House Bill 3212

Sponsored by Representatives NOSSE, NATHANSON, DIEHL, LEVY B, WALLAN, Senators GELSER BLOUIN, GOLDEN; Representatives GRAYBER, HUDSON, PHAM H, SCHARF, WRIGHT, Senators FREDERICK, PHAM K, PROZANSKI, WEBER (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: Makes changes to the rules for PBMs and prescription drug benefits. (Flesch Readability Score: 64.9).

Creates additional rules and requirements for pharmacy benefit managers and a policy or certificate of health insurance or other contract providing for the reimbursement of the cost of a prescription drug.

A BILL FOR AN ACT

Relating to pharmacy benefits; amending ORS 735.534 and 743A.062.

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

SECTION 1. ORS 735.534, as amended by section 6, chapter 87, Oregon Laws 2024, is amended to read:

735.534. (1) As used in this section:

[*(a)(A)*] **(a) "Contract" does not mean a pharmacy or provider manual.**

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

(B) A drug is not "generally available for purchase" if the drug:

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

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

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

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

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

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

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

[*(d)*] **(e)** "Multiple source drug" means a therapeutically equivalent drug that is available from at least two manufacturers.

[*(e)*] **(f)** "Therapeutically equivalent" has the meaning given that term in ORS 689.515.

(2) A pharmacy benefit manager licensed under ORS 735.532:

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

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

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

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.

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

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

(A) Is electronic;

(B) Is computer accessible and searchable;

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

(D) For each drug specifies:

(i) The national drug code; and

(ii) The maximum allowable cost.

(f) Shall update each list maintained by the pharmacy benefit manager every seven business days and make the updated lists, including all changes in the price of drugs, available to network pharmacies in the format described in paragraph (e) of this subsection.

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

(h) May not reimburse a 340B pharmacy differently than any other network pharmacy based on its status as a 340B pharmacy.

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

(j) May not retroactively deny or reduce payment on a claim for reimbursement of the cost of services after the claim has been adjudicated by the pharmacy benefit manager unless the:

(A) Adjudicated claim was submitted fraudulently;

(B) Pharmacy benefit manager's payment on the adjudicated claim was incorrect because the pharmacy had already been paid for the services;

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

(D) Payment was incorrect due to an error that the pharmacy and pharmacy benefit manager agree was a clerical error.

(k) May not impose a fee on a pharmacy after the point of sale.

(L) Shall provide notice to a pharmacy of any claim for reimbursement of the cost of a prescription drug that is denied or reduced. The notice shall identify the specific disaggregated claim that was denied or reduced and a detailed explanation for why the specific claim was denied or reduced.

(m) May not engage in spread pricing.

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

(A) The pharmacy's usual charge to the public for the drug; and

(B) The National Average Drug Acquisition Cost published by the Centers for Medicare and Medicaid Services, or if the drug is not on the National Average Drug Acquisition Cost rates list, the wholesale acquisition cost.

(o) Shall offer the same contract terms and options to network pharmacies and out-of-network pharmacies, including reimbursing network and out-of-network pharmacies in the same amount and manner for the same claims.

(p) May not sign or enter into a contract with a pharmacy or pharmacy services administrative organization, as defined in section 2, chapter 87, Oregon Laws 2024, that:

(A) Requires a pharmacy to participate in any other contract;

(B) Restricts, prohibits or in any other way interferes with a pharmacist's ability to discuss the contract with any other individual or organization;

(C) Requires the pharmacy to meet unreasonable burdens, as defined by the Department of Consumer and Business Services, including but not limited to requiring accreditation or certification in addition to what is required by the Board of Pharmacy;

(D) Requires the pharmacy to provide pharmacist services to a patient if the pharmacy will be reimbursed less than the pharmacy's drug acquisition cost; or

(E) Requires the pharmacy to provide pharmacy services to an individual who no longer has prescription drug benefit coverage.

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

(4) A pharmacy benefit manager must establish a process by which a network pharmacy may appeal its reimbursement for a drug subject to maximum allowable cost pricing**, ingredient cost or dispensing fee**. A network pharmacy may appeal a maximum allowable cost**, ingredient cost or dispensing fee** if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug. The process must allow a network pharmacy a period of no less than 60 days after a claim is reimbursed in which to file the appeal. An appeal requested under this section must be completed within 30 calendar days of the pharmacy making the claim for which appeal has been requested.

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

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

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

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

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

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

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

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

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

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

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

(b) If the request for an adjustment has come from a critical access pharmacy, as defined by the

Oregon Health Authority by rule for purposes related to the Oregon Prescription Drug Program, the adjustment approved under paragraph (a) of this subsection shall apply only to critical access pharmacies.

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

(9) The Department of Consumer and Business Services may adopt rules to carry out the provisions of this section.

SECTION 2. ORS 743A.062, as amended by section 11, chapter 87, Oregon Laws 2024, is amended to read:

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

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

(b) "340B drug" means a covered drug dispensed by a covered entity, as those terms are defined 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).

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

(a) **May not** exclude coverage of the drug for a particular indication solely on the grounds that the indication has not been approved by the United States Food and Drug Administration if the Health Evidence Review Commission established under ORS 414.688 or the Pharmacy and Therapeutics Committee established under ORS 414.353 determines that the drug is recognized as effective for the treatment of that indication:

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

(i) The American Hospital Formulary Service drug information;

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

(iii) The United States Pharmacopoeia drug information; or

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

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

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

(b) For an insured who is enrolled in the medical assistance program**, may not**:

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

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

(c) **May not** discriminate in the reimbursement of a prescription for 340B drugs from other prescription drugs;

(d) **May not** assess a fee, chargeback, clawback or other adjustment for the dispensing of a 340B drug;

(e) **May not** exclude a pharmacy from a pharmacy network on the basis that the pharmacy dispenses a 340B drug;

(f) **May not** restrict the methods by which a 340B drug may be dispensed or delivered; [*or*]

(g) **May not** restrict the number of pharmacies within a pharmacy network that may dispense or deliver 340B drugs[.]**;**

(h) Must permit the policyholder, certificate holder or beneficiary, at the time of issu-

ance, amendment or renewal, to select a licensed pharmacy or licensed pharmacist for the dispensing of prescription drugs reimbursed by the policy, certificate or contract;

(i) May not deny a pharmacy or pharmacist licensed in this state the opportunity to participate as a preferred provider or a contracting provider under the same terms and conditions applicable to all other preferred or contracting providers if the pharmacy or pharmacist agrees to the terms and conditions; or

(j) May not require beneficiaries to fill prescriptions at network pharmacies, as defined in ORS 735.530.

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

(4) Required coverage of a prescription drug under this section shall include coverage for medically necessary services associated with the administration of that drug.

(5) Nothing in this section requires coverage for any prescription drug if the United States Food and Drug Administration has determined use of the drug to be contraindicated.

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

(7) Notwithstanding ORS 750.055 (1)(h), this section does not apply to a health maintenance organization as defined in ORS 750.005.

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