First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REREVISED

This Version Includes All Amendments Adopted in the Second House

LLS NO. 23-0773.02 Kristen Forrestal x4217

HOUSE BILL 23-1201

HOUSE SPONSORSHIP

Daugherty and Soper, Bacon, Bird, Boesenecker, Brown, Duran, Garcia, Jodeh, Lieder, Lindsay, McCluskie, McCormick, Sharbini, Sirota, Snyder, Titone, Valdez, Velasco, Woodrow

SENATE SPONSORSHIP

Mullica and Smallwood, Bridges, Ginal, Hinrichsen, Priola

House Committees
Health & Insurance
Appropriations

Senate Committees
Health & Human Services
Appropriations

SENATE
3rd Reading Unamended
May 2, 2023

SENATE
2nd Reading Unamended
May 1, 2023

HOUSE
3rd Reading Unamended
April 15, 2023

HOUSE
Amended 2nd Reading
April 14, 2023

A BILL FOR AN ACT

101 CONCERNING PRESCRIPTION DRUG BENEFITS CONTRACT TERM
102 REQUIREMENTS, AND, IN CONNECTION THEREWITH, MAKING AN
103 APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

For group benefit plan contracts between a pharmacy benefit manager (PBM) or a health insurance carrier (carrier) and an employer, certificate holder, or policyholder, the bill requires that the amount charged by the PBM or carrier to the employer, certificate holder, or policyholder for a prescription drug be equal to or less than the amount

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.

paid by the PBM or carrier to the contracted pharmacy for the drug.

The bill creates transparency requirements for PBMs and carriers regarding prescription drug benefits and grants audit authority to the department of health care policy and financing for self-funded plans and to the commissioner of insurance for fully insured plans, on request of the office of the attorney general, to ensure compliance with the requirements.

A violation of the requirements of the bill is a deceptive trade practice under the "Colorado Consumer Protection Act", with regard to self-funded plans, and a deceptive trade practice in the business of insurance, with regard to fully insured plans.

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

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3 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-158 as

4 follows:

5 **10-16-158. Contracts - health benefit plans - pharmacy benefit**

6 **managers - policyholders - transparency requirements - rules -**

7 **definitions.** (1) FOR A CONTRACT BETWEEN A CARRIER OR PHARMACY

8 BENEFIT MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT

9 IS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2025, THE AMOUNT

10 CHARGED BY THE CARRIER OR PBM TO THE CERTIFICATE HOLDER OR

11 POLICYHOLDER FOR A PRESCRIPTION DRUG DISPENSED TO A COVERED

12 PERSON MUST BE EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE

13 CARRIER OR PBM TO A CONTRACTED PHARMACY FOR SUCH PRESCRIPTION

14 DRUG DISPENSED TO SUCH COVERED PERSON RESIDING IN COLORADO.

15 (2) (a) FOR GROUP HEALTH BENEFIT PLANS IN EFFECT DURING

16 CALENDAR YEAR 2025, AND EACH CALENDAR YEAR THEREAFTER, A

17 CARRIER OR PHARMACY BENEFIT MANAGER SHALL DISCLOSE TO EACH

18 POLICYHOLDER OR THE POLICYHOLDER'S SPECIFICALLY DESIGNATED

19 BROKER OR CONSULTANT THE PRESCRIPTION DRUG CONTRACT TERMS

1 REQUIRED BY THIS SUBSECTION (2). FOR GROUP HEALTH BENEFIT PLANS IN
2 EFFECT DURING CALENDAR YEAR 2023 OR 2024, OR BOTH, THE
3 DISCLOSURE MUST ALSO INCLUDE ANY CHANGES IN TERMS BETWEEN EACH
4 CALENDAR YEAR.
5 (b) THE DISCLOSURES REQUIRED PURSUANT TO THIS SUBSECTION
6 (2) MUST INCLUDE:
7 (I) THE INGREDIENT COST AVERAGE REIMBURSEMENT RATE FOR:
8 (A) GENERIC DRUGS DISPENSED AT RETAIL PHARMACIES;
9 (B) BRAND-NAME DRUGS DISPENSED AT RETAIL PHARMACIES;
10 (C) SPECIALTY DRUGS DISPENSED AT RETAIL PHARMACIES;
11 (D) GENERIC DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;
12 (E) BRAND-NAME DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;
13 (F) SPECIALTY DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;
14 AND
15 (G) SPECIALTY DRUGS DISPENSED AT ANY SPECIALTY PHARMACY,
16 INCLUDING A PHARMACY THAT IS FULLY OR PARTIALLY OWNED BY A
17 CONTRACTING PBM, CARRIER, OR THE PBM'S OR CARRIER'S HOLDING
18 COMPANIES OR AFFILIATES;
19 (II) THE AVERAGE DISPENSING FEE PAID TO EACH TYPE OF
20 PHARMACY, INCLUDING EACH RETAIL, MAIL-ORDER, AND SPECIALTY
21 PHARMACY;
22 (III) THE CHARGE PER PRIOR AUTHORIZATION;
23 (IV) UTILIZATION MANAGEMENT PROGRAMS AND ASSOCIATED
24 FEES;
25 (V) ANY OTHER CONTRACTED SERVICES AND ASSOCIATED FEES;
26 (VI) THE AVERAGE REBATE ACROSS ALL PAID PRESCRIPTIONS FOR
27 THE RESPECTIVE GROUP HEALTH BENEFIT PLAN AND THE AVERAGE REBATE

