

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

**INTRODUCED**

LLS NO. 21-0462.02 Christy Chase x2008

**HOUSE BILL 21-1297**

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**HOUSE SPONSORSHIP**

**Hooton,**

**SENATE SPONSORSHIP**

**Sonnenberg and Buckner,**

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**House Committees**  
Health & Insurance

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING REQUIREMENTS REGARDING THE ADMINISTRATION OF**  
102 **PRESCRIPTION DRUG BENEFITS UNDER HEALTH BENEFIT PLANS.**

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**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>.)*

The bill precludes a health insurer, a pharmacy benefit manager (PBM), or an entity acting for a health insurer or PBM to conduct on-site audits of pharmacies within 12 months after a prior on-site audit except in specified circumstances.

Additionally, the bill enacts the "Pharmacy Fairness Act" (act), which imposes requirements regarding contracts between PBMs and

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.

pharmacies as follows:

- Requires a health insurer to submit to the commissioner of insurance (commissioner) a list of PBMs the health insurer uses to manage or administer prescription drug benefits under its health benefit plans offered in this state;
- Prohibits PBMs from:
  - Restricting a covered person's access to prescription drug benefits at an in-network retail pharmacy, except as permitted in limited circumstances;
  - Charging a pharmacy or pharmacist a fee for adjudicating a claim, other than a one-time fee of not more than the lesser of 25% of the pharmacy dispensing fee or 25 cents for receipt and processing of the same pharmacy claim;
  - Requiring stricter pharmacy accreditation standards or certification requirements than the standards or requirements that are applicable to similarly situated PBM-affiliated pharmacies within the same PBM network; or
  - Refusing to designate a pharmacy located in a county with a population of 20,000 or fewer as a preferred pharmacy under the health benefit plan.

A PBM that administers the drug assistance program operated by the department of public health and environment is exempt from the requirements and prohibitions of the act with regard to the PBM's administration of that program only.

The bill also:

- Requires a health insurer or PBM to respond in real time to a request from an insured, the insured's health care provider, or a third party acting on behalf of the insured or provider for data regarding the cost, benefits, and coverage under the insured's health benefit plan for a particular drug; and
- Requires a health insurer or PBM that removes a prescription drug from the prescription drug formulary or moves a prescription drug to a higher cost tier on the formulary during the benefit year to notify a covered person that is prescribed that drug at least 30 days before the action and allow the covered person to continue using the drug without prior authorization and at the same coverage level for the remainder of the benefit year, except in specified circumstances.

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

3           (a) Pharmacies are vital community resources, with local  
4 pharmacies often serving as the only source of health information and  
5 care for many patients;

6           (b) Pharmacies and pharmacists are particularly important in rural  
7 communities, where residents may lack access to other regular health  
8 care;

9           (c) Moreover, many pharmacists are authorized to dispense and  
10 administer routine vaccinations and will play a critical role in distributing  
11 the COVID-19 vaccine;

12           (d) Pharmacy benefit managers (PBMs) function as  
13 claims-processing intermediaries between health insurers or plans and  
14 pharmacies, and as administrators of the financial and logistical aspects  
15 of claims processing, PBMs can serve a valuable purpose;

16           (e) By establishing infrastructure and centralizing processing,  
17 PBMs can streamline services, realize efficiencies, and potentially reduce  
18 system costs across the board, and by amassing large patient networks,  
19 PBMs can gain leverage to negotiate discounts for the ultimate benefit of  
20 the patient;

21           (f) When patients are left without a trusted pharmacy, they are  
22 alone to navigate a confusing and unpredictable prescription drug benefits  
23 system that includes barriers to medication access from diagnosis to  
24 prescription pickup, such as impersonal technology and benefit  
25 complications; and

26           (g) Access to prescription drugs needs to be fair, predictable, easy,  
27 and empowered by technologies that break down barriers to medication

1 access and improve the lives of patients.

2 (2) The general assembly declares that the intent of this act is to:

3 (a) Ensure that all Colorado pharmacies and their patients are  
4 treated fairly and equitably;

5 (b) Preserve patient access to pharmacy services; and

6 (c) Ensure that:

7 (I) Pharmacists are fairly compensated for their services;

8 (II) Patients have access to affordable, life-saving medications;

9 and

10 (III) Transactions between PBMs, patients, and pharmacies are  
11 transparent.

