

CHAPTER 217

GOVERNMENT - STATE

HOUSE BILL 21-1237

BY REPRESENTATIVE(S) Lontine and Rich, Amabile, Bradfield, Caraveo, Cutter, Kennedy, Michaelson Jenet, Ortiz, Ricks, Roberts, Will, Young, Burnett, Bird, Boesenecker, Duran, Esgar, Exum, Gray, Hooton, Jackson, McCluskie, McCormick, Mullica, Snyder, Titone, Valdez D., Weissman;
also SENATOR(S) Kirkmeyer and Moreno, Bridges, Buckner, Ginal, Jaquez Lewis, Kolker.

AN ACT**CONCERNING THE CREATION OF A COMPETITIVE PHARMACY BENEFITS MANAGER MARKETPLACE.**

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

SECTION 1. In Colorado Revised Statutes, **add** part 12 to article 50 of title 24 as follows:

PART 12
COLORADO COMPETITIVE PHARMACY
BENEFIT MANAGERS MARKETPLACE

24-50-1201. Short title. THE SHORT TITLE OF THIS PART 12 IS THE "COLORADO COMPETITIVE PHARMACY BENEFIT MANAGERS MARKETPLACE ACT".

24-50-1202. Legislative declaration - intent. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE INTENT OF THIS ACT TO OPTIMIZE PRESCRIPTION DRUG SAVINGS BY THE STATE BY REQUIRING THE FOLLOWING:

(a) THE ADOPTION OF A DYNAMICALLY COMPETITIVE REVERSE AUCTION PROCESS FOR STATE HEALTH PLAN SELECTION OF PHARMACY BENEFIT MANAGERS;

(b) THE ELECTRONIC REVIEW AND VALIDATION OF PHARMACY BENEFIT MANAGER CLAIMS AS THE FOUNDATION FOR RECONCILING PHARMACY BILLS; AND

(c) THE TECHNOLOGY-DRIVEN EVALUATION OF INCUMBENT PHARMACY BENEFIT MANAGER PRESCRIPTION DRUG PRICING BASED ON BENCHMARK COMPARATORS DERIVED FROM PHARMACY BENEFIT MANAGER REVERSE AUCTION PROCESSES

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

CONDUCTED IN THE UNITED STATES OVER THE PREVIOUS TWELVE MONTHS.

24-50-1203. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AWP" MEANS AVERAGE WHOLESALE PRICE.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL.

(3) "GNC" MEANS GUARANTEED NET COST.

(4) "MARKET CHECK" MEANS A TECHNOLOGY-DRIVEN EVALUATION OF AN INCUMBENT PBM'S PRESCRIPTION DRUG PRICING BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE PREVIOUS TWELVE MONTHS.

(5) "NADAC" MEANS NATIONAL AVERAGE DRUG ACQUISITION COST.

(6) "NIST" MEANS NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(7) "PARTICIPANT BIDDING AGREEMENT" MEANS AN ONLINE AGREEMENT THAT DETAILS COMMON DEFINITIONS, PRESCRIPTION DRUG CLASSIFICATIONS, RULES, DATA ACCESS AND USE RIGHTS, AND OTHER OPTIMAL CONTRACT TERMS BENEFITTING THE STATE THAT ALL PBM BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN A PBM REVERSE AUCTION.

(8) "PHARMACY BENEFIT MANAGER" OR "PBM" MEANS A PERSON, BUSINESS, OR OTHER ENTITY THAT, PURSUANT TO A CONTRACT WITH A HEALTH CARE SERVICE PLAN, MANAGES, IN WHOLE OR THROUGH A COORDINATION OF SERVICE PROVIDERS, THE PRESCRIPTION DRUG COVERAGE PROVIDED BY THE HEALTH CARE SERVICE PLAN, INCLUDING, BUT NOT LIMITED TO, THE PROCESSING AND PAYMENT OF CLAIMS FOR PRESCRIPTION DRUGS, THE PERFORMANCE OF DRUG UTILIZATION REVIEW, THE PROCESSING OF PRIOR AUTHORIZATION REQUESTS FOR SPECIFIED DRUGS, THE ADJUDICATION OF APPEALS OR GRIEVANCES RELATED TO PRESCRIPTION DRUG COVERAGE, CONTRACTING WITH NETWORK PHARMACIES, AND CONTROLLING THE COST OF COVERED PRESCRIPTION DRUGS.

