

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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

Health & Insurance
Appropriations

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.

HOUSE
2nd Reading Unamended
June 4, 2021

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 Colorado residents and entities who purchase or reimburse for
14 prescription drugs from the excessive costs of prescription drugs,
15 including but not limited to state and local governments, contractors and
16 vendors, commercial health plans, providers, and pharmacies.

17 **SECTION 2.** In Colorado Revised Statutes, **add** part 13 to article
18 16 of title 10 as follows:

19 PART 13

20 COLORADO PRESCRIPTION DRUG

21 AFFORDABILITY REVIEW BOARD

22 **10-16-1301. Definitions.** AS USED IN THIS PART 13, UNLESS THE
23 CONTEXT OTHERWISE REQUIRES:

24 (1) "ADVISORY COUNCIL" MEANS THE COLORADO PRESCRIPTION
25 DRUG AFFORDABILITY ADVISORY COUNCIL CREATED IN SECTION
26 10-16-1309.

27 (2) "AFFORDABILITY REVIEW" MEANS AN AFFORDABILITY REVIEW

1 OF A PRESCRIPTION DRUG PERFORMED BY THE BOARD PURSUANT TO
2 SECTION 10-16-1306.

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

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

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

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

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

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

18 (9) "CARRIER" HAS THE MEANING SET FORTH IN SECTION
19 10-16-102 (8).

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

1 OF A BOARD MEMBER, AN ADVISORY COUNCIL MEMBER, A STAFF MEMBER,
2 OR A CONTRACTOR OF THE DIVISION, ON BEHALF OF THE BOARD, HAS
3 RECEIVED OR COULD RECEIVE:

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

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

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

13 (12) "GENERIC DRUG" MEANS:

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

17 (b) AN AUTHORIZED GENERIC DRUG; OR

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

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

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

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

3 (I) IS ACTIVELY ENGAGED IN BUSINESS;

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

8 (III) WAS NOT FORMED PRIMARILY FOR THE PURPOSE OF
9 PURCHASING INSURANCE.

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

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

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

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

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

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

1 (17) "OPTIONAL PARTICIPATING PLAN" MEANS A SELF-FUNDED
2 HEALTH BENEFIT PLAN OFFERED IN COLORADO THAT ELECTS TO SUBJECT
3 ITS PURCHASES OF OR PAYER REIMBURSEMENTS FOR PRESCRIPTION DRUGS
4 FOR ITS MEMBERS IN COLORADO TO THE REQUIREMENTS OF THIS PART 13,
5 AS DESCRIBED IN SECTION 10-16-1307 (6).

6 (18) "PRACTITIONER" HAS THE MEANING SET FORTH IN SECTION
7 12-280-103 (40).

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

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

14 (21) "SMALL EMPLOYER" HAS THE MEANING SET FORTH IN SECTION
15 10-16-102 (61).

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

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

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

1 (25) "WHOLESALER" HAS THE MEANING SET FORTH IN SECTION
2 12-280-103 (55).

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

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

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

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

1 (d) THE GOVERNOR SHALL DESIGNATE ONE MEMBER OF THE BOARD
2 TO SERVE AS THE CHAIR. A MAJORITY OF THE BOARD CONSTITUTES A
3 QUORUM. THE CONCURRENCE OF A MAJORITY OF THE BOARD IN ANY
4 MATTER WITHIN ITS POWERS AND DUTIES IS REQUIRED FOR ANY
5 DETERMINATION MADE BY THE BOARD.

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

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

14 (I) A MANUFACTURER OR A TRADE ASSOCIATION OF
15 MANUFACTURERS;

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

17 (III) A PHARMACY BENEFIT MANAGER OR A TRADE ASSOCIATION
18 OF PHARMACY BENEFIT MANAGERS.

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

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

1 (e) BOARD MEMBERS, STAFF MEMBERS, CONTRACTORS OF THE
2 DIVISION, ON BEHALF OF THE BOARD, AND IMMEDIATE FAMILY MEMBERS
3 OF BOARD MEMBERS, STAFF MEMBERS, OR CONTRACTORS SHALL NOT
4 ACCEPT A FINANCIAL BENEFIT OR GIFTS, BEQUESTS, OR DONATIONS OF
5 SERVICES OR PROPERTY THAT SUGGEST A CONFLICT OF INTEREST OR HAVE
6 THE APPEARANCE OF CREATING BIAS IN THE WORK OF THE BOARD.

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

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

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

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

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

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

27 (2) THE BOARD MAY ESTABLISH AD HOC WORK GROUPS TO

1 CONSIDER MATTERS RELATED TO THE WORK OF THE BOARD PURSUANT TO
2 THIS PART 13. AD HOC WORK GROUPS MAY INCLUDE MEMBERS OF THE
3 PUBLIC.