1 ACROSS ALL PAID PRESCRIPTIONS THAT PAY A REBATE FOR THE
2 RESPECTIVE GROUP HEALTH BENEFIT PLAN; AND
3 (VII) THE REBATE GUARANTEE, WHERE APPLICABLE.
4 (c) FOR CONTRACTS BETWEEN A CARRIER OR PHARMACY BENEFIT
5 MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT ARE
6 RENEWED IN CALENDAR YEAR 2025, AND EACH CALENDAR YEAR
7 THEREAFTER, THE CARRIER OR PBM SHALL CALCULATE AND
8 COMMUNICATE TO THE CERTIFICATE HOLDER OR POLICYHOLDER THE
9 VALUE OF THE DIFFERENCE BETWEEN THE CONTRACT TERMS IN THE
10 RENEWED CONTRACTS AND THE CONTRACTS THAT WERE IN EFFECT THE
11 PREVIOUS CALENDAR YEAR, ANNUALIZING THE PREVIOUS YEAR'S ACTUAL
12 DATA FOR EACH RESPECTIVE CERTIFICATE HOLDER OR POLICYHOLDER. THE
13 VALUE COMMUNICATED SHALL INCLUDE ANNUAL AGGREGATE SAVINGS,
14 ANNUAL AGGREGATE SAVINGS PER EMPLOYEE PER YEAR, AND ANNUAL
15 AGGREGATE SAVINGS PER COVERED PERSON PER YEAR.
16 (d) A CARRIER OR PHARMACY BENEFIT MANAGER SHALL PROVIDE
17 TO EACH CERTIFICATE HOLDER OR POLICYHOLDER, FOR VOLUNTARY
18 CONSIDERATION, OPTIONS TO REPURPOSE AGGREGATE SAVINGS IN THE
19 FORM OF REDUCTIONS TO OUT-OF-POCKET COSTS SUCH AS DEDUCTIBLES,
20 COPAYMENT AMOUNTS, COINSURANCE, OR PREMIUM CONTRIBUTIONS. THE
21 CARRIER OR PBM SHALL PROVIDE THE INFORMATION TO CERTIFICATE
22 HOLDERS OR POLICYHOLDERS NO LESS THAN NINETY DAYS BEFORE THE
23 DATE OF THE CONTRACT RENEWAL.
24 (e) A CARRIER OR PBM SHALL PROVIDE THE INFORMATION
25 SPECIFIED IN SUBSECTIONS (2)(b), (2)(c), AND (2)(d) OF THIS SECTION TO
26 ALL CERTIFICATE HOLDERS AND POLICYHOLDERS FOR CONTRACTS IN
27 EFFECT DURING CALENDAR YEAR 2025, INCLUDING CERTIFICATE HOLDERS

