

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0210.01 Jason Gelender x4330

HOUSE BILL 21-1237

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A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A COMPETITIVE PHARMACY BENEFITS
102 MANAGER MARKETPLACE.**

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>.)

The department of personnel (department) is required to contract for the services of a pharmacy benefit manager (PBM) for group benefit plans provided pursuant to the "State Employees Group Benefits Act" (state employee group benefits plans) and to procure a technology platform with the required capabilities for conducting a PBM reverse auction and the related services of a technology platform operator.

HOUSE
3rd Reading Unamended
May 4, 2021

HOUSE
Amended 2nd Reading
April 30, 2021

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.*

The department is required to repurpose the technology platform used to conduct the reverse auction over the duration of the PBM services contract to perform reviews of all invoiced PBM prescription drug claims, and to identify all deviations from the specific terms of the PBM services contract. The department is required to reconcile the electronically adjudicated pharmacy claims with PBM invoices to ensure that state payments do not exceed the terms specified in any PBM services contract.

Each PBM reverse auction is required to be completed and the PBM services contract awarded to the winning PBM within a specified timeline.

The department may perform a market check for providing PBM services during the term of the current PBM services contract to ensure continuing competitiveness of incumbent prescription drug pricing over the life of a PBM services contract.

To ensure that the department does not incur additional expenditures associated with the requirements of the bill, the department is required to implement a no-pay option that obligates the winning PBM to pay the cost of the technology platform and related technology platform operator services by assessing a per-prescription fee and requiring the PBM to pay these fees to the technology operator over the duration of the PBM services contract.

The bill allows other health plans to use the processes and procedures established in the bill individually, collectively, or as a joint purchasing group with the state employee group benefits plans.

After completion of the first state employees group benefits plans PBM reverse auction, self-funded private sector employer or multi-employer health plans have the option to participate in a joint purchasing pool with state employees for conduct of subsequent PBM reverse auctions.

The state employees group benefits plans and any self-funded public or private sector health plans that opt to participate with the state employees group benefits plans in a joint PBM reverse auction purchasing pool shall retain full autonomy over determination of their respective prescription drug formularies and pharmacy benefit designs and shall not be required to adopt a common prescription drug formulary or common prescription pharmacy benefit design.

Any PBM providing services to the department or a self-funded public or private sector employee health plan is required to provide the department and the plan access to complete pharmacy claims data necessary to conduct the reverse auction and carry out their administrative and management duties.

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

1 **SECTION 1.** In Colorado Revised Statutes, **add** part 12 to article
2 50 of title 24 as follows:

PART 12

COLORADO COMPETITIVE PHARMACY BENEFIT MANAGERS MARKETPLACE

24-50-1201. Short title. THE SHORT TITLE OF THIS PART 12 IS THE
"COLORADO COMPETITIVE PHARMACY BENEFIT MANAGERS
MARKETPLACE ACT".

9 **24-50-1202. Legislative declaration - intent.** (1) THE GENERAL
10 ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS THE INTENT OF THIS
11 ACT TO OPTIMIZE PRESCRIPTION DRUG SAVINGS BY THE STATE BY
12 REQUIRING THE FOLLOWING:

13 (a) THE ADOPTION OF A DYNAMICALLY COMPETITIVE REVERSE
14 AUCTION PROCESS FOR STATE HEALTH PLAN SELECTION OF PHARMACY
15 BENEFIT MANAGERS;

16 (b) THE ELECTRONIC REVIEW AND VALIDATION OF PHARMACY
17 BENEFIT MANAGER CLAIMS AS THE FOUNDATION FOR RECONCILING
18 PHARMACY BILLS; AND

19 (c) THE TECHNOLOGY-DRIVEN EVALUATION OF INCUMBENT
20 PHARMACY BENEFIT MANAGER PRESCRIPTION DRUG PRICING BASED ON
21 BENCHMARK COMPARATORS DERIVED FROM PHARMACY BENEFIT
22 MANAGER REVERSE AUCTION PROCESSES CONDUCTED IN THE UNITED
23 STATES OVER THE PREVIOUS TWELVE MONTHS.

24 **24-50-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

26 (1) "AWP" MEANS AVERAGE WHOLESALE PRICE.

27 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL.

1 (3) "GNC" MEANS GUARANTEED NET COST.

2 (4) "MARKET CHECK" MEANS A TECHNOLOGY-DRIVEN
3 EVALUATION OF AN INCUMBENT PBM'S PRESCRIPTION DRUG PRICING
4 BASED ON BENCHMARK COMPARATORS DERIVED FROM PBM REVERSE
5 AUCTION PROCESSES CONDUCTED IN THE UNITED STATES OVER THE
6 PREVIOUS TWELVE MONTHS.

7 (5) "NADAC" MEANS NATIONAL AVERAGE DRUG ACQUISITION
8 COST.