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

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

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

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

1 CONFLICT OF INTEREST OR THE APPEARANCE OF ANY CONFLICT OF
2 INTEREST FOR ANY BOARD MEMBER.

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

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

15 (2) THE BOARD IS A STATE PUBLIC BODY FOR PURPOSES OF SECTION
16 24-6-402, AND THE BOARD'S MEETINGS AND THE MEETINGS OF AD HOC
17 WORK GROUPS OF THE BOARD ARE PUBLIC MEETINGS.

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

1 EXECUTIVE SESSIONS DISCLOSE OR INCLUDE MATERIALS OR INFORMATION
2 CONTAINING TRADE-SECRET, CONFIDENTIAL, OR PROPRIETARY DATA. THE
3 BOARD SHALL NOT TAKE ANY OF THE FOLLOWING ACTIONS WHILE MEETING
4 IN EXECUTIVE SESSION:

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

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

10 (c) ANY FINAL DECISION OF THE BOARD.

11 **10-16-1305. Colorado prescription drug affordability review**
12 **board - reports from carriers and pharmacy benefit management**

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

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

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

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

27 (III) THE FIFTEEN PRESCRIPTION DRUGS PAID FOR BY THE CARRIER

1 THAT ACCOUNTED FOR THE HIGHEST INCREASE IN TOTAL ANNUAL PLAN
2 SPENDING WHEN COMPARED WITH THE TOTAL ANNUAL PLAN SPENDING FOR
3 THE SAME PRESCRIPTION DRUGS IN THE YEAR IMMEDIATELY PRECEDING
4 THE YEAR FOR WHICH THE INFORMATION IS REPORTED;

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

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

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

13 (VII) THE FIFTEEN PRESCRIPTION DRUGS FOR WHICH THE CARRIER
14 RECEIVED THE LARGEST REBATES;

15 (VIII) THE TOTAL SPENDING FOR EACH OF THE FOLLOWING
16 CATEGORIES OF PRESCRIPTION DRUGS:

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

18 (B) AUTHORIZED GENERIC DRUGS PURCHASED FROM RETAIL
19 PHARMACIES;

20 (C) BRAND-NAME DRUGS PURCHASED FROM MAIL-ORDER
21 PHARMACIES;

22 (D) AUTHORIZED GENERIC DRUGS PURCHASED FROM MAIL-ORDER
23 PHARMACIES;

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

26 (F) PRESCRIPTION DRUGS ADMINISTERED IN AN INPATIENT
27 HOSPITAL SETTING; AND

1 (G) PRESCRIPTION DRUGS ADMINISTERED IN AN OUTPATIENT
2 HOSPITAL SETTING; AND

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

8 (A) INDIVIDUAL;

9 (B) SMALL EMPLOYER; AND

10 (C) LARGE EMPLOYER.

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

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

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

26 (I) POST THE INFORMATION REPORTED BY CARRIERS AND
27 PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO THIS SECTION ON

1 THE DIVISION'S WEBSITE; AND

2 (II) PROVIDE THE INFORMATION REPORTED BY CARRIERS AND
3 PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO THIS SECTION TO
4 THE BOARD, IN A FORM AND MANNER PRESCRIBED BY THE BOARD.

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

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

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

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

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

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

24 **10-16-1306. Colorado prescription drug affordability review**
25 **board - affordability reviews of prescription drugs.** (1) THE BOARD
26 MAY CONDUCT AFFORDABILITY REVIEWS OF PRESCRIPTION DRUGS IN
27 ACCORDANCE WITH THIS SECTION. THE BOARD SHALL IDENTIFY, FOR

1 PURPOSES OF DETERMINING WHETHER TO CONDUCT AN AFFORDABILITY
2 REVIEW, ANY PRESCRIPTION DRUG THAT IS:

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

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

9 (II) AN INCREASE IN THE WHOLESALE ACQUISITION COST OF TEN
10 PERCENT OR MORE DURING THE IMMEDIATELY PRECEDING TWELVE
11 MONTHS FOR A TWELVE-MONTH SUPPLY OR FOR A COURSE OF TREATMENT
12 THAT IS LESS THAN TWELVE MONTHS IN DURATION;

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

16 (c) A GENERIC DRUG:

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

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

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

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

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

1 WHOLESAL ACQUISITION COST TO THE AVERAGE WHOLESAL
2 ACQUISITION COST REPORTED DURING THE IMMEDIATELY PRECEDING
3 TWELVE MONTHS.