(9) "PBM REVERSE AUCTION" MEANS AN AUTOMATED, TRANSPARENT, AND DYNAMICALLY COMPETITIVE BIDDING PROCESS CONDUCTED ONLINE THAT STARTS WITH AN OPENING ROUND OF BIDS AND ALLOWS QUALIFIED PBM BIDDERS TO COUNTER-OFFER A LOWER PRICE FOR AS MANY ROUNDS OF BIDDING AS DETERMINED BY THE DEPARTMENT FOR A MULTIPLE HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP.

(10) "PRICE" MEANS THE PROJECTED COST OF A PBM OFFER OR BID FOR PROVIDING PRESCRIPTION DRUG BENEFITS PURSUANT TO THIS PART 12, TO ENABLE DIRECT COMPARISON OF THE COMPARABLY CALCULATED COSTS OF COMPETING PBM PROPOSALS OVER THE DURATION OF THE PBM SERVICES CONTRACT.

(11) "REAL-TIME" MEANS WITHIN NO MORE THAN ONE HOUR.

(12) "SELF-FUNDED PRIVATE SECTOR HEALTH PLAN" MEANS ANY SELF-FUNDED PRIVATE SECTOR EMPLOYER OR MULTI-EMPLOYER HEALTH PLAN.

(13) "SELF-FUNDED PUBLIC SECTOR HEALTH PLAN" MEANS ANY GROUP BENEFIT PLAN PROVIDED PURSUANT TO THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50; ANY STATE-FUNDED HEALTH PLAN OR SELF-FUNDED COUNTY, MUNICIPAL, OR OTHER LOCAL GOVERNMENT EMPLOYEE HEALTH PLAN; AND ANY PUBLIC SCHOOL EMPLOYEE HEALTH PLAN, HEALTH PLAN OF THE UNIVERSITY OF COLORADO, COLORADO PUBLIC FOUR-YEAR COLLEGE, OR COLORADO COMMUNITY COLLEGE SYSTEM.

(14) "SOC 2" MEANS SERVICE ORGANIZATION CONTROL 2.

24-50-1204. Competitive pharmacy benefit manager - contract - requirements. (1) CONSISTENT WITH THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE 24, AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEPARTMENT SHALL ENTER INTO A CONTRACT FOR THE SERVICES OF A PHARMACY BENEFIT MANAGER FOR THE ADMINISTRATION OF BENEFITS UNDER THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50, IN A TRANSPARENT, ONLINE, AND DYNAMICALLY COMPETITIVE PROCESS AND IN THE MANNER SPECIFIED IN THIS SECTION.

(2) PRIOR TO NOVEMBER 1, 2022, THE DEPARTMENT SHALL PROCURE, THROUGH THE SOLICITATION OF PROPOSALS FROM QUALIFIED PROFESSIONAL SERVICES VENDORS, THE FOLLOWING PRODUCTS AND SERVICES BASED ON PRICE, CAPABILITIES, AND OTHER FACTORS DEEMED RELEVANT BY THE DEPARTMENT:

(a) A TECHNOLOGY PLATFORM WITH THE REQUIRED CAPABILITIES FOR CONDUCTING A PBM REVERSE AUCTION. THE DEPARTMENT SHALL ENSURE THAT THE TECHNOLOGY PLATFORM POSSESSES, AT A MINIMUM, THE CAPACITY TO:

(I) CONDUCT AN AUTOMATED, ONLINE, REVERSE AUCTION OF PBM SERVICES USING A SOFTWARE APPLICATION AND HIGH-PERFORMANCE DATA INFRASTRUCTURE TO INTAKE, CLEANSE, AND NORMALIZE PBM DATA WITH DEVELOPMENT METHODS AND INFORMATION SECURITY STANDARDS THAT HAVE BEEN VALIDATED BY RECEIVING SOC 2 AND NIST CERTIFICATION OR SUCCESSOR INFORMATION TECHNOLOGY SECURITY CERTIFICATIONS, AS IDENTIFIED BY THE OFFICE OF INFORMATION TECHNOLOGY;

