

CHAPTER 312

INSURANCE

HOUSE BILL 22-1122

BY REPRESENTATIVE(S) Will and Lindsay, Lontine, Bennett, Esgar, Jodeh, Kipp, Ricks, Weissman, Daugherty, Hooton;
also SENATOR(S) Jaquez Lewis, Moreno.

AN ACT

**CONCERNING PROHIBITING CERTAIN PRACTICES BY ENTITIES OBLIGATED TO PAY FOR
PRESCRIPTION DRUG BENEFITS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

SECTION 1. In Colorado Revised Statutes, **add** part 15 to article 16 of title 10 as follows:

PART 15
340B PRESCRIPTION DRUG PROGRAM
ANTI-DISCRIMINATION ACT

10-16-1501. Short title. THE SHORT TITLE OF THIS PART 15 IS THE "COLORADO 340B PRESCRIPTION DRUG PROGRAM ANTI-DISCRIMINATION ACT".

10-16-1502. Legislative declaration. (1) THE GENERAL ASSEMBLY DECLARES THAT THE PURPOSE OF THIS PART 15 IS TO:

(a) PROHIBIT A PHARMACY BENEFIT MANAGER OR CARRIER FROM IMPOSING FEES, CHARGE BACKS, OR OTHER ADJUSTMENTS ON COVERED ENTITIES OR CONTRACT PHARMACIES BASED ON THEIR PARTICIPATION IN THE 340B DRUG PRICING PROGRAM;

(b) PROHIBIT A PHARMACY BENEFIT MANAGER OR CARRIER FROM REQUIRING A CLAIM FOR A DRUG TO INCLUDE A MODIFIER TO INDICATE THAT THE DRUG IS A 340B DRUG UNLESS THE CLAIM IS FOR PAYMENT, DIRECTLY OR INDIRECTLY, BY THE MEDICAID PROGRAM; AND

(c) PROVIDE FOR POWERS AND DUTIES OF THE COMMISSIONER AND THE DIVISION.

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.

10-16-1503. Definitions. AS USED IN THIS PART 15, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "340B COVERED ENTITY" MEANS A COVERED ENTITY, AS DEFINED IN SECTION 340B (a)(4) OF THE FEDERAL "PUBLIC HEALTH SERVICE ACT", 42 U.S.C. SEC. 256b (a)(4), AS AMENDED.

(2) "340B DRUG" MEANS A DRUG PURCHASED THROUGH THE 340B DRUG PRICING PROGRAM BY A 340B COVERED ENTITY.

(3) "340B DRUG PRICING PROGRAM" OR "340B PROGRAM" MEANS THE PROGRAM DESCRIBED IN 42 U.S.C. SEC. 256b.

(4) "CONTRACT PHARMACY" MEANS A PHARMACY OPERATING UNDER CONTRACT WITH A 340B COVERED ENTITY TO PROVIDE DISPENSING SERVICES TO THE 340B COVERED ENTITY AS DESCRIBED IN 75 FED. REG. 10272 (2010) OR ANY SUPERSEDING GUIDANCE.

(5) (a) "DRUG COVERAGE" MEANS COVERAGE OR PAYMENT FOR A PRESCRIPTION DRUG DISPENSED BY A PHARMACY TO A PATIENT PURSUANT TO:

(I) A HEALTH COVERAGE PLAN;

(II) A MANAGED CARE ORGANIZATION, AS DEFINED IN SECTION 25.5-5-403 (5); OR

(III) ANY OTHER CONTRACTUAL OR OTHER LEGAL OBLIGATION TO PROVIDE COVERAGE OR PAYMENT FOR A PRESCRIPTION DRUG DISPENSED BY A PHARMACY TO A PATIENT.

(b) "DRUG COVERAGE" DOES NOT INCLUDE:

(I) REIMBURSEMENT FOR COVERED OUTPATIENT DRUGS, AS THAT TERM IS DEFINED IN SECTION 42 U.S.C. SEC. 1396r-8 (k)(2), ON A FEE-FOR-SERVICE BASIS UNDER THE MEDICAID PROGRAM; OR

(II) ANY AMOUNTS PAID BY AN INDIVIDUAL ON THE INDIVIDUAL'S OWN BEHALF OR ON BEHALF OF ANOTHER INDIVIDUAL WITHOUT A CONTRACTUAL OR LEGAL OBLIGATION TO DO SO.

(6) "MEDICAID PROGRAM" MEANS THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO ARTICLES 4 TO 6 OF TITLE 25.5.

(7) (a) "THIRD PARTY" MEANS:

(I) A CARRIER OR PHARMACY BENEFIT MANAGER THAT PROVIDES OR MANAGES DRUG COVERAGE UNDER A HEALTH COVERAGE PLAN; OR

(II) A SYSTEM OF HEALTH INSURANCE FOR STATE OR LOCAL GOVERNMENT EMPLOYEES, THEIR DEPENDENTS, AND RETIREES, INCLUDING A GROUP BENEFIT PLAN, AS DEFINED IN SECTION 24-50-603 (9), AND A GROUP HEALTH CARE PROGRAM

DESIGNED PURSUANT TO SECTION 24-51-1202.

(b) "THIRD PARTY" DOES NOT INCLUDE:

(I) AN INSURER THAT PROVIDES COVERAGE UNDER A POLICY OF PROPERTY AND CASUALTY INSURANCE; OR

(II) AN INSURER OR ENTITY THAT PROVIDES HEALTH COVERAGE, BENEFITS, OR COVERAGE OF PRESCRIPTION DRUGS AS PART OF COVERAGE REQUIRED UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, OR WORKERS' COMPENSATION COVERAGE REQUIRED UNDER FEDERAL LAW.

