

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0021.01 Yelana Love x2295

**HOUSE BILL 20-1078**

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**HOUSE SPONSORSHIP**

**Jaquez Lewis and Mullica,**

**SENATE SPONSORSHIP**

**Winter,**

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**House Committees**  
Health & Insurance

**Senate Committees**

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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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**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.

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 on**  
5 **clean claims** - retroactive reduction prohibited - enforcement -  
6 **definitions.** (1) A PHARMACY BENEFIT MANAGEMENT FIRM SHALL NOT  
7 REIMBURSE A PHARMACY IN AN AMOUNT LESS THAN THE AMOUNT THAT  
8 THE PHARMACY BENEFIT MANAGEMENT FIRM REIMBURSES ANY AFFILIATE  
9 FOR THE SAME PHARMACY SERVICES FOR A CLEAN CLAIM.

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

1 CLAIM.

2 (b) NOTHING IN THIS SUBSECTION (2) PROHIBITS A PHARMACY  
3 BENEFIT MANAGEMENT FIRM FROM RETROACTIVELY INCREASING A  
4 PAYMENT TO A PHARMACY PURSUANT TO A WRITTEN AGREEMENT  
5 BETWEEN THE PHARMACY BENEFIT MANAGEMENT FIRM AND THE  
6 PHARMACY OR MAKING ADJUSTMENTS TO CLAIMS IN ACCORDANCE WITH  
7 SECTION 10-16-704 (4.5).

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

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

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

24 (6) AS USED IN THIS SECTION:

25 (a) "AFFILIATE" MEANS A PHARMACY THAT DIRECTLY OR  
26 INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, OWNS OR  
27 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON

1 OWNERSHIP OR CONTROL WITH A PHARMACY BENEFIT MANAGEMENT FIRM.

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

8 (c) "PHARMACY" MEANS AN IN-STATE OR NONRESIDENT  
9 PRESCRIPTION DRUG OUTLET, AS DEFINED IN SECTION 12-280-103 (43); AN  
10 OTHER OUTLET, AS DEFINED IN SECTION 12-280-103 (32); A HOSPITAL  
11 SATELLITE PHARMACY, AS DEFINED IN SECTION 12-280-103 (20); OR  
12 OTHER SETTING, INCLUDING A PRACTITIONER'S OFFICE OR CLINIC, WHERE  
13 A PRACTITIONER, AS DEFINED IN SECTION 12-280-103 (40), DISPENSES  
14 PRESCRIPTION DRUGS TO PATIENTS AS AUTHORIZED BY SECTION  
15 12-280-120 (6).

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18 **SECTION 2. Act subject to petition - effective date -**  
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
20 the expiration of the ninety-day period after final adjournment of the  
21 general assembly (August 5, 2020, if adjournment sine die is on May 6,  
22 2020); except that, if a referendum petition is filed pursuant to section 1  
23 (3) of article V of the state constitution against this act or an item, section,  
24 or part of this act within such period, then the act, item, section, or part  
25 will not take effect unless approved by the people at the general election  
26 to be held in November 2020 and, in such case, will take effect on the  
27 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.