

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0773.02 Kristen Forrestal x4217

HOUSE BILL 23-1201

HOUSE SPONSORSHIP

Daugherty and Soper,

SENATE SPONSORSHIP

(None),

House Committees

Health & Insurance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PRESCRIPTION DRUG BENEFITS CONTRACT TERM**

102 **REQUIREMENTS.**

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

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.

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.

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

2

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**
20 **REQUIRED BY THIS SUBSECTION (2).** FOR GROUP HEALTH BENEFIT PLANS IN

1 EFFECT DURING CALENDAR YEAR 2023 OR 2024, OR BOTH, THE
2 DISCLOSURE MUST ALSO INCLUDE ANY CHANGES IN TERMS BETWEEN EACH
3 CALENDAR YEAR.

4 (b) THE DISCLOSURES REQUIRED PURSUANT TO THIS SUBSECTION
5 (2) MUST INCLUDE:

6 (I) THE INGREDIENT COST AVERAGE REIMBURSEMENT RATE FOR:
7 (A) GENERIC DRUGS DISPENSED AT RETAIL PHARMACIES;
8 (B) BRAND-NAME DRUGS DISPENSED AT RETAIL PHARMACIES;
9 (C) SPECIALTY DRUGS DISPENSED AT RETAIL PHARMACIES;
10 (D) GENERIC DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;
11 (E) BRAND-NAME DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;
12 (F) SPECIALTY DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

13 AND

14 (G) SPECIALTY DRUGS DISPENSED AT ANY SPECIALTY PHARMACY,
15 INCLUDING A PHARMACY THAT IS FULLY OR PARTIALLY OWNED BY A
16 CONTRACTING PBM, CARRIER, OR THE PBM'S OR CARRIER'S HOLDING
17 COMPANIES OR AFFILIATES;

18 (II) THE AVERAGE DISPENSING FEE PAID TO EACH TYPE OF
19 PHARMACY, INCLUDING EACH RETAIL, MAIL-ORDER, AND SPECIALTY
20 PHARMACY;

21 (III) THE CHARGE PER PRIOR AUTHORIZATION;

22 (IV) UTILIZATION MANAGEMENT PROGRAMS AND ASSOCIATED
23 FEES;

24 (V) ANY OTHER CONTRACTED SERVICES AND ASSOCIATED FEES;

25 (VI) THE AVERAGE REBATE ACROSS ALL PAID PRESCRIPTIONS FOR
26 THE RESPECTIVE GROUP HEALTH BENEFIT PLAN AND THE AVERAGE REBATE
27 ACROSS ALL PAID PRESCRIPTIONS THAT PAY A REBATE FOR THE

1 RESPECTIVE GROUP HEALTH BENEFIT PLAN; AND

2 (VII) THE REBATE GUARANTEE, WHERE APPLICABLE.

3 (c) FOR CONTRACTS BETWEEN A CARRIER OR PHARMACY BENEFIT
4 MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT ARE
5 RENEWED IN CALENDAR YEAR 2025, AND EACH CALENDAR YEAR
6 THEREAFTER, THE CARRIER OR PBM SHALL CALCULATE AND
7 COMMUNICATE TO THE CERTIFICATE HOLDER OR POLICYHOLDER THE
8 VALUE OF THE DIFFERENCE BETWEEN THE CONTRACT TERMS IN THE █
9 RENEWED CONTRACTS AND THE CONTRACTS THAT WERE IN EFFECT THE
10 PREVIOUS CALENDAR YEAR, ANNUALIZING THE PREVIOUS YEAR'S ACTUAL
11 DATA FOR EACH RESPECTIVE CERTIFICATE HOLDER OR POLICYHOLDER. THE
12 VALUE COMMUNICATED SHALL INCLUDE ANNUAL AGGREGATE SAVINGS,
13 ANNUAL AGGREGATE SAVINGS PER EMPLOYEE PER YEAR, AND ANNUAL
14 AGGREGATE SAVINGS PER COVERED PERSON PER YEAR.

