

Enrolled Senate Bill 819

Sponsored by Senator CLARNO; Senators L BEYER, BROWN, BURDICK, CASTILLO, CORCORAN,
DUNCAN, HARTUNG, MESSERLE, METSGER, MINNIS, Representatives NELSON, NOLAN,
C WALKER

CHAPTER

AN ACT

Relating to Oregon Health Plan; creating new provisions; amending ORS 414.325; and declaring an emergency.

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

SECTION 1. The Legislative Assembly finds that:

- (1) The cost of prescription drugs in the Oregon Health Plan is growing and will soon be unsustainable;**
- (2) The benefit of prescription drugs when appropriately used decreases the need for other expensive treatments and improves the health of Oregonians; and**
- (3) Providing the most effective drugs in the most cost-effective manner will benefit both patients and taxpayers.**

SECTION 2. It is the policy of the State of Oregon that a Practitioner-managed Prescription Drug Plan will ensure that:

- (1) Oregonians have access to the most effective prescription drugs appropriate for their clinical conditions;**
- (2) Decisions concerning the clinical effectiveness of prescription drugs are made by licensed health practitioners, are informed by the latest peer-reviewed research and consider the health condition of a patient or characteristics of a patient, including the patient's gender, race or ethnicity; and**
- (3) The cost of prescription drugs in the Oregon Health Plan is managed through market competition among pharmaceutical manufacturers by publicly considering, first, the effectiveness of a given drug and, second, its relative cost.**

SECTION 3. (1) The Department of Human Services shall adopt a Practitioner-managed Prescription Drug Plan for the Oregon Health Plan. The purpose of the plan is to ensure that enrollees of the Oregon Health Plan receive the most effective prescription drug available at the best possible price.

- (2) Before adopting the plan, the department shall conduct public meetings and consult with the Health Resources Commission.**
- (3) The department shall consult with representatives of the regulatory boards and associations representing practitioners who are prescribers under the Oregon Health Plan and ensure that practitioners receive educational materials and have access to training on the Practitioner-managed Prescription Drug Plan.**

(4) Notwithstanding the Practitioner-managed Prescription Drug Plan adopted by the department, a practitioner may prescribe any drug that the practitioner indicates is medically necessary for an enrollee as being the most effective available.

(5) An enrollee may appeal to the department a decision of a practitioner or the department to not provide a prescription drug requested by the enrollee.

(6) This section does not limit the decision of a practitioner as to the scope and duration of treatment of chronic conditions, including but not limited to arthritis, diabetes and asthma.

SECTION 4. The President of the Senate and the Speaker of the House of Representatives shall designate an appropriate interim legislative committee or legislative commission to:

(1) Receive regular reports on the development and implementation of the Practitioner-managed Prescription Drug Plan;

(2) Review the impact of the implementation of the Practitioner-managed Prescription Drug Plan, including but not limited to a review of whether the program realizes any savings, whether there is an increase in physician and hospital costs for individuals receiving medical assistance, and whether there is an impact on the ability of an individual receiving medical assistance to obtain prescribed drugs; and

(3) Report its findings and recommendations periodically to the Emergency Board and to the Seventy-second Legislative Assembly.

SECTION 5. ORS 414.325 is amended to read:

414.325. (1) As used in this section, "legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515, 689.854 and 689.857 and pursuant to rules of the [division] **Department of Human Services** unless the practitioner prescribes otherwise and an exception is granted by the [division] **department**.

(3) [Except as provided in subsections (4) and (5) of this section, the division shall place no limit on the type of legend drug that may be prescribed by a practitioner, but] **The department** shall pay only for drugs in the generic form **if the federal Food and Drug Administration has approved a generic version of a particular brand name drug that is chemically identical to the brand name drug according to federal Food and Drug Administration rating standards**, unless an exception has been granted by the [division] **department**.

(4) [Notwithstanding subsection (3) of this section,] An exception must be applied for and granted before the [division] **department** is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the [division] **department**.

(5)[(a)] Notwithstanding subsections (1) to (4) of this section, [and except as provided in paragraph (b) of this subsection, the division] **the department** is authorized to:

[(A)] **(a)** Withhold payment for a legend drug when federal financial participation is not available; and

[(B)] **(b)** Require prior authorization of payment for drugs [which] **that** the [division] **department** has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

[(b) The division may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the division, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies.]

