

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 21-0497.02 Richard Sweetman x4333

SENATE BILL 21-175

SENATE SPONSORSHIP

Jaquez Lewis and Gonzales, Buckner, Bridges, Moreno

HOUSE SPONSORSHIP

Caraveo and Kennedy,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE COLORADO PRESCRIPTION DRUG AFFORDABILITY**
102 **REVIEW BOARD, AND, IN CONNECTION THEREWITH, DIRECTING**
103 **THE BOARD TO REVIEW THE AFFORDABILITY OF CERTAIN DRUGS**
104 **AND ESTABLISH UPPER PAYMENT LIMITS FOR CERTAIN DRUGS;**
105 **PROHIBITING CERTAIN ENTITIES FROM PURCHASING OR**
106 **REIMBURSING FOR ANY DRUG FOR DISTRIBUTION IN THE STATE**
107 **AT AN AMOUNT THAT EXCEEDS THE UPPER PAYMENT LIMIT**
108 **ESTABLISHED FOR THE PRESCRIPTION DRUG; ESTABLISHING**
109 **PENALTIES FOR VIOLATIONS; AND 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

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.*

SENATE
3rd Reading Unamended
May 7, 2021

SENATE
Amended 2nd Reading
May 6, 2021

applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the Colorado prescription drug affordability review board (board) as an independent unit of state government and requires the board to perform affordability reviews of prescription drugs and establish upper payment limits for prescription drugs the board determines are unaffordable for Colorado consumers. The board is also required to promulgate rules as necessary for its purposes.

The board shall determine by rule the methodology for establishing an upper payment limit for a prescription drug. An upper payment limit applies to all purchases of and payer reimbursements for the prescription drug dispensed or administered to individuals in the state in person, by mail, or by other means. Any savings generated for a health benefit plan as a result of an upper payment limit established by the board must be used by the carrier that issued the health benefit plan to reduce costs to consumers.

On and after January 1, 2022, the bill prohibits any purchase or payer reimbursement for a prescription drug from exceeding an upper payment limit established by the board for that prescription drug. A person who violates the prohibition may be subject to a fine of \$1,000 for each violation. Final board decisions are subject to judicial review.

A person aggrieved by a decision of the board may appeal the decision within 60 days. The board shall consider the appeal and issue a final decision concerning the appeal within 60 days after the board receives the appeal.

Any prescription drug manufacturer (manufacturer) that intends to withdraw a prescription drug for which the board has established an upper payment limit from sale or distribution within the state must notify, at least 180 days before the withdrawal:

- The commissioner;
- The attorney general; and
- Each entity in the state with which the manufacturer has contracted for the sale or distribution of the prescription drug.

A manufacturer who fails to comply with the notice requirement may be required to pay a penalty of up to \$500,000.

For all prescription drugs dispensed at a pharmacy and paid for by a carrier during the immediately preceding calendar year, the bill requires each carrier and each pharmacy benefit management firm acting on behalf of a carrier to report certain information.

The bill creates the Colorado prescription drug affordability advisory council to provide stakeholder input to the board.

The board must submit an annual report to the governor and to subject matter committees of the general assembly summarizing the

activities of the board during the preceding calendar year.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Excessive costs for prescription drugs:

5 (I) Negatively impact the ability of Coloradans to obtain
6 prescription drugs, and price increases that exceed reasonable levels
7 endanger the health and safety of Coloradans;

8 (II) Threaten the economic well-being of Coloradans and
9 endanger their ability to pay for other necessary and essential goods and
10 services, including housing, food, and utilities;

11 (III) Contribute significantly to a dramatic and unsustainable rise
12 in health-care costs and health insurance premiums that threatens the
13 financial health of Coloradans and their ability to maintain their physical
14 health;

15 (IV) Pose a threat to the health and safety of all Coloradans but
16 disproportionately harm people of color and Coloradans with low
17 incomes; and

18 (V) Contribute significantly to rising costs for health care that is
19 provided to public employees, including employees of state, county, and
20 local governments, school districts, and institutions of higher education,
21 and to public retirees whose health-care costs are funded by public
22 programs, thereby threatening the ability of state and local governments
23 to adequately fund those programs and other important services, such as
24 public education and public safety;

25 (b) Lack of transparency in health insurance costs and wholesaler

1 and pharmacy benefits manager discounts and margins prevents
2 policymakers and the public from gaining a true understanding of the
3 costs of prescription drugs; and

4 (c) Information relating to the cost of prescription drugs in
5 Colorado is necessary to provide accountability to the state and to all
6 Coloradans for prescription drug pricing.

7 (2) The general assembly therefore declares that in exercise of its
8 police powers and responsibility for the public health, safety, and general
9 welfare of Colorado residents, it is imperative that Colorado take
10 measures to reduce excessive prescription drug costs for Coloradans who
11 cannot afford prescription drugs and create a prescription drug
12 affordability board with the authority to review prescription drug costs
13 and protect state and local governments and Colorado residents from the
14 excessive costs of prescription drugs.

15 **SECTION 2.** In Colorado Revised Statutes, **add** part 13 to article
16 16 of title 10 as follows:

17 PART 13

18 COLORADO PRESCRIPTION DRUG

19 AFFORDABILITY REVIEW BOARD

20 **10-16-1301. Definitions.** AS USED IN THIS PART 13, UNLESS THE
21 CONTEXT OTHERWISE REQUIRES:

22 (1) "ADVISORY COUNCIL" MEANS THE COLORADO PRESCRIPTION
23 DRUG AFFORDABILITY ADVISORY COUNCIL CREATED IN SECTION
24 10-16-1309.

25 (2) "AFFORDABILITY REVIEW" MEANS AN AFFORDABILITY REVIEW
26 OF A PRESCRIPTION DRUG PERFORMED BY THE BOARD PURSUANT TO
27 SECTION 10-16-1306.

1 (3) "ALL-PAYER HEALTH CLAIMS DATABASE" MEANS THE
2 ALL-PAYER HEALTH CLAIMS DATABASE DESCRIBED IN SECTION 25.5-1-204.

3 (4) "AUTHORIZED GENERIC DRUG" HAS THE MEANING SET FORTH
4 IN 42 CFR 447.502.

5 (5) "BIOLOGICAL PRODUCT" HAS THE MEANING SET FORTH IN 42
6 U.S.C. SEC. 262 (i)(1).

7 (6) "BIOSIMILAR DRUG" MEANS A PRESCRIPTION DRUG THAT IS
8 PRODUCED OR DISTRIBUTED IN ACCORDANCE WITH A BIOLOGICAL PRODUCT
9 LICENSE ISSUED PURSUANT TO 42 U.S.C. SEC. 262 (k)(3).

10 (7) "BOARD" MEANS THE COLORADO PRESCRIPTION DRUG
11 AFFORDABILITY REVIEW BOARD CREATED IN SECTION 10-16-1302.

12 (8) "BRAND-NAME DRUG" MEANS A PRESCRIPTION DRUG THAT IS
13 PRODUCED OR DISTRIBUTED IN ACCORDANCE WITH AN ORIGINAL NEW
14 DRUG APPLICATION APPROVED PURSUANT TO 21 U.S.C. SEC. 355.
15 "BRAND-NAME DRUG" DOES NOT INCLUDE AN AUTHORIZED GENERIC DRUG.

16 (9) "CARRIER" HAS THE MEANING SET FORTH IN SECTION
17 10-16-102 (8).

18 (10) "CONFLICT OF INTEREST" MEANS AN ASSOCIATION, INCLUDING
19 A FINANCIAL OR PERSONAL ASSOCIATION, THAT HAS THE POTENTIAL TO
20 BIAS OR APPEAR TO BIAS AN INDIVIDUAL'S DECISIONS IN MATTERS RELATED
21 TO THE BOARD OR THE ADVISORY COUNCIL OR THE CONDUCT OF THE
22 ACTIVITIES OF THE BOARD OR THE ADVISORY COUNCIL. "CONFLICT OF
23 INTEREST" INCLUDES ANY INSTANCE IN WHICH A BOARD MEMBER; AN
24 ADVISORY COUNCIL MEMBER; A STAFF MEMBER; A CONTRACTOR OF THE
25 DIVISION, ON BEHALF OF THE BOARD; OR AN IMMEDIATE FAMILY MEMBER
26 OF A BOARD MEMBER, AN ADVISORY COUNCIL MEMBER, A STAFF MEMBER,
27 OR A CONTRACTOR OF THE DIVISION, ON BEHALF OF THE BOARD, HAS

1 RECEIVED OR COULD RECEIVE:

2 (a) A FINANCIAL BENEFIT OF ANY AMOUNT DERIVED FROM THE
3 RESULTS OR FINDINGS OF A STUDY OR DETERMINATION THAT IS REACHED
4 BY OR FOR THE BOARD; OR

5 (b) A FINANCIAL BENEFIT FROM AN INDIVIDUAL OR COMPANY THAT
6 OWNS OR MANUFACTURES A PRESCRIPTION DRUG, SERVICE, OR ITEM THAT
7 IS BEING OR WILL BE STUDIED BY THE BOARD.

8 (11) "FINANCIAL BENEFIT" MEANS HONORARIA, FEES, STOCK, OR
9 ANY OTHER FORM OF COMPENSATION, INCLUDING INCREASES TO THE
10 VALUE OF EXISTING STOCK HOLDINGS.

11 (12) "GENERIC DRUG" MEANS:

12 (a) A PRESCRIPTION DRUG THAT IS MARKETED OR DISTRIBUTED IN
13 ACCORDANCE WITH AN ABBREVIATED NEW DRUG APPLICATION APPROVED
14 PURSUANT TO 21 U.S.C. SEC. 355 (j);

15 (b) AN AUTHORIZED GENERIC DRUG; OR

16 (c) A PRESCRIPTION DRUG THAT WAS INTRODUCED FOR RETAIL
17 SALE BEFORE 1962 THAT WAS NOT ORIGINALLY MARKETED UNDER A NEW
18 DRUG APPLICATION.

