

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0243.02 Christy Chase x2008

HOUSE BILL 22-1122

HOUSE SPONSORSHIP

Will, Lontine

SENATE SPONSORSHIP

Jaquez Lewis,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROHIBITING CERTAIN PRACTICES BY ENTITIES
102 OBLIGATED TO PAY FOR PRESCRIPTION DRUG BENEFITS.

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 contracts between a pharmacy benefit manager (PBM) and a pharmacy entered into or renewed on or after January 1, 2023, **section 1** of the bill prohibits the PBM or its representative from reimbursing a pharmacy for a prescription drug in an amount less than the national average drug acquisition cost for the prescription drug.

Section 2 enacts the "Colorado 340B Prescription Drug Program

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.

Anti-discrimination Act" (act), which prohibits health insurers, PBMs, and other third-party payers (third-party payers) from discriminating against entities, including pharmacies, participating in the federal 340B drug pricing program (340B covered entity). Specifically, the bill prohibits a third-party payer from:

- Refusing to reimburse a 340B covered entity for dispensing 340B drugs, imposing additional requirements or restrictions on 340B covered entities, or reimbursing a 340B covered entity for a 340B drug at a rate lower than the amount paid for the same drug to pharmacies that are not 340B covered entities;
- Assessing a fee, charge back, or other adjustment against a 340B covered entity, or restricting a 340B covered entity's access to the third-party payer's pharmacy network, because the covered entity participates in the 340B drug pricing program;
- Requiring a 340B covered entity to contract with a specific pharmacy or health coverage plan in order to access the third-party payer's pharmacy network;
- Imposing a restriction or an additional charge on a patient who obtains a prescription drug from a 340B covered entity; or
- Restricting the methods by which a 340B covered entity may dispense or deliver 340B drugs.

Section 2 makes a violation of the act an unfair or deceptive act or practice in the business of insurance and authorizes the commissioner of insurance to adopt rules to implement the act.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-122.1, **add**
3 (3.5), (5)(a.5), and (5)(h) as follows:

4 **10-16-122.1. Contracts between PBMs and pharmacies -**
5 **carrier submit list of PBMs - prohibited practices - exception - short**
6 **title - definitions.** (3.5) FOR ANY CONTRACT BETWEEN A PBM AND A
7 PHARMACY ENTERED INTO OR RENEWED ON OR AFTER JANUARY 1, 2023,
8 A PBM OR THE REPRESENTATIVE OF A PBM SHALL NOT REIMBURSE A
9 PHARMACY FOR A PRESCRIPTION DRUG IN AN AMOUNT THAT IS LESS THAN:

10 (a) THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE

1 PRESCRIPTION DRUG AT THE TIME THE DRUG IS ADMINISTERED OR
2 DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE; OR

3 (b) IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS NOT
4 AVAILABLE AT THE TIME A PRESCRIPTION DRUG IS ADMINISTERED OR
5 DISPENSED, THE WHOLESALE ACQUISITION COST OF THE DRUG, PLUS A
6 PROFESSIONAL DISPENSING FEE.

7 (5) As used in this section and section 10-16-122.9, unless the
8 context otherwise requires:

9 (a.5) "NATIONAL AVERAGE DRUG ACQUISITION COST" MEANS THE
10 DRUG PRICING BENCHMARK DEVELOPED BY THE FEDERAL CENTERS FOR
11 MEDICARE AND MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT
12 OF HEALTH AND HUMAN SERVICES, WHICH BENCHMARK IS BASED ON DATA
13 COLLECTED FROM A MONTHLY NATIONWIDE SURVEY OF RETAIL
14 COMMUNITY PHARMACY OUTPATIENT DRUG PRICES.

15 (h) "WHOLESALE ACQUISITION COST" HAS THE MEANING SET
16 FORTH IN 42 U.S.C. SEC. 1395w-3a (c)(6)(B).

17 **SECTION 2.** In Colorado Revised Statutes, **add** part 15 to article
18 16 of title 10 as follows:

19 PART 15

20 340B PRESCRIPTION DRUG PROGRAM

21 ANTI-DISCRIMINATION ACT

22 **10-16-1501. Short title.** THE SHORT TITLE OF THIS PART 15 IS THE
23 "COLORADO 340B PRESCRIPTION DRUG PROGRAM ANTI-DISCRIMINATION
24 ACT".

25 **10-16-1502. Legislative declaration.** (1) THE GENERAL
26 ASSEMBLY DECLARES THAT THE PURPOSE OF THIS PART 15 IS TO:

27 (a) PROHIBIT A PHARMACY BENEFIT MANAGER OR CARRIER FROM

1 IMPOSING FEES, CHARGE BACKS, OR OTHER ADJUSTMENTS ON COVERED
2 ENTITIES OR CONTRACT PHARMACIES BASED ON THEIR PARTICIPATION IN
3 THE 340B DRUG PRICING PROGRAM;

4 (b) PROHIBIT A PHARMACY BENEFIT MANAGER OR CARRIER FROM
5 REQUIRING A CLAIM FOR A DRUG TO INCLUDE A MODIFIER TO INDICATE
6 THAT THE DRUG IS A 340B DRUG UNLESS THE CLAIM IS FOR PAYMENT,
7 DIRECTLY OR INDIRECTLY, BY THE MEDICAID PROGRAM; AND

8 (c) PROVIDE FOR POWERS AND DUTIES OF THE COMMISSIONER AND
9 THE DIVISION.

