

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading 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,

House Committees
Health & Insurance

Senate Committees
Health & Human Services

A BILL FOR AN ACT

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

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>.)

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,

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.

SENATE
Amended 2nd Reading
March 9, 2020

HOUSE
3rd Reading Unamended
February 6, 2020

HOUSE
Amended 2nd Reading
February 5, 2020

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.

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.**

6 (1) 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 FOR THE SAME TYPE OF CONTRACT,
10 INCLUDING A PERFORMANCE-BASED CONTRACT.

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

22 (b) NOTHING IN THIS SUBSECTION (2) PROHIBITS A PHARMACY
23 BENEFIT MANAGEMENT FIRM FROM RETROACTIVELY INCREASING A

1 PAYMENT TO A PHARMACY PURSUANT TO A WRITTEN AGREEMENT
2 BETWEEN THE PHARMACY BENEFIT MANAGEMENT FIRM AND THE
3 PHARMACY OR MAKING ADJUSTMENTS TO CLAIMS IN THE CASE OF A
4 CLERICAL ERROR.

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

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

16
17 (5) THIS SECTION APPLIES TO CONTRACTS AND AGREEMENTS
18 BETWEEN PHARMACY BENEFIT MANAGEMENT FIRMS AND PHARMACIES OR
19 PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS IN EFFECT ON OR
20 AFTER JANUARY 1, 2021.

21 (6) AS USED IN THIS SECTION:

22 (a) "AFFILIATE" MEANS A PHARMACY THAT DIRECTLY OR
23 INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, OWNS OR
24 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON
25 OWNERSHIP OR CONTROL WITH A PHARMACY BENEFIT MANAGEMENT FIRM.

26 (b) "CLEAN CLAIM" MEANS A CLAIM THAT HAS NO DEFECT OR
27 IMPROPRIETY, INCLUDING ANY LACK OF REQUIRED SUBSTANTIATING

1 DOCUMENTATION, OR PARTICULAR CIRCUMSTANCE REQUIRING SPECIAL
2 TREATMENT THAT PREVENTS TIMELY PAYMENT FROM BEING MADE ON THE
3 CLAIM. "CLEAN CLAIM" DOES NOT INCLUDE A CLAIM BASED ON FRAUD,
4 WASTE, OR ABUSE.

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

13

14

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

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