19 (13) "HEALTH BENEFIT PLAN" HAS THE MEANING SET FORTH IN
20 SECTION 10-16-102 (32).

21 (14) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN
22 THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR
23 STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD
24 FOR ALL ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS APPLICABLE
25 PREDECESSOR OR SUCCESSOR INDEX.

26 (15) (a) "LARGE EMPLOYER" MEANS ANY PERSON, FIRM,
27 CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT:

1 (I) IS ACTIVELY ENGAGED IN BUSINESS;
2 (II) EMPLOYED AN AVERAGE OF MORE THAN ONE HUNDRED
3 ELIGIBLE EMPLOYEES ON BUSINESS DAYS DURING THE IMMEDIATELY
4 PRECEDING CALENDAR YEAR, EXCEPT AS PROVIDED IN SUBSECTION (15)(c)
5 OF THIS SECTION; AND

6 (III) WAS NOT FORMED PRIMARILY FOR THE PURPOSE OF
7 PURCHASING INSURANCE.

8 (b) FOR PURPOSES OF DETERMINING WHETHER AN EMPLOYER IS A
9 "LARGE EMPLOYER", THE NUMBER OF ELIGIBLE EMPLOYEES IS
10 CALCULATED USING THE METHOD SET FORTH IN 26 U.S.C. SEC. 4980H
11 (c)(2)(E).

12 (c) IN THE CASE OF AN EMPLOYER THAT WAS NOT IN EXISTENCE
13 THROUGHOUT THE PRECEDING CALENDAR QUARTER, THE DETERMINATION
14 OF WHETHER THE EMPLOYER IS A LARGE EMPLOYER IS BASED ON THE
15 AVERAGE NUMBER OF EMPLOYEES THAT THE EMPLOYER IS REASONABLY
16 EXPECTED TO EMPLOY ON BUSINESS DAYS IN THE CURRENT CALENDAR
17 YEAR.

18 (16) "MANUFACTURER" MEANS A PERSON THAT:

19 (a) ENGAGES IN THE MANUFACTURE OF A PRESCRIPTION DRUG
20 THAT IS SOLD TO PURCHASERS LOCATED IN THIS STATE; OR

21 (b) (I) ENTERS INTO A LEASE OR OTHER CONTRACTUAL
22 AGREEMENT WITH A MANUFACTURER TO MARKET AND DISTRIBUTE A
23 PRESCRIPTION DRUG IN THIS STATE UNDER THE PERSON'S OWN NAME; AND

24 (II) SETS OR CHANGES THE WHOLESALE ACQUISITION COST OF THE
25 PRESCRIPTION DRUG IN THIS STATE.

26 (17) "OPTIONAL PARTICIPATING PLAN" MEANS A SELF-FUNDED
27 HEALTH BENEFIT PLAN OFFERED IN COLORADO THAT ELECTS TO SUBJECT

1 ITS PURCHASES OF OR PAYER REIMBURSEMENTS FOR PRESCRIPTION DRUGS
2 FOR ITS MEMBERS IN COLORADO TO THE REQUIREMENTS OF THIS PART 13,
3 AS DESCRIBED IN SECTION 10-16-1307 (6).

4 (18) "PRACTITIONER" HAS THE MEANING SET FORTH IN SECTION
5 12-280-103 (40).

6 (19) "PRESCRIPTION DRUG" HAS THE MEANING SET FORTH IN
7 SECTION 12-280-103 (42); EXCEPT THAT THE TERM INCLUDES ONLY
8 PRESCRIPTION DRUGS THAT ARE INTENDED FOR HUMAN USE.

9 (20) "PRICING INFORMATION" MEANS INFORMATION ABOUT THE
10 PRICE OF A PRESCRIPTION DRUG, INCLUDING INFORMATION THAT EXPLAINS
11 OR HELPS EXPLAIN HOW THE PRICE WAS DETERMINED.

12 (21) "SMALL EMPLOYER" HAS THE MEANING SET FORTH IN SECTION
13 10-16-102 (61).

14 (22) "STATE ENTITY" MEANS ANY AGENCY OF STATE GOVERNMENT
15 THAT PURCHASES OR REIMBURSES PAYERS FOR PRESCRIPTION DRUGS ON
16 BEHALF OF THE STATE FOR A PERSON WHOSE HEATH CARE IS PAID FOR BY
17 THE STATE, INCLUDING ANY AGENT, VENDOR, CONTRACTOR, OR OTHER
18 PARTY ACTING ON BEHALF OF THE STATE.

19 (23) "UPPER PAYMENT LIMIT" MEANS THE MAXIMUM AMOUNT
20 THAT MAY BE PAID OR BILLED FOR A PRESCRIPTION DRUG THAT IS
21 DISPENSED OR DISTRIBUTED IN COLORADO IN ANY FINANCIAL
22 TRANSACTION CONCERNING THE PURCHASE OF OR REIMBURSEMENT FOR
23 THE PRESCRIPTION DRUG.

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

26 (25) "WHOLESALER" HAS THE MEANING SET FORTH IN SECTION
27 12-280-103 (55).

1 **10-16-1302. Colorado prescription drug affordability review**
2 **board - created - membership - terms - conflicts of interest.** (1) THE
3 COLORADO PRESCRIPTION DRUG AFFORDABILITY REVIEW BOARD IS
4 CREATED IN THE DIVISION. THE BOARD IS A BODY POLITIC AND CORPORATE
5 AND IS AN INSTRUMENTALITY OF THE STATE. THE BOARD IS AN
6 INDEPENDENT UNIT OF STATE GOVERNMENT, AND THE EXERCISE BY THE
7 BOARD OF ITS AUTHORITY UNDER THIS PART 13 IS AN ESSENTIAL PUBLIC
8 FUNCTION.

9 (2) (a) THE BOARD CONSISTS OF FIVE MEMBERS, WHO MUST EACH
10 HAVE AN ADVANCED DEGREE AND EXPERIENCE OR EXPERTISE IN
11 HEALTH-CARE ECONOMICS OR CLINICAL MEDICINE.

12 (b) THE GOVERNOR SHALL APPOINT EACH BOARD MEMBER,
13 SUBJECT TO CONFIRMATION BY THE SENATE. ALL OF THE INITIAL MEMBERS
14 OF THE BOARD MUST BE APPOINTED BY OCTOBER 1, 2021.

15 (c) THE TERM OF OFFICE OF EACH BOARD MEMBER IS THREE YEARS;
16 EXCEPT THAT, AS TO THE TERMS OF THE MEMBERS WHO ARE FIRST
17 APPOINTED TO THE BOARD, TWO SUCH MEMBERS SHALL SERVE
18 THREE-YEAR INITIAL TERMS, TWO SUCH MEMBERS SHALL SERVE TWO-YEAR
19 INITIAL TERMS, AND ONE SUCH MEMBER SHALL SERVE A ONE-YEAR INITIAL
20 TERM, TO BE DETERMINED BY THE GOVERNOR. THE GOVERNOR MAY
21 REMOVE ANY APPOINTED MEMBER OF THE BOARD FOR MALFEASANCE IN
22 OFFICE, FOR FAILURE TO REGULARLY ATTEND MEETINGS, OR FOR ANY
23 CAUSE THAT RENDERS THE MEMBER INCAPABLE OR UNFIT TO DISCHARGE
24 THE DUTIES OF THE MEMBER'S OFFICE, AND ANY SUCH REMOVAL IS NOT
25 SUBJECT TO REVIEW.

26 (d) THE GOVERNOR SHALL DESIGNATE ONE MEMBER OF THE BOARD
27 TO SERVE AS THE CHAIR. A MAJORITY OF THE BOARD CONSTITUTES A

1 QUORUM. THE CONCURRENCE OF A MAJORITY OF THE BOARD IN ANY
2 MATTER WITHIN ITS POWERS AND DUTIES IS REQUIRED FOR ANY
3 DETERMINATION MADE BY THE BOARD.

4 (3) (a) AN INDIVIDUAL WHO IS BEING CONSIDERED FOR
5 APPOINTMENT TO THE BOARD SHALL DISCLOSE ANY CONFLICT OF INTEREST
6 TO THE INDIVIDUAL'S POTENTIAL APPOINTING AUTHORITY. WHEN
7 APPOINTING A MEMBER OF THE BOARD, AN APPOINTING AUTHORITY SHALL
8 CONSIDER ANY CONFLICT OF INTEREST DISCLOSED BY THE PROSPECTIVE
9 MEMBER.

10 (b) A BOARD MEMBER MUST NOT BE AN EMPLOYEE, BOARD
11 MEMBER, OR CONSULTANT OF:

12 (I) A MANUFACTURER OR A TRADE ASSOCIATION OF
13 MANUFACTURERS;

14 (II) A CARRIER OR A TRADE ASSOCIATION OF CARRIERS; OR

15 (III) A PHARMACY BENEFIT MANAGER OR A TRADE ASSOCIATION
16 OF PHARMACY BENEFIT MANAGERS.

17 (c) BOARD MEMBERS, STAFF MEMBERS, AND CONTRACTORS OF THE
18 DIVISION, ON BEHALF OF THE BOARD, SHALL RECUSE THEMSELVES FROM
19 ANY BOARD ACTIVITY IN ANY CASE IN WHICH THEY HAVE A CONFLICT OF
20 INTEREST.

21 (d) ON AND AFTER JANUARY 1, 2022, THE DIVISION SHALL
22 MAINTAIN A PAGE ON ITS PUBLIC WEBSITE FOR THE BOARD TO USE FOR ITS
23 PURPOSES. THE BOARD SHALL DISCLOSE ON THE PAGE EACH CONFLICT OF
24 INTEREST THAT IS DISCLOSED TO THE BOARD PURSUANT TO SUBSECTION
25 (3)(c) OF THIS SECTION AND SECTION 10-16-1309 (5)(b).

