

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0939.01 Eden Rolland x2373

SENATE BILL 26-167

SENATE SPONSORSHIP

Benavidez and Mullica,

HOUSE SPONSORSHIP

Boesenecker and Lindsay,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING A COVERED PERSON'S CONTRIBUTION UNDER A HEALTH
102 BENEFIT PLAN BASED ON OUT-OF-POCKET EXPENSES
103 ATTRIBUTABLE TO THE PURCHASE OF PRESCRIPTION DRUGS.

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>.)

Subject to certain exceptions, the bill requires a carrier of an individual or group health benefit plan in Colorado (plan), beginning on January 1, 2028, when calculating a covered person's overall contribution to an out-of-pocket maximum or cost-sharing requirement under the plan (contribution), to account for and credit to the covered person's

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

contribution an out-of-pocket expense that the covered person incurs by purchasing a prescription drug directly from a pharmacy, health-care provider, or direct-to-consumer platform (direct purchase of a prescription drug). The carrier shall apply the credit to the covered person's contribution that is applicable in the plan year in which the expense from the direct purchase of a prescription drug was incurred.

To receive a contribution credit for an out-of-pocket expense that a covered person incurred because of a direct purchase of a prescription drug, the covered person must provide proof of payment to the carrier. If the covered person does not provide proof of payment, the carrier is prohibited from applying the contribution credit.

The bill also prohibits a carrier from applying the contribution credit in certain other instances. Specifically, the carrier shall not apply the contribution credit:

- For an amount of the covered person's out-of-pocket expense from the direct purchase of a prescription drug that is greater than the amount the covered person would have incurred if they had obtained the same prescription drug in the same plan year from an in-network pharmacy and pursuant to the terms of their plan;
- If the covered person incurred the out-of-pocket expense by purchasing a prescription drug that is not covered under the formulary of the covered person's plan, unless an exception is granted; or
- If the covered person does not comply with the carrier's utilization management processes, including prior authorization and step therapy protocols required under the covered person's plan.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-161, **add** (2.5)
3 as follows:

4 **10-16-161. Calculation of contribution to out-of-pocket and**
5 **cost-sharing requirements - exception - definition - rules.**

6 (2.5) (a) BEGINNING JANUARY 1, 2028, AND EXCEPT AS PROVIDED
7 IN SUBSECTION (2.5)(d) OF THIS SECTION, WHEN CALCULATING A COVERED
8 PERSON'S OVERALL CONTRIBUTION TO AN OUT-OF-POCKET MAXIMUM OR
9 COST-SHARING REQUIREMENT UNDER THE COVERED PERSON'S HEALTH

1 BENEFIT PLAN, A CARRIER THAT DELIVERS, ISSUES, RENEWS, AMENDS, OR
2 CONTINUES COVERAGE FOR AN INDIVIDUAL OR GROUP HEALTH BENEFIT
3 PLAN IN THIS STATE SHALL ACCOUNT FOR AND CREDIT TO THE COVERED
4 PERSON'S OVERALL CONTRIBUTION TO THE OUT-OF-POCKET MAXIMUM OR
5 COST-SHARING REQUIREMENT AN OUT-OF-POCKET EXPENSE THAT THE
6 COVERED PERSON INCURS BY:

7 (I) PURCHASING A PRESCRIPTION DRUG; AND

8 (II) DIRECTLY PAYING A PHARMACY, HEALTH-CARE PROVIDER, OR
9 DIRECT-TO-CONSUMER PLATFORM FOR THE PRESCRIPTION DRUG.

10 (b) IN ORDER TO RECEIVE CREDIT FOR AN OUT-OF-POCKET
11 EXPENSE AS DESCRIBED IN SUBSECTION (2.5)(a) OF THIS SECTION, A
12 COVERED PERSON WHO PURCHASES A PRESCRIPTION DRUG IN ACCORDANCE
13 WITH SUBSECTION (2.5)(a) OF THIS SECTION SHALL PROVIDE TO THE
14 CARRIER PROOF OF PAYMENT FOR THE COVERED PERSON'S PURCHASE OF
15 THE PRESCRIPTION DRUG.

16 (c) A CARRIER THAT ACCOUNTS FOR AND CREDITS A COVERED
17 PERSON'S OUT-OF-POCKET EXPENSE IN ACCORDANCE WITH SUBSECTION
18 (2.5)(a) OF THIS SECTION SHALL APPLY THE CREDIT TO THE COVERED
19 PERSON'S OVERALL CONTRIBUTION TO AN OUT-OF-POCKET MAXIMUM OR
20 COST-SHARING REQUIREMENT UNDER THE COVERED PERSON'S HEALTH
21 BENEFIT PLAN THAT IS APPLICABLE IN THE PLAN YEAR IN WHICH THE
22 OUT-OF-POCKET EXPENSE WAS INCURRED.

23 (d) A CARRIER SHALL NOT CREDIT A COVERED PERSON'S
24 OUT-OF-POCKET EXPENSE IN ACCORDANCE WITH SUBSECTION (2.5)(a) OF
25 THIS SECTION:

26 (I) FOR AN AMOUNT OF THE OUT-OF-POCKET EXPENSE INCURRED
27 THAT IS GREATER THAN THE AMOUNT OF AN OUT-OF-POCKET EXPENSE

1 THAT THE COVERED PERSON WOULD HAVE INCURRED, ACCORDING TO
2 DRUG COST DATA AVAILABLE PURSUANT TO SECTION 10-16-122.9 (1)(c),
3 IF THE COVERED PERSON HAD OBTAINED THE SAME PRESCRIPTION DRUG IN
4 THE SAME PLAN YEAR FROM AN IN-NETWORK PHARMACY AND PURSUANT
5 TO THE TERMS OF THE COVERED PERSON'S HEALTH BENEFIT PLAN. IN SUCH
6 CIRCUMSTANCES, THE CARRIER SHALL APPLY CREDIT FOR ONLY THE
7 AMOUNT THAT IS EQUAL TO OR LESS THAN THE AMOUNT OF THE
8 OUT-OF-POCKET EXPENSE THAT THE COVERED PERSON WOULD HAVE
9 INCURRED, ACCORDING TO DRUG COST DATA AVAILABLE PURSUANT TO
10 SECTION 10-16-122.9 (1)(c), IF THE COVERED PERSON HAD OBTAINED THE
11 SAME PRESCRIPTION DRUG IN THE SAME PLAN YEAR FROM AN IN-NETWORK
12 PHARMACY AND PURSUANT TO THE TERMS OF THE COVERED PERSON'S
13 HEALTH BENEFIT PLAN.

14 (II) IF THE COVERED PERSON:

15 (A) DOES NOT PROVIDE PROOF OF PAYMENT PURSUANT TO
16 SUBSECTION (2.5)(b) OF THIS SECTION; OR

17 (B) INCURRED THE OUT-OF-POCKET EXPENSE BY PURCHASING A
18 PRESCRIPTION DRUG THAT IS NOT COVERED UNDER THE FORMULARY OF
19 THE COVERED PERSON'S HEALTH BENEFIT PLAN, UNLESS AN EXCEPTION IS
20 GRANTED PURSUANT TO SECTION 10-16-113.5 (2)(a)(IV).

21 **SECTION 2. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly (August
24 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in
2 November 2026 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.