10 **10-16-1503. Definitions.** AS USED IN THIS PART 15, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (1) "340B COVERED ENTITY" MEANS A COVERED ENTITY, AS
13 DEFINED IN SECTION 340B (a)(4) OF THE FEDERAL "PUBLIC HEALTH
14 SERVICE ACT", 42 U.S.C. SEC. 256b (a)(4), AS AMENDED. "340B COVERED
15 ENTITY" INCLUDES A PHARMACY UNDER CONTRACT WITH A 340B COVERED
16 ENTITY TO DISPENSE DRUGS ON BEHALF OF THE ENTITY.

17 (2) "340B DRUG" MEANS A DRUG PURCHASED THROUGH THE 340B
18 DRUG PRICING PROGRAM BY A 340B COVERED ENTITY.

19 (3) "340B DRUG PRICING PROGRAM" OR "340B PROGRAM" MEANS
20 THE PROGRAM DESCRIBED IN 42 U.S.C. SEC. 256b.

21 (4) "CONTRACT PHARMACY" MEANS A PHARMACY OPERATING
22 UNDER CONTRACT WITH A 340B COVERED ENTITY TO PROVIDE DISPENSING
23 SERVICES TO THE 340B COVERED ENTITY AS DESCRIBED IN 75 FED. REG.
24 10272 (2010) OR ANY SUPERSEDING GUIDANCE.

25 (5) (a) "DRUG COVERAGE" MEANS COVERAGE OR PAYMENT FOR A
26 PRESCRIPTION DRUG DISPENSED BY A PHARMACY TO A PATIENT PURSUANT
27 TO:

1 (I) A HEALTH COVERAGE PLAN;
2 (II) A MANAGED CARE ORGANIZATION, AS DEFINED IN SECTION
3 25.5-5-403 (5); OR

4 (III) ANY OTHER CONTRACTUAL OR OTHER LEGAL OBLIGATION TO
5 PROVIDE COVERAGE OR PAYMENT FOR A PRESCRIPTION DRUG DISPENSED
6 BY A PHARMACY TO A PATIENT.

7 (b) "DRUG COVERAGE" DOES NOT INCLUDE:

8 (I) REIMBURSEMENT FOR COVERED OUTPATIENT DRUGS, AS THAT
9 TERM IS DEFINED IN SECTION 42 U.S.C. SEC. 1396r-8 (k)(2), ON A
10 FEE-FOR-SERVICE BASIS UNDER THE MEDICAID PROGRAM; OR

11 (II) ANY AMOUNTS PAID BY AN INDIVIDUAL ON THE INDIVIDUAL'S
12 OWN BEHALF OR ON BEHALF OF ANOTHER INDIVIDUAL WITHOUT A
13 CONTRACTUAL OR LEGAL OBLIGATION TO DO SO.

14 (6) "MEDICAID PROGRAM" MEANS THE MEDICAL ASSISTANCE
15 PROGRAM ESTABLISHED PURSUANT TO ARTICLES 4 TO 6 OF TITLE 25.5.

16 (7) (a) "THIRD PARTY" MEANS:

17 (I) A CARRIER OR PHARMACY BENEFIT MANAGER THAT PROVIDES
18 OR MANAGES DRUG COVERAGE UNDER A HEALTH COVERAGE PLAN;

19 (II) A SYSTEM OF HEALTH INSURANCE FOR STATE OR LOCAL
20 GOVERNMENT EMPLOYEES, THEIR DEPENDENTS, AND RETIREES, INCLUDING
21 A GROUP BENEFIT PLAN, AS DEFINED IN SECTION 24-50-603 (9), AND A
22 GROUP HEALTH CARE PROGRAM DESIGNED PURSUANT TO SECTION
23 24-51-1202; OR

24 (III) ANY OTHER INSURER OR ENTITY THAT PROVIDES HEALTH
25 COVERAGE, BENEFITS, OR COVERAGE OF PRESCRIPTION DRUGS AS PART OF
26 COVERAGE REQUIRED UNDER THE "WORKERS' COMPENSATION ACT OF
27 COLORADO", ARTICLES 40 TO 47 OF TITLE 8, OR WORKERS' COMPENSATION

1 COVERAGE REQUIRED UNDER FEDERAL LAW.

2 (b) "THIRD PARTY" DOES NOT INCLUDE AN INSURER THAT
3 PROVIDES COVERAGE UNDER A POLICY OF PROPERTY AND CASUALTY
4 INSURANCE.