15 (d) A CARRIER OR PHARMACY BENEFIT MANAGER SHALL PROVIDE
16 TO EACH CERTIFICATE HOLDER OR POLICYHOLDER, FOR VOLUNTARY
17 CONSIDERATION, OPTIONS TO REPURPOSE AGGREGATE SAVINGS IN THE
18 FORM OF REDUCTIONS TO OUT-OF-POCKET COSTS SUCH AS DEDUCTIBLES,
19 COPAYMENT AMOUNTS, COINSURANCE, OR PREMIUM CONTRIBUTIONS. THE
20 CARRIER OR PBM SHALL PROVIDE THE INFORMATION TO CERTIFICATE
21 HOLDERS OR POLICYHOLDERS NO LESS THAN NINETY DAYS BEFORE THE
22 DATE OF THE █ CONTRACT RENEWAL.

23 (e) A CARRIER OR PBM SHALL PROVIDE THE INFORMATION
24 SPECIFIED IN SUBSECTIONS (2)(b), (2)(c), AND (2)(d) OF THIS SECTION TO
25 ALL CERTIFICATE HOLDERS AND POLICYHOLDERS FOR CONTRACTS IN
26 EFFECT DURING CALENDAR YEAR 2025, INCLUDING CERTIFICATE HOLDERS
27 AND POLICYHOLDERS THAT MAY NOT RECEIVE A RENEWAL NOTICE DUE TO

1 A MULTIYEAR CONTRACTUAL AGREEMENT OR FOR ANY OTHER REASON,
2 EXCEPT NOTICE OF TERMINATION.

3 (f) THE DISCLOSURES REQUIRED IN SUBSECTIONS (2)(b)(VI) AND
4 (2)(b)(VII) OF THIS SECTION MUST NOT DISCLOSE ANY PROPRIETARY
5 REBATE INFORMATION BETWEEN A DRUG MANUFACTURER AND THE
6 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE. THE
7 DISCLOSURE OF DATA REQUIRED BY THESE SUBSECTIONS MUST REPRESENT
8 THE AGGREGATE VALUE OF REBATES PASSING THROUGH FROM THE
9 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE TO THE HEALTH
10 BENEFIT PLAN AS DEFINED BY RULE OF THE COMMISSIONER.

11 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT
12 THIS SECTION.

13 (4) (a) THE COMMISSIONER MAY CONDUCT AN AUDIT OR MARKET
14 CONDUCT EXAMINATION OF A CARRIER OR PHARMACY BENEFIT MANAGER
15 TO ENSURE COMPLIANCE WITH THIS SECTION. THE COMMISSIONER,
16 PURSUANT TO ANY RULES PROMULGATED BY THE DIVISION, MAY AUDIT
17 A CARRIER OR PBM ANNUALLY TO DETERMINE IF THERE IS A VIOLATION
18 OF THIS SECTION.

19 (b) THE COMMISSIONER MAY DETERMINE A CARRIER'S OR PBM'S
20 COMPLIANCE WITH THIS SECTION BASED ON A SAMPLING OF DATA OR
21 BASED ON A FULL CLAIMS AUDIT. THE SAMPLING OF DATA AND ANY
22 EXTRAPOLATION FROM THE DATA USED TO DETERMINE PENALTIES MUST
23 BE REASONABLY VALID FROM A STATISTICAL STANDPOINT AND IN
24 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS. A
25 CARRIER OR PBM THAT DOES NOT COMPLY WITH A DIVISION REQUEST FOR
26 THE DATA REQUIRED TO COMPLETE AN AUDIT VIOLATES THIS SECTION AND
27 MAY BE SUBJECT TO PENALTIES.

1 (c) INFORMATION OBTAINED THROUGH AN AUDIT CONDUCTED
2 PURSUANT TO THIS SUBSECTION (4) IS PROPRIETARY AND CONFIDENTIAL
3 INFORMATION, AVAILABLE ONLY TO THE COMMISSIONER AND THE
4 COMMISSIONER'S AUDITING DESIGNEE AND IS NOT SUBJECT TO DISCLOSURE
5 UNLESS SPECIFICALLY REQUIRED BY STATE OR FEDERAL LAW.