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

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

11 (b) EVALUATING AGGREGATED DATA;

12 (c) SEEKING AND CONSIDERING INPUT FROM THE ADVISORY
13 COUNCIL ABOUT THE PRESCRIPTION DRUG; AND

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

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

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

24 (a) THE WHOLESAL ACQUISITION COST OF THE PRESCRIPTION
25 DRUG;

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

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

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

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

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

13 (g) ORPHAN DRUG STATUS;

14 (h) INPUT FROM:

15 (I) PATIENTS AND CAREGIVERS AFFECTED BY THE CONDITION OR
16 DISEASE THAT IS TREATED BY THE PRESCRIPTION DRUG THAT IS UNDER
17 REVIEW BY THE BOARD; AND

18 (II) INDIVIDUALS WHO POSSESS SCIENTIFIC OR MEDICAL TRAINING
19 WITH RESPECT TO A CONDITION OR DISEASE TREATED BY THE
20 PRESCRIPTION DRUG THAT IS UNDER REVIEW BY THE BOARD;

21 (i) ANY OTHER INFORMATION THAT A MANUFACTURER, CARRIER,
22 PHARMACY BENEFIT MANAGEMENT FIRM, OR OTHER ENTITY CHOOSES TO
23 PROVIDE; AND

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

26 (5) TRADE-SECRET, CONFIDENTIAL, OR PROPRIETARY
27 INFORMATION OBTAINED BY THE BOARD PURSUANT TO THIS SECTION MAY

1 BE ACCESSED ONLY BY BOARD MEMBERS AND STAFF OR BY A QUALIFIED
2 INDEPENDENT THIRD PARTY THAT HAS CONTRACTED WITH THE DIVISION
3 PURSUANT TO SECTION 10-16-1303 (3) AND IS SUBJECT TO A
4 NONDISCLOSURE AGREEMENT PROHIBITING DISCLOSURE OF SUCH
5 INFORMATION. ANY PERSON WITH ACCESS TO SUCH INFORMATION SHALL
6 PROTECT THE INFORMATION FROM DIRECT OR INDIRECT PUBLICATION OR
7 RELEASE TO ANY PERSON.

8 (6) IN PERFORMING AN AFFORDABILITY REVIEW OF A PRESCRIPTION
9 DRUG, THE BOARD MAY CONSIDER ANY DOCUMENTS AND INFORMATION
10 RELATING TO THE MANUFACTURER'S SELECTION OF THE INTRODUCTORY
11 PRICE OR PRICE INCREASE OF THE PRESCRIPTION DRUG, INCLUDING
12 DOCUMENTS AND INFORMATION RELATING TO:

- 13 (a) LIFE-CYCLE MANAGEMENT;
- 14 (b) THE AVERAGE COST OF THE PRESCRIPTION DRUG IN THE STATE;
- 15 (c) MARKET COMPETITION AND CONTEXT;
- 16 (d) PROJECTED REVENUE;
- 17 (e) THE ESTIMATED COST-EFFECTIVENESS OF THE PRESCRIPTION
18 DRUG; AND
- 19 (f) OFF-LABEL USAGE OF THE PRESCRIPTION DRUG.

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

- 22 (I) ACCESSING PUBLICLY AVAILABLE PRICING INFORMATION FROM
23 A STATE TO WHICH MANUFACTURERS REPORT PRICING INFORMATION;
- 24 (II) ACCESSING AVAILABLE PRICING INFORMATION FROM THE
25 ALL-PAYER HEALTH CLAIMS DATABASE AND FROM STATE ENTITIES; AND
- 26 (III) ACCESSING INFORMATION THAT IS AVAILABLE FROM OTHER
27 COUNTRIES.

1 (b) TO THE EXTENT THAT THERE IS NO PUBLICLY AVAILABLE
2 INFORMATION WITH WHICH TO CONDUCT AN AFFORDABILITY REVIEW, THE
3 BOARD MAY REQUEST THAT A MANUFACTURER, CARRIER, OR PHARMACY
4 BENEFIT MANAGEMENT FIRM PROVIDE PRICING INFORMATION FOR ANY
5 PRESCRIPTION DRUG IDENTIFIED PURSUANT TO SUBSECTION (1) OF THIS
6 SECTION. THE FAILURE OF AN ENTITY TO PROVIDE PRICING INFORMATION
7 TO THE BOARD FOR AN AFFORDABILITY REVIEW DOES NOT AFFECT THE
8 AUTHORITY OF THE BOARD TO CONDUCT THE AFFORDABILITY REVIEW, AS
9 DESCRIBED IN THIS SECTION.