12 **SECTION 2.** In Colorado Revised Statutes, 10-16-102, **amend**  
13 (49) as follows:

14 **10-16-102. Definitions.** As used in this article 16, unless the  
15 context otherwise requires:

16 (49) (a) "Pharmacy benefit management firm", "PHARMACY  
17 BENEFIT MANAGER", OR "PBM" means any entity doing business in this  
18 state that ~~contracts to administer or manage~~ ADMINISTERS OR MANAGES  
19 prescription drug benefits, INCLUDING CLAIMS PROCESSING SERVICES AND  
20 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES AS DEFINED IN SECTION  
21 10-16-122.1, on behalf of any carrier that provides prescription drug  
22 benefits to residents of this state, EITHER PURSUANT TO A CONTRACT WITH  
23 THE CARRIER OR AS AN ENTITY THAT IS RELATED TO, ASSOCIATED BY  
24 COMMON OR OTHER OWNERSHIP WITH, OR OTHERWISE ASSOCIATED WITH  
25 THE CARRIER.

26 (b) "PHARMACY BENEFIT MANAGEMENT FIRM", "PHARMACY  
27 BENEFIT MANAGER", OR "PBM" DOES NOT INCLUDE:

1 (I) A HEALTH CARE FACILITY LICENSED OR CERTIFIED BY THE  
2 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO  
3 SECTION 25-1.5-103 (1)(a);

4 (II) A PROVIDER;

5 (III) A CONSULTANT WHO ONLY PROVIDES ADVICE AS TO THE  
6 SELECTION OR PERFORMANCE OF A PHARMACY BENEFIT MANAGEMENT  
7 FIRM; OR

8 (IV) A NONPROFIT HEALTH MAINTENANCE ORGANIZATION THAT  
9 OFFERS MANAGED CARE PLANS THAT PROVIDE A MAJORITY OF COVERED  
10 PROFESSIONAL SERVICES THROUGH A SINGLE, CONTRACTED MEDICAL  
11 GROUP AND THAT OPERATES ITS OWN PHARMACIES.

12 **SECTION 3.** In Colorado Revised Statutes, **add** 10-16-122.1 as  
13 follows:

14 **10-16-122.1. Contracts between PBMs and pharmacies -**  
15 **carrier submit list of PBMs - prohibited practices - exception - short**  
16 **title - definitions.** (1) THE SHORT TITLE OF THIS SECTION IS THE  
17 "PHARMACY FAIRNESS ACT".

18 (2) (a) STARTING IN 2022, EACH CARRIER SHALL SUBMIT TO THE  
19 COMMISSIONER, CONTEMPORANEOUSLY WITH ITS RATE FILING PURSUANT  
20 TO SECTION 10-16-107 AND IN A FORM AND MANNER SPECIFIED BY THE  
21 COMMISSIONER BY RULE, A LIST OF ALL PHARMACY BENEFIT MANAGERS  
22 THE CARRIER CONTRACTS WITH OR OTHERWISE USES FOR CLAIMS  
23 PROCESSING SERVICES OR OTHER PRESCRIPTION DRUG OR DEVICE SERVICES  
24 UNDER HEALTH COVERAGE PLANS THE CARRIER OFFERS.

25 (b) THE LIST OF PBMs SUBMITTED TO THE COMMISSIONER  
26 PURSUANT TO THIS SUBSECTION (2) IS CONSIDERED PROPRIETARY AND  
27 CONFIDENTIAL INFORMATION AND IS NOT SUBJECT TO DISCLOSURE UNDER

1 THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE  
2 24.

3 (3) STARTING IN 2022, A PBM OR THE REPRESENTATIVE OF A PBM  
4 SHALL NOT:

5 (a) (I) WITH REGARD TO INDIVIDUAL AND GROUP HEALTH BENEFIT  
6 PLANS, PRECLUDE COVERED PERSONS FROM ACCESSING PRESCRIPTION  
7 DRUG BENEFITS UNDER THE HEALTH BENEFIT PLAN AT AN IN-NETWORK  
8 RETAIL PHARMACY UNLESS:

9 (A) THE FDA HAS RESTRICTED DISTRIBUTION OF THE  
10 PRESCRIPTION DRUG; OR

11 (B) THE PRESCRIPTION DRUG REQUIRES SPECIAL HANDLING,  
12 PROVIDER COORDINATION, OR PATIENT EDUCATION THAT CANNOT BE  
13 PROVIDED BY A RETAIL PHARMACY.