9 (6) "NIST" MEANS NATIONAL INSTITUTE OF STANDARDS AND
10 TECHNOLOGY.

1 DRUGS.

2 (9) "PBM REVERSE AUCTION" MEANS AN AUTOMATED,
3 TRANSPARENT, AND DYNAMICALLY COMPETITIVE BIDDING PROCESS
4 CONDUCTED ONLINE THAT STARTS WITH AN OPENING ROUND OF BIDS AND
5 ALLOWS QUALIFIED PBM BIDDERS TO COUNTER-OFFER A LOWER PRICE FOR
6 AS MANY ROUNDS OF BIDDING AS DETERMINED BY THE DEPARTMENT FOR
7 A MULTIPLE HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP.

8 (10) "PRICE" MEANS THE PROJECTED COST OF A PBM OFFER OR BID
9 FOR PROVIDING PRESCRIPTION DRUG BENEFITS PURSUANT TO THIS PART 12,
10 TO ENABLE DIRECT COMPARISON OF THE COMPARABLY CALCULATED COSTS
11 OF COMPETING PBM PROPOSALS OVER THE DURATION OF THE PBM
12 SERVICES CONTRACT.

13 (11) "REAL-TIME" MEANS WITHIN NO MORE THAN ONE HOUR.

14 (12) "SELF-FUNDED PRIVATE SECTOR HEALTH PLAN" MEANS ANY
15 SELF-FUNDED PRIVATE SECTOR EMPLOYER OR MULTI-EMPLOYER HEALTH
16 PLAN.

17 (13) "SELF-FUNDED PUBLIC SECTOR HEALTH PLAN" MEANS ANY
18 GROUP BENEFIT PLAN PROVIDED PURSUANT TO THE "STATE EMPLOYEES
19 GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50; ANY STATE-FUNDED
20 HEALTH PLAN OR SELF-FUNDED COUNTY, MUNICIPAL, OR OTHER LOCAL
21 GOVERNMENT EMPLOYEE HEALTH PLAN; AND ANY PUBLIC SCHOOL
22 EMPLOYEE HEALTH PLAN, HEALTH PLAN OF THE UNIVERSITY OF
23 COLORADO, COLORADO PUBLIC FOUR-YEAR COLLEGE, OR COLORADO
24 COMMUNITY COLLEGE SYSTEM.

25 (14) "SOC 2" MEANS SERVICE ORGANIZATION CONTROL 2.

26 **24-50-1204. Competitive pharmacy benefit manager - contract**
27 **- requirements.** (1) CONSISTENT WITH THE "PROCUREMENT CODE",

1 ARTICLES 101 TO 112 OF THIS TITLE 24, AND NOTWITHSTANDING ANY
2 OTHER PROVISION OF LAW, THE DEPARTMENT SHALL ENTER INTO A
3 CONTRACT FOR THE SERVICES OF A PHARMACY BENEFIT MANAGER FOR THE
4 ADMINISTRATION OF BENEFITS UNDER THE "STATE EMPLOYEES GROUP
5 BENEFITS ACT", PART 6 OF THIS ARTICLE 50, IN A TRANSPARENT, ONLINE,
6 AND DYNAMICALLY COMPETITIVE PROCESS AND IN THE MANNER SPECIFIED
7 IN THIS SECTION.

8 (2) PRIOR TO NOVEMBER 1, 2022, THE DEPARTMENT SHALL
9 PROCURE, THROUGH THE SOLICITATION OF PROPOSALS FROM QUALIFIED
10 PROFESSIONAL SERVICES VENDORS, THE FOLLOWING PRODUCTS AND
11 SERVICES BASED ON PRICE, CAPABILITIES, AND OTHER FACTORS DEEMED
12 RELEVANT BY THE DEPARTMENT:

13 (a) A TECHNOLOGY PLATFORM WITH THE REQUIRED CAPABILITIES
14 FOR CONDUCTING A PBM REVERSE AUCTION. THE DEPARTMENT SHALL
15 ENSURE THAT THE TECHNOLOGY PLATFORM POSSESSES, AT A MINIMUM,
16 THE CAPACITY TO:

17 (I) CONDUCT AN AUTOMATED, ONLINE, REVERSE AUCTION OF PBM
18 SERVICES USING A SOFTWARE APPLICATION AND HIGH-PERFORMANCE
19 DATA INFRASTRUCTURE TO INTAKE, CLEANSE, AND NORMALIZE PBM DATA
20 WITH DEVELOPMENT METHODS AND INFORMATION SECURITY STANDARDS
21 THAT HAVE BEEN VALIDATED BY RECEIVING SOC 2 AND NIST
22 CERTIFICATION OR SUCCESSOR INFORMATION TECHNOLOGY SECURITY
23 CERTIFICATIONS, AS IDENTIFIED BY THE OFFICE OF INFORMATION
24 TECHNOLOGY;