(II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX PBM PRESCRIPTION DRUG PRICING PROPOSALS TO ENABLE DIRECT COMPARISON OF THE COMPARABLY CALCULATED COSTS TO THE STATE OF PBM BIDS USING ONE HUNDRED PERCENT OF ANNUAL PRESCRIPTION DRUG CLAIMS DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR A MULTIPLE HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP AND USING CODE-BASED CLASSIFICATION OF DRUGS FROM NATIONALLY ACCEPTED DRUG SOURCES;

(III) SIMULTANEOUSLY EVALUATE, IN REAL-TIME, DIVERSE AND COMPLEX MULTIPLE PROPOSALS FROM FULL SERVICE PBMs, INCLUDING AWP, GNC, AND NADAC PRICING MODELS, AS WELL AS PROPOSALS FROM PHARMACY BENEFIT ADMINISTRATORS AND SPECIALTY DRUG AND REBATE CARVE OUT SERVICE

PROVIDERS;

(IV) PRODUCE AN AUTOMATED REPORT AND ANALYSIS OF PBM BIDS, INCLUDING THE RANKING OF PBM BIDS BASED ON THE COMPARATIVE COSTS AND QUALITATIVE ASPECTS OF THE BIDS WITHIN A ONE-HOUR PERIOD FOLLOWING THE CLOSE OF EACH ROUND OF REVERSE AUCTION BIDDING; AND

(V) PERFORM REAL-TIME, ELECTRONIC, LINE-BY-LINE, CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF INVOICED PBM PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL DEVIATIONS FROM THE SPECIFIC TERMS OF THE PBM SERVICES CONTRACT RESULTING FROM THE RESERVE AUCTION PROCESS; AND

(b) RELATED SERVICES FROM THE OPERATOR OF THE TECHNOLOGY PLATFORM IDENTIFIED IN SUBSECTION (2)(a) OF THIS SECTION, WHICH SHALL INCLUDE, AT A MINIMUM:

(I) EVALUATION OF THE QUALIFICATIONS OF PBM BIDDERS;

(II) ONLINE AUTOMATED REVERSE AUCTION SERVICES TO SUPPORT THE DEPARTMENT IN COMPARING THE PRICING FOR THE PBM PROCUREMENT; AND

(III) RELATED PROFESSIONAL SERVICES.

(3) THE DEPARTMENT SHALL NOT AWARD A CONTRACT FOR PROCUREMENT OF THE TECHNOLOGY PLATFORM AND TECHNOLOGY OPERATOR SERVICES TO A VENDOR THAT IS A PBM OR A VENDOR THAT IS MANAGED BY OR A SUBSIDIARY OR AFFILIATE OF A PBM.

(4) THE VENDOR AWARDED THE CONTRACT BY THE DEPARTMENT SHALL NOT OUTSOURCE ANY PART OF THE PBM REVERSE AUCTION OR THE AUTOMATED, REAL-TIME, ELECTRONIC, LINE-BY-LINE, CLAIM-BY-CLAIM REVIEW OF INVOICED PBM PRESCRIPTION DRUG CLAIMS.

(5) WITH TECHNICAL ASSISTANCE AND SUPPORT PROVIDED BY THE TECHNOLOGY PLATFORM OPERATOR, THE DEPARTMENT SHALL SPECIFY THE TERMS OF THE PARTICIPANT BIDDING AGREEMENT. THE TERMS OF THE PARTICIPANT BIDDING AGREEMENT SHALL NOT BE MODIFIED EXCEPT BY SPECIFIC CONSENT OF THE DEPARTMENT.

(6) (a) THE TECHNOLOGY PLATFORM USED TO CONDUCT THE REVERSE AUCTION SHALL BE REPURPOSED OVER THE DURATION OF THE PBM SERVICES CONTRACT AS AN AUTOMATED PHARMACY CLAIMS ADJUDICATION ENGINE TO PERFORM REAL-TIME, ELECTRONIC, LINE-BY-LINE, CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF INVOICED PBM PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL DEVIATIONS FROM THE SPECIFIC TERMS OF THE PBM SERVICES CONTRACT.