26 (e) BOARD MEMBERS, STAFF MEMBERS, CONTRACTORS OF THE
27 DIVISION, ON BEHALF OF THE BOARD, AND IMMEDIATE FAMILY MEMBERS

1 OF BOARD MEMBERS, STAFF MEMBERS, OR CONTRACTORS SHALL NOT
2 ACCEPT A FINANCIAL BENEFIT OR GIFTS, BEQUESTS, OR DONATIONS OF
3 SERVICES OR PROPERTY THAT SUGGEST A CONFLICT OF INTEREST OR HAVE
4 THE APPEARANCE OF CREATING BIAS IN THE WORK OF THE BOARD.

5
6 (4) THE ATTORNEY GENERAL SHALL ASSIGN AN ASSISTANT
7 ATTORNEY GENERAL TO PROVIDE LEGAL COUNSEL TO THE BOARD. ANY
8 ASSISTANT ATTORNEY GENERAL ASSIGNED TO THE BOARD PURSUANT TO
9 THIS SUBSECTION (4) SHALL DISCLOSE ANY CONFLICT OF INTEREST TO THE
10 BOARD.

11 **10-16-1303. Colorado prescription drug affordability review**
12 **board - powers and duties - rules.** (1) TO PROTECT COLORADO
13 CONSUMERS FROM EXCESSIVE PRESCRIPTION DRUG COSTS, THE BOARD
14 SHALL:

15 (a) COLLECT AND EVALUATE INFORMATION CONCERNING THE COST
16 OF PRESCRIPTION DRUGS SOLD TO COLORADO CONSUMERS, AS DESCRIBED
17 IN SECTION 10-16-1305;

18 (b) PERFORM AFFORDABILITY REVIEWS OF PRESCRIPTION DRUGS,
19 AS DESCRIBED IN SECTION 10-16-1306;

20 (c) ESTABLISH UPPER PAYMENT LIMITS FOR PRESCRIPTION DRUGS,
21 AS DESCRIBED IN SECTION 10-16-1307; AND

22 (d) MAKE POLICY RECOMMENDATIONS TO THE GENERAL ASSEMBLY
23 TO IMPROVE THE AFFORDABILITY OF PRESCRIPTION DRUGS FOR COLORADO
24 CONSUMERS, AS DESCRIBED IN SECTION 10-16-1314 (1)(h).

25 (2) THE BOARD MAY ESTABLISH AD HOC WORK GROUPS TO
26 CONSIDER MATTERS RELATED TO THE WORK OF THE BOARD PURSUANT TO
27 THIS PART 13. AD HOC WORK GROUPS MAY INCLUDE MEMBERS OF THE

1 PUBLIC.

2 (3) THE DIVISION, ON BEHALF OF THE BOARD, MAY ENTER INTO A
3 CONTRACT WITH A QUALIFIED, INDEPENDENT THIRD PARTY FOR ANY
4 SERVICE NECESSARY TO CARRY OUT THE POWERS AND DUTIES OF THE
5 BOARD. A THIRD PARTY WITH WHICH THE DIVISION CONTRACTS PURSUANT
6 TO THIS SUBSECTION (3), INCLUDING ANY OF THE THIRD PARTY'S
7 DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, OR AGENTS, SHALL
8 NOT RELEASE OR PUBLISH ANY INFORMATION THAT THE THIRD PARTY
9 ACQUIRES PURSUANT TO ITS PERFORMANCE UNDER THE CONTRACT. ANY
10 THIRD PARTY WITH WHICH THE DIVISION CONTRACTS PURSUANT TO THIS
11 SUBSECTION (3) SHALL DISCLOSE ANY CONFLICT OF INTEREST TO THE
12 BOARD.

13 (4) IN CARRYING OUT ITS DUTIES PURSUANT TO THIS PART 13, THE
14 DIVISION, WHEN PERFORMING ITS DUTIES ON BEHALF OF THE BOARD, IS
15 EXEMPT FROM THE STATE "PROCUREMENT CODE", ARTICLES 101 TO 112
16 OF TITLE 24.

17 (5) THE BOARD SHALL PROMULGATE RULES AS NECESSARY,
18 PURSUANT TO ARTICLE 4 OF TITLE 24, FOR THE IMPLEMENTATION OF THIS
19 PART 13.

20 (6) (a) THE DIVISION, ON BEHALF OF THE BOARD, MAY SEEK,
21 ACCEPT, AND EXPEND GIFTS, GRANTS, AND DONATIONS FROM PRIVATE OR
22 PUBLIC SOURCES FOR THE PURPOSES OF THIS PART 13, AND ANY SUCH
23 GIFTS, GRANTS, AND DONATIONS ARE CONTINUOUSLY APPROPRIATED TO
24 THE DEPARTMENT OF REGULATORY AGENCIES; EXCEPT THAT THE DIVISION
25 SHALL NOT ACCEPT ANY GIFT, GRANT, OR DONATION THAT CREATES A
26 CONFLICT OF INTEREST OR THE APPEARANCE OF ANY CONFLICT OF
27 INTEREST FOR ANY BOARD MEMBER.

1 (b) THE GENERAL ASSEMBLY FINDS THAT THE IMPLEMENTATION OF
2 THIS PART 13 DOES NOT RELY ENTIRELY ON THE RECEIPT OF ADEQUATE
3 FUNDING THROUGH GIFTS, GRANTS, OR DONATIONS. THEREFORE, THE
4 BOARD IS NOT SUBJECT TO THE REPORTING REQUIREMENTS DESCRIBED IN
5 SECTION 24-75-1303.

6 **10-16-1304. Colorado prescription drug affordability review**
7 **board meetings - required to be public - exceptions.** (1) THE BOARD
8 SHALL HOLD ITS FIRST MEETING WITHIN SIX WEEKS AFTER ALL OF THE
9 BOARD MEMBERS ARE APPOINTED AND SHALL MEET AT LEAST EVERY SIX
10 WEEKS THEREAFTER TO REVIEW PRESCRIPTION DRUGS; EXCEPT THAT THE
11 CHAIR MAY CANCEL OR POSTPONE A MEETING IF THE BOARD HAS NO
12 PRESCRIPTION DRUGS TO REVIEW.

13 (2) THE BOARD IS A STATE PUBLIC BODY FOR PURPOSES OF SECTION
14 24-6-402, AND THE BOARD'S MEETINGS AND THE MEETINGS OF AD HOC
15 WORK GROUPS OF THE BOARD ARE PUBLIC MEETINGS.

16 (3) THE BOARD SHALL MEET IN EXECUTIVE SESSION TO DISCUSS
17 PROPRIETARY INFORMATION. THE BOARD AND ANY BOARD MEMBERS,
18 OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS SHALL
19 NOT DISCLOSE OR OTHERWISE MAKE AVAILABLE TO THE PUBLIC ANY
20 MATERIALS OR INFORMATION CONTAINING TRADE-SECRET, CONFIDENTIAL,
21 OR PROPRIETARY DATA THAT IS NOT OTHERWISE AVAILABLE TO THE
22 PUBLIC. ELECTRONIC RECORDINGS OF SUCH EXECUTIVE SESSIONS ARE NOT
23 PERMITTED IF THEY WOULD RESULT IN THE DISCLOSURE OF ANY
24 MATERIALS OR INFORMATION CONTAINING TRADE-SECRET, CONFIDENTIAL,
25 OR PROPRIETARY DATA, AND IN NO CASE SHALL MINUTES FROM SUCH
26 EXECUTIVE SESSIONS DISCLOSE OR INCLUDE MATERIALS OR INFORMATION
27 CONTAINING TRADE-SECRET, CONFIDENTIAL, OR PROPRIETARY DATA. THE

1 BOARD SHALL NOT TAKE ANY OF THE FOLLOWING ACTIONS WHILE MEETING
2 IN EXECUTIVE SESSION:

3 (a) DELIBERATIONS CONCERNING WHETHER TO SUBJECT A
4 PRESCRIPTION DRUG TO AN AFFORDABILITY REVIEW AS DESCRIBED IN
5 SECTION 10-16-1306;

6 (b) VOTES CONCERNING WHETHER TO ESTABLISH AN UPPER
7 PAYMENT LIMIT ON A PRESCRIPTION DRUG; OR

8 (c) ANY FINAL DECISION OF THE BOARD.

