

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

PREAMENDED

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

LLS NO. 21-0210.01 Jason Gelender x4330

HOUSE BILL 21-1237

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A COMPETITIVE PHARMACY BENEFITS**
102 **MANAGER MARKETPLACE.**

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 department of personnel (department) is required to contract for the services of a pharmacy benefit manager (PBM) for group benefit plans provided pursuant to the "State Employees Group Benefits Act" (state employee group benefits plans) and to procure a technology platform with the required capabilities for conducting a PBM reverse auction and the related services of a technology platform operator.

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

The department is required to repurpose the technology platform used to conduct the reverse auction over the duration of the PBM services contract to perform reviews of all invoiced PBM prescription drug claims, and to identify all deviations from the specific terms of the PBM services contract. The department is required to reconcile the electronically adjudicated pharmacy claims with PBM invoices to ensure that state payments do not exceed the terms specified in any PBM services contract.

Each PBM reverse auction is required to be completed and the PBM services contract awarded to the winning PBM within a specified timeline.

The department may perform a market check for providing PBM services during the term of the current PBM services contract to ensure continuing competitiveness of incumbent prescription drug pricing over the life of a PBM services contract.

To ensure that the department does not incur additional expenditures associated with the requirements of the bill, the department is required to implement a no-pay option that obligates the winning PBM to pay the cost of the technology platform and related technology platform operator services by assessing a per-prescription fee and requiring the PBM to pay these fees to the technology operator over the duration of the PBM services contract.

The bill allows other health plans to use the processes and procedures established in the bill individually, collectively, or as a joint purchasing group with the state employee group benefits plans.

After completion of the first state employees group benefits plans PBM reverse auction, self-funded private sector employer or multi-employer health plans have the option to participate in a joint purchasing pool with state employees for conduct of subsequent PBM reverse auctions.

The state employees group benefits plans and any self-funded public or private sector health plans that opt to participate with the state employees group benefits plans 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 PBM providing services to the department or a self-funded public or private sector employee health plan is required to 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.

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

1 (3) "GNC" MEANS GUARANTEED NET COST.

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

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

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

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

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

1 DRUGS.

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

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

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

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

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

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

26 **24-50-1204. Competitive pharmacy benefit manager - contract**
27 **- requirements.** (1) CONSISTENT WITH THE "PROCUREMENT CODE",

1 ARTICLES 101 TO 112 OF THIS TITLE 24, AND NOTWITHSTANDING ANY
2 OTHER PROVISION OF LAW, THE DEPARTMENT SHALL ENTER INTO A
3 CONTRACT FOR THE SERVICES OF A PHARMACY BENEFIT MANAGER FOR THE
4 ADMINISTRATION OF BENEFITS UNDER THE "STATE EMPLOYEES GROUP
5 BENEFITS ACT", PART 6 OF THIS ARTICLE 50, IN A TRANSPARENT, ONLINE,
6 AND DYNAMICALLY COMPETITIVE PROCESS AND IN THE MANNER SPECIFIED
7 IN THIS SECTION.

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

13 (a) A TECHNOLOGY PLATFORM WITH THE REQUIRED CAPABILITIES
14 FOR CONDUCTING A PBM REVERSE AUCTION. THE TECHNOLOGY
15 PLATFORM SHALL, AT A MINIMUM, POSSESS THE CAPACITY TO:

16 (I) CONDUCT AN AUTOMATED, ONLINE, REVERSE AUCTION OF PBM
17 SERVICES USING A SOFTWARE APPLICATION AND HIGH-PERFORMANCE
18 DATA INFRASTRUCTURE TO INTAKE, CLEANSE, AND NORMALIZE PBM DATA
19 WITH DEVELOPMENT METHODS AND INFORMATION SECURITY STANDARDS
20 THAT HAVE BEEN VALIDATED BY RECEIVING SOC 2 AND NIST
21 CERTIFICATION;

22 (II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX PBM
23 PRESCRIPTION DRUG PRICING PROPOSALS TO ENABLE DIRECT COMPARISON
24 OF THE COMPARABLY CALCULATED COSTS TO THE STATE OF PBM BIDS
25 USING ONE HUNDRED PERCENT OF ANNUAL PRESCRIPTION DRUG CLAIMS
26 DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR A MULTIPLE
27 HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP AND USING

1 CODE-BASED CLASSIFICATION OF DRUGS FROM NATIONALLY ACCEPTED
2 DRUG SOURCES;

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

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

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

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

- 21 (I) EVALUATION OF THE QUALIFICATIONS OF PBM BIDDERS;
- 22 (II) ONLINE AUTOMATED REVERSE AUCTION SERVICES TO SUPPORT
23 THE DEPARTMENT IN COMPARING THE PRICING FOR THE PBM
24 PROCUREMENT; AND
- 25 (III) RELATED PROFESSIONAL SERVICES.

