

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 23-0629.02 Christy Chase x2008

**HOUSE BILL 23-1227**

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**HOUSE SPONSORSHIP**

**Jodeh and Ortiz,**

**SENATE SPONSORSHIP**

**Will,**

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**House Committees**

Health & Insurance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101    **CONCERNING THE ENFORCEMENT OF REQUIREMENTS IMPOSED ON**  
102            **PHARMACY BENEFIT MANAGERS, AND, IN CONNECTION**  
103            **THEREWITH, MAKING AN APPROPRIATION.**

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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>.)*

Under current law, pharmacy benefit managers (PBMs) are required to perform certain acts and are prohibited from engaging in certain acts. Specifically, PBMs are prohibited from:

- Requiring patients to obtain their prescription drugs through mail order;

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

- Charging pharmacies fees to adjudicate claims;
- Requiring pharmacies to obtain accreditations or certifications that are different than what the PBM requires of its affiliated pharmacies;
- Retroactively reducing a payment made to a pharmacy on a drug claim after the point of sale or reimbursing a pharmacy in an amount that is less than the amount reimbursed to its own affiliated pharmacy for the same pharmacy service;
- Modifying the prescription drug formulary under a health benefit plan during the plan year;
- With regard to audits, using specified techniques in calculating a recoupment or penalty, subjecting a pharmacy to recoupment when a clerical error is discovered, and requiring pharmacies to be audited more than once a year;
- Prohibiting a pharmacy or pharmacist from, or penalizing a pharmacy or pharmacist for, providing information to patients about more affordable, therapeutically equivalent alternatives to a prescribed drug; or
- Requiring a pharmacy or pharmacist to charge or collect a copayment from an insured patient that exceeds the total charge submitted by the pharmacy for the prescription drug.

Additionally, PBMs are required to:

- Provide pharmacies 7 days' written notice before an audit, conduct an audit by or in consultation with a pharmacist, allow the pharmacy to supplement claims documentation, and establish an appeals process;
- Provide an insured individual, the insured's health-care provider, or a third party acting on behalf of the insured or provider with up-to-date and real-time cost, benefit, and coverage information under the terms of the insured's health benefit plan; and
- Provide contracted pharmacies with the list of sources the PBM used in determining maximum allowable cost pricing, update the information every 7 days, allow pharmacies the ability to readily review the information, follow specified requirements when placing a drug on the maximum allowable cost list, and establish an appeals process to resolve disputes.

The bill specifies that the commissioner of insurance (commissioner) has the power to enforce these prohibitions and requirements and impose penalties on PBMs for failing to comply with these prohibitions and requirements.

Additionally, the bill requires:

- PBMs to register with and pay a registration fee to the commissioner; and
- Health insurers to pay a fee when filing with the commissioner their list of PBMs they use for prescription drug benefits administration.

The fees imposed under the bill are to be used to fund the costs of the division of insurance in enforcing requirements and prohibitions on PBMs.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-122.1, **add**  
3 (2.5) and (4.5) as follows:

4 **10-16-122.1. Contracts between PBMs and pharmacies -**  
5 **carrier submit list of PBMs - PBM registration - fees - prohibited**  
6 **practices - exception - rules - enforcement - short title - definitions.**

7 **2.5**  
8 (2.5) (a) STARTING IN 2024, A PERSON SHALL NOT ESTABLISH OR  
9 OPERATE AS A PBM IN THIS STATE UNLESS THE PERSON HAS REGISTERED  
10 WITH THE COMMISSIONER IN ACCORDANCE WITH THIS SUBSECTION (2.5)  
11 AND COMMISSIONER RULES.

12 (b) THE COMMISSIONER SHALL ESTABLISH, BY RULE, THE FORM  
13 AND MANNER FOR A PERSON TO REGISTER WITH THE COMMISSIONER AND  
14 SHALL CHARGE APPLICATION AND RENEWAL FEES AS ESTABLISHED BY  
15 RULE.

16 (c) THE COMMISSIONER SHALL TRANSMIT ANY FEES COLLECTED  
17 PURSUANT TO THIS SUBSECTION (2.5) TO THE STATE TREASURER FOR  
18 DEPOSIT IN THE DIVISION OF INSURANCE CASH FUND CREATED IN SECTION  
19 10-1-103 (3). THE COMMISSIONER SHALL USE THE FEES COLLECTED  
20 PURSUANT TO THIS SUBSECTION (2.5) TO FUND THE DIVISION'S COSTS IN  
21 ADMINISTERING AND ENFORCING THIS SUBSECTION (2.5) AND THE

1 REQUIREMENTS AND PROHIBITIONS ON THE CONDUCT AND ACTIONS OF  
2 PBMS AS SPECIFIED IN THIS ARTICLE 16 AND SECTION 25-37-103.5.

3 (4.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION  
4 APPLICABLE TO PBMS, THE COMMISSIONER HAS THE AUTHORITY TO  
5 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY  
6 AGAINST A PBM THAT FAILS TO COMPLY WITH THIS SECTION.

7 **SECTION 2.** In Colorado Revised Statutes, 10-16-122.3, **add**  
8 (5.5) as follows:

9 **10-16-122.3. Pharmacy benefit management firm payments -**  
10 **retroactive reduction prohibited - enforcement - rules - definitions.**

11 (5.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE  
12 TO PHARMACY BENEFIT MANAGEMENT FIRMS, THE COMMISSIONER HAS THE  
13 AUTHORITY TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR  
14 OTHER REMEDY AGAINST A PHARMACY BENEFIT MANAGEMENT FIRM THAT  
15 FAILS TO COMPLY WITH THIS SECTION.