9 **10-16-1305. Colorado prescription drug affordability review**
10 **board - reports from carriers and pharmacy benefit management**

11 **firms required - confidential materials.** (1) BEGINNING IN THE 2022
12 CALENDAR YEAR, FOR ALL PRESCRIPTION DRUGS DISPENSED AT A
13 PHARMACY IN THIS STATE AND PAID FOR BY A CARRIER PURSUANT TO A
14 HEALTH BENEFIT PLAN ISSUED UNDER PART 2, 3, OR 4 OF THIS ARTICLE 16
15 DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, INCLUDING
16 BRAND-NAME DRUGS, AUTHORIZED GENERIC DRUGS, BIOLOGICAL
17 PRODUCTS, AND BIOSIMILAR DRUGS:

18 (a) EACH CARRIER AND EACH PHARMACY BENEFIT MANAGEMENT
19 FIRM ACTING ON BEHALF OF A CARRIER SHALL REPORT TO THE ALL-PAYER
20 HEALTH CLAIMS DATABASE THE FOLLOWING INFORMATION:

21 (I) THE TOP FIFTEEN PRESCRIPTION DRUGS BY VOLUME,
22 CALCULATED BY UNIT, FOR WHICH THE CARRIER PAID;

23 (II) THE FIFTEEN COSTLIEST PRESCRIPTION DRUGS FOR WHICH THE
24 CARRIER PAID, AS DETERMINED BY TOTAL ANNUAL PLAN SPENDING;

25 (III) THE FIFTEEN PRESCRIPTION DRUGS PAID FOR BY THE CARRIER
26 THAT ACCOUNTED FOR THE HIGHEST INCREASE IN TOTAL ANNUAL PLAN
27 SPENDING WHEN COMPARED WITH THE TOTAL ANNUAL PLAN SPENDING FOR

1 THE SAME PRESCRIPTION DRUGS IN THE YEAR IMMEDIATELY PRECEDING
2 THE YEAR FOR WHICH THE INFORMATION IS REPORTED;

3 (IV) THE FIFTEEN PRESCRIPTION DRUGS THAT CAUSED THE
4 GREATEST INCREASES IN THE CARRIER'S PREMIUMS;

5 (V) THE FIFTEEN PRESCRIPTION DRUGS FOR WHICH THE CARRIER
6 PAID MOST FREQUENTLY AND FOR WHICH THE CARRIER RECEIVED A
7 REBATE FROM MANUFACTURERS;

8 (VI) THE FIFTEEN PRESCRIPTION DRUGS FOR WHICH THE CARRIER
9 RECEIVED THE HIGHEST REBATES, AS DETERMINED BY PERCENTAGES OF
10 THE PRICE OF THE PRESCRIPTION DRUG;

11 (VII) THE FIFTEEN PRESCRIPTION DRUGS FOR WHICH THE CARRIER
12 RECEIVED THE LARGEST REBATES;

13 (VIII) THE TOTAL SPENDING FOR EACH OF THE FOLLOWING
14 CATEGORIES OF PRESCRIPTION DRUGS:

15 (A) BRAND-NAME DRUGS PURCHASED FROM RETAIL PHARMACIES;

16 (B) AUTHORIZED GENERIC DRUGS PURCHASED FROM RETAIL
17 PHARMACIES;

18 (C) BRAND-NAME DRUGS PURCHASED FROM MAIL-ORDER
19 PHARMACIES;

20 (D) AUTHORIZED GENERIC DRUGS PURCHASED FROM MAIL-ORDER
21 PHARMACIES;

22 (E) PRESCRIPTION DRUGS DISPENSED BY A PRACTITIONER IN
23 ACCORDANCE WITH SECTION 12-280-120 (6);

24 (F) PRESCRIPTION DRUGS ADMINISTERED IN AN INPATIENT
25 HOSPITAL SETTING; AND

26 (G) PRESCRIPTION DRUGS ADMINISTERED IN AN OUTPATIENT
27 HOSPITAL SETTING; AND

1 (IX) THE TOTAL SPENDING FOR THE PRESCRIPTION DRUGS
2 DESCRIBED IN SUBSECTION (1)(a)(VIII) OF THIS SECTION PAID FOR BY A
3 CARRIER PURSUANT TO A HEALTH BENEFIT PLAN ISSUED UNDER PART 2, 3,
4 OR 4 OF THIS ARTICLE 16 DURING THE IMMEDIATELY PRECEDING
5 CALENDAR YEAR FOR EACH OF THE FOLLOWING MARKET SECTORS: _____

- 6 (A) INDIVIDUAL;
- 7 (B) SMALL EMPLOYER; AND
- 8 (C) LARGE EMPLOYER.

9 (b) IF THE ALL-PAYER HEALTH CLAIMS DATABASE DOES NOT
10 COLLECT AND MAINTAIN THE DATA THAT IS REQUIRED TO BE REPORTED TO
11 THE DATABASE PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE
12 ADMINISTRATOR OF THE ALL-PAYER HEALTH CLAIMS DATABASE SHALL
13 AMEND THE REQUIREMENTS REGARDING THE DATA TO BE SUBMITTED TO
14 THE DATABASE PURSUANT TO SECTION 25.5-1-204 (5) TO INCLUDE THE
15 DATA REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION DURING THE NEXT
16 UPDATE OF SUCH REQUIREMENTS, BUT NO LATER THAN JUNE 1, 2022.

17 (2) THE ADMINISTRATOR OF THE ALL-PAYER HEALTH CLAIMS
18 DATABASE SHALL PROVIDE TO THE COMMISSIONER, IN A FORM AND
19 MANNER DETERMINED BY THE COMMISSIONER, THE INFORMATION THAT IS
20 REPORTED TO THE DATABASE BY CARRIERS AND PHARMACY BENEFIT
21 MANAGEMENT FIRMS PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION.

22 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS
23 SECTION, THE COMMISSIONER SHALL:

24 (I) POST THE INFORMATION REPORTED BY CARRIERS AND
25 PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO THIS SECTION ON
26 THE DIVISION'S WEBSITE; AND

27 (II) PROVIDE THE INFORMATION REPORTED BY CARRIERS AND

1 PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO THIS SECTION TO
2 THE BOARD, IN A FORM AND MANNER PRESCRIBED BY THE BOARD.

3 (b) IF A CARRIER OR PHARMACY BENEFIT MANAGEMENT FIRM
4 CLAIMS THAT INFORMATION SUBMITTED PURSUANT TO THIS SECTION IS
5 CONFIDENTIAL OR PROPRIETARY, THE COMMISSIONER SHALL REVIEW THE
6 INFORMATION AND REDACT SPECIFIC ITEMS THAT THE CARRIER OR
7 PHARMACY BENEFIT MANAGEMENT FIRM DEMONSTRATES TO BE
8 CONFIDENTIAL OR PROPRIETARY. THE COMMISSIONER SHALL NOT
9 DISCLOSE REDACTED ITEMS TO ANY PERSON; EXCEPT THAT THE
10 COMMISSIONER MAY DISCLOSE REDACTED ITEMS:

11 (I) AS MAY BE REQUIRED PURSUANT TO THE "COLORADO OPEN
12 RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24; AND

13 (II) TO EMPLOYEES OF THE DIVISION, AS NECESSARY.

14 (4) THE REQUIREMENT IN THIS SECTION TO REPORT INFORMATION
15 RELATING TO THE COST OF PRESCRIPTION DRUGS IS INTENDED TO CREATE
16 TRANSPARENCY IN PRESCRIPTION DRUG PRICING AND DOES NOT:

17 (a) PROHIBIT A MANUFACTURER OF A PRESCRIPTION DRUG FROM
18 MAKING PRICING DECISIONS ABOUT ITS PRESCRIPTION DRUGS; OR

19 (b) PROHIBIT PURCHASERS, BOTH PUBLIC AND PRIVATE, OR
20 PHARMACY BENEFIT MANAGEMENT FIRMS FROM NEGOTIATING DISCOUNTS
21 AND REBATES CONSISTENT WITH EXISTING STATE AND FEDERAL LAW.

22 **10-16-1306. Colorado prescription drug affordability review**
23 **board - affordability reviews of prescription drugs.** (1) THE BOARD
24 MAY CONDUCT AFFORDABILITY REVIEWS OF PRESCRIPTION DRUGS IN
25 ACCORDANCE WITH THIS SECTION. THE BOARD SHALL IDENTIFY, FOR
26 PURPOSES OF DETERMINING WHETHER TO CONDUCT AN AFFORDABILITY
27 REVIEW, ANY PRESCRIPTION DRUG THAT IS:

1 (a) A BRAND-NAME DRUG OR BIOLOGICAL PRODUCT THAT, AS
2 ADJUSTED ANNUALLY FOR INFLATION, HAS:

3 (I) AN INITIAL WHOLESALE ACQUISITION COST OF THIRTY
4 THOUSAND DOLLARS OR MORE FOR A TWELVE-MONTH SUPPLY OR FOR A
5 COURSE OF TREATMENT THAT IS LESS THAN TWELVE MONTHS IN
6 DURATION; OR

7 (II) AN INCREASE IN THE WHOLESALE ACQUISITION COST OF THREE
8 THOUSAND DOLLARS OR MORE DURING THE IMMEDIATELY PRECEDING
9 TWELVE MONTHS FOR A TWELVE-MONTH SUPPLY OR FOR A COURSE OF
10 TREATMENT THAT IS LESS THAN TWELVE MONTHS IN DURATION;

11 (b) A BIOSIMILAR DRUG THAT HAS AN INITIAL WHOLESALE
12 ACQUISITION COST THAT IS NOT AT LEAST FIFTEEN PERCENT LOWER THAN
13 THE CORRESPONDING BIOLOGICAL PRODUCT; OR

14 (c) A GENERIC DRUG:

15 (I) THAT, AS ADJUSTED ANNUALLY FOR INFLATION, HAS A
16 WHOLESALE ACQUISITION COST OF ONE HUNDRED DOLLARS OR MORE FOR:

17 (A) A THIRTY-DAY SUPPLY BASED ON THE RECOMMENDED DOSAGE
18 APPROVED FOR LABELING BY THE FDA;

19 (B) A SUPPLY THAT LASTS LESS THAN THIRTY DAYS BASED ON THE
20 RECOMMENDED DOSAGE APPROVED FOR LABELING BY THE FDA; OR

21 (C) ONE DOSE OF THE GENERIC DRUG IF THE LABELING APPROVED
22 BY THE FDA DOES NOT RECOMMEND A FINITE DOSAGE; AND

23 (II) FOR WHICH THE WHOLESALE ACQUISITION COST INCREASED BY
24 TWO HUNDRED PERCENT OR MORE DURING THE IMMEDIATELY PRECEDING
25 TWELVE MONTHS, AS DETERMINED BY COMPARING THE CURRENT
26 WHOLESALE ACQUISITION COST TO THE AVERAGE WHOLESALE
27 ACQUISITION COST REPORTED DURING THE IMMEDIATELY PRECEDING

1 TWELVE MONTHS.

2 (2) AFTER IDENTIFYING PRESCRIPTION DRUGS AS DESCRIBED IN
3 SUBSECTION (1) OF THIS SECTION, THE BOARD SHALL DETERMINE WHETHER
4 TO CONDUCT AN AFFORDABILITY REVIEW FOR EACH IDENTIFIED
5 PRESCRIPTION DRUG BY:

6 (a) EVALUATING THE CLASS OF THE PRESCRIPTION DRUG AND
7 WHETHER ANY THERAPEUTICALLY EQUIVALENT PRESCRIPTION DRUGS ARE
8 AVAILABLE FOR SALE;

9 (b) EVALUATING AGGREGATED DATA;

10 (c) SEEKING AND CONSIDERING INPUT FROM THE ADVISORY
11 COUNCIL ABOUT THE PRESCRIPTION DRUG; AND

12 (d) CONSIDERING THE AVERAGE PATIENT'S OUT-OF-POCKET COST
13 FOR THE PRESCRIPTION DRUG.