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

10 (6) (a) THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (4) OF
11 THIS SECTION APPLY TO AN EMPLOYER-SPONSORED HEALTH BENEFIT PLAN,
12 AN ASSOCIATED PHARMACY BENEFIT MANAGER, AND THE HEALTH BENEFIT
13 PLAN MEMBERS ONLY IF A PERSON, TAFT-HARTLEY TRUST, MUNICIPALITY,
14 STATE, LABOR UNION, PLAN SPONSOR, OR EMPLOYER THAT PROVIDES THE
15 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN ELECTS TO BE SUBJECT TO
16 SUBSECTIONS (1), (2), AND (4) OF THIS SECTION FOR ITS MEMBERS THAT
17 RESIDE IN COLORADO.

18 (b) AS USED IN THIS SUBSECTION (6), "PHARMACY BENEFIT
19 MANAGER" MEANS AN ENTITY DOING BUSINESS IN THIS STATE THAT
20 ADMINISTERS OR MANAGES PRESCRIPTION DRUG BENEFITS, INCLUDING
21 CLAIMS PROCESSING SERVICES AND OTHER PRESCRIPTION DRUG OR DEVICE
22 SERVICES AS DEFINED IN SECTION 10-16-122.1, THAT IS IN A CONTRACTUAL
23 RELATIONSHIP DIRECTLY OR INDIRECTLY THROUGH AN AFFILIATE WITH AN
24 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN, WHICH INCLUDES PLANS
25 THAT ARE SELF-INSURED OR REGULATED BY THE FEDERAL "EMPLOYEE
26 RETIREMENT INCOME SECURITY ACT OF 1974", 29 U.S.C. SEC. 1001 ET
27 SEQ., AS AMENDED, OFFERED BY:

- 1 (I) A PERSON;
- 2 (II) A TAFT-HARTLEY TRUST;
- 3 (III) A MUNICIPALITY;
- 4 (IV) THE STATE;
- 5 (V) A LABOR UNION;
- 6 (VI) A PLAN SPONSOR;
- 7 (VII) AN EMPLOYER; OR
- 8 (VIII) A COALITION OF EMPLOYERS OR AGGREGATION OF
- 9 EMPLOYERS WORKING TOGETHER TO NEGOTIATE IMPROVED CONTRACT
- 10 TERMS WITH A PHARMACY BENEFIT MANAGER.

11 (7) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
12 REQUIRES:

20 (c) "PHARMACY" MEANS AN ENTITY WHERE MEDICINAL DRUGS ARE
21 DISPENSED AND SOLD, INCLUDING A RETAIL PHARMACY, MAIL-ORDER
22 PHARMACY, SPECIALTY PHARMACY, HOSPITAL OUTPATIENT SETTING, OR
23 OTHER RELATED PHARMACY.

24 **SECTION 2.** In Colorado Revised Statutes, **add** 25.5-1-133 as
25 follows:

26 **25.5-1-133. Prescription benefits - department and pharmacy**
27 **manager - contracts - audit - rules. (1) FOR CONTRACTS BETWEEN A**

1 PHARMACY BENEFIT MANAGER AND THE STATE DEPARTMENT OR ONE OF
2 ITS AFFILIATED MANAGED CARE ORGANIZATIONS OFFERING A
3 PRESCRIPTION BENEFIT PLAN THAT IS ISSUED OR RENEWED ON OR AFTER
4 JANUARY 1, 2025, THE AMOUNT CHARGED BY THE PHARMACY BENEFIT
5 MANAGER TO THE STATE DEPARTMENT OR MANAGED CARE ORGANIZATION
6 FOR A PRESCRIPTION DRUG DISPENSED TO AN ENROLLEE IN THE PROGRAM
7 OF MEDICAL ASSISTANCE CREATED PURSUANT TO SECTION 25.5-4-104
8 MUST BE EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE PHARMACY
9 BENEFIT MANAGER TO A MEDICAID PHARMACY FOR THE PRESCRIPTION
10 DRUG DISPENSED TO THE ENROLLEE.

11 (2) THE STATE BOARD SHALL PROMULGATE RULES TO IMPLEMENT
12 THIS SECTION, INCLUDING RULES GUIDING AN AUDIT OF MANAGED CARE OR
13 FEE-FOR-SERVICE CLAIMS, TO ENSURE THAT THERE IS NO VIOLATION OF
14 SUBSECTION (1) OF THIS SECTION.

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