

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0243.02 Christy Chase x2008

HOUSE BILL 22-1122

HOUSE SPONSORSHIP

Will and Lindsay, Lontine

SENATE SPONSORSHIP

Jaquez Lewis,

House Committees

Health & Insurance
Appropriations

Senate Committees

A BILL FOR AN ACT

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

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>.)

For contracts between a pharmacy benefit manager (PBM) and a pharmacy entered into or renewed on or after January 1, 2023, **section 1** of the bill prohibits the PBM or its representative from reimbursing a pharmacy for a prescription drug in an amount less than the national average drug acquisition cost for the prescription drug.

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.

HOUSE
Amended 2nd Reading
April 19, 2022

Section 2 enacts the "Colorado 340B Prescription Drug Program Anti-discrimination Act" (act), which prohibits health insurers, PBMs, and other third-party payers (third-party payers) from discriminating against entities, including pharmacies, participating in the federal 340B drug pricing program (340B covered entity). Specifically, the bill prohibits a third-party payer from:

- Refusing to reimburse a 340B covered entity for dispensing 340B drugs, imposing additional requirements or restrictions on 340B covered entities, or reimbursing a 340B covered entity for a 340B drug at a rate lower than the amount paid for the same drug to pharmacies that are not 340B covered entities;
- Assessing a fee, charge back, or other adjustment against a 340B covered entity, or restricting a 340B covered entity's access to the third-party payer's pharmacy network, because the covered entity participates in the 340B drug pricing program;
- Requiring a 340B covered entity to contract with a specific pharmacy or health coverage plan in order to access the third-party payer's pharmacy network;
- Imposing a restriction or an additional charge on a patient who obtains a prescription drug from a 340B covered entity; or
- Restricting the methods by which a 340B covered entity may dispense or deliver 340B drugs.

Section 2 makes a violation of the act an unfair or deceptive act or practice in the business of insurance and authorizes the commissioner of insurance to adopt rules to implement the act.

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 (3.5), (5)(a.5), and (5)(h) as follows:

4 **10-16-122.1. Contracts between PBMs and pharmacies -**
5 **carrier submit list of PBMs - prohibited practices - exception - short**
6 **title - definitions.** (3.5) (a) FOR ANY CONTRACT ENTERED INTO OR
7 RENEWED ON OR AFTER JANUARY 1, 2023, BETWEEN A PBM AND A
8 PHARMACY DESCRIBED IN SUBSECTION (3.5)(b) OF THIS SECTION, A PBM
9 OR THE REPRESENTATIVE OF THE PBM SHALL NOT REIMBURSE A

1 PHARMACY FOR A PRESCRIPTION DRUG IN AN AMOUNT THAT IS LESS THAN:

2 (I) THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE
3 PRESCRIPTION DRUG AT THE TIME THE DRUG IS ADMINISTERED OR
4 DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE; OR

5 (II) IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS NOT
6 AVAILABLE AT THE TIME A PRESCRIPTION DRUG IS ADMINISTERED OR
7 DISPENSED, THE WHOLESALE ACQUISITION COST OF THE DRUG, PLUS A
8 PROFESSIONAL DISPENSING FEE.

9 (b) THIS SUBSECTION (3.5) APPLIES ONLY TO A CONTRACT
10 BETWEEN A PBM AND A PHARMACY THAT IS:

11 (I) LOCATED IN A COUNTY WITH A POPULATION OF FEWER THAN
12 ONE HUNDRED THOUSAND PEOPLE; AND

13 (II) OWNED BY A LICENSED PHARMACIST.

14 (5) As used in this section and section 10-16-122.9, unless the
15 context otherwise requires:

16 (a.5) "NATIONAL AVERAGE DRUG ACQUISITION COST" MEANS THE
17 DRUG PRICING BENCHMARK DEVELOPED BY THE FEDERAL CENTERS FOR
18 MEDICARE AND MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT
19 OF HEALTH AND HUMAN SERVICES, WHICH BENCHMARK IS BASED ON DATA
20 COLLECTED FROM A MONTHLY NATIONWIDE SURVEY OF RETAIL
21 COMMUNITY PHARMACY OUTPATIENT DRUG PRICES.