5 **10-16-1504. Applicability.** THIS PART 15 APPLIES TO ANY THIRD
6 PARTY PROVIDING OR MANAGING DRUG COVERAGE UNDER A HEALTH
7 COVERAGE PLAN IN THIS STATE.

8 **10-16-1505. Prohibition on 340B discrimination.** (1) A THIRD
9 PARTY THAT REIMBURSES A 340B COVERED ENTITY FOR 340B DRUGS
10 SHALL NOT:

11 (a) REIMBURSE THE 340B COVERED ENTITY FOR A
12 PHARMACY-DISPENSED DRUG AT A RATE LOWER THAN THE AMOUNT PAID
13 FOR THE SAME DRUG TO PHARMACIES SIMILAR IN PRESCRIPTION VOLUME
14 THAT ARE NOT 340B COVERED ENTITIES;

15 (b) ASSESS ANY FEE, CHARGE BACK, OR OTHER ADJUSTMENT
16 AGAINST THE 340B COVERED ENTITY ON THE BASIS THAT THE 340B
17 COVERED ENTITY PARTICIPATES IN THE 340B PROGRAM;

18 (c) RESTRICT ACCESS TO THE THIRD PARTY'S PHARMACY NETWORK
19 FOR ANY 340B COVERED ENTITY ON THE BASIS THAT THE 340B COVERED
20 ENTITY PARTICIPATES IN THE 340B PROGRAM;

21 (d) REQUIRE THE 340B COVERED ENTITY TO ENTER INTO A
22 CONTRACT WITH A SPECIFIC PHARMACY OR HEALTH COVERAGE PLAN TO
23 PARTICIPATE IN THE THIRD PARTY'S PHARMACY NETWORK;

24 (e) CREATE A RESTRICTION OR AN ADDITIONAL CHARGE ON A
25 PATIENT WHO CHOOSES TO RECEIVE DRUGS FROM A 340B COVERED
26 ENTITY;

27 (f) RESTRICT THE METHODS BY WHICH A 340B COVERED ENTITY

1 MAY DISPENSE OR DELIVER 340B DRUGS;

2 (g) REFUSE TO PROVIDE REIMBURSEMENT OR COVERAGE FOR 340B
3 DRUGS; OR

4 (h) CREATE ANY ADDITIONAL REQUIREMENTS OR RESTRICTIONS ON
5 A 340B COVERED ENTITY.

6 (2) UNLESS A CLAIM IS FOR PAYMENT, DIRECTLY OR INDIRECTLY,
7 BY THE MEDICAID PROGRAM, A PHARMACY BENEFIT MANAGER OR ANY
8 OTHER THIRD PARTY THAT REIMBURSES A 340B COVERED ENTITY FOR
9 340B DRUGS SHALL NOT REQUIRE A CLAIM FOR A 340B DRUG TO INCLUDE:

10 (a) A MODIFIER TO INDICATE THAT THE DRUG IS A 340B DRUG; OR

11 (b) ANY OTHER METHOD OF IDENTIFYING THE CLAIM FOR A 340B
12 DRUG.

13 (3) WITH RESPECT TO A PATIENT ELIGIBLE TO RECEIVE 340B
14 DRUGS, A PHARMACY BENEFIT MANAGER OR ANY OTHER THIRD PARTY
15 THAT MAKES PAYMENT FOR THE DRUGS SHALL NOT DISCRIMINATE
16 AGAINST A 340B COVERED ENTITY IN A MANNER THAT PREVENTS OR
17 INTERFERES WITH THE PATIENT'S CHOICE TO RECEIVE THE DRUGS FROM
18 THE 340B COVERED ENTITY.

19 **10-16-1506. Enforcement - rules.** (1) A THIRD PARTY THAT
20 VIOLATES THIS PART 15 ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR
21 PRACTICE IN THE BUSINESS OF INSURANCE UNDER SECTION 10-3-1104
22 (1)(tt), AND THE ACT OF THE THIRD PARTY THAT VIOLATES THIS PART 15
23 IS VOID AND UNENFORCEABLE.

24 (2) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO
25 IMPLEMENT THIS PART 15.

26 **SECTION 3.** In Colorado Revised Statutes, 10-3-1104, **add**
27 (1)(tt) as follows:

1 **10-3-1104. Unfair methods of competition - unfair or deceptive**
2 **practices.** (1) The following are defined as unfair methods of
3 competition and unfair or deceptive acts or practices in the business of
4 insurance:

5 (tt) A VIOLATION OF PART 15 OF ARTICLE 16 OF THIS TITLE 10.

6 **SECTION 4. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly; except
9 that, if a referendum petition is filed pursuant to section 1 (3) of article V
10 of the state constitution against this act or an item, section, or part of this
11 act within such period, then the act, item, section, or part will not take
12 effect unless approved by the people at the general election to be held in
13 November 2022 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.