CHAPTER 303

INSURANCE

HOUSE BILL 25-1094

BY REPRESENTATIVE(S) Brown and Johnson, Bacon, Bird, Boesenecker, Duran, English, Joseph, Lieder, Lindsay, McCormick, Paschal, Sirota, Smith, Stewart K., Valdez, Woodrow, Zokaie, McCluskie, Velasco;
also SENATOR(S) Pelton B. and Roberts, Amabile, Bridges, Exum, Hinrichsen, Jodeh, Kipp, Wallace, Weissman.

AN ACT

CONCERNING PHARMACY BENEFIT MANAGER PRACTICES THAT AFFECT PRESCRIPTION DRUG COSTS.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-122.8 as follows:

10-16-122.8. Pharmacy benefit manager practices - agreements - fees - documentation - rules. (1) A PHARMACY BENEFIT MANAGER MAY EARN INCOME DERIVED FROM THE ASSESSMENT OF A SINGLE, FLAT-DOLLAR SERVICE FEE FOR THE PROVISION OF A PRESCRIPTION DRUG, WHICH SERVICE FEE IS TRANSPARENTLY EXPRESSED IN A WRITTEN AGREEMENT BETWEEN THE PBM AND HEALTH BENEFIT PLAN. THE SINGLE, FLAT-DOLLAR SERVICE FEE MAY VARY FROM CLIENT TO CLIENT OF THE PBM BASED ON THE NUMBER OF HEALTH BENEFIT PLAN PARTICIPANTS, CLINICAL AND ADMINISTRATIVE SERVICES PROVIDED, VALUE-BASED PAYMENT ARRANGEMENT, AND OTHER CONSIDERATIONS.

(2) (a) THROUGHOUT THE COURSE OF PROVIDING PRESCRIPTION DRUG BENEFITS AND CLAIMS PROCESSING SERVICES FOR HEALTH BENEFIT PLANS, A PBM SHALL NOT:

(I) EARN ANY INCOME THAT IS DIRECTLY OR INDIRECTLY BASED ON THE PRICE OR COST OF A PRESCRIPTION DRUG, INCLUDING INCOME FROM PRESCRIPTION DRUG MARK-UPS, COPAYMENTS THAT EXCEED THE COST OF PRESCRIPTION DRUGS, UP-CHARGING OR SPREAD-PRICING, OR MANUFACTURER-DERIVED REVENUES; OR

(II) DESIGN A PRESCRIPTION DRUG FORMULARY TO FAVOR A CERTAIN BRANDED PHARMACEUTICAL OR BIOLOGIC OVER A THERAPEUTICALLY EQUIVALENT GENERIC OR BIOSIMILAR, UNLESS THE BRANDED PHARMACEUTICAL OR BIOLOGIC HAS A LOWER

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

NET ACQUISITION COST AND THAT LOWER COST IS REFLECTED IN A LOWER OUT-OF-POCKET EXPENSE FOR CONSUMERS.

(b) A PBM MUST BE REIMBURSED BY A HEALTH BENEFIT PLAN FOR LOWERING AGGREGATED PRESCRIPTION DRUG SPENDING FOR THE PLAN OVER A GIVEN PERIOD OF TIME. A PBM MUST ALSO BE REIMBURSED FOR THE DIRECT SERVICES THE PBM PROVIDES TO THE HEALTH BENEFIT PLAN.

(c) A PBM MAY INCLUDE IN ITS CONTRACTS OR OTHER AGREEMENTS WITH PRESCRIPTION DRUG MANUFACTURERS PROVISIONS THAT LIMIT THE INCREASE OF THE WHOLESALE ACQUISITION COST OF PRESCRIPTION DRUGS THAT THEY INCLUDE IN THEIR FORMULARIES AND BENEFIT DESIGNS.

(d) THIS SUBSECTION (2) DOES NOT PREVENT A PBM FROM NEGOTIATING A PRESCRIPTION DRUG REBATE OR OTHER DISCOUNT AS A PERCENTAGE OF THE PRESCRIPTION DRUG'S LIST PRICE.

(3) THROUGHOUT THE COURSE OF PROVIDING PRESCRIPTION DRUG BENEFITS AND CLAIMS PROCESSING SERVICES FOR HEALTH BENEFIT PLANS, A PBM SHALL REIMBURSE AN UNAFFILIATED PHARMACY OR A PBM-AFFILIATED RETAIL, MAIL ORDER, OR SPECIALTY PHARMACY FOR THE FULFILLMENT OF A PRESCRIPTION DRUG IN AN AMOUNT EQUAL TO THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE DISPENSED PRESCRIPTION DRUG INGREDIENTS AND A REASONABLE AND ADEQUATE DISPENSING FEE. IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS NOT AVAILABLE AT THE TIME A PRESCRIPTION DRUG IS ADMINISTERED OR DISPENSED, A PBM SHALL NOT REIMBURSE IN AN AMOUNT THAT IS LESS THAN THE WHOLESALE ACQUISITION COST OF THE PRESCRIPTION DRUG.

(4) (a) A CONTRACT BETWEEN A PBM AND A COVERED PERSON'S HEALTH BENEFIT PLAN MUST INCLUDE A PROVISION THAT REQUIRES THE PBM TO DISCLOSE PRESCRIPTION DRUG COST INFORMATION TO THE HEALTH BENEFIT PLAN, INCLUDING CLAIMS-LEVEL PHARMACY DATA AND PBM INCOME DERIVED FROM PROHIBITED SOURCES THAT THE PBM MUST PASS THROUGH TO THE HEALTH BENEFIT PLAN. THE INFORMATION MUST BE PROVIDED WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTIFICATION TO THE PBM BY THE HEALTH BENEFIT PLAN OR AT REGULAR NEGOTIATED REPORTING INTERVALS NECESSARY FOR THE HEALTH BENEFIT PLAN TO DETERMINE THE PBM'S COMPLIANCE WITH THE CONTRACT TERMS AND THIS SECTION. THE PBM SHALL ASSESS NO ADDITIONAL FEES WITH REGARD TO PROVISION OF THIS INFORMATION.

(b) THE CONTRACT BETWEEN THE PBM AND A COVERED PERSON'S HEALTH BENEFIT PLAN MUST INCLUDE A PROVISION AUTHORIZING THE COVERED PERSON'S HEALTH BENEFIT PLAN TO ANNUALLY EXECUTE AN AUDIT FOR THE PURPOSE OF VALIDATING COMPLIANCE WITH CONTRACT TERMS AND THIS SECTION.

(5) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO ENFORCE THIS SECTION.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2027; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an

item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect January 1, 2027, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: May 30, 2025