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

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

23 (2) THE BOARD SHALL DETERMINE BY RULE THE METHODOLOGY
24 FOR ESTABLISHING AN UPPER PAYMENT LIMIT FOR A PRESCRIPTION DRUG
25 TO PROTECT CONSUMERS FROM THE EXCESSIVE COST OF PRESCRIPTION
26 DRUGS AND ENSURE THEY CAN ACCESS PRESCRIPTION DRUGS NECESSARY
27 FOR THEIR HEALTH. THE METHODOLOGY MUST INCLUDE CONSIDERATION

1 OF:

2 (a) THE COST OF ADMINISTERING OR DISPENSING THE PRESCRIPTION
3 DRUG;

4 (b) THE COST OF DISTRIBUTING THE PRESCRIPTION DRUG TO
5 CONSUMERS IN THE STATE;

6 (c) THE STATUS OF THE PRESCRIPTION DRUG ON THE DRUG
7 SHORTAGE LIST PUBLISHED BY THE DRUG SHORTAGE PROGRAM WITHIN THE
8 FDA; AND

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

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

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

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

20 (b) MUST AUTHORIZE A [REDACTED] PHARMACY LICENSED BY THE STATE
21 BOARD OF PHARMACY TO CHARGE REASONABLE FEES, TO BE PAID BY THE
22 PROVIDING HEALTH BENEFIT PLAN OF THE CONSUMER, FOR DISPENSING OR
23 DELIVERING A PRESCRIPTION DRUG FOR WHICH THE BOARD HAS
24 ESTABLISHED AN UPPER PAYMENT LIMIT.

25 (5) AN UPPER PAYMENT LIMIT APPLIES TO ALL PURCHASES OF AND
26 PAYER REIMBURSEMENTS FOR A PRESCRIPTION DRUG THAT IS DISPENSED
27 OR ADMINISTERED TO INDIVIDUALS IN THE STATE IN PERSON, BY MAIL, OR

1 BY OTHER MEANS AND FOR WHICH AN UPPER PAYMENT LIMIT IS
2 ESTABLISHED. THE BOARD SHALL PROMULGATE RULES THAT ESTABLISH
3 THE EFFECTIVE DATE OF ANY UPPER PAYMENT LIMIT ESTABLISHED BY THE
4 BOARD, WHICH EFFECTIVE DATE IS AT LEAST SIX MONTHS AFTER THE
5 ADOPTION OF THE UPPER PAYMENT LIMIT BY THE BOARD AND APPLIES
6 ONLY TO PURCHASES, CONTRACTS, AND PLANS THAT ARE ISSUED ON OR
7 RENEWED AFTER THE EFFECTIVE DATE.

8 (6) THE BOARD SHALL PROMULGATE RULES TO NOTIFY CONSUMERS
9 OF ANY DECISION TO ESTABLISH AN UPPER PAYMENT LIMIT PURSUANT TO
10 THIS SECTION.

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

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

24 (9) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY
25 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT
26 AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN
27 BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND

1 TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

2 (10) FOR ANY UPPER PAYMENT LIMIT ESTABLISHED BY THE BOARD
3 PURSUANT TO THIS SECTION, THE BOARD SHALL:

4 (a) INQUIRE OF MANUFACTURERS OF THE PRESCRIPTION DRUG AS
5 TO WHETHER EACH SUCH MANUFACTURER IS ABLE TO MAKE THE
6 PRESCRIPTION DRUG AVAILABLE FOR SALE IN THE STATE AND REQUEST THE
7 RATIONALE FOR THE MANUFACTURER'S RESPONSE; AND

8 (b) SUBMIT ANNUALLY TO THE HEALTH AND HUMAN SERVICES
9 COMMITTEE OF THE SENATE AND THE HEALTH AND INSURANCE COMMITTEE
10 OF THE HOUSE OF REPRESENTATIVES, OR TO ANY SUCCESSOR COMMITTEES,
11 THE RESPONSE OF EACH MANUFACTURER TO THE INQUIRY DESCRIBED IN
12 SUBSECTION (10)(a) OF THIS SECTION.

13 **10-16-1308. Colorado prescription drug affordability review**
14 **board - appeals - rules - judicial review.** (1) A PERSON AGGRIEVED BY
15 A DECISION OF THE BOARD MAY APPEAL THE DECISION WITHIN SIXTY DAYS
16 AFTER THE DECISION IS MADE. THE BOARD SHALL CONSIDER THE APPEAL
17 AND ISSUE A FINAL DECISION CONCERNING THE APPEAL WITHIN SIXTY
18 DAYS AFTER THE BOARD RECEIVES THE APPEAL.