25 (II) AUTOMATE REPRICING OF DIVERSE AND COMPLEX PBM
26 PRESCRIPTION DRUG PRICING PROPOSALS TO ENABLE DIRECT COMPARISON
27 OF THE COMPARABLY CALCULATED COSTS TO THE STATE OF PBM BIDS

1 USING ONE HUNDRED PERCENT OF ANNUAL PRESCRIPTION DRUG CLAIMS
2 DATA AVAILABLE FOR STATE-FUNDED HEALTH PLANS OR A MULTIPLE
3 HEALTH PLAN PRESCRIPTION DRUG PURCHASING GROUP AND USING
4 CODE-BASED CLASSIFICATION OF DRUGS FROM NATIONALLY ACCEPTED
5 DRUG SOURCES;

6 (III) SIMULTANEOUSLY EVALUATE, IN REAL-TIME, DIVERSE AND
7 COMPLEX MULTIPLE PROPOSALS FROM FULL SERVICE PBMs, INCLUDING
8 AWP, GNC, AND NADAC PRICING MODELS, AS WELL AS PROPOSALS
9 FROM PHARMACY BENEFIT ADMINISTRATORS AND SPECIALTY DRUG AND
10 REBATE CARVE OUT SERVICE PROVIDERS;

11 (IV) PRODUCE AN AUTOMATED REPORT AND ANALYSIS OF PBM
12 BIDS, INCLUDING THE RANKING OF PBM BIDS BASED ON THE COMPARATIVE
13 COSTS AND QUALITATIVE ASPECTS OF THE BIDS WITHIN A ONE-HOUR
14 PERIOD FOLLOWING THE CLOSE OF EACH ROUND OF REVERSE AUCTION
15 BIDDING; AND

16 (V) PERFORM REAL-TIME, ELECTRONIC, LINE-BY-LINE,
17 CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF INVOICED PBM
18 PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL DEVIATIONS FROM THE
19 SPECIFIC TERMS OF THE PBM SERVICES CONTRACT RESULTING FROM THE
20 RESERVE AUCTION PROCESS; AND

21 (b) RELATED SERVICES FROM THE OPERATOR OF THE TECHNOLOGY
22 PLATFORM IDENTIFIED IN SUBSECTION (2)(a) OF THIS SECTION, WHICH
23 SHALL INCLUDE, AT A MINIMUM:

24 (I) EVALUATION OF THE QUALIFICATIONS OF PBM BIDDERS;

25 (II) ONLINE AUTOMATED REVERSE AUCTION SERVICES TO SUPPORT
26 THE DEPARTMENT IN COMPARING THE PRICING FOR THE PBM
27 PROCUREMENT; AND

(III) RELATED PROFESSIONAL SERVICES.

(3) THE DEPARTMENT SHALL NOT AWARD A CONTRACT FOR PROCUREMENT OF THE TECHNOLOGY PLATFORM AND TECHNOLOGY ACTOR SERVICES TO A VENDOR THAT IS A PBM OR A VENDOR THAT IS GED BY OR A SUBSIDIARY OR AFFILIATE OF A PBM.

(4) THE VENDOR AWARDED THE CONTRACT BY THE DEPARTMENT
NOT OUTSOURCE ANY PART OF THE PBM REVERSE AUCTION OR THE
MATED, REAL-TIME, ELECTRONIC, LINE-BY-LINE, CLAIM-BY-CLAIM
W OF INVOICED PBM PRESCRIPTION DRUG CLAIMS.

(5) WITH TECHNICAL ASSISTANCE AND SUPPORT PROVIDED BY THE TECHNOLOGY PLATFORM OPERATOR, THE DEPARTMENT SHALL SPECIFY THE TERMS OF THE PARTICIPANT BIDDING AGREEMENT. THE TERMS OF THE PARTICIPANT BIDDING AGREEMENT SHALL NOT BE MODIFIED EXCEPT BY PRIOR CONSENT OF THE DEPARTMENT.

(6) (a) THE TECHNOLOGY PLATFORM USED TO CONDUCT THE
AUCTION SHALL BE REPURPOSED OVER THE DURATION OF THE
SERVICES CONTRACT AS AN AUTOMATED PHARMACY CLAIMS
VALIDATION ENGINE TO PERFORM REAL-TIME, ELECTRONIC,
BY-LINE, CLAIM-BY-CLAIM REVIEW OF ONE HUNDRED PERCENT OF
PBM PRESCRIPTION DRUG CLAIMS, AND IDENTIFY ALL
TIONS FROM THE SPECIFIC TERMS OF THE PBM SERVICES CONTRACT

(b) THE DEPARTMENT SHALL RECONCILE THE ELECTRONICALLY
INDICATED PHARMACY CLAIMS, AS DESCRIBED IN SUBSECTION (6)(a) OF
SECTION, WITH PBM INVOICES ON A MONTHLY OR QUARTERLY BASIS
TO ENSURE THAT STATE PAYMENTS SHALL NOT EXCEED THE TERMS
STATED IN ANY PBM SERVICES CONTRACT.