22 (h) "WHOLESALE ACQUISITION COST" HAS THE MEANING SET
23 FORTH IN 42 U.S.C. SEC. 1395w-3a (c)(6)(B).

24 **SECTION 2.** In Colorado Revised Statutes, **add** part 15 to article
25 16 of title 10 as follows:

26 PART 15

27 340B PRESCRIPTION DRUG PROGRAM

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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.

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

1 SERVICES TO THE 340B COVERED ENTITY AS DESCRIBED IN 75 FED. REG.
2 10272 (2010) OR ANY SUPERSEDING GUIDANCE.

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

6 (I) A HEALTH COVERAGE PLAN;

7 (II) A MANAGED CARE ORGANIZATION, AS DEFINED IN SECTION
8 25.5-5-403 (5); OR

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

12 (b) "DRUG COVERAGE" DOES NOT INCLUDE:

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

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

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

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

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

24 (II) A SYSTEM OF HEALTH INSURANCE FOR STATE OR LOCAL
25 GOVERNMENT EMPLOYEES, THEIR DEPENDENTS, AND RETIREES, INCLUDING
26 A GROUP BENEFIT PLAN, AS DEFINED IN SECTION 24-50-603 (9), AND A
27 GROUP HEALTH CARE PROGRAM DESIGNED PURSUANT TO SECTION [REDACTED]

1 24-51-1202.

2 (b) "THIRD PARTY" DOES NOT INCLUDE:

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

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

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

13 (2) NOTHING IN THIS PART 15:

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

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

25 (c) REQUIRES A THIRD PARTY TO CONTRACT WITH A 340B
26 COVERED ENTITY OR CONTRACT PHARMACY FOR PURPOSES OF
27 PARTICIPATING IN THE THIRD PARTY'S NETWORK, SO LONG AS THE THIRD

1 PARTY'S CONTRACTING DECISIONS ARE NOT DETERMINED ON THE BASIS OF
2 A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT
3 PHARMACY.

4 **10-16-1505. Prohibition on 340B discrimination.** (1) A THIRD
5 PARTY THAT REIMBURSES A 340B COVERED ENTITY OR CONTRACT
6 PHARMACY FOR 340B DRUGS SHALL NOT:

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

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

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

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

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

27 (f) RESTRICT THE METHODS BY WHICH A 340B COVERED ENTITY

1 OR CONTRACT PHARMACY MAY DISPENSE OR DELIVER 340B DRUGS;

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

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

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

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

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

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

20 **10-16-1506. Enforcement - rules.** (1) A THIRD PARTY THAT
21 VIOLATES THIS PART 15 ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR
22 PRACTICE IN THE BUSINESS OF INSURANCE UNDER SECTION 10-3-1104
23 (1)(tt), AND THE ACT OF THE THIRD PARTY THAT VIOLATES THIS PART 15
24 IS VOID AND UNENFORCEABLE.

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

27 **SECTION 3.** In Colorado Revised Statutes, 10-3-1104, **add**

1 (1)(tt) as follows:

2 **10-3-1104. Unfair methods of competition - unfair or deceptive**
3 **practices.** (1) The following are defined as unfair methods of
4 competition and unfair or deceptive acts or practices in the business of
5 insurance:

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

7 **SECTION 4. Appropriation.** For the 2022-23 state fiscal year,
8 \$17,109 is appropriated to the department of regulatory agencies for use
9 by the division of insurance. This appropriation is from the division of
10 insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
11 on an assumption that the division will require an additional 0.3 FTE. To
12 implement this act, the division may use this appropriation for personal
13 services.

14 **SECTION 5. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2022 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.