(b) THE DEPARTMENT SHALL RECONCILE THE ELECTRONICALLY ADJUDICATED PHARMACY CLAIMS, AS DESCRIBED IN SUBSECTION (6)(a) OF THIS SECTION, WITH PBM INVOICES ON A MONTHLY OR QUARTERLY BASIS TO ENSURE THAT STATE PAYMENTS SHALL NOT EXCEED THE TERMS SPECIFIED IN ANY PBM SERVICES CONTRACT.

(c) IF FOLLOWING STATE PAYMENT TO THE PBM ON THE BASIS OF SUCH RECONCILIATION, THE PBM ASSERTS THAT THE DEPARTMENT OR ITS AUTHORIZED REPRESENTATIVE HAS UNDERPAID ON THE AMOUNT OWED, THE PBM MAY SEEK RESOLUTION THROUGH A MUTUALLY ACCEPTABLE DISPUTE RESOLUTION PROCESS, WHICH THE PARTIES SHALL HAVE AGREED TO PREVIOUSLY IN THE TERMS OF THEIR CONTRACT.

(7)(a) THE FIRST PBM REVERSE AUCTION SHALL BE COMPLETED AND THE PBM SERVICES CONTRACT SHALL BE AWARDED TO THE WINNING PBM WITH AN EFFECTIVE DATE OF JULY 1, 2023. SUBSEQUENT CONTRACTS MUST BE AWARDED NO LATER THAN THREE MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE CURRENT PBM SERVICES CONTRACT FOR A COVERED GROUP, SUCH AS THE STATE EMPLOYEES BENEFITS GROUP, THAT INCLUDES ONLY ACTIVE EMPLOYEES AND DEPENDENTS, BUT DOES NOT INCLUDE RETIREE PARTICIPANTS IN A MEDICARE PART D EMPLOYER GROUP WAIVER PROGRAM PURSUANT TO THE "MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L. 108-173.

(b) IN THE EVENT AN ELIGIBLE COVERED GROUP THAT INCLUDES RETIREE PARTICIPANTS IN A PART D EMPLOYER GROUP WAIVER PROGRAM PURSUANT TO THE "MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L. 108-173, OPTS TO USE THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12, THE RELEVANT PBM REVERSE AUCTION SHALL BE COMPLETED AND THE PBM SERVICES CONTRACT SHALL BE AWARDED TO THE WINNING PBM NO LATER THAN SIX MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE PBM SERVICES CONTRACT CURRENTLY COVERING THE RETIREE EMPLOYER GROUP WAIVER PROGRAM PARTICIPANTS.

(8) THE DEPARTMENT MAY PERFORM A MARKET CHECK FOR PROVIDING PBM SERVICES DURING THE TERM OF THE CURRENT PBM SERVICES CONTRACT, WHICH SHALL BE A TECHNOLOGY-DRIVEN EVALUATION OF THE INCUMBENT PBM'S PRESCRIPTION DRUG PRICING BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE PREVIOUS TWELVE MONTHS IN ORDER TO ENSURE CONTINUING COMPETITIVENESS OF INCUMBENT PRESCRIPTION DRUG PRICING OVER THE LIFE OF A PBM SERVICES CONTRACT.

(9) TO ENSURE THAT THE DEPARTMENT DOES NOT INCUR ADDITIONAL EXPENDITURES ASSOCIATED WITH CONDUCT OF THE PBM REVERSE AUCTION, ONGOING ELECTRONIC REVIEW AND VALIDATIONS OF PBM CLAIMS, AND OPTIONAL PERIODIC MARKET CHECKS, THE DEPARTMENT SHALL IMPLEMENT A NO-PAY OPTION THAT OBLIGATES THE WINNING PBM, RATHER THAN THE STATE, TO PAY THE COST OF THE TECHNOLOGY PLATFORM AND RELATED TECHNOLOGY PLATFORM OPERATOR SERVICES BY ASSESSING THE PBM A PER-PRESCRIPTION FEE IN AN AMOUNT AGREED TO BY THE DEPARTMENT AND THE TECHNOLOGY OPERATOR AND REQUIRING THE PBM TO PAY THESE FEES TO THE TECHNOLOGY OPERATOR OVER THE DURATION OF THE PBM SERVICES CONTRACT. THE OBLIGATION OF THE WINNING PBM TO PAY THE PER-PRESCRIPTION FEES SHALL BE INCORPORATED AS A TERM OF THE PARTICIPANT BIDDING AGREEMENT AND THE PBM SERVICES CONTRACT AWARDED TO THE PBM REVERSE AUCTION WINNER.

