

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

INTRODUCED

LLS NO. 25-0494.01 Josh Schultz x5486

HOUSE BILL 25-1222

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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PRESERVE HEALTH-CARE ACCESS**
102 **PROVIDED BY RURAL INDEPENDENT PHARMACIES.**

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 prevents a pharmacy benefit manager (PBM) from prohibiting a rural independent pharmacy from using a private courier or a delivery service to deliver a prescription drug to a patient.

A PBM is required to reimburse a rural independent pharmacy for a prescription drug in an amount not less than the average acquisition cost for like prescription drugs, as determined by the medical services board

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.

in the state department of health care policy and financing, plus pay a dispensing fee.

When a PBM conducts an audit of a rural independent pharmacy and the audit results in a recoupment of more than \$1,000 or a penalty of more than \$1,000, the PBM must serve process on the rural independent pharmacy and notify the rural independent pharmacy of the rural independent pharmacy's appeal rights at least 30 days before any recoupment of funds.

The bill defines "flex pharmacy" as a prescription drug outlet that:

- Is registered with the state board of pharmacy (board) as a prescription drug outlet;
- Operates as a telepharmacy during times when the licensed pharmacist is not on the premises;
- Has a licensed pharmacist on the premises for at least twice the number of hours that the flex pharmacy operates as a telepharmacy;
- Operates as a telepharmacy from the same premises as the premises where the pharmacy is registered; and
- Is a rural independent pharmacy.

The board may adopt rules to facilitate the operation of flex pharmacies and may assess a fee on a prescription drug outlet applying to be a flex pharmacy.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and determines that:

4 (a) Rural independent pharmacies are critical to the provision of
5 health-care services for Colorado's rural communities and vulnerable
6 populations;

7 (b) Nationally, one in 3 pharmacies have closed in the last decade;

8 (c) A 2024 study of pharmacy closures found that 41% of the
9 state's pharmacy closures were independent pharmacies, with the majority
10 of those closures located in rural areas of the state;

11 (d) Rural independent pharmacies have higher rates of permanent
12 closure and report low reimbursement rates from pharmacy benefit
13 managers, or "PBMs", as the key contributing factor;

1 (e) Nationally, PBMs are under scrutiny for restricting consumer
2 choice, steering patients to select pharmacies, and reimbursing rural
3 independent pharmacies below cost;

4 (f) State attorneys general have sued PBMs for over-inflating
5 prescription drug costs for state medicaid programs, and the over-inflated
6 prescription drug costs drive up costs for taxpayers by hundreds of
7 millions of dollars;

8 (g) The federal house committee on oversight and accountability
9 found that the 3 largest PBMs control 80% of the market and have used
10 their position to enact anticompetitive policies, share patient information,
11 steer patients to PBM-owned pharmacies, and artificially reduce
12 reimbursements to rural independent pharmacies;

13 (h) The federal trade commission has reported that PBM practices
14 inflate drug costs, squeeze independent pharmacies, and deprive
15 consumers of affordable, accessible health care;

16 (i) A recent audit by the state of Mississippi found that PBMs
17 excessively audited pharmacies and reimbursed rural independent
18 pharmacies 145% less than they paid their own PBM-affiliated pharmacy
19 for the same drug;

20 (j) Rural independent pharmacies offer a wide variety of
21 health-care services, ranging from prescription drug delivery; special drug
22 packaging for vulnerable populations; medication management; wellness
23 and prevention services; immunizations; chronic and acute care
24 management; testing and treatment for strep throat, flu, and COVID-19;
25 blood pressure and glucose screenings; and diabetes education and
26 management, and provide health-care services for hospitals, long-term
27 care facilities, and health clinics; and

1 (k) When rural independent pharmacies close, patients lose access
2 to care, communities lose health-care providers, and Coloradans are
3 forced to travel greater distances to access care or are left completely
4 without care.

5 (2) Therefore, the general assembly declares that Colorado must
6 preserve access to rural independent pharmacies for the state's rural
7 communities and its most vulnerable populations.