19 (2) NOT LATER THAN MARCH 31, 2022, THE BOARD SHALL
20 PROMULGATE RULES ESTABLISHING A PROCESS AND TIMELINE FOR THE
21 CONSIDERATION BY THE BOARD OF ANY APPEAL THAT IS SUBMITTED TO
22 THE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE PROCESS
23 AND TIMELINE MUST COMPORT WITH THE "STATE ADMINISTRATIVE
24 PROCEDURE ACT", ARTICLE 4 OF TITLE 24.

25 (3) IN THE ABSENCE OF AN APPEAL, A DECISION OF THE BOARD
26 BECOMES FINAL AND RIPE FOR JUDICIAL REVIEW AFTER SIXTY DAYS. ANY
27 PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD MAY PETITION

1 FOR JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106.

2 (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
3 CONTRARY:

4 (a) AN INDIVIDUAL MAY REQUEST AN EXPEDITED REVIEW, AS
5 DESCRIBED IN SECTION 10-16-113.5, OF ACCESS TO A PRESCRIPTION DRUG
6 THAT IS UNAVAILABLE TO THE INDIVIDUAL BECAUSE A MANUFACTURER
7 REFUSES TO MAKE THE DRUG AVAILABLE AS A RESULT OF AN UPPER
8 PAYMENT LIMIT ESTABLISHED FOR THE PRESCRIPTION DRUG BY THE
9 BOARD; AND

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

14 **10-16-1309. Colorado prescription drug affordability advisory**
15 **council - created - membership - powers and duties.** (1) (a) THE
16 COLORADO PRESCRIPTION DRUG AFFORDABILITY ADVISORY COUNCIL IS
17 CREATED IN THE DIVISION ___ TO PROVIDE STAKEHOLDER INPUT TO THE
18 BOARD REGARDING THE AFFORDABILITY OF PRESCRIPTION DRUGS. THE
19 ADVISORY COUNCIL INCLUDES FIFTEEN MEMBERS AS FOLLOWS:

20 (I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH
21 CARE POLICY AND FINANCING OR THE EXECUTIVE DIRECTOR'S DESIGNEE;
22 AND

23 (II) FOURTEEN MEMBERS APPOINTED BY THE BOARD AS FOLLOWS:

24 (A) TWO MEMBERS WHO ARE HEALTH-CARE CONSUMERS OR WHO
25 REPRESENT HEALTH-CARE CONSUMERS;

26 (B) ONE MEMBER REPRESENTING A STATEWIDE HEALTH-CARE
27 CONSUMER ADVOCACY ORGANIZATION;

1 (C) ONE MEMBER REPRESENTING HEALTH-CARE CONSUMERS WHO
2 ARE LIVING WITH CHRONIC DISEASES;

3 (D) ONE MEMBER REPRESENTING A LABOR UNION;

4 (E) ONE MEMBER REPRESENTING EMPLOYERS;

5 (F) ONE MEMBER REPRESENTING CARRIERS;

6 (G) ONE MEMBER REPRESENTING PHARMACY BENEFIT
7 MANAGEMENT FIRMS;

8 (H) ONE MEMBER REPRESENTING HEALTH-CARE PROFESSIONALS
9 WITH PRESCRIBING AUTHORITY;

10 (I) ONE MEMBER WHO IS EMPLOYED BY AN ORGANIZATION THAT
11 PERFORMS RESEARCH CONCERNING PRESCRIPTION DRUGS, INCLUDING
12 RESEARCH CONCERNING PRICING INFORMATION;

13 (J) ONE MEMBER REPRESENTING MANUFACTURERS OF
14 BRAND-NAME DRUGS;

15 (K) ONE MEMBER REPRESENTING MANUFACTURERS OF GENERIC
16 DRUGS; ==

17 (L) ONE MEMBER REPRESENTING PHARMACISTS; AND

18 (M) ONE MEMBER REPRESENTING WHOLESALERS.

19 (b) TO THE EXTENT POSSIBLE, THE BOARD SHALL APPOINT COUNCIL
20 MEMBERS WHO HAVE EXPERIENCE SERVING UNDERSERVED COMMUNITIES
21 AND REFLECT THE DIVERSITY OF THE STATE WITH REGARD TO RACE,
22 ETHNICITY, IMMIGRATION STATUS, INCOME, WEALTH, DISABILITY, AGE,
23 GENDER IDENTITY, AND GEOGRAPHY. IN CONSIDERING GEOGRAPHIC
24 DIVERSITY, THE BOARD SHALL ENSURE AT LEAST ONE COUNCIL MEMBER
25 RESIDES ON THE EASTERN PLAINS AND ONE MEMBER RESIDES ON THE
26 WESTERN SLOPE, AND THE BOARD SHALL ATTEMPT TO APPOINT MEMBERS
27 FROM EACH CONGRESSIONAL DISTRICT IN THE STATE.