26 
27 (3) THE DEPARTMENT SHALL NOT AWARD A CONTRACT FOR

1 PROCUREMENT OF THE TECHNOLOGY PLATFORM AND TECHNOLOGY
2 OPERATOR SERVICES TO A VENDOR THAT IS A PBM OR A VENDOR THAT IS
3 MANAGED BY OR A SUBSIDIARY OR AFFILIATE OF A PBM.

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

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

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

20 (b) THE DEPARTMENT SHALL RECONCILE THE ELECTRONICALLY
21 ADJUDICATED PHARMACY CLAIMS, AS DESCRIBED IN SUBSECTION (7)(a) OF
22 THIS SECTION, WITH PBM INVOICES ON A MONTHLY OR QUARTERLY BASIS
23 TO ENSURE THAT STATE PAYMENTS SHALL NOT EXCEED THE TERMS
24 SPECIFIED IN ANY PBM SERVICES CONTRACT.

25 (c) IF FOLLOWING STATE PAYMENT TO THE PBM ON THE BASIS OF
26 SUCH RECONCILIATION, THE PBM ASSERTS THAT THE DEPARTMENT OR ITS
27 AUTHORIZED REPRESENTATIVE HAS UNDERPAID ON THE AMOUNT OWED,

1 THE PBM MAY SEEK RESOLUTION THROUGH A MUTUALLY ACCEPTABLE
2 DISPUTE RESOLUTION PROCESS, WHICH THE PARTIES SHALL HAVE AGREED
3 TO PREVIOUSLY IN THE TERMS OF THEIR CONTRACT.

4 (7) (a) THE FIRST PBM REVERSE AUCTION SHALL BE COMPLETED
5 AND THE PBM SERVICES CONTRACT SHALL BE AWARDED TO THE WINNING
6 PBM WITH AN EFFECTIVE DATE OF JULY 1, 2023. SUBSEQUENT
7 CONTRACTS MUST BE AWARDED NO LATER THAN THREE MONTHS PRIOR TO
8 TERMINATION OR EXPIRATION OF THE CURRENT PBM SERVICES CONTRACT
9 FOR A COVERED GROUP, SUCH AS THE STATE EMPLOYEES BENEFITS GROUP,
10 THAT INCLUDES ONLY ACTIVE EMPLOYEES AND DEPENDENTS, BUT DOES
11 NOT INCLUDE RETIREE PARTICIPANTS IN A MEDICARE PART D EMPLOYER
12 GROUP WAIVER PROGRAM PURSUANT TO THE "MEDICARE PRESCRIPTION
13 DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L.
14 108-173.

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

25 (8) THE DEPARTMENT MAY PERFORM A MARKET CHECK FOR
26 PROVIDING PBM SERVICES DURING THE TERM OF THE CURRENT PBM
27 SERVICES CONTRACT, WHICH SHALL BE A TECHNOLOGY-DRIVEN

1 EVALUATION OF THE INCUMBENT PBM'S PRESCRIPTION DRUG PRICING
2 BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE
3 AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE
4 PREVIOUS TWELVE MONTHS IN ORDER TO ENSURE CONTINUING
5 COMPETITIVENESS OF INCUMBENT PRESCRIPTION DRUG PRICING OVER THE
6 LIFE OF A PBM SERVICES CONTRACT.

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

22 (10)(a) THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART
23 12 APPLY TO GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE
24 EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50. THIS
25 PART 12 SHALL NOT APPLY IN THE CASE OF A NONPROFIT,
26 NONGOVERNMENTAL HEALTH MAINTENANCE ORGANIZATION WITH
27 RESPECT TO MANAGED CARE PLANS THAT PROVIDE A MAJORITY OF

1 COVERED PROFESSIONAL SERVICES THROUGH A SINGLE CONTRACTED
2 MEDICAL GROUP.

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

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

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

26 (III) ANY PBM PROVIDING SERVICES TO THE DEPARTMENT, TO
27 SELF-FUNDED PUBLIC SECTOR HEALTH PLANS, OR TO SELF-FUNDED

1 PRIVATE SECTOR HEALTH PLANS AS DESCRIBED IN THIS SECTION SHALL
2 PROVIDE THE DEPARTMENT AND THE PLAN ACCESS TO COMPLETE
3 PHARMACY CLAIMS DATA NECESSARY TO CONDUCT THE REVERSE AUCTION
4 AND CARRY OUT THEIR ADMINISTRATIVE AND MANAGEMENT DUTIES.

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