14 (II) A HEALTH BENEFIT PLAN MAY IMPOSE A DIFFERENT  
15 COST-SHARING AMOUNT FOR OBTAINING A COVERED PRESCRIPTION DRUG  
16 AT A RETAIL PHARMACY, BUT ALL COST SHARING MUST COUNT TOWARDS  
17 THE PLAN'S ANNUAL LIMITATION ON COST SHARING SPECIFIED IN 45 CFR  
18 156.130 AND MUST BE ACCOUNTED FOR IN THE PLAN'S ACTUARIAL VALUE  
19 CALCULATED UNDER 45 CFR 156.135.

20 (b) CHARGE A PHARMACY OR PHARMACIST A FEE RELATED TO THE  
21 ADJUDICATION OF A PHARMACIST SERVICES CLAIM, OTHER THAN A  
22 ONE-TIME, REASONABLE FEE, NOT TO EXCEED THE LESSER OF TWENTY-FIVE  
23 PERCENT OF THE PHARMACY DISPENSING FEE OR TWENTY-FIVE CENTS, FOR  
24 RECEIPT AND PROCESSING OF THE SAME PHARMACIST SERVICES CLAIM;

25 (c) REQUIRE PHARMACY ACCREDITATION STANDARDS OR  
26 CERTIFICATION REQUIREMENTS INCONSISTENT WITH, MORE STRINGENT  
27 THAN, OR IN ADDITION TO REQUIREMENTS APPLICABLE TO SIMILARLY

1 SITUATED PBM-AFFILIATED PHARMACIES WITHIN THE SAME PBM  
2 NETWORK; OR

3 (d) FAIL OR REFUSE TO DESIGNATE AS A PREFERRED PHARMACY A  
4 PHARMACY THAT IS LOCATED IN A COUNTY WITH A POPULATION OF  
5 TWENTY THOUSAND OR LESS.

6 (4) THIS SECTION DOES NOT APPLY TO THE ADMINISTRATION OR  
7 MANAGEMENT OF THE DRUG ASSISTANCE PROGRAM AUTHORIZED  
8 PURSUANT TO SECTION 25-4-1401.

9 (5) AS USED IN THIS SECTION AND SECTION 10-16-122.9, UNLESS  
10 THE CONTEXT OTHERWISE REQUIRES:

11 (a) "CLAIMS PROCESSING SERVICES" MEANS THE ADMINISTRATIVE  
12 SERVICES PERFORMED IN CONNECTION WITH PROCESSING AND  
13 ADJUDICATING CLAIMS RELATED TO PHARMACIST SERVICES, WHICH  
14 SERVICES INCLUDE:

15 (I) RECEIVING PAYMENTS FOR PHARMACIST SERVICES; OR

16 (II) MAKING PAYMENTS TO PHARMACIES OR PHARMACISTS FOR  
17 PHARMACIST SERVICES.

18 (b) "OTHER PRESCRIPTION DRUG OR DEVICE SERVICES" MEANS  
19 SERVICES, OTHER THAN CLAIMS PROCESSING SERVICES, PROVIDED  
20 DIRECTLY OR INDIRECTLY AND EITHER IN CONNECTION WITH OR SEPARATE  
21 FROM CLAIMS PROCESSING SERVICES. THE TERM INCLUDES:

22 (I) MANAGING OR PARTICIPATING IN INCENTIVE PROGRAMS OR  
23 ARRANGEMENTS FOR PHARMACIST SERVICES;

24 (II) NEGOTIATING OR ENTERING INTO CONTRACTUAL  
25 ARRANGEMENTS WITH PHARMACIES OR PHARMACISTS;

26 (III) DEVELOPING FORMULARIES;

27 (IV) DESIGNING PRESCRIPTION DRUG BENEFITS PROGRAMS; AND

1 (V) ADVERTISING OR PROMOTING SERVICES.

2 (c) "PBM-AFFILIATED PHARMACY" MEANS A PHARMACY OR  
3 PHARMACIST THAT, EITHER DIRECTLY OR INDIRECTLY THROUGH ONE OR  
4 MORE INTERMEDIARIES, OWNS OR CONTROLS OR IS OWNED OR  
5 CONTROLLED BY A PBM.

