

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

ENGROSSED

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

LLS NO. 23-0629.02 Christy Chase x2008

HOUSE BILL 23-1227

HOUSE SPONSORSHIP

Jodeh and Ortiz,

SENATE SPONSORSHIP

Will,

House Committees

Health & Insurance
Appropriations

Senate Committees

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.

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.

19 (II) THE COMMISSIONER MAY DENY A REGISTRATION TO A PBM;
20 SUSPEND, REVOKE, OR REFUSE TO ISSUE, CONTINUE, OR RENEW THE
21 REGISTRATION OF A PBM; OR ISSUE A CEASE-AND-DESIST ORDER TO A

1 PBM IF, AFTER NOTICE TO THE PBM AND AFTER A HEARING HELD IN
2 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105, THE COMMISSIONER
3 FINDS THAT THE PBM, OR AN OFFICER, DIRECTOR, OR EMPLOYEE OF THE
4 PBM, HAS:

5 (A) MADE A MATERIAL MISSTATEMENT, MISREPRESENTATION, OR
6 OMISSION IN A REGISTRATION OR REGISTRATION RENEWAL APPLICATION;

7 (B) FRAUDULENTLY OR DECEPTIVELY OBTAINED OR ATTEMPTED
8 TO OBTAIN A REGISTRATION OR RENEWAL OF A REGISTRATION;

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

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

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

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

23 (4.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION
24 APPLICABLE TO PBMS, THE COMMISSIONER HAS THE AUTHORITY TO
25 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY
26 AGAINST A PBM THAT FAILS TO COMPLY WITH THIS SECTION.

27 (4.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND

1 ENFORCE THIS SECTION.

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

4 10-16-122.3. Pharmacy benefit management firm payments -
5 retroactive reduction prohibited - enforcement - rules - definitions.

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

10 (5.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION
11 APPLICABLE TO PHARMACY BENEFIT MANAGEMENT FIRMS, THE
12 COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO
13 IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PHARMACY BENEFIT
14 MANAGEMENT FIRM THAT FAILS TO COMPLY WITH THIS SECTION.

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

17 10-16-122.4. Pharmacy benefits - formulary change
18 prohibition - exceptions - enforcement - definition - rules. (6) WITH

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

23 SECTION 4. In Colorado Revised Statutes, 10-16-122.5, add
24 (5.7) and (5.9) as follows:

25 10-16-122.5. Pharmacy benefit manager - audit of pharmacies
26 - time limits on on-site audits - enforcement - rules. (5.7) WITH

27 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO

1 PHARMACY BENEFIT MANAGERS, THE COMMISSIONER HAS THE AUTHORITY
2 TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY
3 AGAINST A PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH
4 THIS SECTION.

5 (5.9) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
6 ENFORCE THIS SECTION.

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

9 10-16-122.7. Disclosures between pharmacists and patients -
10 carrier and PBM prohibitions - enforcement - short title - legislative
11 declaration - preemption by federal law - rules. (4) (a) If the
12 commissioner determines that a carrier has not complied with this section,
13 the commissioner shall institute a corrective action plan for the carrier to
14 follow or use any of the commissioner's enforcement powers under this
15 title 10 to obtain the carrier's compliance with this section.

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

21 (6) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
22 ENFORCE THIS SECTION.

23 SECTION 6. In Colorado Revised Statutes, 10-16-122.9, add
24 (1.5) and (1.7) as follows:

25 10-16-122.9. Prescription drug benefits - real-time access to
26 benefit information - enforcement - definitions - rules. (1.5) WITH
27 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMs,

1 THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND
2 TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO
3 COMPLY WITH THIS SECTION.

4 (1.7) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
5 ENFORCE THIS SECTION.

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

8 **10-16-122.6. [Formerly 25-37-103.5] Pharmacy benefit**
9 **managers - contracts with pharmacies - maximum allowable cost**
10 **pricing - enforcement - rules.** (1) (a) In each contract between a
11 pharmacy benefit manager and a pharmacy, the pharmacy shall be given
12 the right to obtain from the pharmacy benefit manager, within ten days
13 after any request, a current list of the sources used to determine maximum
14 allowable cost pricing. The pharmacy benefit manager shall update the
15 pricing information at least every seven days and provide a means by
16 which contracted pharmacies may promptly review pricing updates in a
17 format that is readily available and accessible.

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

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

24 (a) The drug is listed as "A" or "B" rated in the most recent
25 version of the United States food and drug administration's approved drug
26 products with therapeutic equivalence evaluations, also known as the
27 orange book, or has an "NR" or "NA" rating or similar rating by a

1 nationally recognized reference; and

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

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

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

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

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

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

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

24 (4) THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS
25 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A
26 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS
27 SECTION.

1 (5) THE COMMISSIONER MAY ADOPT RULES TO IMPLEMENT AND
2 ENFORCE THIS SECTION.

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

5 **10-1-103. Division of insurance - division of insurance cash**
6 **fund created - division subject to repeal - repeal of functions.**

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

10 (II) All fees collected under sections 8-44-204 (7), ~~€R.S.~~,
11 8-44-205 (6), ~~€R.S.~~, 10-2-413, 10-3-108, 10-3-207, 10-3.5-104,
12 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1),
13 **10-16-122.1 (2.5)**, 10-23-102, 10-23-104, 24-10-115.5 (5), ~~€R.S.~~, and
14 29-13-102 (5), ~~€R.S.~~, not including fees retained under contracts entered
15 into in accordance with section 10-2-402 (5) or 24-34-101, ~~€R.S.~~, and all
16 taxes collected under section 10-3-209 (4) designated for the division of
17 insurance, are transmitted to the state treasurer, who shall credit the
18 ~~moneys~~ MONEY to the division of insurance cash fund.

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

24 (c) ~~Moneys~~ MONEY in the fund ~~do~~ DOES not revert to the general
25 fund or to any other fund. In accordance with section 24-36-114, ~~€R.S.~~,
26 all interest derived from the deposit and investment of ~~moneys~~ MONEY in
27 the fund is credited to the general fund.

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

3 **SECTION 10. Appropriation.** For the 2023-24 state fiscal year,
4 \$206,647 is appropriated to the department of regulatory agencies for use
5 by the division of insurance. This appropriation is from the division of
6 insurance cash fund created in section 10-1-103 (3), C.R.S. To implement
7 this act, the division may use this appropriation as follows:

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

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

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