(10)(a) THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12 APPLY TO

GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50. THIS PART 12 SHALL NOT APPLY IN THE CASE OF A NONPROFIT, NONGOVERNMENTAL HEALTH MAINTENANCE ORGANIZATION WITH RESPECT TO MANAGED CARE PLANS THAT PROVIDE A MAJORITY OF COVERED PROFESSIONAL SERVICES THROUGH A SINGLE CONTRACTED MEDICAL GROUP.

(b) ANY OTHER SELF-FUNDED PUBLIC SECTOR HEALTH PLAN MAY USE THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12 INDIVIDUALLY, COLLECTIVELY, OR AS A JOINT PURCHASING GROUP WITH THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50.

(c) (I) AFTER COMPLETION OF THE FIRST PBM REVERSE AUCTION, SELF-FUNDED PRIVATE SECTOR HEALTH PLANS WITH SUBSTANTIAL PARTICIPATION BY COLORADO EMPLOYEES AND THEIR DEPENDENTS SHALL HAVE THE OPTION TO PARTICIPATE IN A JOINT PURCHASING POOL WITH STATE EMPLOYEES FOR SUBSEQUENT PBM REVERSE AUCTIONS.

(II) THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50, AND ANY SELF-FUNDED PUBLIC SECTOR HEALTH PLANS OR SELF-FUNDED PRIVATE SECTOR HEALTH PLANS THAT OPT TO PARTICIPATE WITH THE STATE EMPLOYEES GROUP BENEFITS PLAN IN A JOINT PBM REVERSE AUCTION PURCHASING POOL SHALL RETAIN FULL AUTONOMY OVER DETERMINATION OF THEIR RESPECTIVE PRESCRIPTION DRUG FORMULARIES AND PHARMACY BENEFIT DESIGNS AND SHALL NOT BE REQUIRED TO ADOPT A COMMON PRESCRIPTION DRUG FORMULARY OR COMMON PRESCRIPTION PHARMACY BENEFIT DESIGN. ANY SUCH ENTITY OR PURCHASING GROUP SHALL AGREE, BEFORE PARTICIPATING IN THE PBM REVERSE AUCTION, TO ACCEPT THE PRESCRIPTION DRUG PRICING PLAN THAT IS SELECTED THROUGH THE PBM REVERSE AUCTION PROCESS.

(III) ANY PBM PROVIDING SERVICES TO THE DEPARTMENT, TO SELF-FUNDED PUBLIC SECTOR HEALTH PLANS, OR TO SELF-FUNDED PRIVATE SECTOR HEALTH PLANS AS DESCRIBED IN THIS SECTION SHALL PROVIDE THE DEPARTMENT AND THE PLAN ACCESS TO COMPLETE PHARMACY CLAIMS DATA NECESSARY TO CONDUCT THE REVERSE AUCTION AND CARRY OUT THEIR ADMINISTRATIVE AND MANAGEMENT DUTIES.

(11) NOTWITHSTANDING SECTION 24-50-1204(1), THE DEPARTMENT MAY ELECT TO VACATE THE OUTCOME OF A PBM REVERSE AUCTION IF THE LOWEST COST PBM BID IS NOT LESS THAN THE PROJECTED COST TREND FOR THE INCUMBENT PBM CONTRACT AS VERIFIED BY THE DEPARTMENT. THE DEPARTMENT MAY UTILIZE A CONSULTANT TO MAKE THE VERIFICATION. THE COST TREND SHALL BE PROJECTED BY THE TECHNOLOGY PLATFORM OPERATOR USING INDUSTRY-RECOGNIZED DATA SOURCES AND IS SUBJECT TO REVIEW AND APPROVAL BY THE DEPARTMENT IN ADVANCE OF THE REVERSE AUCTION. METHODOLOGY MUST BE APPLIED CONSISTENTLY IN PROJECTION OF COST AND SAVINGS TO THE STATE WITH REGARD TO THE INCUMBENT PBM CONTRACT AND COMPETING PBM REVERSE AUCTION BIDS.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 7, 2021