6 (d) "PBM NETWORK" MEANS A NETWORK OF PHARMACIES OR  
7 PHARMACISTS THAT ARE OFFERED AN AGREEMENT OR CONTRACT TO  
8 PROVIDE PHARMACIST SERVICES FOR A HEALTH BENEFIT PLAN.

9 (e) "PHARMACIST" HAS THE SAME MEANING AS SET FORTH IN  
10 SECTION 12-280-103 (35).

11 (f) "PHARMACIST SERVICES" MEANS PRODUCTS, GOODS, AND  
12 SERVICES PROVIDED AS A PART OF THE PRACTICE OF PHARMACY, AS  
13 DEFINED IN SECTION 12-280-103 (39).

14 (g) "PHARMACY" HAS THE SAME MEANING AS SET FORTH IN  
15 SECTION 12-280-103 (43).

16 **SECTION 4.** In Colorado Revised Statutes, 10-16-122.5, **add**  
17 (5.5) as follows:

18 **10-16-122.5. Pharmacy benefit manager - audit of pharmacies**  
19 **- time limits on on-site audits.** (5.5) EXCEPT UNDER CIRCUMSTANCES  
20 SPECIFIED IN SUBSECTION (5) OF THIS SECTION, ON OR AFTER THE  
21 EFFECTIVE DATE OF THIS SUBSECTION (5.5), A PHARMACY BENEFIT  
22 MANAGER, A CARRIER, OR AN ENTITY ACTING ON BEHALF OF A PBM OR A  
23 CARRIER SHALL NOT CONDUCT AN ON-SITE AUDIT OF A PHARMACY FOR  
24 WHICH THE PBM, CARRIER, OR ENTITY ACTING ON BEHALF OF A PBM OR  
25 A CARRIER HAS CONDUCTED AN ON-SITE AUDIT WITHIN THE IMMEDIATELY  
26 PRECEDING TWELVE MONTHS.

27 **SECTION 5.** In Colorado Revised Statutes, **add** 10-16-122.9 as



1 follows:

2 **10-16-122.9. Prescription drug benefits - real-time access to**  
3 **benefit information - limits on changes to drug formularies -**

4 **definitions.** (1) (a) UPON REQUEST OF A COVERED PERSON, THE COVERED  
5 PERSON'S PROVIDER, OR A THIRD PARTY ON BEHALF OF THE COVERED  
6 PERSON OR PROVIDER, A CARRIER OR, IF A CARRIER USES A PHARMACY  
7 BENEFIT MANAGER FOR CLAIMS PROCESSING SERVICES OR OTHER  
8 PRESCRIPTION DRUG OR DEVICE SERVICES UNDER A HEALTH BENEFIT PLAN  
9 OFFERED BY THE CARRIER, THE PBM SHALL FURNISH THE COST, BENEFIT,  
10 AND COVERAGE DATA SET FORTH IN SUBSECTION (1)(c) OF THIS SECTION  
11 TO THE COVERED PERSON, THE COVERED PERSON'S PROVIDER, OR THE  
12 THIRD PARTY ACTING ON BEHALF OF THE COVERED PERSON OR PROVIDER  
13 AND SHALL ENSURE THAT THE DATA IS:

14 (I) CURRENT AND UPDATED NO LATER THAN ONE BUSINESS DAY  
15 AFTER ANY CHANGE IS MADE;

16 (II) PROVIDED IN REAL TIME; AND

17 (III) PROVIDED IN THE SAME FORMAT THAT THE REQUEST IS MADE  
18 BY THE COVERED PERSON, PROVIDER, OR THIRD PARTY THAT MADE THE  
19 REQUEST.

20 (b) (I) A COVERED PERSON, THE COVERED PERSON'S PROVIDER, OR  
21 A THIRD PARTY ACTING ON BEHALF OF THE COVERED PERSON OR PROVIDER  
22 SHALL SUBMIT THE REQUEST FOR COST, BENEFIT, AND COVERAGE DATA  
23 AND THE CARRIER OR PBM SHALL RESPOND TO THE REQUEST USING  
24 ESTABLISHED INDUSTRY CONTENT AND TRANSPORT STANDARDS  
25 PUBLISHED BY:

26 (A) A STANDARDS-DEVELOPING ORGANIZATION ACCREDITED BY  
27 THE AMERICAN NATIONAL STANDARDS INSTITUTE OR ITS SUCCESSOR

1 ENTITY, INCLUDING THE NATIONAL COUNCIL FOR PRESCRIPTION DRUG  
2 PROGRAMS, THE ACCREDITED STANDARDS COMMITTEE, OR HEALTH  
3 LEVEL SEVEN INTERNATIONAL, OR THEIR SUCCESSOR ENTITIES; OR

4 (B) A RELEVANT FEDERAL OR STATE GOVERNING BODY, INCLUDING  
5 THE CMS OR THE OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH  
6 INFORMATION TECHNOLOGY IN THE FEDERAL DEPARTMENT OF HEALTH  
7 AND HUMAN SERVICES.

