

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0376.01 Christy Chase x2008

HOUSE BILL 20-1198

HOUSE SPONSORSHIP

Landgraf and Buckner,

SENATE SPONSORSHIP

Fields and Ginal,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING REQUIREMENTS REGARDING THE ADMINISTRATION OF
102 PREScription DRUG BENEFITS UNDER HEALTH BENEFIT PLANS.

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 imposes requirements regarding the administration of prescription drug benefits under health benefit plans as follows:

- ! Requires a health insurer to submit to the commissioner of insurance a list of pharmacy benefit managers (PBMs) the health insurer uses to manage or administer prescription drug benefits under its health benefit plans offered in this

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.

state;

- ! Requires health insurers and PBMs to submit their programs for compensating pharmacies and pharmacists and their prescription drug formularies under their prescription drug benefits plans, and the commissioner is authorized to review the compensation programs to ensure they are fair and reasonable to provide an adequate network of pharmacies and pharmacists under their prescription drug benefits plans;
- ! Requires a PBM to also report to the commissioner the amount the PBM expects to be reimbursed from health insurers for pharmacist services;
- ! Prohibits health insurers and PBMs from:
 - ! Causing or knowingly permitting the use of any untrue, deceptive, or misleading advertisement, promotion, solicitation, representation, proposal, or offer;
 - ! Charging a pharmacy or pharmacist a fee for adjudicating a claim;
 - ! Requiring stricter pharmacy accreditation standards or certification requirements than the standards or requirements that are required by the state board of pharmacy;
 - ! Reimbursing an independent pharmacy or pharmacist an amount that is less than the amount the health insurer or PBM reimburses an affiliated pharmacy or pharmacist; and
 - ! Modifying their prescription drug formulary at any time during the benefit year.
- ! If a pharmacy or pharmacist is eliminated from a health care provider or PBM network, specifies that the health insurer or PBM is not relieved of any obligation to pay for pharmacist services properly rendered before elimination from the network; and
- ! Requires health insurers and PBMs to report specified claims data to the commissioner and the all-payer health claims database.

The commissioner is authorized to adopt rules to implement the bill and to enforce the bill using all powers granted the commissioner under the insurance laws of this state. A health insurer is:

- ! Responsible for complying with the bill and ensuring any PBM the health insurer uses is complying with the bill; and
- ! Liable for failure of the health insurer or PBM to comply.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-102, **amend**
3 (49) as follows:

4 **10-16-102. Definitions.** As used in this article 16, unless the
5 context otherwise requires:

6 (49) (a) "Pharmacy benefit management firm", "PHARMACY
7 BENEFIT MANAGER", OR "PBM" means any entity doing business in this
8 state that ~~contracts to administer or manage~~ ADMINISTERS OR MANAGES
9 prescription drug benefits, INCLUDING CLAIMS PROCESSING SERVICES AND
10 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES, AS DEFINED IN SECTION
11 10-16-122.3, on behalf of any carrier that provides prescription drug
12 benefits to residents of this state, EITHER PURSUANT TO A CONTRACT WITH
13 THE CARRIER OR AS AN ENTITY THAT IS RELATED TO, ASSOCIATED BY
14 COMMON OR OTHER OWNERSHIP WITH, OR OTHERWISE ASSOCIATED WITH
15 THE CARRIER.

16 (b) "PHARMACY BENEFIT MANAGEMENT FIRM", "PHARMACY
17 BENEFIT MANAGER", OR "PBM" DOES NOT INCLUDE:

18 (I) A HEALTH CARE FACILITY LICENSED OR CERTIFIED BY THE
19 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
20 SECTION 25-1.5-103 (1)(a);

21 (II) A PROVIDER; OR

22 (III) A CONSULTANT WHO ONLY PROVIDES ADVICE AS TO THE
23 SELECTION OR PERFORMANCE OF A PHARMACY BENEFIT MANAGEMENT
24 FIRM.

25 **SECTION 2.** In Colorado Revised Statutes, **add** 10-16-122.3 as
26 follows:

27 **10-16-122.3. Prescription drug benefits - reimbursement for**

1 **pharmacist services - prohibited practices - annual report -**
2 **enforcement - short title - legislative declaration - definitions - rules.**

3 (1) THE SHORT TITLE OF THIS SECTION IS THE "FAIRNESS IN PRESCRIPTION
4 DRUG BENEFITS ADMINISTRATION ACT".