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

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

5 (a) THE PHARMACEUTICAL BUSINESS MODEL;

6 (b) SUPPLY CHAIN BUSINESS MODELS;

7 (c) THE PRACTICE OF MEDICINE OR CLINICAL TRAINING;

8 (d) HEALTH-CARE CONSUMER OR PATIENT PERSPECTIVES;

9 (e) HEALTH-CARE COST TRENDS AND DRIVERS;

10 (f) CLINICAL AND HEALTH SERVICES RESEARCH; OR

11 (g) THE STATE'S HEALTH-CARE MARKETPLACE.

12 (3) THE TERM OF EACH MEMBER OF THE ADVISORY COUNCIL IS
13 THREE YEARS; EXCEPT THAT THE MEMBERS INITIALLY APPOINTED TO THE
14 ADVISORY COUNCIL PURSUANT TO SUBSECTIONS (1)(a)(II)(A) TO
15 (1)(a)(II)(E) OF THIS SECTION SHALL EACH SERVE INITIAL TERMS OF TWO
16 YEARS.

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

19 (5) (a) AN INDIVIDUAL WHO IS BEING CONSIDERED FOR
20 APPOINTMENT TO THE ADVISORY COUNCIL SHALL DISCLOSE ANY CONFLICT
21 OF INTEREST TO THE BOARD IN A FORM AND MANNER PRESCRIBED BY THE
22 BOARD. WHEN APPOINTING A MEMBER OF THE ADVISORY COUNCIL, THE
23 BOARD SHALL CONSIDER ANY CONFLICT OF INTEREST DISCLOSED BY THE
24 PROSPECTIVE MEMBER.

25 (b) THE CHAIR OF THE ADVISORY COUNCIL SHALL REPORT TO THE
26 BOARD ANY CONFLICT OF INTEREST THAT IS DISCLOSED TO THE ADVISORY
27 COUNCIL. THE BOARD SHALL INCLUDE INFORMATION CONCERNING SUCH

1 DISCLOSURES ON ITS PUBLIC WEBSITE PURSUANT TO SECTION 10-16-1302
2 (3)(d).

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

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

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

13 (I) TO GATHER AND UNDERSTAND DATA; OR

14 (II) TO ESTABLISH, ORGANIZE, AND PLAN FOR THE BUSINESS OF THE
15 ADVISORY COUNCIL.

16 **10-16-1310. Use of savings - report - rules.** (1) ANY SAVINGS
17 GENERATED FOR A HEALTH BENEFIT PLAN THAT ARE ATTRIBUTABLE TO
18 THE ESTABLISHMENT OF AN UPPER PAYMENT LIMIT ESTABLISHED BY THE
19 BOARD PURSUANT TO SECTION 10-16-1307 MUST BE USED BY THE CARRIER
20 THAT ISSUES THE HEALTH BENEFIT PLAN TO REDUCE COSTS TO
21 CONSUMERS, PRIORITIZING THE REDUCTION OF OUT-OF-POCKET COSTS FOR
22 PRESCRIPTION DRUGS.

23 (2) ON OR BEFORE MARCH 15, 2023, AND ON OR BEFORE MARCH
24 15 EACH YEAR THEREAFTER, EACH STATE ENTITY AND EACH CARRIER THAT
25 ISSUES A HEALTH BENEFIT PLAN OR OPTIONAL PARTICIPATING PLAN SHALL
26 SUBMIT TO THE BOARD A REPORT DESCRIBING THE SAVINGS ACHIEVED
27 DURING THE PRECEDING PLAN YEAR FOR EACH PRESCRIPTION DRUG FOR

1 WHICH THE BOARD ESTABLISHED AN UPPER PAYMENT LIMIT DURING THE
2 PRECEDING YEAR AND HOW THOSE SAVINGS WERE USED TO SATISFY THE
3 REQUIREMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

4 (3) ON OR BEFORE NOVEMBER 1, 2022, THE BOARD SHALL
5 PROMULGATE RULES ESTABLISHING A FORMULA FOR CALCULATING
6 SAVINGS FOR THE PURPOSE OF COMPLYING WITH SUBSECTION (1) OF THIS
7 SECTION.

8 **10-16-1311. Unlawful acts - enforcement - penalties.** (1) ON
9 AND AFTER JANUARY 1, 2022, IT IS UNLAWFUL FOR ANY PERSON TO
10 PURCHASE OR REIMBURSE A PAYER FOR A PRESCRIPTION DRUG FOR WHICH
11 THE BOARD HAS ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO
12 SECTION 10-16-1307 AT AN AMOUNT THAT EXCEEDS THE UPPER PAYMENT
13 LIMIT ESTABLISHED BY THE BOARD FOR THAT PRESCRIPTION DRUG,
14 REGARDLESS OF WHETHER THE PRESCRIPTION DRUG IS DISPENSED OR
15 DISTRIBUTED IN PERSON, BY MAIL, OR BY OTHER MEANS.