(6) Notwithstanding subsection (3) of this section, the department may not limit legend drugs when used as approved by the federal Food and Drug Administration to treat mental illness, HIV and AIDS, and cancer.

SECTION 5a. If House Bill 2497 becomes law, section 5 of this 2001 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section 1, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2497), is amended to read:

414.325. (1) As used in this section:

(a) "Legend drug" means any drug requiring a prescription by a practitioner.

(b) "Pharmacy network" means a group of pharmacies using a shared database or employing other electronic means to access prescription information of enrollees from multiple points of service.

(c) "Practitioner" has the meaning given that term in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515, 689.854 and 689.857 and pursuant to rules of the Department of Human Services unless the practitioner prescribes otherwise and an exception is granted by the department.

(3) *[Except as provided in subsections (4) and (5) of this section, the department shall place no limit on the type of legend drug that may be prescribed by a practitioner, but]* **The department shall pay only for drugs in the generic form if the federal Food and Drug Administration has approved a generic version of a particular brand name drug that is chemically identical to the brand name drug according to federal Food and Drug Administration rating standards,** unless an exception has been granted by the department.

(4) *[Notwithstanding subsection (3) of this section,]* An exception must be applied for and granted before the department is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the department.

(5)(a) Notwithstanding subsections (1) to (4) of this section *[and except as provided in paragraph (b) of this subsection]*, the department is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; and

(B) Require prior authorization of payment for drugs *[which]* **that** the department has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

[(b) The department may not require prior authorization for therapeutic classes of nonsedating antihistamines and nasal inhalers, as defined by rule by the department, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:]

[(A) Asthma;]

[(B) Sinusitis;]

[(C) Rhinitis; or]

[(D) Allergies.]

[(c)] **(b)** Notwithstanding subsections (1) to (4) of this section and *[paragraphs (a) and (b)]* **paragraph (a)** of this subsection, the department may require prior authorization of payment for drugs for individuals whose prescription drug use exceeded 15 drugs in the preceding six-month period.

(6) Notwithstanding subsection (3) of this section, the department may not limit legend drugs when used as approved by the federal Food and Drug Administration to treat mental illness, HIV and AIDS, and cancer.

[(6)] **(7)** When a practitioner prescribes a legend drug under this chapter, the practitioner shall write on the prescription:

(a) The diagnosis code for the condition on the prioritized list of services covered for payment for which the legend drug is being prescribed; and

(b) The practitioner's Office of Medical Assistance Programs provider number.

[(7)(a)] **(8)(a)** At the time of enrollment or reenrollment in a fee-for-service payment system, an enrollee shall designate a primary pharmacy or pharmacy network to dispense legend drugs covered by the medical assistance program.

(b) The department shall adopt rules establishing procedures that allow an enrollee to:

(A) Obtain a legend drug at a pharmacy other than a designated primary pharmacy or pharmacy network; and

(B) Change a designation of a primary pharmacy or pharmacy network.

[(8)] **(9)** The department shall adopt rules that:

(a) Establish procedures to ensure that a primary pharmacy or pharmacy network will receive notice when an enrollee obtains a legend drug at another pharmacy; and

(b) Allow payment at the point of sale to a pharmacy other than a primary pharmacy or pharmacy network for a legend drug obtained by an enrollee as described in subsection [(7)(b)(A)] **(8)(b)(A)** of this section.

SECTION 6. ORS 414.325, as amended by section 5 of this 2001 Act, is amended to read:

414.325. (1) As used in this section, "legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515, 689.854 and 689.857 and pursuant to rules of the Department of Human Services unless the practitioner prescribes otherwise and an exception is granted by the department.

(3) **Except as provided in subsections (4) and (5) of this section, the department shall place no limit on the type of legend drug that may be prescribed by a practitioner, but** the department shall pay only for drugs in the generic form [*if the federal Food and Drug Administration has approved a generic version of a particular brand name drug that is chemically identical to the brand name drug according to federal Food and Drug Administration rating standards,*] unless an exception has been granted by the department.