1 AND POLICYHOLDERS THAT MAY NOT RECEIVE A RENEWAL NOTICE DUE TO
2 A MULTIYEAR CONTRACTUAL AGREEMENT OR FOR ANY OTHER REASON,
3 EXCEPT NOTICE OF TERMINATION.
4 (f) THE DISCLOSURES REQUIRED IN SUBSECTIONS (2)(b)(VI) AND
5 (2)(b)(VII) OF THIS SECTION MUST NOT DISCLOSE ANY PROPRIETARY
6 REBATE INFORMATION BETWEEN A DRUG MANUFACTURER AND THE
7 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE. THE
8 DISCLOSURE OF DATA REQUIRED BY THESE SUBSECTIONS MUST REPRESENT
9 THE AGGREGATE VALUE OF REBATES PASSING THROUGH FROM THE
10 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE TO THE HEALTH
11 BENEFIT PLAN AS DEFINED BY RULE OF THE COMMISSIONER.
12 (g) A CARRIER MAY EXEMPT A SEGMENT OF ITS BUSINESS FROM
13 THIS SUBSECTION (2). THE CARRIER'S EXEMPTED BUSINESS SEGMENT MUST
14 PROVIDE THE MAJORITY OF COVERED MEDICAL PROFESSIONAL SERVICES
15 THROUGH A SINGLE, CONTRACTED MEDICAL GROUP AND OPERATE ITS OWN
16 PHARMACIES THROUGH WHICH AT LEAST EIGHTY-FIVE PERCENT OF ITS
17 AGGREGATE PRESCRIPTION DRUG CLAIMS ARE FILLED. ON AND AFTER THE
18 EFFECTIVE DATE OF THIS SECTION, A CARRIER THAT MEETS THE EXEMPTION
19 CRITERIA IN THIS SUBSECTION (2)(g) SHALL SUBMIT AN ATTESTATION TO
20 THE DIVISION OF SUCH COMPLIANCE WITH EACH RATE FILING REQUIRED
21 PURSUANT TO SECTION 10-16-107. THE CARRIER OR PBM SHALL DISCLOSE
22 ALL DATA REQUIREMENTS AS OUTLINED IN THIS SUBSECTION (2) TO THE
23 CARRIER'S GROUP POLICYHOLDERS THAT ARE PRIMARILY ACCESSING
24 PRESCRIPTION DRUG BENEFITS THROUGH A THIRD-PARTY PBM
25 CONTRACTED WITH THE CARRIER.
26 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT
27 THIS SECTION.

1 (4) (a) THE COMMISSIONER MAY CONDUCT AN AUDIT OR MARKET
2 CONDUCT EXAMINATION OF A CARRIER OR PHARMACY BENEFIT MANAGER
3 TO ENSURE COMPLIANCE WITH THIS SECTION. THE COMMISSIONER,
4 PURSUANT TO ANY RULES PROMULGATED BY THE DIVISION, MAY AUDIT
5 A CARRIER OR PBM ANNUALLY TO DETERMINE IF THERE IS A VIOLATION
6 OF THIS SECTION.
7 (b) THE COMMISSIONER MAY DETERMINE A CARRIER'S OR PBM'S
8 COMPLIANCE WITH THIS SECTION BASED ON A SAMPLING OF DATA OR
9 BASED ON A FULL CLAIMS AUDIT. THE SAMPLING OF DATA AND ANY
10 EXTRAPOLATION FROM THE DATA USED TO DETERMINE PENALTIES MUST
11 BE REASONABLY VALID FROM A STATISTICAL STANDPOINT AND IN
12 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS. A
13 CARRIER OR PBM THAT DOES NOT COMPLY WITH A DIVISION REQUEST FOR
14 THE DATA REQUIRED TO COMPLETE AN AUDIT VIOLATES THIS SECTION AND
15 MAY BE SUBJECT TO PENALTIES.
16 (c) INFORMATION OBTAINED THROUGH AN AUDIT CONDUCTED
17 PURSUANT TO THIS SUBSECTION (4) IS PROPRIETARY AND CONFIDENTIAL
18 INFORMATION, AVAILABLE ONLY TO THE COMMISSIONER AND THE
19 COMMISSIONER'S AUDITING DESIGNEE AND IS NOT SUBJECT TO DISCLOSURE
20 UNLESS SPECIFICALLY REQUIRED BY STATE OR FEDERAL LAW.
21 (5) THE FAILURE OF A CARRIER OR PBM TO COMPLY WITH THIS
22 SECTION IS AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR A
23 DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT
24 TO SECTION 10-3-1104 (1).
25 (6) (a) THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (4) OF
26 THIS SECTION APPLY TO AN EMPLOYER-SPONSORED HEALTH BENEFIT PLAN,
27 AN ASSOCIATED PHARMACY BENEFIT MANAGER, AND THE HEALTH BENEFIT