16 (2) ON AND AFTER JANUARY 1, 2023, EACH STATE ENTITY,
17 CARRIER, AND OPTIONAL PARTICIPATING PLAN SHALL REQUIRE
18 COMPLIANCE WITH AN UPPER PAYMENT LIMIT ESTABLISHED BY THE
19 BOARD.

20 ==
21 (3) THE ATTORNEY GENERAL IS AUTHORIZED TO ENFORCE THIS
22 PART 13 ON BEHALF OF ANY STATE ENTITY OR ANY CONSUMER OF
23 PRESCRIPTION DRUGS.

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

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

8 **10-16-1312. Notice of withdrawal of prescription drugs with**
9 **upper payment limits required - rules - penalty.** (1) ANY
10 MANUFACTURER THAT INTENDS TO WITHDRAW FROM SALE OR
11 DISTRIBUTION WITHIN THE STATE A PRESCRIPTION DRUG FOR WHICH THE
12 BOARD HAS ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO
13 SECTION 10-16-1307 SHALL PROVIDE A NOTICE OF WITHDRAWAL IN
14 WRITING AT LEAST ONE HUNDRED EIGHTY DAYS BEFORE THE WITHDRAWAL
15 TO:

- 16 (a) THE COMMISSIONER;
- 17 (b) THE ATTORNEY GENERAL; AND
- 18 (c) EACH ENTITY IN THE STATE WITH WHICH THE MANUFACTURER
- 19 HAS CONTRACTED FOR THE SALE OR DISTRIBUTION OF THE PRESCRIPTION
- 20 DRUG.

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

25 (3) AFTER PROVIDING NOTICE AND A HEARING AS DESCRIBED IN
26 SECTION 24-4-105, THE COMMISSIONER MAY REQUIRE A MANUFACTURER
27 TO PAY A PENALTY NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS IF

1 THE COMMISSIONER DETERMINES THAT THE MANUFACTURER FAILED TO
2 PROVIDE THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION
3 BEFORE WITHDRAWING FROM SALE OR DISTRIBUTION WITHIN THE STATE A
4 PRESCRIPTION DRUG FOR WHICH THE BOARD HAS ESTABLISHED AN UPPER
5 PAYMENT LIMIT PURSUANT TO SECTION 10-16-1307.

6 **10-16-1313. Optional participating plans - notice of election to**
7 **participate required.** AN OPTIONAL PARTICIPATING PLAN THAT ELECTS
8 TO SUBJECT ITS PURCHASES OF OR PAYER REIMBURSEMENTS FOR
9 PRESCRIPTION DRUGS IN COLORADO TO THE REQUIREMENTS OF THIS PART
10 13 SHALL NOTIFY THE COMMISSIONER IN WRITING WITHIN THIRTY DAYS
11 AFTER SUCH ELECTION.

12 **10-16-1314. Reports.** (1) NOTWITHSTANDING SECTION 24-1-136
13 (11)(a), ON OR BEFORE JULY 1, 2023, AND ON OR BEFORE JULY 1 EACH
14 YEAR THEREAFTER, THE BOARD SHALL SUBMIT A REPORT TO THE
15 GOVERNOR, THE HEALTH AND INSURANCE COMMITTEE OF THE HOUSE OF
16 REPRESENTATIVES, AND THE HEALTH AND HUMAN SERVICES COMMITTEE
17 OF THE SENATE, OR TO ANY SUCCESSOR COMMITTEES, SUMMARIZING THE
18 ACTIVITIES OF THE BOARD DURING THE PRECEDING CALENDAR YEAR. AT
19 A MINIMUM, THE REPORT MUST INCLUDE:

20 (a) PUBLICLY AVAILABLE DATA CONCERNING PRICE TRENDS FOR
21 PRESCRIPTION DRUGS;

22 (b) THE NUMBER OF PRESCRIPTION DRUGS THAT WERE SUBJECTED
23 TO AN AFFORDABILITY REVIEW BY THE BOARD PURSUANT TO SECTION
24 10-16-1306, INCLUDING THE RESULTS OF EACH AFFORDABILITY REVIEW
25 AND THE NUMBER AND DISPOSITION OF ANY APPEALS OR JUDICIAL REVIEWS
26 OF THE BOARD'S DECISIONS;

