

Enrolled
House Bill 2388

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care for Oregon State Pharmacy Association and Oregon Society of Health-System Pharmacists)

CHAPTER

AN ACT

Relating to pharmacy benefit managers; creating new provisions; amending ORS 705.137, 735.530 and 735.532; and declaring an emergency.

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

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 735.530 to 735.552.

SECTION 2. (1) In accordance with ORS chapter 183, the Department of Consumer and Business Services may deny an application for registration as a pharmacy benefit manager or an application for renewal of a registration as a pharmacy benefit manager, and may suspend or revoke a registration as a pharmacy benefit manager, if the department finds that an applicant or registrant:

- (a) Falsified an application for registration or for the renewal of a registration or engaged in any dishonest act in relation to the application;
- (b) Engaged in dishonesty, fraud or gross negligence in the conduct of business as a pharmacy benefit manager;
- (c) Engaged in conduct that resulted in a conviction of a felony under the laws of any state or of the United States, to the extent that such conduct may be considered under ORS 670.280;
- (d) Was convicted under the laws of any state or of the United States of any crime of which an essential element is dishonesty or fraud;
- (e) Had a certificate of authority or authority to conduct business as a pharmacy benefit manager denied, revoked or suspended in another state;
- (f) Failed to pay a civil penalty imposed by final order of the department or to comply with the terms of suspension set by the department;
- (g) Failed to meet the terms of a consent decree approved by a court of competent jurisdiction in this state, or a consent order made between the department and the pharmacy benefit manager;
- (h) Refused to be examined or to produce accounts, records or files for examination, including the refusal by any officer of the applicant or registrant to give information with respect to the affairs of the pharmacy benefit manager, or refused to perform any other legal obligation with respect to an examination by the department; or
- (i) Violated any rule or order of the department or any provision of the Insurance Code.

(2) The department may prescribe by rule a procedure by which a pharmacy or an entity acting on behalf of a pharmacy may file a complaint with the department alleging that a pharmacy benefit manager has engaged in conduct described in this section. The department may restrict the right of a pharmacy or entity to file a complaint only to the extent necessary to prevent abuse of the complaint process.

SECTION 3. ORS 735.532 is amended to read:

735.532. (1) To conduct business in this state, a pharmacy benefit manager must register with the Department of Consumer and Business Services and annually renew the registration.

(2) To register under this section, a pharmacy benefit manager must:

(a) Submit an application to the department on a form prescribed by the department by rule.

(b) Pay a registration fee[*not to exceed \$50,*] **in an amount** adopted by the department by rule.

(3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal fee[*not to exceed \$50,*] **in an amount** adopted by the department by rule.

(4) The department shall deposit all moneys collected under this section into the Consumer and Business Services Fund created in ORS 705.145.

(5) Any fee adopted by the department under this section must be based on the department's reasonable costs in administering ORS 735.530 to 735.552.

SECTION 4. ORS 705.137 is amended to read:

705.137. (1) Except as provided in subsection (3) of this section, a document, material or other information that the Department of Consumer and Business Services possesses or controls for the purpose of administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in a private civil action. The Director of the Department of Consumer and Business Services may use a confidential document, material or other information in administering ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905 and ORS chapters 59, 723, 725 and 726, the Bank Act and the Insurance Code **and section 2 of this 2017 Act** and in furthering a regulatory or legal action the director brings as a part of the director's duties.

(2) A document, material or other information to which subsection (1) of this section applies is subject to the public officer privilege described in ORS 40.270.

(3) In order to assist in the performance of the director's duties, the director may:

(a) Authorize sharing a confidential document, material or other information that is subject to subsection (1) of this section as appropriate among the administrative divisions and staff offices of the department created under ORS 705.115 for the purpose of administering and enforcing the statutes identified in subsection (1) of this section, in order to enable the administrative divisions and staff offices to carry out the functions and responsibilities of the administrative divisions and staff offices.

(b) Share a document, material or other information, including a confidential document, material or other information that is subject to subsection (1) of this section or that is otherwise confidential under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies, with the Federal Reserve Board and with the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners, if the recipient agrees to maintain the confidentiality of the document, material or other information.

(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies, from the Federal Reserve Board and from the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners. As provided in this section, the director shall maintain the confidentiality of documents, materials or other information the director receives if the director receives notice or has an

understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(4) Disclosing a document, material or other information to the director under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

(5) This section does not prohibit the director from disclosing to a database or other clearing-house service maintained by the National Association of Insurance Commissioners or affiliates or subsidiaries of the National Association of Insurance Commissioners information about a final, adjudicated action, including a suspension or revocation of a certificate of authority or a license, if the information is otherwise open to public inspection.

SECTION 5. ORS 735.530 is amended to read:

735.530. As used in ORS 735.530 to 735.552:

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

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

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

(4) "Pharmacy" [*has the meaning given that term in ORS 689.005*] **includes:**

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

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

(5)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf of an insurer, a third party administrator or the Oregon Prescription Drug Program established in ORS 414.312 to:

(A) Process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

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

(C) Negotiate rebates with manufacturers for drugs paid for or procured as described in this paragraph.

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

(6) "Third party administrator" means a person licensed under ORS 744.702.

SECTION 6. Section 2 of this 2017 Act and the amendments to ORS 705.137 and 735.532 by sections 3 and 4 of this 2017 Act become operative on January 1, 2018.

SECTION 7. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 9, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State