8 (II) A FACSIMILE, PROPRIETARY PAYER OR PATIENT PORTAL, OR  
9 OTHER ELECTRONIC FORM IS NOT AN ACCEPTABLE ELECTRONIC FORMAT  
10 PURSUANT TO THIS SECTION.

11 (c) (I) UPON RECEIPT OF A REQUEST FOR COST, BENEFIT, AND  
12 COVERAGE DATA PURSUANT TO THIS SUBSECTION (1), THE CARRIER OR  
13 PBM, AS APPLICABLE, SHALL PROVIDE THE FOLLOWING DATA FOR ANY  
14 DRUG COVERED UNDER THE COVERED PERSON'S HEALTH BENEFIT PLAN:

15 (A) THE COVERED PERSON'S ELIGIBILITY INFORMATION FOR THE  
16 DRUG;

17 (B) A LIST OF ANY CLINICALLY APPROPRIATE ALTERNATIVES TO  
18 THE DRUG THAT ARE COVERED UNDER THE COVERED PERSON'S HEALTH  
19 BENEFIT PLAN;

20 (C) COST-SHARING INFORMATION FOR THE DRUG AND FOR  
21 CLINICALLY APPROPRIATE ALTERNATIVES, INCLUDING A DESCRIPTION OF  
22 ANY VARIANCE IN COST-SHARING BASED ON A PHARMACY, WHETHER  
23 RETAIL OR MAIL ORDER, OR PROVIDER DISPENSING OR ADMINISTERING THE  
24 DRUG OR ALTERNATIVES; AND

25 (D) ANY APPLICABLE UTILIZATION MANAGEMENT REQUIREMENTS  
26 FOR THE DRUG OR CLINICALLY APPROPRIATE ALTERNATIVES, INCLUDING  
27 PRIOR AUTHORIZATION, STEP THERAPY, QUANTITY LIMITS, AND

1 SITE-OF-SERVICE RESTRICTIONS.

2 (II) THE CARRIER OR PBM SHALL FURNISH THE DATA SPECIFIED IN  
3 SUBSECTION (1)(c)(I) OF THIS SECTION, WHETHER THE REQUEST IS MADE  
4 USING THE DRUG'S UNIQUE BILLING CODE, SUCH AS A NATIONAL DRUG  
5 CODE OR HEALTHCARE COMMON PROCEDURE CODING SYSTEM CODE, OR  
6 A DESCRIPTIVE TERM, SUCH AS THE BRAND OR GENERIC NAME OF THE  
7 DRUG. A CARRIER OR PBM SHALL NOT DENY OR DELAY A REQUEST FOR  
8 COST, BENEFIT, AND COVERAGE DATA AS A METHOD OF BLOCKING THE  
9 DATA FROM BEING SHARED BASED ON HOW THE DRUG WAS REQUESTED.

10 (d) A CARRIER OR PBM FURNISHING THE DATA REQUESTED  
11 PURSUANT TO THIS SUBSECTION (1) SHALL NOT:

12 (I) RESTRICT, PROHIBIT, OR OTHERWISE HINDER A PROVIDER FROM  
13 COMMUNICATING OR SHARING WITH THE COVERED PERSON:

14 (A) ANY OF THE DATA SET FORTH IN SUBSECTION (1)(c)(I) OF THIS  
15 SECTION;

16 (B) ADDITIONAL INFORMATION ON ANY LOWER-COST OR  
17 CLINICALLY APPROPRIATE ALTERNATIVES, WHETHER OR NOT THE  
18 ALTERNATIVES ARE COVERED UNDER THE COVERED PERSON'S PLAN; OR

19 (C) ADDITIONAL PAYMENT OR COST-SHARING INFORMATION THAT  
20 MAY REDUCE THE COVERED PERSON'S OUT-OF-POCKET COSTS, SUCH AS  
21 CASH PRICE OR PATIENT ASSISTANCE AND SUPPORT PROGRAMS, WHETHER  
22 SPONSORED BY A MANUFACTURER, FOUNDATION, OR OTHER ENTITY;

