

CHAPTER 160

INSURANCE

HOUSE BILL 23-1227

BY REPRESENTATIVE(S) Jodeh and Ortiz, Amabile, Bacon, Boesenecker, Brown, Daugherty, deGruy Kennedy, English, Epps, Gonzales-Gutierrez, Hamrick, Herod, Kipp, Lieder, Lindsay, Mabrey, Marshall, Sharbini, Sirota, Story, Titone, Valdez, Velasco, Vigil, Weissman, Woodrow, McCluskie;
also SENATOR(S) Will and Jaquez Lewis, Buckner, Cutter, Fields, Moreno, Priola, Rodriguez, Winter F.

AN ACT

CONCERNING THE ENFORCEMENT OF REQUIREMENTS IMPOSED ON PHARMACY BENEFIT MANAGERS, 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, 10-16-122.1, **add** (2.5), (4.5), and (4.7) as follows:

10-16-122.1. Contracts between PBMs and pharmacies - carrier submit list of PBMs - PBM registration - fees - prohibited practices - exception - rules - enforcement - short title - definitions. (2.5) (a) **STARTING IN 2024**, A PERSON SHALL NOT ESTABLISH OR OPERATE AS A PBM IN THIS STATE UNLESS THE PERSON HAS REGISTERED WITH THE COMMISSIONER IN ACCORDANCE WITH THIS SUBSECTION (2.5) AND COMMISSIONER RULES. NOTWITHSTANDING THE DEFINITION OF A PBM IN SECTION 10-16-102 (49), THIS REGISTRATION REQUIREMENT APPLIES TO ALL PBMS DOING BUSINESS IN THIS STATE, INCLUDING A PBM THAT IS NOT DIRECTLY CONNECTED WITH A CARRIER.

(b) (I) THE COMMISSIONER SHALL ESTABLISH, BY RULE, THE FORM AND MANNER FOR A PERSON TO REGISTER WITH THE COMMISSIONER AND SHALL CHARGE APPLICATION AND RENEWAL FEES AS ESTABLISHED BY RULE. THE COMMISSIONER SHALL SET REGISTRATION FEES AT AMOUNTS THAT ARE COMMENSURATE WITH THE AMOUNTS OF REGISTRATION FEES ASSESSED IN OTHER STATES.

(II) THE COMMISSIONER MAY DENY A REGISTRATION TO A PBM; SUSPEND, REVOKE, OR REFUSE TO ISSUE, CONTINUE, OR RENEW THE REGISTRATION OF A PBM; OR ISSUE A CEASE-AND-DESIST ORDER TO A PBM IF, AFTER NOTICE TO THE PBM AND

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.

AFTER A HEARING HELD IN ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105, THE COMMISSIONER FINDS THAT THE PBM, OR AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE PBM, HAS:

(A) MADE A MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION IN A REGISTRATION OR REGISTRATION RENEWAL APPLICATION;

(B) FRAUDULENTLY OR DECEPTIVELY OBTAINED OR ATTEMPTED TO OBTAIN A REGISTRATION OR RENEWAL OF A REGISTRATION;

(C) IN CONNECTION WITH THE ADMINISTRATION OF PRESCRIPTION DRUG BENEFITS MANAGEMENT SERVICES, COMMITTED FRAUD OR ENGAGED IN ILLEGAL OR DISHONEST ACTIVITIES; OR

(D) VIOLATED ANY PROVISION OF THIS TITLE 10.

(III) A DETERMINATION OF THE COMMISSIONER IS A FINAL AGENCY ACTION SUBJECT TO JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106.

(c) THE COMMISSIONER SHALL TRANSMIT ANY FEES COLLECTED PURSUANT TO THIS SUBSECTION (2.5) TO THE STATE TREASURER FOR DEPOSIT IN THE DIVISION OF INSURANCE CASH FUND CREATED IN SECTION 10-1-103 (3). THE COMMISSIONER SHALL USE THE FEES COLLECTED PURSUANT TO THIS SUBSECTION (2.5) TO FUND THE DIVISION'S COSTS IN ADMINISTERING AND ENFORCING THIS SUBSECTION (2.5) AND THE REQUIREMENTS AND PROHIBITIONS ON THE CONDUCT AND ACTIONS OF PBMS AS SPECIFIED IN THIS ARTICLE 16.

