

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 23-0629.02 Christy Chase x2008

HOUSE BILL 23-1227

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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.

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.

SENATE
Amended 2nd Reading
April 28, 2023

HOUSE
3rd Reading Unamended
April 13, 2023

HOUSE
Amended 2nd Reading
April 12, 2023

- 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.

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), (4.5), and (4.7) 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
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. NOTWITHSTANDING THE DEFINITION OF A
12 PBM IN SECTION 10-16-102 (49), THIS REGISTRATION REQUIREMENT
13 APPLIES TO ALL PBMS DOING BUSINESS IN THIS STATE, INCLUDING A PBM
14 THAT IS NOT DIRECTLY CONNECTED WITH A CARRIER.

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

21 (II) THE COMMISSIONER MAY DENY A REGISTRATION TO A PBM;

1 SUSPEND, REVOKE, OR REFUSE TO ISSUE, CONTINUE, OR RENEW THE
2 REGISTRATION OF A PBM; OR ISSUE A CEASE-AND-DESIST ORDER TO A
3 PBM IF, AFTER NOTICE TO THE PBM AND AFTER A HEARING HELD IN
4 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105, THE COMMISSIONER
5 FINDS THAT THE PBM, OR AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE
6 PBM, HAS:

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

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

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

14 (D) VIOLATED ANY PROVISION OF THIS TITLE 10.

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

17 (c) THE COMMISSIONER SHALL TRANSMIT ANY FEES COLLECTED
18 PURSUANT TO THIS SUBSECTION (2.5) TO THE STATE TREASURER FOR
19 DEPOSIT IN THE DIVISION OF INSURANCE CASH FUND CREATED IN SECTION
20 10-1-103 (3). THE COMMISSIONER SHALL USE THE FEES COLLECTED
21 PURSUANT TO THIS SUBSECTION (2.5) TO FUND THE DIVISION'S COSTS IN
22 ADMINISTERING AND ENFORCING THIS SUBSECTION (2.5) AND THE
23 REQUIREMENTS AND PROHIBITIONS ON THE CONDUCT AND ACTIONS OF
24 PBMS AS SPECIFIED IN THIS ARTICLE 16.

25 (4.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION
26 APPLICABLE TO PBMS, THE COMMISSIONER HAS THE AUTHORITY TO
27 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY

1 AGAINST A PBM THAT FAILS TO COMPLY WITH THIS SECTION.

2 (4.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
3 ENFORCE THIS SECTION.

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

6 10-16-122.3. Pharmacy benefit management firm payments -
7 retroactive reduction prohibited - enforcement - rules - definitions.

8 (4) The division may promulgate rules TO IMPLEMENT AND ENFORCE THIS
9 SECTION, INCLUDING RULES to establish the manner in which carriers and
10 pharmacy benefit management firms are required to show compliance
11 with this section.

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

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

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

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

25 SECTION 4. In Colorado Revised Statutes, 10-16-122.5, add
26 (5.7) and (5.9) as follows:

27 10-16-122.5. Pharmacy benefit manager - audit of pharmacies

1 - **time limits on on-site audits - enforcement - rules.** (5.7) WITH
2 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO
3 PHARMACY BENEFIT MANAGERS, THE COMMISSIONER HAS THE AUTHORITY
4 TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY
5 AGAINST A PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH
6 THIS SECTION.

7 (5.9) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
8 ENFORCE THIS SECTION.

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

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

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

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

25 **SECTION 6.** In Colorado Revised Statutes, 10-16-122.9, **add**
26 **(1.5) and (1.7)** as follows:

27 **10-16-122.9. Prescription drug benefits - real-time access to**

1 **benefit information - enforcement - definitions - rules.** (1.5) WITH
2 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMS,
3 THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND
4 TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO
5 COMPLY WITH THIS SECTION.

6 (1.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
7 ENFORCE THIS SECTION.

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

10 **10-16-122.6. [Formerly 25-37-103.5] Pharmacy benefit**
11 **managers - contracts with pharmacies - maximum allowable cost**
12 **pricing - enforcement - rules.** (1) (a) In each contract between a
13 pharmacy benefit manager and a pharmacy, the pharmacy shall be given
14 the right to obtain from the pharmacy benefit manager, within ten days
15 after any request, a current list of the sources used to determine maximum
16 allowable cost pricing. The pharmacy benefit manager shall update the
17 pricing information at least every seven days and provide a means by
18 which contracted pharmacies may promptly review pricing updates in a
19 format that is readily available and accessible.

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

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

26 (a) The drug is listed as "A" or "B" rated in the most recent
27 version of the United States food and drug administration's approved drug

1 products with therapeutic equivalence evaluations, also known as the
2 orange book, or has an "NR" or "NA" rating or similar rating by a
3 nationally recognized reference; and

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

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

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

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

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

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

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

26 (4) THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS
27 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A

1 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS
2 SECTION.

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

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

7 **10-1-103. Division of insurance - division of insurance cash**
8 **fund created - division subject to repeal - repeal of functions.**

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

12 (II) All fees collected under sections 8-44-204 (7), ~~€R.S.~~,
13 8-44-205 (6), ~~€R.S.~~, 10-2-413, 10-3-108, 10-3-207, 10-3.5-104,
14 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1),
15 **10-16-122.1 (2.5)**, 10-23-102, 10-23-104, 24-10-115.5 (5), ~~€R.S.~~, and
16 29-13-102 (5), ~~€R.S.~~, not including fees retained under contracts entered
17 into in accordance with section 10-2-402 (5) or 24-34-101, ~~€R.S.~~, and all
18 taxes collected under section 10-3-209 (4) designated for the division of
19 insurance, are transmitted to the state treasurer, who shall credit the
20 ~~moneys~~ MONEY to the division of insurance cash fund.

21 (b) The division shall use all ~~moneys~~ MONEY credited to the
22 division of insurance cash fund as provided in this section and in section
23 24-48.5-106, ~~€R.S.~~, subject to annual appropriation by the general
24 assembly, for the purposes authorized in this ~~title~~ TITLE 10 and as
25 otherwise authorized by law.

26 (c) ~~Moneys~~ MONEY in the fund ~~do~~ DOES not revert to the general
27 fund or to any other fund. In accordance with section 24-36-114, ~~€R.S.~~,

1 all interest derived from the deposit and investment of ~~moneys~~ MONEY in
2 the fund is credited to the general fund.

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

5 **SECTION 10. Appropriation.** For the 2023-24 state fiscal year,
6 \$206,647 is appropriated to the department of regulatory agencies for use
7 by the division of insurance. This appropriation is from the division of
8 insurance cash fund created in section 10-1-103 (3), C.R.S. To implement
9 this act, the division may use this appropriation as follows:

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

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

13 **SECTION 11. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2024 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.