1 PLAN MEMBERS ONLY IF A PERSON, TAFT-HARTLEY TRUST, MUNICIPALITY,
2 STATE, LABOR UNION, PLAN SPONSOR, OR EMPLOYER THAT PROVIDES THE
3 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN ELECTS TO BE SUBJECT TO
4 SUBSECTIONS (1), (2), AND (4) OF THIS SECTION FOR ITS MEMBERS THAT
5 RESIDE IN COLORADO.
6 (b) AS USED IN THIS SUBSECTION (6), "PHARMACY BENEFIT
7 MANAGER" MEANS AN ENTITY DOING BUSINESS IN THIS STATE THAT
8 ADMINISTERS OR MANAGES PRESCRIPTION DRUG BENEFITS, INCLUDING
9 CLAIMS PROCESSING SERVICES AND OTHER PRESCRIPTION DRUG OR DEVICE
10 SERVICES AS DEFINED IN SECTION 10-16-122.1, THAT IS IN A CONTRACTUAL
11 RELATIONSHIP DIRECTLY OR INDIRECTLY THROUGH AN AFFILIATE WITH AN
12 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN, WHICH INCLUDES PLANS
13 THAT ARE SELF-INSURED OR REGULATED BY THE FEDERAL "EMPLOYEE
14 RETIREMENT INCOME SECURITY ACT OF 1974", 29 U.S.C. SEC. 1001 ET
15 SEQ., AS AMENDED, OFFERED BY:
16 (I) A PERSON;
17 (II) A TAFT-HARTLEY TRUST;
18 (III) A MUNICIPALITY;
19 (IV) THE STATE;
20 (V) A LABOR UNION;
21 (VI) A PLAN SPONSOR;
22 (VII) AN EMPLOYER; OR
23 (VIII) A COALITION OF EMPLOYERS OR AGGREGATION OF
24 EMPLOYERS WORKING TOGETHER TO NEGOTIATE IMPROVED CONTRACT
25 TERMS WITH A PHARMACY BENEFIT MANAGER.
26 (7) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
27 REQUIRES:

1 (a) "CONTRACTED PHARMACY" MEANS A PHARMACY THAT HAS
2 CONTRACTED WITH A CARRIER, A PHARMACY BENEFIT MANAGER, OR AN
3 AFFILIATE OF THE CARRIER OR PBM.
4 (b) "INGREDIENT COST" MEANS THE ACTUAL AMOUNT PAID TO A
5 PHARMACY BY A PHARMACY BENEFIT MANAGER FOR A PRESCRIPTION
6 DRUG, NOT INCLUDING A DISPENSING FEE OR PATIENT COST-SHARING
7 AMOUNT.
8 (c) "PHARMACY" MEANS AN ENTITY WHERE MEDICINAL DRUGS ARE
9 DISPENSED AND SOLD, INCLUDING A RETAIL PHARMACY, MAIL-ORDER
10 PHARMACY, SPECIALTY PHARMACY, HOSPITAL OUTPATIENT SETTING, OR
11 OTHER RELATED PHARMACY.
12 **SECTION 2.** In Colorado Revised Statutes, **add** 25.5-1-133 as
13 follows:
14 **25.5-1-133. Prescription benefits - department and pharmacy**
15 **manager - contracts - audit - rules.** (1) FOR CONTRACTS BETWEEN A
16 PHARMACY BENEFIT MANAGER AND THE STATE DEPARTMENT OR ONE OF
17 ITS AFFILIATED MANAGED CARE ORGANIZATIONS OFFERING A
18 PRESCRIPTION BENEFIT PLAN THAT IS ISSUED OR RENEWED ON OR AFTER
19 JANUARY 1, 2025, THE AMOUNT CHARGED BY THE PHARMACY BENEFIT
20 MANAGER TO THE STATE DEPARTMENT OR MANAGED CARE ORGANIZATION
21 FOR A PRESCRIPTION DRUG DISPENSED TO AN ENROLLEE IN THE PROGRAM
22 OF MEDICAL ASSISTANCE CREATED PURSUANT TO SECTION 25.5-4-104
23 MUST BE EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE PHARMACY
24 BENEFIT MANAGER TO A MEDICAID PHARMACY FOR THE PRESCRIPTION
25 DRUG DISPENSED TO THE ENROLLEE.
26 (2) THE STATE BOARD SHALL PROMULGATE RULES TO IMPLEMENT
27 THIS SECTION, INCLUDING RULES GUIDING AN AUDIT OF MANAGED CARE OR

1 FEE-FOR-SERVICE CLAIMS, TO ENSURE THAT THERE IS NO VIOLATION OF
2 SUBSECTION (1) OF THIS SECTION.
3 **SECTION 3. Appropriation.** For the 2023-24 state fiscal year,
4 $10,000 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 for personal services.
8 **SECTION 4. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly; except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within such period, then the act, item, section, or part will not take
14 effect unless approved by the people at the general election to be held in
15 November 2024 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.