23 (II) EXCEPT AS MAY BE REQUIRED BY LAW, INTERFERE WITH,  
24 PREVENT, OR MATERIALLY DISCOURAGE ACCESS, EXCHANGE, OR USE OF  
25 THE DATA SET FORTH IN SUBSECTION (1)(c)(I) OF THIS SECTION, WHICH  
26 MAY INCLUDE:

27 (A) CHARGING FEES;

1 (B) FAILING TO RESPOND TO A REQUEST, AT THE TIME THE  
2 REQUEST IS MADE, WHEN A RESPONSE IS REASONABLY POSSIBLE;

3 (C) IMPLEMENTING TECHNOLOGY IN NONSTANDARD WAYS OR  
4 INSTITUTING COVERED PERSON CONSENT REQUIREMENTS, PROCESSES,  
5 POLICIES, PROCEDURES, OR RENEWALS THAT ARE LIKELY TO  
6 SUBSTANTIALLY INCREASE THE COMPLEXITY OR BURDEN OF ACCESSING,  
7 EXCHANGING, OR USING THE DATA; OR

8 (III) PENALIZE A PROVIDER FOR DISCLOSING THE INFORMATION TO  
9 A COVERED PERSON OR PRESCRIBING, ADMINISTERING, OR ORDERING A  
10 CLINICALLY APPROPRIATE OR LOWER-COST ALTERNATIVE.

11 (e) A CARRIER OR PBM SHALL TREAT A PERSONAL  
12 REPRESENTATIVE OF A COVERED PERSON AS THE COVERED PERSON FOR  
13 PURPOSES OF THIS SECTION. IF, UNDER APPLICABLE LAW, A PERSON HAS  
14 AUTHORITY TO ACT ON BEHALF OF A COVERED PERSON IN MAKING  
15 DECISIONS RELATED TO HEALTH CARE, A CARRIER OR PBM, OR AFFILIATES  
16 OR ENTITIES ACTING ON BEHALF OF THE CARRIER OR PBM, MUST TREAT  
17 THE PERSON AS A PERSONAL REPRESENTATIVE OF THE COVERED PERSON  
18 FOR PURPOSES OF THIS SECTION.

19 (2) (a) STARTING IN 2022, IF A CARRIER OR, IF A CARRIER USES A  
20 PHARMACY BENEFIT MANAGER FOR CLAIMS PROCESSING SERVICES OR  
21 OTHER PRESCRIPTION DRUG OR DEVICE SERVICES UNDER A HEALTH  
22 BENEFIT PLAN OFFERED BY THE CARRIER, THE PBM, DURING THE BENEFIT  
23 YEAR, REMOVES COVERAGE OF A PRESCRIPTION DRUG ON THE  
24 PRESCRIPTION DRUG FORMULARY ESTABLISHED BY OR FILED WITH THE  
25 CARRIER FOR THAT BENEFIT YEAR OR MOVES A PRESCRIPTION DRUG TO A  
26 HIGHER COST TIER ON THE FORMULARY, THE CARRIER OR PBM SHALL:

27 (I) NOTIFY A COVERED PERSON WHO HAS BEEN PRESCRIBED THE

1        PRESCRIPTION DRUG THAT THE PRESCRIPTION DRUG IS BEING REMOVED  
2        FROM OR MOVED TO A HIGHER COST TIER ON THE FORMULARY. THE  
3        CARRIER OR PBM SHALL PROVIDE THE NOTICE TO THE COVERED PERSON:

4            (A) ELECTRONICALLY OR, IF REQUESTED BY THE COVERED PERSON,  
5        IN WRITING; AND

6            (B) AT LEAST THIRTY DAYS BEFORE REMOVING THE PRESCRIPTION  
7        DRUG FROM THE FORMULARY OR MOVING THE PRESCRIPTION DRUG TO A  
8        HIGHER COST TIER.

9            (II) ALLOW A COVERED PERSON TO WHOM THE PRESCRIPTION DRUG  
10        HAS BEEN PRESCRIBED TO CONTINUE USING THE PRESCRIPTION DRUG FOR  
11        THE REMAINDER OF THE BENEFIT YEAR WITHOUT PRIOR AUTHORIZATION  
12        AND AT THE SAME COVERAGE UNDER THE HEALTH BENEFIT PLAN AS  
13        APPLIED BEFORE THE PRESCRIPTION DRUG WAS REMOVED FROM THE  
14        FORMULARY OR MOVED TO THE HIGHER COST TIER ON THE FORMULARY.