14 (3) IF THE BOARD CONDUCTS AN AFFORDABILITY REVIEW OF A
15 PRESCRIPTION DRUG, THE AFFORDABILITY REVIEW MUST DETERMINE
16 WHETHER USE OF THE PRESCRIPTION DRUG CONSISTENT WITH THE
17 LABELING APPROVED FOR THE PRESCRIPTION DRUG BY THE FDA OR WITH
18 STANDARD MEDICAL PRACTICE IS UNAFFORDABLE FOR COLORADO
19 CONSUMERS.

20 (4) IN PERFORMING AN AFFORDABILITY REVIEW, TO THE EXTENT
21 PRACTICABLE, THE BOARD SHALL CONSIDER:

22 (a) THE WHOLESALE ACQUISITION COST OF THE PRESCRIPTION
23 DRUG;

24 (b) THE COST AND AVAILABILITY OF THERAPEUTIC ALTERNATIVES
25 TO THE PRESCRIPTION DRUG IN THE STATE;

26 (c) THE EFFECT OF THE PRICE ON COLORADO CONSUMERS' ACCESS
27 TO THE PRESCRIPTION DRUG;

1 (d) THE RELATIVE FINANCIAL EFFECTS ON HEALTH, MEDICAL, OR
2 SOCIAL SERVICES COSTS, AS THE EFFECTS CAN BE QUANTIFIED AND
3 COMPARED TO BASELINE EFFECTS OF EXISTING THERAPEUTIC
4 ALTERNATIVES TO THE PRESCRIPTION DRUG;

5 (e) THE PATIENT COPAYMENT OR OTHER COST SHARING THAT IS
6 ASSOCIATED WITH THE PRESCRIPTION DRUG AND TYPICALLY REQUIRED
7 PURSUANT TO HEALTH BENEFIT PLANS ISSUED BY CARRIERS IN THE STATE;

8 (f) THE IMPACT ON SAFETY NET PROVIDERS IF THE PRESCRIPTION
9 DRUG IS AVAILABLE THROUGH SECTION 340B OF THE FEDERAL "PUBLIC
10 HEALTH SERVICE ACT", PUB.L. 78-410;

11 (g) ORPHAN DRUG STATUS;

12 (h) ANY OTHER INFORMATION THAT A MANUFACTURER, CARRIER,
13 PHARMACY BENEFIT MANAGEMENT FIRM, OR OTHER ENTITY CHOOSES TO
14 PROVIDE; AND

15 (i) ANY OTHER FACTORS AS DETERMINED BY RULES PROMULGATED
16 BY THE BOARD PURSUANT TO SECTION 10-16-1303 (5).

17 (5) TRADE-SECRET, CONFIDENTIAL, OR PROPRIETARY
18 INFORMATION OBTAINED BY THE BOARD PURSUANT TO THIS SECTION MAY
19 BE ACCESSED ONLY BY BOARD MEMBERS AND STAFF OR BY A QUALIFIED
20 INDEPENDENT THIRD PARTY THAT HAS CONTRACTED WITH THE DIVISION
21 PURSUANT TO SECTION 10-16-1303 (3) AND IS SUBJECT TO A
22 NONDISCLOSURE AGREEMENT PROHIBITING DISCLOSURE OF SUCH
23 INFORMATION. ANY PERSON WITH ACCESS TO SUCH INFORMATION SHALL
24 PROTECT THE INFORMATION FROM DIRECT OR INDIRECT PUBLICATION OR
25 RELEASE TO ANY PERSON.

26 (6) IN PERFORMING AN AFFORDABILITY REVIEW OF A PRESCRIPTION
27 DRUG, THE BOARD MAY CONSIDER ANY DOCUMENTS AND INFORMATION

1 RELATING TO THE MANUFACTURER'S SELECTION OF THE INTRODUCTORY
2 PRICE OR PRICE INCREASE OF THE PRESCRIPTION DRUG, INCLUDING
3 DOCUMENTS AND INFORMATION RELATING TO:

- 4 (a) LIFE-CYCLE MANAGEMENT;
- 5 (b) THE AVERAGE COST OF THE PRESCRIPTION DRUG IN THE STATE;
- 6 (c) MARKET COMPETITION AND CONTEXT;
- 7 (d) PROJECTED REVENUE;
- 8 (e) THE ESTIMATED COST-EFFECTIVENESS OF THE PRESCRIPTION
9 DRUG; AND
- 10 (f) OFF-LABEL USAGE OF THE PRESCRIPTION DRUG.

11 (7) (a) TO THE EXTENT PRACTICABLE, THE BOARD MAY ACCESS
12 PRICING INFORMATION FOR PRESCRIPTION DRUGS BY:

- 13 (I) ACCESSING PUBLICLY AVAILABLE PRICING INFORMATION FROM
14 A STATE TO WHICH MANUFACTURERS REPORT PRICING INFORMATION;
- 15 (II) ACCESSING AVAILABLE PRICING INFORMATION FROM THE
16 ALL-PAYER HEALTH CLAIMS DATABASE AND FROM STATE ENTITIES; AND
- 17 (III) ACCESSING INFORMATION THAT IS AVAILABLE FROM OTHER
18 COUNTRIES.

19 (b) TO THE EXTENT THAT THERE IS NO PUBLICLY AVAILABLE
20 INFORMATION WITH WHICH TO CONDUCT AN AFFORDABILITY REVIEW, THE
21 BOARD MAY REQUEST THAT A MANUFACTURER, CARRIER, OR PHARMACY
22 BENEFIT MANAGEMENT FIRM PROVIDE PRICING INFORMATION FOR ANY
23 PRESCRIPTION DRUG IDENTIFIED PURSUANT TO SUBSECTION (1) OF THIS
24 SECTION. THE FAILURE OF AN ENTITY TO PROVIDE PRICING INFORMATION
25 TO THE BOARD FOR AN AFFORDABILITY REVIEW DOES NOT AFFECT THE
26 AUTHORITY OF THE BOARD TO CONDUCT THE AFFORDABILITY REVIEW, AS
27 DESCRIBED IN THIS SECTION.

1 **10-16-1307. Colorado prescription drug affordability review**
2 **board - upper payment limits for certain prescription drugs - rules**

3 **- severability.** (1) THE BOARD MAY ESTABLISH AN UPPER PAYMENT LIMIT
4 FOR ANY PRESCRIPTION DRUG FOR WHICH THE BOARD HAS PERFORMED AN
5 AFFORDABILITY REVIEW PURSUANT TO SECTION 10-16-1306 AND
6 DETERMINED THAT THE USE OF THE PRESCRIPTION DRUG IS UNAFFORDABLE
7 FOR COLORADO CONSUMERS; EXCEPT THAT THE BOARD MAY NOT
8 ESTABLISH AN UPPER PAYMENT LIMIT FOR MORE THAN TWELVE
9 PRESCRIPTION DRUGS IN EACH CALENDAR YEAR FOR THREE YEARS
10 BEGINNING APRIL 1, 2022. THE FAILURE OF AN ENTITY TO PROVIDE
11 INFORMATION TO THE BOARD PURSUANT TO SECTION 10-16-1306 (7)(b)
12 DOES NOT AFFECT THE AUTHORITY OF THE BOARD TO ESTABLISH AN UPPER
13 PAYMENT LIMIT FOR THE PRESCRIPTION DRUG.

14 (2) THE BOARD SHALL DETERMINE BY RULE THE METHODOLOGY
15 FOR ESTABLISHING AN UPPER PAYMENT LIMIT FOR A PRESCRIPTION DRUG
16 TO PROTECT CONSUMERS FROM THE EXCESSIVE COST OF PRESCRIPTION
17 DRUGS AND ENSURE THEY CAN ACCESS PRESCRIPTION DRUGS NECESSARY
18 FOR THEIR HEALTH. THE METHODOLOGY MUST INCLUDE CONSIDERATION
19 OF:

20 (a) THE COST OF ADMINISTERING OR DISPENSING THE PRESCRIPTION
21 DRUG;

22 (b) THE COST OF DISTRIBUTING THE PRESCRIPTION DRUG TO
23 CONSUMERS IN THE STATE;

24 (c) THE STATUS OF THE PRESCRIPTION DRUG ON THE DRUG
25 SHORTAGE LIST PUBLISHED BY THE DRUG SHORTAGE PROGRAM WITHIN THE
26 FDA; AND

27 (d) OTHER RELEVANT COSTS RELATED TO THE PRESCRIPTION DRUG.

1 (3) THE METHODOLOGY DETERMINED BY THE BOARD PURSUANT TO
2 SUBSECTION (2) OF THIS SECTION MUST CONSIDER THE IMPACT TO OLDER
3 ADULTS AND PERSONS WITH DISABILITIES AND SHALL NOT PLACE A LOWER
4 VALUE ON THEIR LIVES.

