

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, Bennett, Esgar, Jodeh, Kipp, Ricks, Weissman

**SENATE SPONSORSHIP**

**Jaquez Lewis,**

**House Committees**

Health & Insurance  
Appropriations

**Senate Committees**

Health & Human Services  
Appropriations

**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.*

HOUSE  
3rd Reading Unamended  
April 22, 2022

HOUSE  
Amended 2nd Reading  
April 19, 2022

**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.

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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) (a) FOR ANY CONTRACT ENTERED INTO OR  
7 RENEWED ON OR AFTER JANUARY 1, 2023, BETWEEN A PBM AND A  
8 PHARMACY DESCRIBED IN SUBSECTION (3.5)(b) OF THIS SECTION, A PBM  
9 OR THE REPRESENTATIVE OF THE PBM SHALL NOT REIMBURSE A

1 PHARMACY FOR A PRESCRIPTION DRUG IN AN AMOUNT THAT IS LESS THAN:

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

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

9 (b) THIS SUBSECTION (3.5) APPLIES ONLY TO A CONTRACT  
10 BETWEEN A PBM AND A PHARMACY THAT IS LOCATED        IN A COUNTY  
11 WITH A POPULATION OF FEWER THAN FIFTY THOUSAND PEOPLE.

12       

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

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

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

23 **SECTION 2.** In Colorado Revised Statutes, **add** part 15 to article  
24 16 of title 10 as follows:

25 PART 15  
26 340B PRESCRIPTION DRUG PROGRAM  
27 ANTI-DISCRIMINATION ACT

1           **10-16-1501. Short title.** THE SHORT TITLE OF THIS PART 15 IS THE  
2 "COLORADO 340B PRESCRIPTION DRUG PROGRAM ANTI-DISCRIMINATION  
3 ACT".

4           **10-16-1502. Legislative declaration.** (1) THE GENERAL  
5 ASSEMBLY DECLARES THAT THE PURPOSE OF THIS PART 15 IS TO:

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

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

14           (c) PROVIDE FOR POWERS AND DUTIES OF THE COMMISSIONER AND  
15 THE DIVISION.

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

18           (1) "340B COVERED ENTITY" MEANS A COVERED ENTITY, AS  
19 DEFINED IN SECTION 340B (a)(4) OF THE FEDERAL "PUBLIC HEALTH  
20 SERVICE ACT", 42 U.S.C. SEC. 256b (a)(4), AS AMENDED. ■ ■

21           (2) "340B DRUG" MEANS A DRUG PURCHASED THROUGH THE 340B  
22 DRUG PRICING PROGRAM BY A 340B COVERED ENTITY.

23           (3) "340B DRUG PRICING PROGRAM" OR "340B PROGRAM" MEANS  
24 THE PROGRAM DESCRIBED IN 42 U.S.C. SEC. 256b.

25           (4) "CONTRACT PHARMACY" MEANS A PHARMACY OPERATING  
26 UNDER CONTRACT WITH A 340B COVERED ENTITY TO PROVIDE DISPENSING  
27 SERVICES TO THE 340B COVERED ENTITY AS DESCRIBED IN 75 FED. REG.

1 10272 (2010) OR ANY SUPERSEDING GUIDANCE.

2 (5) (a) "DRUG COVERAGE" MEANS COVERAGE OR PAYMENT FOR A  
3 PRESCRIPTION DRUG DISPENSED BY A PHARMACY TO A PATIENT PURSUANT  
4 TO:

5 (I) A HEALTH COVERAGE PLAN;

6 (II) A MANAGED CARE ORGANIZATION, AS DEFINED IN SECTION  
7 25.5-5-403 (5); OR

8 (III) ANY OTHER CONTRACTUAL OR OTHER LEGAL OBLIGATION TO  
9 PROVIDE COVERAGE OR PAYMENT FOR A PRESCRIPTION DRUG DISPENSED  
10 BY A PHARMACY TO A PATIENT.