5 (2) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE
6 PURPOSE OF THIS SECTION IS TO ESTABLISH REQUIREMENTS FOR CARRIERS
7 AND PHARMACY BENEFIT MANAGERS PROVIDING CLAIMS SERVICES OR
8 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES PURSUANT TO A
9 PRESCRIPTION DRUG BENEFITS PLAN TO ENSURE THAT:

10 (a) REIMBURSEMENT TO PHARMACIES AND PHARMACISTS FOR
11 PROVIDING PHARMACIST SERVICES IS FAIR AND REASONABLE; AND

12 (b) CARRIERS AND PHARMACY BENEFIT MANAGERS DO NOT
13 ENGAGE IN UNFAIR OR DECEPTIVE PRACTICES IN THEIR BUSINESS DEALINGS
14 WITH PHARMACIES AND PHARMACISTS OR IMPOSE UNDULY BURDENSOME
15 REQUIREMENTS ON PHARMACIES AND PHARMACISTS.

16 (3) STARTING IN 2021, EACH CARRIER SHALL SUBMIT TO THE
17 COMMISSIONER, IN A FORM AND MANNER AND BY A DATE SPECIFIED BY THE
18 COMMISSIONER BY RULE, A LIST OF ALL PHARMACY BENEFIT MANAGERS
19 THE CARRIER USES FOR CLAIMS PROCESSING SERVICES OR OTHER
20 PRESCRIPTION DRUG OR DEVICE SERVICES UNDER HEALTH BENEFIT PLANS
21 THE CARRIER OFFERS. A CARRIER SHALL PROVIDE THE COMMISSIONER
22 WITH UPDATED INFORMATION ABOUT ANY CHANGE IN THE PBM THE
23 CARRIER USES, INCLUDING A CHANGE IN THE NAME OR CONTACT
24 INFORMATION OF THE PBM, WITHIN TEN BUSINESS DAYS AFTER THE
25 CHANGE.

26 (4) (a) (I) STARTING IN 2021, EACH CARRIER OR, IF A CARRIER USES
27 A PHARMACY BENEFIT MANAGER FOR CLAIMS PROCESSING SERVICES OR

1 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES UNDER A HEALTH
2 BENEFIT PLAN OFFERED BY THE CARRIER, THE PBM SHALL SUBMIT TO THE
3 COMMISSIONER, IN A FORM AND MANNER AND BY A DATE SPECIFIED BY THE
4 COMMISSIONER THAT COINCIDES WITH THE DATE FOR RATE FILINGS
5 PURSUANT TO SECTION 10-16-107, THE CARRIER'S OR PBM'S PROGRAM
6 FOR COMPENSATING PHARMACIES AND PHARMACISTS FOR PHARMACIST
7 SERVICES UNDER THE HEALTH BENEFIT PLAN FOR THE NEXT BENEFIT YEAR
8 AND THE CARRIER'S OR PBM'S PRESCRIPTION DRUG FORMULARY UNDER
9 THE HEALTH BENEFIT PLAN FOR THE NEXT BENEFIT YEAR.

10 (II) THE PBM SHALL ALSO REPORT TO THE COMMISSIONER THE
11 AMOUNT THE PBM EXPECTS TO RECEIVE FROM THE CARRIER FOR
12 PHARMACIST SERVICES THAT ARE ELIGIBLE FOR REIMBURSEMENT UNDER
13 THE HEALTH BENEFIT PLAN.

14 (b) THE COMMISSIONER MAY REVIEW THE CARRIER'S AND PBM'S
15 COMPENSATION PROGRAM TO ENSURE THAT THE REIMBURSEMENT FOR
16 PHARMACIST SERVICES PAID TO A PHARMACY OR PHARMACIST PURSUANT
17 TO THE PROGRAM IS FAIR AND REASONABLE TO PROVIDE AN ADEQUATE
18 PROVIDER OR PHARMACY BENEFIT MANAGER NETWORK UNDER THE
19 PRESCRIPTION DRUG BENEFITS PLAN.