8 **SECTION 2.** In Colorado Revised Statutes, 10-16-102, **add**
9 (59.5) as follows:

10 **10-16-102. Definitions.** As used in this article 16, unless the
11 context otherwise requires:

12 (59.5) "RURAL INDEPENDENT PHARMACY" MEANS A PRESCRIPTION
13 DRUG OUTLET THAT IS:

14 (a) PRIVATELY OWNED BY AT LEAST ONE LICENSED PHARMACIST
15 WITH NO OWNERSHIP INTEREST BY OR AFFILIATION WITH A CHAIN
16 PHARMACY OR A PUBLICLY TRADED PRESCRIPTION DRUG OUTLET; OR

17 (b) LOCATED IN A COUNTY WITH A POPULATION OF LESS THAN
18 FIFTY THOUSAND RESIDENTS OR A MUNICIPALITY WITH A POPULATION OF
19 LESS THAN TWENTY-FIVE THOUSAND RESIDENTS IF THE MUNICIPALITY IS
20 NOT CONTIGUOUS TO A MUNICIPALITY WITH A POPULATION OF
21 TWENTY-FIVE THOUSAND OR MORE RESIDENTS.

22 **SECTION 3.** In Colorado Revised Statutes, 10-16-122.1, **amend**
23 (3) introductory portion; and **add** (3)(d) as follows:

24 **10-16-122.1. Contracts between PBMs and pharmacies -**
25 **carrier submit list of PBMs - PBM registration - fees - prohibited**
26 **practices - exception - rules - enforcement - short title - definitions.**

27 (3) ~~Starting in 2022,~~ A PBM or the representative of a PBM shall not:

1 (d) (I) PROHIBIT A RURAL INDEPENDENT PHARMACY FROM USING
2 A PRIVATE COURIER OR A DELIVERY SERVICE TO DELIVER A PRESCRIPTION
3 DRUG TO A PATIENT; OR

4 (II) REQUIRE A RURAL INDEPENDENT PHARMACY TO OBTAIN
5 CONSENT FROM THE PBM TO USE A PRIVATE COURIER OR DELIVERY
6 SERVICE TO DELIVER A PRESCRIPTION DRUG TO A PATIENT.

7 **SECTION 4.** In Colorado Revised Statutes, 10-16-122.3, **add**
8 (1.5), (6)(a.5), and (6)(b.3) as follows:

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

11 (1.5) (a) A PHARMACY BENEFIT MANAGEMENT FIRM SHALL REIMBURSE A
12 RURAL INDEPENDENT PHARMACY FOR A PRESCRIPTION DRUG IN AN
13 AMOUNT NOT LESS THAN THE AVERAGE ACQUISITION COST OF A
14 PRESCRIPTION DRUG PLUS A DISPENSING FEE.

15 (b) A PHARMACY BENEFIT MANAGEMENT FIRM SHALL PAY A RURAL
16 INDEPENDENT PHARMACY A DISPENSING FEE, WHICH FEE IS DETERMINED
17 BY THE MEDICAL SERVICES BOARD IN THE STATE DEPARTMENT OF HEALTH
18 CARE POLICY AND FINANCING, IN AN AMOUNT NOT LESS THAN THE
19 DISPENSING FEE FOR RURAL PHARMACIES.

20 (6) As used in this section:

21 (a.5) "AVERAGE ACQUISITION COST" MEANS THE AVERAGE
22 ACQUISITION COST FOR LIKE PRESCRIPTION DRUGS, AS DETERMINED BY THE
23 MEDICAL SERVICES BOARD IN THE STATE DEPARTMENT OF HEALTH CARE
24 POLICY AND FINANCING.

25 (b.3) (I) "DISPENSING FEE" MEANS THE REIMBURSEMENT AMOUNT
26 FOR COSTS ASSOCIATED WITH FILLING A PRESCRIPTION, AS DETERMINED BY
27 THE MEDICAL SERVICES BOARD IN THE STATE DEPARTMENT OF HEALTH

1 CARE POLICY AND FINANCING.

2 (II) FOR THE PURPOSES OF DETERMINING THE DISPENSING FEE FOR
3 A RURAL PHARMACY, THE DISPENSING FEE IS THE FEE CALCULATED BY THE
4 MEDICAL SERVICES BOARD AS THE DISPENSING FEE FOR RURAL
5 PHARMACIES.

6 **SECTION 5.** In Colorado Revised Statutes, 10-16-122.5, **amend**
7 (1)(e) and (1)(f); and **add** (1)(g) as follows:

8 **10-16-122.5. Pharmacy benefit manager - audit of pharmacies**
9 **- time limits on on-site audits - enforcement - rules.** (1) A pharmacy
10 benefit manager, a carrier, or an entity acting on behalf of a pharmacy
11 benefit manager or a carrier that audits a pharmacy shall:

12 (e) Establish a written appeals process that includes procedures to
13 allow a pharmacy to appeal to the pharmacy benefit manager or the
14 carrier the preliminary reports resulting from the audit and any resulting
15 recoupment or penalty; ~~and~~

