

**Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 20-0021.01 Yelana Love x2295

**HOUSE BILL 20-1078**

**HOUSE SPONSORSHIP**

**Jaquez Lewis and Mullica**, Bird, Buckner, Duran, Esgar, Froelich, Herod, Hooton, Kennedy, Lontine, Melton, Michaelson Jenet, Roberts, Tipper, Titone, Valdez A.

**SENATE SPONSORSHIP**

**Winter**, Crowder, Danielson, Ginal, Moreno, Pettersen

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**House Committees**  
Health & Insurance

**Senate Committees**  
Health & Human Services

SENATE  
Amended 3rd Reading  
March 12, 2020

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**A BILL FOR AN ACT**

101      **CONCERNING PRESCRIPTION DRUG CLAIMS SUBMITTED BY A**  
102              **PHARMACY, AND, IN CONNECTION THEREWITH, PROHIBITING**  
103              **RETROACTIVE FEES.**

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SENATE  
Amended 2nd Reading  
March 9, 2020

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

HOUSE  
3rd Reading Unamended  
February 6, 2020

The bill specifies the amount that a pharmacy benefit management firm (PBM) is required to reimburse a pharmacy for clean claims and reasonable dispensing fees.

The bill also prohibits PBMs from retroactively reducing payment on a clean claim submitted by a pharmacy unless the PBM determines,

HOUSE  
Amended 2nd Reading  
February 5, 2020

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

through an audit conducted in accordance with state law, that the claim was not a clean claim. Health insurers that contract with PBMs must ensure that the PBMs are complying with this prohibition and the reporting requirements and are subject to penalties for failure to do so.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-122.3 as  
3 follows:

4 **10-16-122.3. Pharmacy benefit management firm payments**

5 **- retroactive reduction prohibited - enforcement - definitions. (1)**

6 (a) A PHARMACY BENEFIT MANAGEMENT FIRM SHALL NOT REIMBURSE  
7 A PHARMACY IN AN AMOUNT LESS THAN THE AMOUNT THAT THE  
8 PHARMACY BENEFIT MANAGEMENT FIRM REIMBURSES ANY AFFILIATE FOR  
9 THE SAME PHARMACY SERVICES.

10 (b) THIS SUBSECTION (1) DOES NOT PROHIBIT A PHARMACY  
11 BENEFIT MANAGEMENT FIRM FROM REIMBURSING AN AFFILIATE FOR  
12 SATISFYING THE TERMS OF A PERFORMANCE-BASED CONTRACT.

13 (2) (a) A CONTRACT OR AGREEMENT, INCLUDING A  
14 PERFORMANCE-BASED OR VALUE-BASED CONTRACT OR AGREEMENT,  
15 BETWEEN A PHARMACY BENEFIT MANAGEMENT FIRM AND A PHARMACY OR  
16 A PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION WITH RESPECT TO  
17 PRESCRIPTION DRUG BENEFITS ADMINISTERED OR MANAGED BY THE  
18 PHARMACY BENEFIT MANAGEMENT FIRM MUST PROVIDE THAT AFTER THE  
19 DATE THE PHARMACY BENEFIT MANAGEMENT FIRM RECEIVES A CLEAN  
20 CLAIM SUBMITTED BY A PHARMACY, THE PHARMACY BENEFIT  
21 MANAGEMENT FIRM SHALL NOT RETROACTIVELY REDUCE PAYMENT ON  
22 THE CLAIM AFTER THE POINT OF SALE EXCEPT AS THE RESULT OF AN AUDIT  
23 CONDUCTED IN ACCORDANCE WITH SECTION 10-16-122.5.

1 (b) NOTHING IN THIS SUBSECTION (2) PROHIBITS A PHARMACY  
2 BENEFIT MANAGEMENT FIRM FROM RETROACTIVELY INCREASING A  
3 PAYMENT TO A PHARMACY PURSUANT TO A WRITTEN AGREEMENT  
4 BETWEEN THE PHARMACY BENEFIT MANAGEMENT FIRM AND THE  
5 PHARMACY OR MAKING ADJUSTMENTS TO CLAIMS IN THE CASE OF A  
6 CLERICAL ERROR.