20 (5) STARTING IN 2021, A CARRIER OR, IF A CARRIER USES A
21 PRESCRIPTION BENEFIT MANAGER FOR CLAIMS PROCESSING SERVICES OR
22 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES UNDER A HEALTH
23 BENEFIT PLAN OFFERED BY THE CARRIER, THE PBM OR A REPRESENTATIVE
24 OF A CARRIER OR PBM SHALL NOT:

25 (a) CAUSE OR KNOWINGLY PERMIT THE USE OF ANY
26 ADVERTISEMENT, PROMOTION, SOLICITATION, REPRESENTATION,
27 PROPOSAL, OR OFFER THAT IS UNTRUE, DECEPTIVE, OR MISLEADING;

1 (b) CHARGE A PHARMACY OR PHARMACIST A FEE RELATED TO THE
2 ADJUDICATION OF A PHARMACIST SERVICES CLAIM, INCLUDING A FEE FOR:

3 (I) THE RECEIPT AND PROCESSING OF A PHARMACIST SERVICES
4 CLAIM;

5 (II) THE DEVELOPMENT OR MANAGEMENT OF CLAIMS PROCESSING
6 SERVICES IN A PROVIDER OR PBM NETWORK; OR

7 (III) PARTICIPATION IN A PROVIDER OR PBM NETWORK;

8 (c) REQUIRE PHARMACY ACCREDITATION STANDARDS OR
9 CERTIFICATION REQUIREMENTS INCONSISTENT WITH, MORE STRINGENT
10 THAN, OR IN ADDITION TO REQUIREMENTS OF THE STATE BOARD OF
11 PHARMACY PURSUANT TO ARTICLE 280 OF TITLE 12;

12 (d) REIMBURSE AN INDEPENDENT PHARMACY OR PHARMACIST IN
13 THE STATE AN AMOUNT LESS THAN THE AMOUNT THAT THE CARRIER OR
14 PBM REIMBURSES A PBM AFFILIATE FOR PROVIDING THE SAME
15 PHARMACIST SERVICES, WHICH AMOUNT IS CALCULATED USING THE SAME
16 METHODOLOGY OR LIST THAT THE CARRIER OR PBM USES FOR
17 CALCULATING THE AMOUNT OF REIMBURSEMENT FOR THE PBM AFFILIATE;
18 OR

19 (e) MODIFY, DURING THE BENEFIT YEAR, THE PRESCRIPTION DRUG
20 FORMULARY FILED WITH THE COMMISSIONER PURSUANT TO SUBSECTION
21 (4) OF THIS SECTION FOR THAT BENEFIT YEAR. A MODIFICATION INCLUDES
22 ELIMINATING A PARTICULAR PRESCRIPTION DRUG FROM THE FORMULARY,
23 MOVING A PRESCRIPTION DRUG TO A HIGHER COST-SHARING TIER, OR
24 OTHERWISE MODIFYING THE FORMULARY.

25 (6) TERMINATION OF A PHARMACY OR PHARMACIST FROM A
26 PROVIDER OR PHARMACY BENEFIT MANAGER NETWORK DOES NOT RELEASE
27 THE CARRIER OR PBM FROM THE OBLIGATION TO MAKE ANY PAYMENT

1 DUE TO THE PHARMACY OR PHARMACIST FOR PHARMACIST SERVICES
2 PROPERLY RENDERED.

3 (7) (a) UNLESS THE COMMISSIONER, BY RULE, REQUIRES MORE
4 FREQUENT REPORTING, A CARRIER OR PHARMACY BENEFIT MANAGER, AS
5 APPLICABLE, SHALL FILE AN ANNUAL REPORT WITH THE COMMISSIONER IN
6 A FORM AND MANNER AND BY A DATE SPECIFIED BY THE COMMISSIONER
7 BY RULE. THE CARRIER OR PBM SHALL INCLUDE IN THE ANNUAL REPORT
8 INFORMATION REGARDING THE FOLLOWING, ITEMIZED BY INDIVIDUAL
9 CLAIM:

10 (I) THE AMOUNT THE CARRIER OR PBM ACTUALLY PAID OR WILL
11 PAY TO THE PHARMACY OR PHARMACIST FOR THE PHARMACIST SERVICES;

12 (II) THE IDENTITY OF THE PHARMACY OR PHARMACIST ACTUALLY
13 PAID OR TO BE PAID;

14 (III) THE PRESCRIPTION NUMBER OR OTHER IDENTIFIER OF THE
15 PHARMACIST SERVICES;

16 (IV) THE AMOUNT THE PBM RECEIVED FROM THE CARRIER FOR
17 PHARMACIST SERVICES; AND

18 (V) THE AMOUNT OF REBATES THE CARRIER OR PBM RECEIVED.