5 (4) THE METHODOLOGY DETERMINED BY THE BOARD PURSUANT TO
6 SUBSECTION (2) OF THIS SECTION:

7 (a) SHALL NOT CONSIDER RESEARCH OR METHODS THAT EMPLOY
8 A DOLLARS-PER-QUALITY ADJUSTED LIFE YEAR, OR SIMILAR MEASURE,
9 THAT DISCOUNTS THE VALUE OF A LIFE BECAUSE OF AN INDIVIDUAL'S
10 DISABILITY OR AGE; AND

11 (b) MUST AUTHORIZE A RETAIL PHARMACY LICENSED BY THE
12 STATE BOARD OF PHARMACY TO CHARGE A REASONABLE DISPENSING FEE,
13 TO BE PAID BY THE PROVIDING HEALTH BENEFIT PLAN OF THE CONSUMER,
14 FOR DISPENSING OR DELIVERING A PRESCRIPTION DRUG FOR WHICH THE
15 BOARD HAS ESTABLISHED AN UPPER PAYMENT LIMIT.

16 (5) AN UPPER PAYMENT LIMIT APPLIES TO ALL PURCHASES OF AND
17 PAYER REIMBURSEMENTS FOR A PRESCRIPTION DRUG THAT IS DISPENSED
18 OR ADMINISTERED TO INDIVIDUALS IN THE STATE IN PERSON, BY MAIL, OR
19 BY OTHER MEANS AND FOR WHICH AN UPPER PAYMENT LIMIT IS
20 ESTABLISHED. THE BOARD SHALL PROMULGATE RULES THAT ESTABLISH
21 THE EFFECTIVE DATE OF ANY UPPER PAYMENT LIMIT ESTABLISHED BY THE
22 BOARD, WHICH EFFECTIVE DATE IS AT LEAST SIX MONTHS AFTER THE
23 ADOPTION OF THE UPPER PAYMENT LIMIT BY THE BOARD AND APPLIES
24 ONLY TO PURCHASES, CONTRACTS, AND PLANS THAT ARE ISSUED ON OR
25 RENEWED AFTER THE EFFECTIVE DATE.

26 (6) THE BOARD SHALL PROMULGATE RULES TO NOTIFY CONSUMERS
27 OF ANY DECISION TO ESTABLISH AN UPPER PAYMENT LIMIT PURSUANT TO

1 THIS SECTION.

2 (7) ANY INFORMATION SUBMITTED TO THE BOARD IN ACCORDANCE
3 WITH THIS SECTION OR SECTION 10-16-1305 OR 10-16-1306 IS SUBJECT TO
4 PUBLIC INSPECTION ONLY TO THE EXTENT ALLOWED UNDER THE
5 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24,
6 AND IN NO CASE SHALL TRADE-SECRET, CONFIDENTIAL, OR PROPRIETARY
7 INFORMATION BE DISCLOSED TO ANY PERSON WHO IS NOT AUTHORIZED TO
8 ACCESS SUCH INFORMATION PURSUANT TO SECTION 10-16-1306.

9 (8) NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE
10 CONTRARY, WITH RESPECT TO AN ENTITY PROVIDING OR ADMINISTERING
11 A SELF-FUNDED HEALTH BENEFIT PLAN AND ITS PLAN MEMBERS, THE
12 REQUIREMENTS OF THIS PART 13 APPLY ONLY IF THE PLAN ELECTS TO BE
13 SUBJECT TO THIS PART 13 FOR ITS MEMBERS IN COLORADO. SUCH A PLAN
14 IS AN OPTIONAL PARTICIPATING PLAN FOR THE PURPOSES OF THIS PART 13.

15 (9) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY
16 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT
17 AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN
18 BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND
19 TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

20 **10-16-1308. Colorado prescription drug affordability review**
21 **board - appeals - rules - judicial review.** (1) A PERSON AGGRIEVED BY
22 A DECISION OF THE BOARD MAY APPEAL THE DECISION WITHIN SIXTY DAYS
23 AFTER THE DECISION IS MADE. THE BOARD SHALL CONSIDER THE APPEAL
24 AND ISSUE A FINAL DECISION CONCERNING THE APPEAL WITHIN SIXTY
25 DAYS AFTER THE BOARD RECEIVES THE APPEAL.

26 (2) NOT LATER THAN MARCH 31, 2022, THE BOARD SHALL
27 PROMULGATE RULES ESTABLISHING A PROCESS AND TIMELINE FOR THE

1 CONSIDERATION BY THE BOARD OF ANY APPEAL THAT IS SUBMITTED TO
2 THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE PROCESS
3 AND TIMELINE MUST COMPORT WITH THE "STATE ADMINISTRATIVE
4 PROCEDURE ACT", ARTICLE 4 OF TITLE 24.

5 (3) IN THE ABSENCE OF AN APPEAL, A DECISION OF THE BOARD
6 BECOMES FINAL AND RIPE FOR JUDICIAL REVIEW AFTER SIXTY DAYS. ANY
7 PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD MAY PETITION
8 FOR JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106.

9 (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
10 CONTRARY:

11 (a) AN INDIVIDUAL MAY REQUEST AN EXPEDITED REVIEW, AS
12 DESCRIBED IN SECTION 10-16-113.5, OF ACCESS TO A PRESCRIPTION DRUG
13 THAT IS UNAVAILABLE TO THE INDIVIDUAL BECAUSE A MANUFACTURER
14 REFUSES TO MAKE THE DRUG AVAILABLE AS A RESULT OF AN UPPER
15 PAYMENT LIMIT ESTABLISHED FOR THE PRESCRIPTION DRUG BY THE
16 BOARD; AND

17 (b) A CARRIER MAY DISREGARD THE UPPER PAYMENT LIMIT IF THE
18 INDEPENDENT EXTERNAL REVIEW ENTITY THAT PERFORMS THE EXPEDITED
19 REVIEW DETERMINES PURSUANT TO SUCH REVIEW THAT THE PRESCRIPTION
20 DRUG SHOULD BE COVERED FOR AND AVAILABLE TO THAT INDIVIDUAL.

21 **10-16-1309. Colorado prescription drug affordability advisory**
22 **council - created - membership - powers and duties.** (1) (a) THE
23 COLORADO PRESCRIPTION DRUG AFFORDABILITY ADVISORY COUNCIL IS
24 CREATED IN THE DIVISION ___ TO PROVIDE STAKEHOLDER INPUT TO THE
25 BOARD REGARDING THE AFFORDABILITY OF PRESCRIPTION DRUGS. THE
26 ADVISORY COUNCIL INCLUDES FIFTEEN MEMBERS AS FOLLOWS:

27 (I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH

1 CARE POLICY AND FINANCING OR THE EXECUTIVE DIRECTOR'S DESIGNEE;
2 AND
3 (II) FOURTEEN MEMBERS APPOINTED BY THE BOARD AS FOLLOWS:
4 (A) TWO MEMBERS WHO ARE HEALTH-CARE CONSUMERS OR WHO
5 REPRESENT HEALTH-CARE CONSUMERS;
6 (B) ONE MEMBER REPRESENTING A STATEWIDE HEALTH-CARE
7 CONSUMER ADVOCACY ORGANIZATION;
8 (C) ONE MEMBER REPRESENTING HEALTH-CARE CONSUMERS WHO
9 ARE LIVING WITH CHRONIC DISEASES;
10 (D) ONE MEMBER REPRESENTING A LABOR UNION;
11 (E) ONE MEMBER REPRESENTING EMPLOYERS;
12 (F) ONE MEMBER REPRESENTING CARRIERS;
13 (G) ONE MEMBER REPRESENTING PHARMACY BENEFIT
14 MANAGEMENT FIRMS;
15 (H) ONE MEMBER REPRESENTING HEALTH-CARE PROFESSIONALS
16 WITH PRESCRIBING AUTHORITY;
17 (I) ONE MEMBER WHO IS EMPLOYED BY AN ORGANIZATION THAT
18 PERFORMS RESEARCH CONCERNING PRESCRIPTION DRUGS, INCLUDING
19 RESEARCH CONCERNING PRICING INFORMATION;
20 (J) ONE MEMBER REPRESENTING MANUFACTURERS OF
21 BRAND-NAME DRUGS;
22 (K) ONE MEMBER REPRESENTING MANUFACTURERS OF GENERIC
23 DRUGS;
24 (L) ONE MEMBER REPRESENTING PHARMACISTS; AND
25 (M) ONE MEMBER REPRESENTING WHOLESALERS.
26 (b) TO THE EXTENT POSSIBLE, THE BOARD SHALL APPOINT COUNCIL
27 MEMBERS WHO HAVE EXPERIENCE SERVING UNDERSERVED COMMUNITIES

1 AND REFLECT THE DIVERSITY OF THE STATE WITH REGARD TO RACE,
2 ETHNICITY, IMMIGRATION STATUS, INCOME, WEALTH, DISABILITY, AGE,
3 GENDER IDENTITY, AND GEOGRAPHY. IN CONSIDERING GEOGRAPHIC
4 DIVERSITY, THE BOARD SHALL ENSURE AT LEAST ONE COUNCIL MEMBER
5 RESIDES ON THE EASTERN PLAINS AND ONE MEMBER RESIDES ON THE
6 WESTERN SLOPE, AND THE BOARD SHALL ATTEMPT TO APPOINT MEMBERS
7 FROM EACH CONGRESSIONAL DISTRICT IN THE STATE.

8 (c) ALL OF THE INITIAL MEMBERS OF THE ADVISORY COUNCIL MUST
9 BE APPOINTED BY JANUARY 1, 2022.