15            (b) (I) NOTHING IN THIS SUBSECTION (2) PRECLUDES A CARRIER OR  
16        PBM, DURING THE PLAN YEAR, FROM REMOVING A PARTICULAR  
17        PRESCRIPTION DRUG FROM THE PRESCRIPTION DRUG FORMULARY:

18            (A) DUE TO SAFETY ISSUES RAISED BY THE FDA, THE  
19        MANUFACTURER OF THE PRESCRIPTION DRUG, OR THE CARRIER OR PBM;

20            (B) IF THE MANUFACTURER HAS NOTIFIED THE FDA OF A  
21        MANUFACTURING DISCONTINUANCE OR POTENTIAL DISCONTINUANCE OF  
22        THE DRUG AS REQUIRED BY SECTION 506C OF THE "FEDERAL FOOD, DRUG,  
23        AND COSMETIC ACT", 21 U.S.C. SEC. 356c; OR

24            (C) IF THE MANUFACTURER HAS REMOVED THE DRUG FROM THE  
25        MARKET.

26            (II) IF A CARRIER OR PBM REMOVES A PRESCRIPTION DRUG FROM  
27        THE PRESCRIPTION DRUG FORMULARY FOR A REASON SPECIFIED IN THIS

1 SUBSECTION (2)(b), THE CARRIER OR PBM SHALL NOTIFY A COVERED  
2 PERSON WHO HAS BEEN PRESCRIBED THAT PRESCRIPTION DRUG OF ITS  
3 REMOVAL FROM THE FORMULARY AS SOON AS PRACTICABLE AFTER THE  
4 EVENT GIVING RISE TO THE REMOVAL OCCURS.

5 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
6 REQUIRES:

7 (a) "CMS" MEANS THE FEDERAL CENTERS FOR MEDICARE AND  
8 MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND  
9 HUMAN SERVICES.

10 (b) "COST-SHARING INFORMATION" MEANS THE AMOUNT A  
11 COVERED PERSON IS REQUIRED TO PAY FOR A DRUG THAT IS COVERED  
12 UNDER THE COVERED PERSON'S HEALTH BENEFIT PLAN.

13 (c) "COVERED" OR "COVERAGE" MEANS THOSE HEALTH CARE  
14 SERVICES TO WHICH A COVERED PERSON IS ENTITLED UNDER THE TERMS  
15 OF THE COVERED PERSON'S HEALTH BENEFIT PLAN.

16 (d) "DRUG" MEANS ANY PRESCRIPTION DRUG OR MEDICATION  
17 COVERED UNDER A HEALTH BENEFIT PLAN, WHETHER ORDERED,  
18 PRESCRIBED, OR ADMINISTERED.

19 (e) "HEALTHCARE COMMON PROCEDURE CODING SYSTEM" MEANS  
20 THE SYSTEM DEVELOPED BY THE CMS FOR IDENTIFYING HEALTH CARE  
21 SERVICES IN A CONSISTENT AND STANDARDIZED MANNER.

22 (f) "NATIONAL DRUG CODE" MEANS THE UNIQUE, THREE-SEGMENT  
23 IDENTIFIER NUMBER USED BY THE FDA TO IDENTIFY DRUGS THAT ARE  
24 MANUFACTURED, PREPARED, PROPAGATED, COMPOUNDED, OR PROCESSED  
25 FOR SALE IN THE UNITED STATES.

26 (g) "THIRD PARTY" MEANS A PERSON, OTHER THAN A PBM, THAT  
27 IS NOT AN ENROLLEE IN OR A COVERED PERSON UNDER A HEALTH BENEFIT

1 PLAN.

2           **SECTION 6. Severability.** If any provision of this act or the  
3 application thereof to any person or circumstance is held invalid, such  
4 invalidity does not affect other provisions or applications of the act that  
5 can be given effect without the invalid provision or application, and to  
6 this end the provisions of this act are declared to be severable.

7           **SECTION 7. Safety clause.** The general assembly hereby finds,  
8 determines, and declares that this act is necessary for the immediate  
9 preservation of the public peace, health, or safety.