

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 22-0243.02 Christy Chase x2008

HOUSE BILL 22-1122

HOUSE SPONSORSHIP

Will and Lindsay, Lontine

SENATE SPONSORSHIP

Jaquez Lewis,

House Committees

Health & Insurance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING CERTAIN PRACTICES BY ENTITIES**
102 **OBLIGATED TO PAY FOR PRESCRIPTION DRUG BENEFITS, AND, IN**
103 **CONNECTION THEREWITH, 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 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.

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.*

Section 2 enacts the "Colorado 340B Prescription Drug Program 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:

1 (a) THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE
2 PRESCRIPTION DRUG AT THE TIME THE DRUG IS ADMINISTERED OR
3 DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE; OR

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

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

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

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

18 **SECTION 2.** In Colorado Revised Statutes, **add** part 15 to article
19 16 of title 10 as follows:

20 PART 15

21 340B PRESCRIPTION DRUG PROGRAM

22 ANTI-DISCRIMINATION ACT

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

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

1 (a) PROHIBIT A PHARMACY BENEFIT MANAGER OR CARRIER FROM
2 IMPOSING FEES, CHARGE BACKS, OR OTHER ADJUSTMENTS ON COVERED
3 ENTITIES OR CONTRACT PHARMACIES BASED ON THEIR PARTICIPATION IN
4 THE 340B DRUG PRICING PROGRAM;

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

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

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

13 (1) "340B COVERED ENTITY" MEANS A COVERED ENTITY, AS
14 DEFINED IN SECTION 340B (a)(4) OF THE FEDERAL "PUBLIC HEALTH
15 SERVICE ACT", 42 U.S.C. SEC. 256b (a)(4), AS AMENDED. ■ ■

16 (2) "340B DRUG" MEANS A DRUG PURCHASED THROUGH THE 340B
17 DRUG PRICING PROGRAM BY A 340B COVERED ENTITY.

18 (3) "340B DRUG PRICING PROGRAM" OR "340B PROGRAM" MEANS
19 THE PROGRAM DESCRIBED IN 42 U.S.C. SEC. 256b.

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

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

27 (I) A HEALTH COVERAGE PLAN;

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

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

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

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

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

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

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

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

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

23 (b) "THIRD PARTY" DOES NOT INCLUDE:

24 (I) AN INSURER THAT PROVIDES COVERAGE UNDER A POLICY OF
25 PROPERTY AND CASUALTY INSURANCE; OR

26 (II) AN INSURER OR ENTITY THAT PROVIDES HEALTH COVERAGE,
27 BENEFITS, OR COVERAGE OF PRESCRIPTION DRUGS AS PART OF COVERAGE

1 REQUIRED UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO",
2 ARTICLES 40 TO 47 OF TITLE 8, OR WORKERS' COMPENSATION COVERAGE
3 REQUIRED UNDER FEDERAL LAW.

4 **10-16-1504. Applicability - exclusions.** (1) THIS PART 15
5 APPLIES TO ANY THIRD PARTY THAT REIMBURSES 340B COVERED ENTITIES
6 OR CONTRACT PHARMACIES IN THIS STATE.

7 (2) NOTHING IN THIS PART 15:

8 (a) PROHIBITS A THIRD PARTY FROM MAINTAINING DIFFERENTIAL
9 REIMBURSEMENT RATES FOR PARTICIPATING AND NONPARTICIPATING
10 PROVIDERS, SO LONG AS THE RATES ARE NOT DETERMINED ON THE BASIS
11 OF A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT
12 PHARMACY;

13 (b) AFFECTS A THIRD PARTY'S ABILITY TO ESTABLISH COVERAGE
14 GUIDELINES AND EXCLUDE SPECIFIC DRUGS FROM ITS PRESCRIPTION DRUG
15 FORMULARIES, SO LONG AS THE GUIDELINES AND EXCLUSIONS ARE NOT
16 DETERMINED ON THE BASIS OF A PROVIDER'S STATUS AS A 340B COVERED
17 ENTITY OR CONTRACT PHARMACY OR OF A DRUG'S STATUS AS A 340B
18 DRUG; OR

19 (c) REQUIRES A THIRD PARTY TO CONTRACT WITH A 340B
20 COVERED ENTITY OR CONTRACT PHARMACY FOR PURPOSES OF
21 PARTICIPATING IN THE THIRD PARTY'S NETWORK, SO LONG AS THE THIRD
22 PARTY'S CONTRACTING DECISIONS ARE NOT DETERMINED ON THE BASIS OF
23 A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT
24 PHARMACY.