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

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

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

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

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

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

23 (II) A SYSTEM OF HEALTH INSURANCE FOR STATE OR LOCAL  
24 GOVERNMENT EMPLOYEES, THEIR DEPENDENTS, AND RETIREES, INCLUDING  
25 A GROUP BENEFIT PLAN, AS DEFINED IN SECTION 24-50-603 (9), AND A  
26 GROUP HEALTH CARE PROGRAM DESIGNED PURSUANT TO SECTION  
27 24-51-1202.

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

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

4 (II) AN INSURER OR ENTITY THAT PROVIDES HEALTH COVERAGE,  
5 BENEFITS, OR COVERAGE OF PRESCRIPTION DRUGS AS PART OF COVERAGE  
6 REQUIRED UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO",  
7 ARTICLES 40 TO 47 OF TITLE 8, OR WORKERS' COMPENSATION COVERAGE  
8 REQUIRED UNDER FEDERAL LAW.

9 **10-16-1504. Applicability - exclusions.** (1) THIS PART 15  
10 APPLIES TO ANY THIRD PARTY THAT REIMBURSES 340B COVERED ENTITIES  
11 OR CONTRACT PHARMACIES IN THIS STATE.

12 (2) NOTHING IN THIS PART 15:

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

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

24 (c) REQUIRES A THIRD PARTY TO CONTRACT WITH A 340B  
25 COVERED ENTITY OR CONTRACT PHARMACY FOR PURPOSES OF  
26 PARTICIPATING IN THE THIRD PARTY'S NETWORK, SO LONG AS THE THIRD  
27 PARTY'S CONTRACTING DECISIONS ARE NOT DETERMINED ON THE BASIS OF

1 A PROVIDER'S STATUS AS A 340B COVERED ENTITY OR CONTRACT  
2 PHARMACY.

3 **10-16-1505. Prohibition on 340B discrimination.** (1) A THIRD  
4 PARTY THAT REIMBURSES A 340B COVERED ENTITY OR CONTRACT  
5 PHARMACY FOR 340B DRUGS SHALL NOT:

6 (a) REIMBURSE THE 340B COVERED ENTITY OR CONTRACT  
7 PHARMACY FOR A PHARMACY-DISPENSED DRUG AT A RATE LOWER THAN  
8 THE AMOUNT PAID FOR THE SAME DRUG TO PHARMACIES SIMILAR IN  
9 PRESCRIPTION VOLUME THAT ARE NOT 340B COVERED ENTITIES OR  
10 CONTRACT PHARMACIES;

11 (b) ASSESS ANY FEE, CHARGE BACK, OR OTHER ADJUSTMENT  
12 AGAINST THE 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE  
13 BASIS THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY  
14 PARTICIPATES IN THE 340B PROGRAM;

15 (c) RESTRICT ACCESS TO THE THIRD PARTY'S PHARMACY NETWORK  
16 FOR ANY 340B COVERED ENTITY OR CONTRACT PHARMACY ON THE BASIS  
17 THAT THE 340B COVERED ENTITY OR CONTRACT PHARMACY PARTICIPATES  
18 IN THE 340B PROGRAM;

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

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

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

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

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

5 (2) UNLESS A CLAIM IS FOR PAYMENT, DIRECTLY OR INDIRECTLY,  
6 BY THE MEDICAID PROGRAM, A PHARMACY BENEFIT MANAGER OR ANY  
7 OTHER THIRD PARTY THAT REIMBURSES A 340B COVERED ENTITY OR  
8 CONTRACT PHARMACY FOR 340B DRUGS SHALL NOT REQUIRE A CLAIM FOR  
9 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 OR CONTRACT PHARMACY IN A MANNER  
17 THAT PREVENTS OR INTERFERES WITH THE PATIENT'S CHOICE TO RECEIVE  
18 THE DRUGS FROM THE 340B COVERED ENTITY OR CONTRACT PHARMACY.

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

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