19 (b) ADDITIONALLY, THE CARRIER OR PBM SHALL REPORT THE
20 INFORMATION SPECIFIED IN SUBSECTION (7)(a) OF THIS SECTION TO THE
21 ALL-PAYER HEALTH CLAIMS DATABASE ESTABLISHED PURSUANT TO
22 SECTION 25.5-1-204.

23 (c) THE INFORMATION REPORTED PURSUANT TO THIS SUBSECTION
24 (7) IS CONSIDERED PROPRIETARY AND CONFIDENTIAL AND NOT SUBJECT TO
25 THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE
26 24.

27 (8) THE COMMISSIONER MAY ADOPT RULES NECESSARY TO

1 IMPLEMENT THIS SECTION.

2 (9) (a) EACH CARRIER THAT USES A PHARMACY BENEFIT MANAGER
3 SHALL REQUIRE THAT THE PBM COMPLY WITH THIS SECTION. THE CARRIER
4 SHALL PERIODICALLY AUDIT THE PBM TO MONITOR AND ENSURE
5 COMPLIANCE WITH THIS SECTION.

6 (b) FAILURE OF A CARRIER TO COMPLY WITH THIS SECTION OR TO
7 ENSURE THAT A PBM THAT THE CARRIER USES IS COMPLYING WITH THIS
8 SECTION IS AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR
9 DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT
10 TO SECTION 10-3-1104 (1)(tt).

11 (10) (a) THE COMMISSIONER MAY USE ALL POWERS CONFERRED BY
12 THE INSURANCE LAWS OF THIS STATE TO ENFORCE THIS SECTION. THE
13 COMMISSIONER MAY EXAMINE OR AUDIT THE BOOKS AND RECORDS OF A
14 CARRIER OR PHARMACY BENEFIT MANAGER PROVIDING CLAIMS
15 PROCESSING SERVICES OR OTHER PRESCRIPTION DRUG OR DEVICE SERVICES
16 FOR A CARRIER AND EXAMINE CLAIMS DATA FROM THE ALL-PAYER HEALTH
17 CLAIMS DATABASE ESTABLISHED PURSUANT TO SECTION 25.5-1-204 TO
18 DETERMINE IF THE CARRIER OR PBM IS COMPLYING WITH THIS SECTION.

19 (b) THE INFORMATION OR DATA ACQUIRED BY THE COMMISSIONER
20 DURING AN EXAMINATION OR AUDIT OF A CARRIER OR PBM UNDER THIS
21 SUBSECTION (10) IS CONSIDERED PROPRIETARY AND CONFIDENTIAL AND
22 NOT SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF
23 ARTICLE 72 OF TITLE 24.

24 (11) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "CLAIMS PROCESSING SERVICES" MEANS THE ADMINISTRATIVE
27 SERVICES PERFORMED IN CONNECTION WITH PROCESSING AND

1 ADJUDICATING CLAIMS RELATED TO PHARMACIST SERVICES, WHICH
2 SERVICES INCLUDE:

- 3 (I) RECEIVING PAYMENTS FOR PHARMACIST SERVICES; OR
- 4 (II) MAKING PAYMENTS TO PHARMACIES OR PHARMACISTS FOR
5 PHARMACIST SERVICES.

6 (b) "INDEPENDENT PHARMACY OR PHARMACIST" MEANS A
7 PHARMACY OR PHARMACIST THAT IS NOT AFFILIATED WITH A PHARMACY
8 BENEFIT MANAGER.

9 (c) "OTHER PRESCRIPTION DRUG OR DEVICE SERVICES" MEANS
10 SERVICES, OTHER THAN CLAIMS PROCESSING SERVICES, PROVIDED
11 DIRECTLY OR INDIRECTLY AND EITHER IN CONNECTION WITH OR SEPARATE
12 FROM CLAIMS PROCESSING SERVICES. THE TERM INCLUDES:

- 13 (I) NEGOTIATING REBATES, DISCOUNTS, OR OTHER FINANCIAL
14 INCENTIVES AND ARRANGEMENTS WITH DRUG MANUFACTURERS;
- 15 (II) DISBURSING OR DISTRIBUTING REBATES;
- 16 (III) MANAGING OR PARTICIPATING IN INCENTIVE PROGRAMS OR
17 ARRANGEMENTS FOR PHARMACIST SERVICES;
- 18 (IV) NEGOTIATING OR ENTERING INTO CONTRACTUAL
19 ARRANGEMENTS WITH PHARMACIES OR PHARMACISTS;
- 20 (V) DEVELOPING FORMULARIES;
- 21 (VI) DESIGNING PRESCRIPTION DRUG BENEFITS PROGRAMS; OR
- 22 (VII) ADVERTISING OR PROMOTING SERVICES.

