is
 45 amended to read:

1 743A.062. (1) As used in this section:

2 (a) "Medical assistance program" means the state program that provides medical assistance as
3 defined in ORS 414.025.

4 (b) "340B drug" means a covered drug dispensed by a covered entity, as those terms are defined
5 in 42 U.S.C. 256b, that is subject to the cap on amounts required to be paid in 42 U.S.C. 256b(a)(1).

6 (2) A policy or certificate of health insurance or other contract providing for the reimbursement
7 of the cost of a prescription drug to a resident of this state may not:

8 (a) Exclude coverage of the drug for a particular indication solely on the grounds that the in-
9 dication has not been approved by the United States Food and Drug Administration if the Health
10 Evidence Review Commission established under ORS 414.688 or the Pharmacy and Therapeutics
11 Committee established under ORS 414.353 determines that the drug is recognized as effective for the
12 treatment of that indication:

13 (A) In publications that the commission or the committee determines to be equivalent to:

14 (i) The American Hospital Formulary Service drug information;

15 (ii) "Drug Facts and Comparisons" (Lippincott-Raven Publishers);

16 (iii) The United States Pharmacopoeia drug information; or

17 (iv) Other publications that have been identified by the United States Secretary of Health and
18 Human Services as authoritative;

19 (B) In the majority of relevant peer-reviewed medical literature; or

20 (C) By the United States Secretary of Health and Human Services;

21 (b) For an insured who is enrolled in the medical assistance program:

22 (A) Except as provided in subsection (3) of this section, require a prescription for the drug to
23 be filled or refilled at a mail order pharmacy; or

24 (B) Require a prescription for the drug to be filled or refilled at a pharmacy that is not a local
25 pharmacy enrolled in the medical assistance program;

26 (c) Discriminate in the reimbursement of a prescription for 340B drugs from other prescription
27 drugs;

28 (d) Assess a fee, chargeback, clawback or other adjustment for the dispensing of a 340B drug;

29 (e) Exclude a pharmacy from a pharmacy network on the basis that the pharmacy dispenses a
30 340B drug;

31 (f) Restrict the methods by which a 340B drug may be dispensed or delivered; *[or]*

32 (g) Restrict the number of pharmacies within a pharmacy network that may dispense or deliver
33 340B drugs; **or**

34 **(h) Require a claim for reimbursement of the prescription drug to include a modifier or**
35 **other indicator that the drug is a 340B drug unless:**

36 **(A) The claim is for payment, directly or indirectly, by the medical assistance program;**
37 **or**

38 **(B) The modifier or other indicator is required by law to prevent a duplicate discount or**
39 **rebate.**

40 (3) Subsection (2)(b)(A) of this section does not prohibit an insurer from requiring a medical as-
41 sistance recipient to fill or refill a prescription for a specialty drug at a mail order pharmacy that
42 is a specialty pharmacy.

43 (4) Required coverage of a prescription drug under this section shall include coverage for med-
44 ically necessary services associated with the administration of that drug.

45 (5) Nothing in this section requires coverage for any prescription drug if the United States Food

1 and Drug Administration has determined use of the drug to be contraindicated.

2 (6) Nothing in this section requires coverage for experimental drugs not approved for any indi-
3 cation by the United States Food and Drug Administration.

4 (7) Notwithstanding ORS 750.055 (1)(h), this section does not apply to a health maintenance or-
5 ganization as defined in ORS 750.005.

6 (8) This section is exempt from ORS 743A.001.

7 **SECTION 4. This 2025 Act takes effect on the 91st day after the date on which the 2025**
8 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

9