10 (2) EACH MEMBER OF THE ADVISORY COUNCIL MUST POSSESS
11 KNOWLEDGE OF AT LEAST ONE OF THE FOLLOWING SUBJECT MATTERS:

- 12 (a) THE PHARMACEUTICAL BUSINESS MODEL;
- 13 (b) SUPPLY CHAIN BUSINESS MODELS;
- 14 (c) THE PRACTICE OF MEDICINE OR CLINICAL TRAINING;
- 15 (d) HEALTH-CARE CONSUMER OR PATIENT PERSPECTIVES;
- 16 (e) HEALTH-CARE COST TRENDS AND DRIVERS;
- 17 (f) CLINICAL AND HEALTH SERVICES RESEARCH; OR
- 18 (g) THE STATE'S HEALTH-CARE MARKETPLACE.

19 (3) THE TERM OF EACH MEMBER OF THE ADVISORY COUNCIL IS
20 THREE YEARS; EXCEPT THAT THE MEMBERS INITIALLY APPOINTED TO THE
21 ADVISORY COUNCIL PURSUANT TO SUBSECTIONS (1)(a)(II)(A) TO
22 (1)(a)(II)(E) OF THIS SECTION SHALL EACH SERVE INITIAL TERMS OF TWO
23 YEARS.

24 (4) THE CHAIR OF THE BOARD SHALL DESIGNATE ONE MEMBER OF
25 THE ADVISORY COUNCIL TO SERVE AS CHAIR OF THE ADVISORY COUNCIL.

26 (5) (a) AN INDIVIDUAL WHO IS BEING CONSIDERED FOR
27 APPOINTMENT TO THE ADVISORY COUNCIL SHALL DISCLOSE ANY CONFLICT

1 OF INTEREST TO THE BOARD IN A FORM AND MANNER PRESCRIBED BY THE
2 BOARD. WHEN APPOINTING A MEMBER OF THE ADVISORY COUNCIL, THE
3 BOARD SHALL CONSIDER ANY CONFLICT OF INTEREST DISCLOSED BY THE
4 PROSPECTIVE MEMBER.

5 (b) THE CHAIR OF THE ADVISORY COUNCIL SHALL REPORT TO THE
6 BOARD ANY CONFLICT OF INTEREST THAT IS DISCLOSED TO THE ADVISORY
7 COUNCIL. THE BOARD SHALL INCLUDE INFORMATION CONCERNING SUCH
8 DISCLOSURES ON ITS PUBLIC WEBSITE PURSUANT TO SECTION 10-16-1302
9 (3)(d).

10 (6) THE ADVISORY COUNCIL SHALL MEET AT LEAST ONCE EVERY
11 THREE MONTHS; EXCEPT THAT THE CHAIR MAY CANCEL OR POSTPONE A
12 MEETING.

13 (7) (a) EXCEPT AS DESCRIBED IN SUBSECTION (7)(b) OF THIS
14 SECTION, THE ADVISORY COUNCIL SHALL CONDUCT ALL OF ITS MEETINGS
15 IN PUBLIC.

16 (b) NOTWITHSTANDING SECTION 24-6-402, THE ADVISORY
17 COUNCIL MAY MEET PRIVATELY IN GROUPS OF THREE OR FEWER MEMBERS
18 FOR THE FOLLOWING PURPOSES, SO LONG AS NO FORMAL ACTION IS TAKEN
19 AT THE MEETING:

- 20 (I) TO GATHER AND UNDERSTAND DATA; OR
- 21 (II) TO ESTABLISH, ORGANIZE, AND PLAN FOR THE BUSINESS OF THE
- 22 ADVISORY COUNCIL.

23 **10-16-1310. Use of savings - report - rules.** (1) ANY SAVINGS
24 GENERATED FOR A HEALTH BENEFIT PLAN THAT ARE ATTRIBUTABLE TO
25 THE ESTABLISHMENT OF AN UPPER PAYMENT LIMIT ESTABLISHED BY THE
26 BOARD PURSUANT TO SECTION 10-16-1307 MUST BE USED BY THE CARRIER
27 THAT ISSUES THE HEALTH BENEFIT PLAN TO REDUCE COSTS TO

1 CONSUMERS, PRIORITIZING THE REDUCTION OF OUT-OF-POCKET COSTS FOR
2 PRESCRIPTION DRUGS.

3 (2) ON OR BEFORE MARCH 15, 2023, AND ON OR BEFORE MARCH
4 15 EACH YEAR THEREAFTER, EACH STATE ENTITY AND EACH CARRIER THAT
5 ISSUES A HEALTH BENEFIT PLAN OR OPTIONAL PARTICIPATING PLAN SHALL
6 SUBMIT TO THE BOARD A REPORT DESCRIBING THE SAVINGS ACHIEVED
7 DURING THE PRECEDING PLAN YEAR FOR EACH PRESCRIPTION DRUG FOR
8 WHICH THE BOARD ESTABLISHED AN UPPER PAYMENT LIMIT DURING THE
9 PRECEDING YEAR AND HOW THOSE SAVINGS WERE USED TO SATISFY THE
10 REQUIREMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

11 (3) ON OR BEFORE NOVEMBER 1, 2022, THE BOARD SHALL
12 PROMULGATE RULES ESTABLISHING A FORMULA FOR CALCULATING
13 SAVINGS FOR THE PURPOSE OF COMPLYING WITH SUBSECTION (1) OF THIS
14 SECTION.

15 **10-16-1311. Unlawful acts - enforcement - penalties.** (1) ON
16 AND AFTER JANUARY 1, 2022, IT IS UNLAWFUL FOR ANY PERSON TO
17 PURCHASE OR REIMBURSE A PAYER FOR A PRESCRIPTION DRUG FOR WHICH
18 THE BOARD HAS ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO
19 SECTION 10-16-1307 AT AN AMOUNT THAT EXCEEDS THE UPPER PAYMENT
20 LIMIT ESTABLISHED BY THE BOARD FOR THAT PRESCRIPTION DRUG,
21 REGARDLESS OF WHETHER THE PRESCRIPTION DRUG IS DISPENSED OR
22 DISTRIBUTED IN PERSON, BY MAIL, OR BY OTHER MEANS.

23 (2) ON AND AFTER JANUARY 1, 2023, EACH STATE ENTITY,
24 CARRIER, AND OPTIONAL PARTICIPATING PLAN SHALL REQUIRE
25 COMPLIANCE WITH AN UPPER PAYMENT LIMIT ESTABLISHED BY THE
26 BOARD.

27 ==

1 (3) THE ATTORNEY GENERAL IS AUTHORIZED TO ENFORCE THIS
2 PART 13 ON BEHALF OF ANY STATE ENTITY OR ANY CONSUMER OF
3 PRESCRIPTION DRUGS.

4 (4) NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE
5 CONTRARY, AS USED IN THIS SECTION, "PERSON" DOES NOT INCLUDE AN
6 INDIVIDUAL WHO ACQUIRES A PRESCRIPTION DRUG FOR THE INDIVIDUAL'S
7 OWN USE OR FOR A FAMILY MEMBER'S USE.

8 (5) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
9 CONTRARY, A CARRIER OR STATE AGENCY THAT IS REQUIRED PURSUANT
10 TO STATE OR FEDERAL LAW TO PURCHASE OR REIMBURSE A PAYER FOR A
11 PRESCRIPTION DRUG FOR WHICH THE BOARD HAS ESTABLISHED AN UPPER
12 PAYMENT LIMIT PURSUANT TO SECTION 10-16-1307 IS NOT SUBJECT TO AN
13 ENFORCEMENT ACTION FOR A VIOLATION OF SUBSECTION (1) OR (2) OF THIS
14 SECTION FOR THAT PARTICULAR PRESCRIPTION DRUG.

15 **10-16-1312. Notice of withdrawal of prescription drugs with**
16 **upper payment limits required - rules - penalty.** (1) ANY
17 MANUFACTURER THAT INTENDS TO WITHDRAW FROM SALE OR
18 DISTRIBUTION WITHIN THE STATE A PRESCRIPTION DRUG FOR WHICH THE
19 BOARD HAS ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO
20 SECTION 10-16-1307 SHALL PROVIDE A NOTICE OF WITHDRAWAL IN
21 WRITING AT LEAST ONE HUNDREDEIGHTY DAYS BEFORE THE WITHDRAWAL
22 TO:

- 23 (a) THE COMMISSIONER;
- 24 (b) THE ATTORNEY GENERAL; AND
- 25 (c) EACH ENTITY IN THE STATE WITH WHICH THE MANUFACTURER
- 26 HAS CONTRACTED FOR THE SALE OR DISTRIBUTION OF THE PRESCRIPTION
- 27 DRUG.

1 (2) THE BOARD SHALL PROMULGATE RULES TO NOTIFY CONSUMERS
2 OF THE INTENT OF ANY MANUFACTURER TO WITHDRAW A PRESCRIPTION
3 DRUG FROM SALE OR DISTRIBUTION WITHIN THE STATE, AS DESCRIBED IN
4 SUBSECTION (1) OF THIS SECTION.

5 (3) AFTER PROVIDING NOTICE AND A HEARING AS DESCRIBED IN
6 SECTION 24-4-105, THE COMMISSIONER MAY REQUIRE A MANUFACTURER
7 TO PAY A PENALTY NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS IF
8 THE COMMISSIONER DETERMINES THAT THE MANUFACTURER FAILED TO
9 PROVIDE THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION
10 BEFORE WITHDRAWING FROM SALE OR DISTRIBUTION WITHIN THE STATE A
11 PRESCRIPTION DRUG FOR WHICH THE BOARD HAS ESTABLISHED AN UPPER
12 PAYMENT LIMIT PURSUANT TO SECTION 10-16-1307.