25 **10-16-1505. Prohibition on 340B discrimination.** (1) A THIRD
26 PARTY THAT REIMBURSES A 340B COVERED ENTITY OR CONTRACT
27 PHARMACY FOR 340B DRUGS SHALL NOT:

1 (a) REIMBURSE THE 340B COVERED ENTITY OR CONTRACT
2 PHARMACY FOR A PHARMACY-DISPENSED DRUG AT A RATE LOWER THAN
3 THE AMOUNT PAID FOR THE SAME DRUG TO PHARMACIES SIMILAR IN
4 PRESCRIPTION VOLUME THAT ARE NOT 340B COVERED ENTITIES OR
5 CONTRACT PHARMACIES;

6 (b) ASSESS ANY FEE, CHARGE BACK, OR OTHER ADJUSTMENT
7 AGAINST THE 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE
8 BASIS THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY
9 PARTICIPATES IN THE 340B PROGRAM;

10 (c) RESTRICT ACCESS TO THE THIRD PARTY'S PHARMACY NETWORK
11 FOR ANY 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE BASIS
12 THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY PARTICIPATES
13 IN THE 340B PROGRAM;

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

18 (e) CREATE A RESTRICTION OR AN ADDITIONAL CHARGE ON A
19 PATIENT WHO CHOOSES TO RECEIVE DRUGS FROM A 340B COVERED ENTITY
20 OR CONTRACT PHARMACY;

21 (f) RESTRICT THE METHODS BY WHICH A 340B COVERED ENTITY
22 OR CONTRACT PHARMACY MAY DISPENSE OR DELIVER 340B DRUGS;

23 (g) REFUSE TO PROVIDE REIMBURSEMENT OR COVERAGE FOR 340B
24 DRUGS; OR

25 (h) CREATE ANY ADDITIONAL REQUIREMENTS OR RESTRICTIONS ON
26 A 340B COVERED ENTITY OR CONTRACT PHARMACY.

27 (2) UNLESS A CLAIM IS FOR PAYMENT, DIRECTLY OR INDIRECTLY,

1 BY THE MEDICAID PROGRAM, A PHARMACY BENEFIT MANAGER OR ANY
2 OTHER THIRD PARTY THAT REIMBURSES A 340B COVERED ENTITY OR
3 CONTRACT PHARMACY FOR 340B DRUGS SHALL NOT REQUIRE A CLAIM FOR
4 A 340B DRUG TO INCLUDE:

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

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

8 (3) WITH RESPECT TO A PATIENT ELIGIBLE TO RECEIVE 340B
9 DRUGS, A PHARMACY BENEFIT MANAGER OR ANY OTHER THIRD PARTY
10 THAT MAKES PAYMENT FOR THE DRUGS SHALL NOT DISCRIMINATE
11 AGAINST A 340B COVERED ENTITY OR CONTRACT PHARMACY IN A MANNER
12 THAT PREVENTS OR INTERFERES WITH THE PATIENT'S CHOICE TO RECEIVE
13 THE DRUGS FROM THE 340B COVERED ENTITY OR CONTRACT PHARMACY.

14 **10-16-1506. Enforcement - rules.** (1) A THIRD PARTY THAT
15 VIOLATES THIS PART 15 ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR
16 PRACTICE IN THE BUSINESS OF INSURANCE UNDER SECTION 10-3-1104
17 (1)(tt), AND THE ACT OF THE THIRD PARTY THAT VIOLATES THIS PART 15
18 IS VOID AND UNENFORCEABLE.

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

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

23 **10-3-1104. Unfair methods of competition - unfair or deceptive**
24 **practices.** (1) The following are defined as unfair methods of
25 competition and unfair or deceptive acts or practices in the business of
26 insurance:

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

1 **SECTION 4. Appropriation.** For the 2022-23 state fiscal year,
2 \$17,109 is appropriated to the department of regulatory agencies for use
3 by the division of insurance. This appropriation is from the division of
4 insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
5 on an assumption that the division will require an additional 0.3 FTE. To
6 implement this act, the division may use this appropriation for personal
7 services.

8 **SECTION 5. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly; except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within such period, then the act, item, section, or part will not take
14 effect unless approved by the people at the general election to be held in
15 November 2022 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.