16 (f) Not subject a pharmacy to the recoupment of funds when an
17 audit results in the identification of a clerical error in a required document
18 or record unless the error results in actual financial harm to the pharmacy
19 benefit manager, a health benefit plan providing prescription drug
20 benefits that are managed by the pharmacy benefit manager, or a
21 consumer; AND

22 (g) WHEN SUBJECTING A RURAL INDEPENDENT PHARMACY TO A
23 RECOUPMENT OF FUNDS, SERVE PROCESS ON THE RURAL INDEPENDENT
24 PHARMACY AND NOTIFY THE RURAL INDEPENDENT PHARMACY OF THE
25 RURAL INDEPENDENT PHARMACY'S RIGHTS TO APPEAL PURSUANT TO
26 SUBSECTION (1)(e) OF THIS SECTION AT LEAST THIRTY DAYS BEFORE THE
27 RECOUPMENT OF FUNDS WHEN AN AUDIT RESULTS IN A RECOUPMENT OF

1 MORE THAN ONE THOUSAND DOLLARS OR A PENALTY OF MORE THAN ONE
2 THOUSAND DOLLARS.

3 **SECTION 6.** In Colorado Revised Statutes, 12-280-103, **add**
4 (17.5) and (46.7) as follows:

5 **12-280-103. Definitions - rules.** As used in this article 280, unless
6 the context otherwise requires or the term is otherwise defined in another
7 part of this article 280:

8 (17.5) "FLEX PHARMACY" MEANS A PRESCRIPTION DRUG OUTLET
9 THAT OPERATES AS A TELEPHARMACY WHEN THE LICENSED PHARMACIST
10 IS NOT ON THE PREMISES.

11 (46.7) "RURAL INDEPENDENT PHARMACY" HAS THE MEANING SET
12 FORTH IN SECTION 10-16-102 (59.5).

13 **SECTION 7.** In Colorado Revised Statutes, **add** 12-280-118.5 as
14 follows:

15 **12-280-118.5. Flex pharmacy - fee - supervision - rules.**

16 (1) THE BOARD MAY ADOPT RULES TO SPECIFY ADDITIONAL CRITERIA
17 NECESSARY TO FACILITATE THE OPERATION OF FLEX PHARMACIES.

18 (2) THE BOARD SHALL ASSESS A FEE ON A PRESCRIPTION DRUG
19 OUTLET THAT APPLIES TO BE A FLEX PHARMACY SO THAT THE TOTAL FEE
20 AMOUNT COLLECTED IS SUFFICIENT TO COVER THE DIRECT AND INDIRECT
21 COSTS NECESSARY FOR THE BOARD TO FACILITATE THE OPERATION OF FLEX
22 PHARMACIES.

23 (3) A FLEX PHARMACY:

24 (a) SHALL BE REGISTERED AS A PRESCRIPTION DRUG OUTLET OR
25 PHARMACY UNDER THIS ARTICLE 280;

26 (b) SHALL HAVE A LICENSED PHARMACIST ON THE PREMISES FOR
27 AT LEAST TWICE THE NUMBER OF HOURS PER CALENDAR YEAR THAT THE

1 FLEX PHARMACY OPERATES AS A TELEPHARMACY;

2 (c) SHALL OPERATE AS A TELEPHARMACY FROM THE SAME
3 PREMISES AS THE PREMISES WHERE THE PHARMACY IS REGISTERED; AND

4 (d) MUST BE A RURAL INDEPENDENT PHARMACY.

5 (4) WHEN A FLEX PHARMACY OPERATES AS A TELEPHARMACY, THE
6 CENTRAL PHARMACY RESPONSIBLE FOR OVERSEEING THE OPERATION OF
7 THE FLEX PHARMACY MUST BE AFFILIATED WITH THE FLEX PHARMACY
8 THROUGH COMMON OWNERSHIP OR THROUGH A COMMON PROFESSIONAL
9 PHARMACY ORGANIZATION THAT OFFERS SUPPORT FOR TELEPHARMACY
10 SUPERVISION SERVICES.

11 **SECTION 8. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly; except that, if a referendum petition is filed pursuant
15 to section 1 (3) of article V of the state constitution against this act or an
16 item, section, or part of this act within such period, then the act, item,
17 section, or part will not take effect unless approved by the people at the
18 general election to be held in November 2026 and, in such case, will take
19 effect on the date of the official declaration of the vote thereon by the
20 governor.

21 (2) This act applies to conduct occurring on or after the applicable
22 effective date of this act.