10-16-1504. Applicability - exclusions. (1) THIS PART 15 APPLIES TO ANY THIRD PARTY THAT REIMBURSES 340B COVERED ENTITIES OR CONTRACT PHARMACIES IN THIS STATE.

(2) NOTHING IN THIS PART 15:

(a) PROHIBITS A THIRD PARTY FROM MAINTAINING DIFFERENTIAL REIMBURSEMENT RATES FOR PARTICIPATING AND NONPARTICIPATING PROVIDERS, SO LONG AS THE RATES ARE NOT DETERMINED ON THE BASIS OF A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT PHARMACY;

(b) AFFECTS A THIRD PARTY'S ABILITY TO ESTABLISH COVERAGE GUIDELINES AND EXCLUDE SPECIFIC DRUGS FROM ITS PRESCRIPTION DRUG FORMULARIES, SO LONG AS THE GUIDELINES AND EXCLUSIONS ARE NOT DETERMINED ON THE BASIS OF A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT PHARMACY OR OF A DRUG'S STATUS AS A 340B DRUG; OR

(c) REQUIRES A THIRD PARTY TO CONTRACT WITH A 340B COVERED ENTITY OR CONTRACT PHARMACY FOR PURPOSES OF PARTICIPATING IN THE THIRD PARTY'S NETWORK, SO LONG AS THE THIRD PARTY'S CONTRACTING DECISIONS ARE NOT DETERMINED ON THE BASIS OF A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT PHARMACY.

10-16-1505. Prohibition on 340B discrimination. (1) A THIRD PARTY THAT REIMBURSES A 340B COVERED ENTITY OR CONTRACT PHARMACY FOR 340B DRUGS SHALL NOT:

(a) REIMBURSE THE 340B COVERED ENTITY OR CONTRACT PHARMACY FOR A PHARMACY-DISPENSED DRUG AT A RATE LOWER THAN THE AMOUNT PAID FOR THE SAME DRUG TO PHARMACIES SIMILAR IN PRESCRIPTION VOLUME THAT ARE NOT 340B COVERED ENTITIES OR CONTRACT PHARMACIES;

(b) ASSESS ANY FEE, CHARGE BACK, OR OTHER ADJUSTMENT AGAINST THE 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE BASIS THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY PARTICIPATES IN THE 340B PROGRAM;

(c) RESTRICT ACCESS TO THE THIRD PARTY'S PHARMACY NETWORK FOR ANY 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE BASIS THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY PARTICIPATES IN THE 340B PROGRAM;

(d) REQUIRE THE 340B COVERED ENTITY OR CONTRACT PHARMACY TO ENTER INTO A CONTRACT WITH A SPECIFIC PHARMACY OR HEALTH COVERAGE PLAN TO PARTICIPATE IN THE THIRD PARTY'S PHARMACY NETWORK;

(e) CREATE A RESTRICTION OR AN ADDITIONAL CHARGE ON A PATIENT WHO CHOOSES TO RECEIVE DRUGS FROM A 340B COVERED ENTITY OR CONTRACT PHARMACY;

(f) RESTRICT THE METHODS BY WHICH A 340B COVERED ENTITY OR CONTRACT PHARMACY MAY DISPENSE OR DELIVER 340B DRUGS;

(g) REFUSE TO PROVIDE REIMBURSEMENT OR COVERAGE FOR 340B DRUGS; OR

(h) CREATE ANY ADDITIONAL REQUIREMENTS OR RESTRICTIONS ON A 340B COVERED ENTITY OR CONTRACT PHARMACY.

(2) UNLESS A CLAIM IS FOR PAYMENT, DIRECTLY OR INDIRECTLY, BY THE MEDICAID PROGRAM, A PHARMACY BENEFIT MANAGER OR ANY OTHER THIRD PARTY THAT REIMBURSES A 340B COVERED ENTITY OR CONTRACT PHARMACY FOR 340B DRUGS SHALL NOT REQUIRE A CLAIM FOR A 340B DRUG TO INCLUDE:

(a) A MODIFIER TO INDICATE THAT THE DRUG IS A 340B DRUG; OR

(b) ANY OTHER METHOD OF IDENTIFYING THE CLAIM FOR A 340B DRUG.

(3) WITH RESPECT TO A PATIENT ELIGIBLE TO RECEIVE 340B DRUGS, A PHARMACY BENEFIT MANAGER OR ANY OTHER THIRD PARTY THAT MAKES PAYMENT FOR THE DRUGS SHALL NOT DISCRIMINATE AGAINST A 340B COVERED ENTITY OR CONTRACT PHARMACY IN A MANNER THAT PREVENTS OR INTERFERES WITH THE PATIENT'S CHOICE TO RECEIVE THE DRUGS FROM THE 340B COVERED ENTITY OR CONTRACT PHARMACY.

10-16-1506. Enforcement - rules. (1) A THIRD PARTY THAT VIOLATES THIS PART 15 ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE UNDER SECTION 10-3-1104 (1)(tt), AND THE ACT OF THE THIRD PARTY THAT VIOLATES THIS PART 15 IS VOID AND UNENFORCEABLE.

(2) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS PART 15.

SECTION 2. In Colorado Revised Statutes, 10-3-1104, **add** (1)(tt) as follows:

10-3-1104. Unfair methods of competition - unfair or deceptive practices.

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(tt) A VIOLATION OF PART 15 OF ARTICLE 16 OF THIS TITLE 10.

SECTION 3. Appropriation. For the 2022-23 state fiscal year, \$17,109 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in

section 10-1-103 (3), C.R.S., and is based on an assumption that the division will require an additional 0.3 FTE. To implement this act, the division may use this appropriation for personal services.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 2, 2022