(4) **Notwithstanding subsection (3) of this section,** an exception must be applied for and granted before the department is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the department.

(5)(a) **Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection,** the department is authorized to:

[(a)] **(A)** Withhold payment for a legend drug when federal financial participation is not available; and

[(b)] **(B)** Require prior authorization of payment for drugs that the department has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

(b) The department may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the department, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

(A) Asthma;

(B) Sinusitis;

(C) Rhinitis; or

(D) Allergies.

[(6) *Notwithstanding subsection (3) of this section, the department may not limit legend drugs when used as approved by the federal Food and Drug Administration as the primary treatment for mental illness, HIV and AIDS and cancer.*]

SECTION 6a. If House Bill 2497 becomes law, section 6 of this 2001 Act (amending ORS 414.325) is repealed and ORS 414.325, as amended by section 5a of this 2001 Act, is amended to read:

414.325. (1) As used in this section:

(a) "Legend drug" means any drug requiring a prescription by a practitioner.

(b) "Pharmacy network" means a group of pharmacies using a shared database or employing other electronic means to access prescription information of enrollees from multiple points of service.

(c) "Practitioner" has the meaning given that term in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515, 689.854 and 689.857 and pursuant to rules of the Department of Human Services unless the practitioner prescribes otherwise and an exception is granted by the department.

(3) **Except as provided in subsections (4) and (5) of this section, the department shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the department shall pay only for drugs in the generic form [if the federal Food and Drug Administration has approved a generic version of a particular brand name drug that is chemically identical to the brand name drug according to federal Food and Drug Administration rating standards,] unless an exception has been granted by the department.**

(4) **Notwithstanding subsection (3) of this section,** an exception must be applied for and granted before the department is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the department.

(5)(a) **Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection,** the department is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; and

(B) Require prior authorization of payment for drugs that the department has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

(b) The department may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the department, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

(A) Asthma;

(B) Sinusitis;

(C) Rhinitis; or

(D) Allergies.

[(b)] (c) **Notwithstanding subsections (1) to (4) of this section and [paragraph (a)] paragraphs (a) and (b) of this subsection,** the department may require prior authorization of payment for drugs for individuals whose prescription drug use exceeded 15 drugs in the preceding six-month period.

[(6)] **Notwithstanding subsection (3) of this section, the department may not limit legend drugs when used as approved by the federal Food and Drug Administration to treat mental illness, HIV and AIDS, and cancer.]**

[(7)] **(6)** When a practitioner prescribes a legend drug under this chapter, the practitioner shall write on the prescription:

(a) The diagnosis code for the condition on the prioritized list of services covered for payment for which the legend drug is being prescribed; and

(b) The practitioner's Office of Medical Assistance Programs provider number.

[(8)(a)] **(7)(a)** At the time of enrollment or reenrollment in a fee-for-service payment system, an enrollee shall designate a primary pharmacy or pharmacy network to dispense legend drugs covered by the medical assistance program.

(b) The department shall adopt rules establishing procedures that allow an enrollee to:
(A) Obtain a legend drug at a pharmacy other than a designated primary pharmacy or pharmacy network; and

(B) Change a designation of a primary pharmacy or pharmacy network.

[(9)] (8) The department shall adopt rules that:

(a) Establish procedures to ensure that a primary pharmacy or pharmacy network will receive notice when an enrollee obtains a legend drug at another pharmacy; and

(b) Allow payment at the point of sale to a pharmacy other than a primary pharmacy or pharmacy network for a legend drug obtained by an enrollee as described in subsection [(8)(b)(A)] (7)(b)(A) of this section.

SECTION 7. The amendments to ORS 414.325 by section 6 of this 2001 Act become operative on January 2, 2007.

SECTION 7a. If House Bill 2497 becomes law, section 7 of this 2001 Act is amended to read:

Sec. 7. The amendments to ORS 414.325 by section [6] 6a of this 2001 Act become operative on January 2, 2007.

SECTION 8. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by Senate July 6, 2001

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Secretary of Senate

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President of Senate

Passed by House July 7, 2001

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Speaker of House

Received by Governor:

.....M.,....., 2001

Approved:

.....M.,....., 2001

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2001

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Secretary of State