13 **10-16-1313. Optional participating plans - notice of election to**
14 **participate required.** AN OPTIONAL PARTICIPATING PLAN THAT ELECTS
15 TO SUBJECT ITS PURCHASES OF OR PAYER REIMBURSEMENTS FOR
16 PRESCRIPTION DRUGS IN COLORADO TO THE REQUIREMENTS OF THIS PART
17 13 SHALL NOTIFY THE COMMISSIONER IN WRITING WITHIN THIRTY DAYS
18 AFTER SUCH ELECTION.

19 **10-16-1314. Reports.** (1) NOTWITHSTANDING SECTION 24-1-136
20 (11)(a), ON OR BEFORE JULY 1, 2023, AND ON OR BEFORE JULY 1 EACH
21 YEAR THEREAFTER, THE BOARD SHALL SUBMIT A REPORT TO THE
22 GOVERNOR, THE HEALTH AND INSURANCE COMMITTEE OF THE HOUSE OF
23 REPRESENTATIVES, AND THE HEALTH AND HUMAN SERVICES COMMITTEE
24 OF THE SENATE, OR TO ANY SUCCESSOR COMMITTEES, SUMMARIZING THE
25 ACTIVITIES OF THE BOARD DURING THE PRECEDING CALENDAR YEAR. AT
26 A MINIMUM, THE REPORT MUST INCLUDE:

27 (a) PUBLICLY AVAILABLE DATA CONCERNING PRICE TRENDS FOR

1 PRESCRIPTION DRUGS;

2 (b) THE NUMBER OF PRESCRIPTION DRUGS THAT WERE SUBJECTED
3 TO AN AFFORDABILITY REVIEW BY THE BOARD PURSUANT TO SECTION
4 10-16-1306, INCLUDING THE RESULTS OF EACH AFFORDABILITY REVIEW
5 AND THE NUMBER AND DISPOSITION OF ANY APPEALS OR JUDICIAL REVIEWS
6 OF THE BOARD'S DECISIONS;

7 (c) A LIST OF EACH PRESCRIPTION DRUG FOR WHICH THE BOARD
8 ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO SECTION
9 10-16-1307, INCLUDING THE AMOUNT OF THE UPPER PAYMENT LIMIT;

10 (d) THE IMPACT OF ANY UPPER PAYMENT LIMITS ESTABLISHED BY
11 THE BOARD PURSUANT TO SECTION 10-16-1307 ON HEALTH-CARE
12 PROVIDERS, PHARMACIES, AND PATIENTS' ABILITY TO ACCESS ANY
13 PRESCRIPTION DRUGS FOR WHICH THE BOARD HAS ESTABLISHED UPPER
14 PAYMENT LIMITS;

15 (e) A SUMMARY OF ANY APPEALS OF BOARD DECISIONS THAT WERE
16 CONSIDERED BY THE BOARD PURSUANT TO SECTION 10-16-1308,
17 INCLUDING AN INDICATION OF THE OUTCOME OF ANY SUCH APPEAL;

18 (f) A DESCRIPTION OF EACH CONFLICT OF INTEREST THAT WAS
19 DISCLOSED TO THE BOARD DURING THE PRECEDING YEAR;

20 (g) A DESCRIPTION OF ANY VIOLATIONS OF ANY OF THE PROVISIONS
21 OF THIS PART 13, INCLUDING AN INDICATION OF ANY ENFORCEMENT
22 ACTION TAKEN IN RESPONSE TO ANY SUCH VIOLATION; AND

23 (h) ANY RECOMMENDATIONS THE BOARD MAY HAVE FOR THE
24 GENERAL ASSEMBLY CONCERNING LEGISLATIVE AND REGULATORY POLICY
25 CHANGES TO INCREASE THE AFFORDABILITY OF PRESCRIPTION DRUGS AND
26 REDUCE THE EFFECTS OF EXCESS COSTS ON CONSUMERS AND COMMERCIAL
27 HEALTH INSURANCE PREMIUMS IN THE STATE.

1 (2) THE BOARD SHALL POST THE REPORT DESCRIBED IN
2 SUBSECTION (1) OF THIS SECTION ON THE PUBLIC WEB PAGE MAINTAINED
3 BY THE DIVISION FOR THE BOARD PURSUANT TO SECTION 10-16-1302
4 (3)(d).

5 (3) (a) THE CHAIR OF THE BOARD SHALL PRESENT TO THE JOINT
6 HEALTH AND INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES
7 AND HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY
8 SUCCESSOR COMMITTEES, WHICH PRESENTATION OCCURS PURSUANT TO
9 THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
10 TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF
11 TITLE 2, INFORMATION CONCERNING ANY PRESCRIPTION DRUG FOR WHICH
12 THE BOARD ESTABLISHED AN UPPER PAYMENT LIMIT DURING THE
13 PRECEDING CALENDAR YEAR. THE CHAIR SHALL SUMMARIZE FOR THE
14 COMMITTEE MEMBERS:

15 (I) THE AFFORDABILITY REVIEW OF THE PRESCRIPTION DRUG,
16 INCLUDING THE RESULTS OF THE BOARD'S CONSIDERATIONS AS DESCRIBED
17 IN SECTION 10-16-1306 (4) AND, IF APPLICABLE, SECTION 10-16-1306 (6);
18 AND

19 (II) THE ESTABLISHMENT OF THE UPPER PAYMENT LIMIT,
20 INCLUDING A SUMMARY OF THE METHODOLOGY USED TO ESTABLISH THE
21 UPPER PAYMENT LIMIT.

22 (b) BASED ON THE INFORMATION PRESENTED IN SUBSECTION (3)(a)
23 OF THIS SECTION, MEMBERS OF THE JOINT HEALTH AND INSURANCE
24 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND HEALTH AND
25 HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR
26 COMMITTEES, MAY PURSUE LEGISLATION, IF THE MAJORITY OF COMMITTEE
27 MEMBERS VOTE TO PURSUE SUCH LEGISLATION, TO DISCONTINUE THE

1 UPPER PAYMENT LIMIT FOR ANY PRESCRIPTION DRUG FOR WHICH THE
2 BOARD ESTABLISHED AN UPPER PAYMENT LIMIT. ANY SUCH LEGISLATION
3 SHALL NOT COUNT AGAINST ANY LIMITATION UPON THE NUMBER OF BILLS
4 THAT A MEMBER OF THE GENERAL ASSEMBLY MAY INTRODUCE EACH
5 REGULAR LEGISLATIVE SESSION, WHICH LIMITATION MAY EXIST PURSUANT
6 TO RULES ADOPTED BY THE GENERAL ASSEMBLY.

7 **10-16-1315. Exemption - prescription drugs derived from**
8 **cannabis.** NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE
9 CONTRARY, THE BOARD HAS NO AUTHORITY TO PERFORM AN
10 AFFORDABILITY REVIEW OF, OR TO ESTABLISH AN UPPER PAYMENT LIMIT
11 FOR, ANY PRESCRIPTION DRUG THAT IS DERIVED IN WHOLE OR IN PART
12 FROM CANNABIS.

13 **10-16-1316. Repeal of part.** THIS PART 13 IS REPEALED,
14 EFFECTIVE SEPTEMBER 1, 2026. BEFORE THE REPEAL, THE FUNCTIONS OF
15 THE BOARD ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION
16 24-34-104.

17 **SECTION 3.** In Colorado Revised Statutes, 24-1-122, **add** (6) as
18 follows:

19 **24-1-122. Department of regulatory agencies - creation.**

20 (6) (a) THE COLORADO PRESCRIPTION DRUG AFFORDABILITY REVIEW
21 BOARD CREATED IN SECTION 10-16-1302 IS TRANSFERRED BY A **TYPE 1**
22 TRANSFER TO THE DEPARTMENT OF REGULATORY AGENCIES AND
23 ALLOCATED TO THE DIVISION OF INSURANCE.

24 (b) THE COLORADO PRESCRIPTION DRUG AFFORDABILITY
25 ADVISORY COUNCIL CREATED IN SECTION 10-16-1309 IS TRANSFERRED BY
26 A **TYPE 2** TRANSFER TO THE DEPARTMENT OF REGULATORY AGENCIES AND
27 ALLOCATED TO THE DIVISION OF INSURANCE.

1 SECTION 4. In Colorado Revised Statutes, 24-34-104, add
2 (27)(a)(XIII) as follows:

3 24-34-104. General assembly review of regulatory agencies
4 and functions for repeal, continuation, or reestablishment - legislative
5 declaration - repeal. (27) (a) The following agencies, functions, or both,
6 are scheduled for repeal on September 1, 2026:

7 (XVIII) THE COLORADO PRESCRIPTION DRUG AFFORDABILITY
8 REVIEW BOARD CREATED IN SECTION 10-16-1302.

9 SECTION 5. Appropriation. (1) For the 2021-22 state fiscal
10 year, \$680,711 is appropriated to the department of regulatory agencies.
11 This appropriation is from the division of insurance cash fund created in
12 section 10-1-103 (3), C.R.S. To implement this act, the department may
13 use this appropriation as follows:

14 (a) \$275,297 for use by the division of insurance for personal
15 services, which amount is based on an assumption that the division will
16 require an additional 3.0 FTE;

17 (b) \$22,650 for use by the division of insurance for operating
18 expenses; and

19 (c) \$382,824 for the purchase of legal services.

20 (2) For the 2021-22 state fiscal year, \$382,824 is appropriated to
21 the department of law. This appropriation is from reappropriated funds
22 received from the department of regulatory agencies under subsection
23 (1)(c) of this section and is based on an assumption that the department
24 of law will require an additional 2.0 FTE. To implement this act, the
25 department of law may use this appropriation to provide legal services for
26 the department of regulatory agencies.

27 SECTION 6. Severability. If any provision of this act or the

1 application thereof to any person or circumstance is held invalid, such
2 invalidity does not affect other provisions or applications of this act that
3 can be given effect without the invalid provision or application, and to
4 this end the provisions of this act are severable.

5 **SECTION 7. 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.