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

(4.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 10-16-122.3, **amend** (4); and **add** (5.5) as follows:

10-16-122.3. Pharmacy benefit management firm payments - retroactive reduction prohibited - enforcement - rules - definitions. (4) The division may promulgate rules TO IMPLEMENT AND ENFORCE THIS SECTION, INCLUDING RULES TO ESTABLISH THE MANNER IN WHICH CARRIERS AND PHARMACY BENEFIT MANAGEMENT FIRMS ARE REQUIRED TO SHOW COMPLIANCE WITH THIS SECTION.

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

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

10-16-122.4. Pharmacy benefits - formulary change prohibition - exceptions - enforcement - definition - rules. (6) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMS, THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO COMPLY WITH THIS SECTION.

SECTION 4. In Colorado Revised Statutes, 10-16-122.5, **add** (5.7) and (5.9) as follows:

10-16-122.5. Pharmacy benefit manager - audit of pharmacies - time limits on on-site audits - enforcement - rules. (5.7) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PHARMACY BENEFIT MANAGERS, THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS SECTION.

(5.9) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND ENFORCE THIS SECTION.

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

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

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

(6) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 6. In Colorado Revised Statutes, 10-16-122.9, **add** (1.5) and (1.7) as follows:

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

(1.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 7. In Colorado Revised Statutes, **add with amended and relocated provisions** 10-16-122.6 as follows:

10-16-122.6. [Formerly 25-37-103.5] Pharmacy benefit managers - contracts with pharmacies - maximum allowable cost pricing - enforcement - rules.

(1) (a) In each contract between a pharmacy benefit manager and a pharmacy, the pharmacy shall be given the right to obtain from the pharmacy benefit manager, within ten days after any request, a current list of the sources used to determine maximum allowable cost pricing. The pharmacy benefit manager shall update the pricing information at least every seven days and provide a means by which contracted pharmacies may promptly review pricing updates in a format that is readily available and accessible.

(b) A pharmacy benefit manager shall maintain a procedure to eliminate products from the list of drugs subject to maximum allowable cost pricing in a timely manner in order to remain consistent with pricing changes in the marketplace.

(2) In order to place a prescription drug on a maximum allowable cost list, a pharmacy benefit manager shall ensure that:

(a) The drug is listed as "A" or "B" rated in the most recent version of the United States food and drug administration's approved drug products with therapeutic equivalence evaluations, also known as the orange book, or has an "NR" or "NA" rating or similar rating by a nationally recognized reference; and

(b) The drug is generally available for purchase by pharmacies in this state from a national or regional wholesaler and is not obsolete.

(3) Each contract between a pharmacy benefit manager and a pharmacy must include a process to appeal, investigate, and resolve disputes regarding maximum allowable cost pricing that includes:

(a) A twenty-one-day limit on the right to appeal following the initial claim;

(b) A requirement that the appeal be investigated and resolved within twenty-one days after the appeal;

(c) A telephone number at which the pharmacy may contact the pharmacy benefit manager to speak to a person responsible for processing appeals;

(d) A requirement that a pharmacy benefit manager provide a reason for any appeal denial and the identification of the national drug code, AS DEFINED IN SECTION 10-16-122.9 (2)(f), of a drug that may be purchased by the pharmacy at a price at or below the benchmark price as determined by the pharmacy benefit manager; and

(e) A requirement that a pharmacy benefit manager make an adjustment to a date no later than one day after the date of determination. This requirement does not prohibit a pharmacy benefit manager from retroactively adjusting a claim for the appealing pharmacy or for another similarly situated pharmacy.

(4) THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS SECTION.

(5) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND ENFORCE THIS SECTION.

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

10-1-103. Division of insurance - division of insurance cash fund created - division subject to repeal - repeal of functions. (3) (a) (I) All direct and indirect expenditures of the division are paid from the division of insurance cash fund, which is hereby created in the state treasury.

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

(b) The division shall use all ~~moneys~~ MONEY credited to the division of insurance cash fund as provided in this section and in section 24-48.5-106, ~~C.R.S.~~, subject to annual appropriation by the general assembly, for the purposes authorized in this ~~title~~ TITLE 10 and as otherwise authorized by law.

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

SECTION 9. Repeal of relocated provision in this act. In Colorado Revised Statutes, **repeal** 25-37-103.5.

SECTION 10. Appropriation. (1) For the 2023-24 state fiscal year, \$206,647 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. To implement this act, the division may use this appropriation as follows:

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

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

SECTION 11. 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 10, 2023