7 (3) EACH CARRIER THAT CONTRACTS WITH A PHARMACY  
8 BENEFIT MANAGEMENT FIRM TO MANAGE OR ADMINISTER PRESCRIPTION  
9 DRUG BENEFITS ON THE CARRIER'S BEHALF SHALL INCLUDE IN A NEW,  
10 AMENDED, OR RENEWED CONTRACT WITH THE PHARMACY BENEFIT  
11 MANAGEMENT FIRM A REQUIREMENT THAT THE PHARMACY BENEFIT  
12 MANAGEMENT FIRM COMPLY WITH THIS SECTION. THE CARRIER SHALL  
13 ANNUALLY AUDIT THE PHARMACY BENEFIT MANAGEMENT FIRM TO  
14 MONITOR AND ENSURE COMPLIANCE WITH THIS SECTION.

15 (4) THE DIVISION MAY PROMULGATE RULES TO ESTABLISH THE  
16 MANNER IN WHICH CARRIERS AND PHARMACY BENEFIT MANAGEMENT  
17 FIRMS ARE REQUIRED TO SHOW COMPLIANCE WITH THIS SECTION.

18  
19 (5) THIS SECTION APPLIES TO CONTRACTS AND AGREEMENTS  
20 BETWEEN PHARMACY BENEFIT MANAGEMENT FIRMS AND PHARMACIES OR  
21 PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS IN EFFECT ON OR  
22 AFTER JANUARY 1, 2021.

23 (6) AS USED IN THIS SECTION:  
24 (a) "AFFILIATE" MEANS A PHARMACY THAT DIRECTLY OR  
25 INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, OWNS OR  
26 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON  
27 OWNERSHIP OR CONTROL WITH A PHARMACY BENEFIT MANAGEMENT FIRM.

1 (b) "CLEAN CLAIM" MEANS A CLAIM THAT HAS NO DEFECT OR  
2 IMPROPRIETY, INCLUDING ANY LACK OF REQUIRED SUBSTANTIATING  
3 DOCUMENTATION, OR PARTICULAR CIRCUMSTANCE REQUIRING SPECIAL  
4 TREATMENT THAT PREVENTS TIMELY PAYMENT FROM BEING MADE ON THE  
5 CLAIM. "CLEAN CLAIM" DOES NOT INCLUDE A CLAIM BASED ON FRAUD,  
6 WASTE, OR ABUSE.

7 (c) "PHARMACY" MEANS AN IN-STATE OR NONRESIDENT  
8 PRESCRIPTION DRUG OUTLET, AS DEFINED IN SECTION 12-280-103 (43); AN  
9 OTHER OUTLET, AS DEFINED IN SECTION 12-280-103 (32); A HOSPITAL  
10 SATELLITE PHARMACY, AS DEFINED IN SECTION 12-280-103 (20); OR  
11 OTHER SETTING, INCLUDING A PRACTITIONER'S OFFICE OR CLINIC, WHERE  
12 A PRACTITIONER, AS DEFINED IN SECTION 12-280-103 (40), DISPENSES  
13 PRESCRIPTION DRUGS TO PATIENTS AS AUTHORIZED BY SECTION  
14 12-280-120 (6).

15 [REDACTED]  
16 [REDACTED]

17 **SECTION 2. Act subject to petition - effective date -**  
18 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
19 the expiration of the ninety-day period after final adjournment of the  
20 general assembly (August 5, 2020, if adjournment sine die is on May 6,  
21 2020); except that, if a referendum petition is filed pursuant to section 1  
22 (3) of article V of the state constitution against this act or an item, section,  
23 or part of this act within such period, then the act, item, section, or part  
24 will not take effect unless approved by the people at the general election  
25 to be held in November 2020 and, in such case, will take effect on the  
26 date of the official declaration of the vote thereon by the governor.

1           (2) This act applies to contracts and agreements in effect on or  
2 after January 1, 2021.