23 (d) "PHARMACIST" HAS THE SAME MEANING AS SET FORTH IN
24 SECTION 12-280-103 (35).

25 (e) "PHARMACIST SERVICES" MEANS PRODUCTS, GOODS, AND
26 SERVICES PROVIDED AS A PART OF THE PRACTICE OF PHARMACY, AS
27 DEFINED IN SECTION 12-280-103 (39).

1 (f) "PHARMACY" HAS THE SAME MEANING AS SET FORTH IN
2 SECTION 12-280-103 (43).

3 (g) "PHARMACY BENEFIT MANAGER AFFILIATE" OR "PBM
4 AFFILIATE" MEANS A PHARMACY OR PHARMACIST THAT, EITHER DIRECTLY
5 OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES, OWNS OR
6 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON
7 OWNERSHIP OR CONTROL WITH A PBM.

8 (h) "PHARMACY BENEFIT MANAGER NETWORK" OR "PBM
9 NETWORK" MEANS A NETWORK OF PHARMACIES OR PHARMACISTS THAT
10 ARE OFFERED AN AGREEMENT OR CONTRACT TO PROVIDE PHARMACIST
11 SERVICES FOR A HEALTH BENEFIT PLAN.

12 (i) "PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION"
13 MEANS AN ORGANIZATION THAT HELPS INDEPENDENT PHARMACIES,
14 PHARMACY BENEFIT MANAGERS, OR THIRD-PARTY PAYERS ACHIEVE
15 ADMINISTRATIVE EFFICIENCIES, INCLUDING CONTRACTING AND PAYMENT
16 EFFICIENCIES.

17 (j) "PRESCRIPTION DRUG BENEFITS PLAN" OR "PRESCRIPTION DRUG
18 BENEFIT" MEANS THE COMPONENT OF A HEALTH BENEFIT PLAN, WHETHER
19 OR NOT IT IS A SEPARATE OR DISTINCT PLAN OR PROGRAM, THAT PAYS FOR,
20 REIMBURSES, COVERS THE COST OF, OR OTHERWISE PROVIDES FOR
21 PHARMACIST SERVICES UNDER THE HEALTH BENEFIT PLAN.

22 (k) "REBATE" MEANS A DISCOUNT OR OTHER PRICE CONCESSION
23 BASED ON UTILIZATION OF A PRESCRIPTION DRUG THAT IS PAID BY A DRUG
24 MANUFACTURER OR THIRD PARTY, DIRECTLY OR INDIRECTLY, TO A
25 CARRIER, PHARMACY BENEFIT MANAGER, PHARMACY SERVICES
26 ADMINISTRATIVE ORGANIZATION, OR PHARMACY AFTER A CLAIM HAS BEEN
27 PROCESSED AND PAID AT A PHARMACY. THE TERM INCLUDES AN

1 INCENTIVE, DISBURSEMENT, OR VOLUME-BASED DISCOUNT.

2 (l) "THIRD PARTY" MEANS A PERSON, OTHER THAN A PHARMACY
3 BENEFIT MANAGER, THAT IS NOT AN ENROLLEE IN OR A COVERED PERSON
4 UNDER A HEALTH BENEFIT PLAN.

5 **SECTION 3.** In Colorado Revised Statutes, 10-3-1104, **add**
6 (1)(tt) as follows:

7 **10-3-1104. Unfair methods of competition - unfair or deceptive**
8 **acts or practices.** (1) The following are defined as unfair methods of
9 competition and unfair or deceptive acts or practices in the business of
10 insurance:

11 (tt) FAILING TO COMPLY WITH SECTION 10-16-122.3 AND TO
12 ENSURE THAT A PHARMACY BENEFIT MANAGER, AS DEFINED IN SECTION
13 10-16-102 (49), THAT A CARRIER USES TO MANAGE OR ADMINISTER
14 PRESCRIPTION DRUG BENEFITS FOR THE CARRIER IS COMPLYING WITH
15 SECTION 10-16-122.3.

16 **SECTION 4. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2020 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.