16 **SECTION 3.** In Colorado Revised Statutes, 10-16-122.4, **add** (6)  
17 as follows:

18 **10-16-122.4. Pharmacy benefits - formulary change**  
19 **prohibition - exceptions - enforcement - definition - rules. (6)** WITH

20 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMS,  
21 THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND  
22 TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO  
23 COMPLY WITH THIS SECTION.

24 **SECTION 4.** In Colorado Revised Statutes, 10-16-122.5, **add**  
25 (5.7) as follows:

26 **10-16-122.5. Pharmacy benefit manager - audit of pharmacies**  
27 **- time limits on on-site audits - enforcement. (5.7)** WITH REGARD TO

1 THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PHARMACY BENEFIT  
2 MANAGERS, THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS  
3 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A  
4 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS  
5 SECTION.

6 **SECTION 5.** In Colorado Revised Statutes, 10-16-122.7, **amend**  
7 (4) as follows:

8 **10-16-122.7. Disclosures between pharmacists and patients -**  
9 **carrier and PBM prohibitions - enforcement - short title - legislative**  
10 **declaration - preemption by federal law.** (4) (a) If the commissioner  
11 determines that a carrier has not complied with this section, the  
12 commissioner shall institute a corrective action plan for the carrier to  
13 follow or use any of the commissioner's enforcement powers under this  
14 title 10 to obtain the carrier's compliance with this section.

15 (b) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION  
16 APPLICABLE TO PBMs, THE COMMISSIONER HAS THE AUTHORITY TO  
17 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY  
18 AGAINST A PHARMACY BENEFIT MANAGEMENT FIRM THAT FAILS TO  
19 COMPLY WITH THIS SECTION.

20 **SECTION 6.** In Colorado Revised Statutes, 10-16-122.9, **add**  
21 (1.5) as follows:

22 **10-16-122.9. Prescription drug benefits - real-time access to**  
23 **benefit information - enforcement - definitions.** (1.5) WITH REGARD  
24 TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMs, THE  
25 COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO  
26 IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO  
27 COMPLY WITH THIS SECTION.

1           **SECTION 7.** In Colorado Revised Statutes, 25-37-103.5, **add** (4)  
2 as follows:

3           **25-37-103.5. Pharmacy benefit managers - contracts with**  
4 **pharmacies - maximum allowable cost pricing - enforcement.** (4) THE  
5 COMMISSIONER OF INSURANCE HAS THE AUTHORITY TO ENFORCE THIS  
6 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A  
7 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS  
8 SECTION.

9           **SECTION 8.** In Colorado Revised Statutes, 10-1-103, **amend** (3)  
10 as follows:

11           **10-1-103. Division of insurance - division of insurance cash**  
12 **fund created - division subject to repeal - repeal of functions.**

13 (3) (a) (I) All direct and indirect expenditures of the division are paid  
14 from the division of insurance cash fund, which is hereby created in the  
15 state treasury.

16 (II) All fees collected under sections 8-44-204 (7), ~~€R.S.~~,  
17 8-44-205 (6), ~~€R.S.~~, 10-2-413, 10-3-108, 10-3-207, 10-3.5-104,  
18 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1),  
19 **10-16-122.1 (2.5)**, 10-23-102, 10-23-104, 24-10-115.5 (5), ~~€R.S.~~, and  
20 29-13-102 (5), ~~€R.S.~~, not including fees retained under contracts entered  
21 into in accordance with section 10-2-402 (5) or 24-34-101, ~~€R.S.~~, and all  
22 taxes collected under section 10-3-209 (4) designated for the division of  
23 insurance, are transmitted to the state treasurer, who shall credit the  
24 ~~moneys~~ MONEY to the division of insurance cash fund.

25 (b) The division shall use all ~~moneys~~ MONEY credited to the  
26 division of insurance cash fund as provided in this section and in section  
27 24-48.5-106, ~~€R.S.~~, subject to annual appropriation by the general

1 assembly, for the purposes authorized in this ~~title~~ TITLE 10 and as  
2 otherwise authorized by law.

3 (c) ~~Moneys~~ MONEY in the fund ~~do~~ DOES not revert to the general  
4 fund or to any other fund. In accordance with section 24-36-114, ~~C.R.S.~~,  
5 all interest derived from the deposit and investment of ~~moneys~~ MONEY in  
6 the fund is credited to the general fund.

7 **SECTION 9. Appropriation.** For the 2023-24 state fiscal year,  
8 \$206,647 is appropriated to the department of regulatory agencies for use  
9 by the division of insurance. This appropriation is from the division  
10 of insurance cash fund created in section 10-1-103 (3), C.R.S. To  
11 implement this act, the division may use this appropriation as follows:

12 (a) \$183,262 for personal services, which amount is based on an  
13 assumption that the division will require an additional 2.5 FTE; and

14 (b) \$23,385 for operating expenses.

15 **SECTION 10. Act subject to petition - effective date.** This act  
16 takes effect at 12:01 a.m. on the day following the expiration of the  
17 ninety-day period after final adjournment of the general assembly; except  
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
19 of the state constitution against this act or an item, section, or part of this  
20 act within such period, then the act, item, section, or part will not take  
21 effect unless approved by the people at the general election to be held in  
22 November 2024 and, in such case, will take effect on the date of the  
23 official declaration of the vote thereon by the governor.