27 (c) A LIST OF EACH PRESCRIPTION DRUG FOR WHICH THE BOARD

1 ESTABLISHED AN UPPER PAYMENT LIMIT PURSUANT TO SECTION
2 10-16-1307, INCLUDING THE AMOUNT OF THE UPPER PAYMENT LIMIT;

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

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

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

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

16 (h) ANY RECOMMENDATIONS THE BOARD MAY HAVE FOR THE
17 GENERAL ASSEMBLY CONCERNING LEGISLATIVE AND REGULATORY POLICY
18 CHANGES TO INCREASE THE AFFORDABILITY OF PRESCRIPTION DRUGS AND
19 REDUCE THE EFFECTS OF EXCESS COSTS ON CONSUMERS AND COMMERCIAL
20 HEALTH INSURANCE PREMIUMS IN THE STATE.

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

25 (3) (a) THE CHAIR OF THE BOARD SHALL PRESENT TO THE JOINT
26 HEALTH AND INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES
27 AND HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY

1 SUCCESSOR COMMITTEES, WHICH PRESENTATION OCCURS PURSUANT TO
2 THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
3 TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF
4 TITLE 2, INFORMATION CONCERNING ANY PRESCRIPTION DRUG FOR WHICH
5 THE BOARD ESTABLISHED AN UPPER PAYMENT LIMIT DURING THE
6 PRECEDING CALENDAR YEAR. THE CHAIR SHALL SUMMARIZE FOR THE
7 COMMITTEE MEMBERS:

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

12 (II) THE ESTABLISHMENT OF THE UPPER PAYMENT LIMIT,
13 INCLUDING A SUMMARY OF THE METHODOLOGY USED TO ESTABLISH THE
14 UPPER PAYMENT LIMIT.

15 (b) BASED ON THE INFORMATION PRESENTED IN SUBSECTION (3)(a)
16 OF THIS SECTION, MEMBERS OF THE JOINT HEALTH AND INSURANCE
17 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND HEALTH AND
18 HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR
19 COMMITTEES, MAY PURSUE LEGISLATION, IF THE MAJORITY OF COMMITTEE
20 MEMBERS VOTE TO PURSUE SUCH LEGISLATION, TO DISCONTINUE THE
21 UPPER PAYMENT LIMIT FOR ANY PRESCRIPTION DRUG FOR WHICH THE
22 BOARD ESTABLISHED AN UPPER PAYMENT LIMIT. ANY SUCH LEGISLATION
23 SHALL NOT COUNT AGAINST ANY LIMITATION UPON THE NUMBER OF BILLS
24 THAT A MEMBER OF THE GENERAL ASSEMBLY MAY INTRODUCE EACH
25 REGULAR LEGISLATIVE SESSION, WHICH LIMITATION MAY EXIST PURSUANT
26 TO RULES ADOPTED BY THE GENERAL ASSEMBLY.

27 **10-16-1315. Exemption - prescription drugs derived from**

1 **cannabis. NOTWITHSTANDING ANY PROVISION OF THIS PART 13 TO THE**
2 **CONTRARY, THE BOARD HAS NO AUTHORITY TO PERFORM AN**
3 **AFFORDABILITY REVIEW OF, OR TO ESTABLISH AN UPPER PAYMENT LIMIT**
4 **FOR, ANY PRESCRIPTION DRUG THAT IS DERIVED IN WHOLE OR IN PART**
5 **FROM CANNABIS.**

6 **10-16-1316. Repeal of part. THIS PART 13 IS REPEALED,**
7 **EFFECTIVE SEPTEMBER 1, 2026. BEFORE THE REPEAL, THE FUNCTIONS OF**
8 **THE BOARD ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION**
9 **24-34-104.**

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

12 **24-1-122. Department of regulatory agencies - creation.**

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

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

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

23 **24-34-104. General assembly review of regulatory agencies**
24 **and functions for repeal, continuation, or reestablishment - legislative**
25 **declaration - repeal.** (27) (a) The following agencies, functions, or both,
26 are scheduled for repeal on September 1, 2026:

27 **(XVIII) THE COLORADO PRESCRIPTION DRUG AFFORDABILITY**

1 REVIEW BOARD CREATED IN SECTION 10-16-1302.

2 **SECTION 5. Appropriation.** (1) For the 2021-22 state fiscal
3 year, \$730,711 is appropriated to the department of regulatory agencies.
4 This appropriation is from the division of insurance cash fund created in
5 section 10-1-103 (3), C.R.S. To implement this act, the department may
6 use this appropriation as follows:

7 (a) \$325,297 for use by the division of insurance for personal
8 services, which amount is based on an assumption that the division will
9 require an additional 3.0 FTE;

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

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

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

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

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