7 (7) (a) THE FIRST PBM REVERSE AUCTION SHALL BE COMPLETED
8 AND THE PBM SERVICES CONTRACT SHALL BE AWARDED TO THE WINNING
9 PBM WITH AN EFFECTIVE DATE OF JULY 1, 2023. SUBSEQUENT
10 CONTRACTS MUST BE AWARDED NO LATER THAN THREE MONTHS PRIOR TO
11 TERMINATION OR EXPIRATION OF THE CURRENT PBM SERVICES CONTRACT
12 FOR A COVERED GROUP, SUCH AS THE STATE EMPLOYEES BENEFITS GROUP,
13 THAT INCLUDES ONLY ACTIVE EMPLOYEES AND DEPENDENTS, BUT DOES
14 NOT INCLUDE RETIREE PARTICIPANTS IN A MEDICARE PART D EMPLOYER
15 GROUP WAIVER PROGRAM PURSUANT TO THE "MEDICARE PRESCRIPTION
16 DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L.
17 108-173.

18 (b) IN THE EVENT AN ELIGIBLE COVERED GROUP THAT INCLUDES
19 RETIREE PARTICIPANTS IN A PART D EMPLOYER GROUP WAIVER PROGRAM
20 PURSUANT TO THE "MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND
21 MODERNIZATION ACT OF 2003", PUB.L. 108-173, OPTS TO USE THE
22 PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12, THE RELEVANT
23 PBM REVERSE AUCTION SHALL BE COMPLETED AND THE PBM SERVICES
24 CONTRACT SHALL BE AWARDED TO THE WINNING PBM NO LATER THAN SIX
25 MONTHS PRIOR TO TERMINATION OR EXPIRATION OF THE PBM SERVICES
26 CONTRACT CURRENTLY COVERING THE RETIREE EMPLOYER GROUP WAIVER
27 PROGRAM PARTICIPANTS.

25 (10) (a) THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART
26 12 APPLY TO GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE
27 EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50. THIS

1 PART 12 SHALL NOT APPLY IN THE CASE OF A NONPROFIT,
2 NONGOVERNMENTAL HEALTH MAINTENANCE ORGANIZATION WITH
3 RESPECT TO MANAGED CARE PLANS THAT PROVIDE A MAJORITY OF
4 COVERED PROFESSIONAL SERVICES THROUGH A SINGLE CONTRACTED
5 MEDICAL GROUP.

6 (b) ANY OTHER SELF-FUNDED PUBLIC SECTOR HEALTH PLAN MAY
7 USE THE PROCESSES AND PROCEDURES SET FORTH IN THIS PART 12
8 INDIVIDUALLY, COLLECTIVELY, OR AS A JOINT PURCHASING GROUP WITH
9 THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE "STATE
10 EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50.

11 (c) (I) AFTER COMPLETION OF THE FIRST PBM REVERSE AUCTION,
12 SELF-FUNDED PRIVATE SECTOR HEALTH PLANS WITH SUBSTANTIAL
13 PARTICIPATION BY COLORADO EMPLOYEES AND THEIR DEPENDENTS SHALL
14 HAVE THE OPTION TO PARTICIPATE IN A JOINT PURCHASING POOL WITH
15 STATE EMPLOYEES FOR SUBSEQUENT PBM REVERSE AUCTIONS.

16 (II) THE GROUP BENEFIT PLANS PROVIDED PURSUANT TO THE
17 "STATE EMPLOYEES GROUP BENEFITS ACT", PART 6 OF THIS ARTICLE 50,
18 AND ANY SELF-FUNDED PUBLIC SECTOR HEALTH PLANS OR SELF-FUNDED
19 PRIVATE SECTOR HEALTH PLANS THAT OPT TO PARTICIPATE WITH THE
20 STATE EMPLOYEES GROUP BENEFITS PLAN IN A JOINT PBM REVERSE
21 AUCTION PURCHASING POOL SHALL RETAIN FULL AUTONOMY OVER
22 DETERMINATION OF THEIR RESPECTIVE PRESCRIPTION DRUG FORMULARIES
23 AND PHARMACY BENEFIT DESIGNS AND SHALL NOT BE REQUIRED TO ADOPT
24 A COMMON PRESCRIPTION DRUG FORMULARY OR COMMON PRESCRIPTION
25 PHARMACY BENEFIT DESIGN. ANY SUCH ENTITY OR PURCHASING GROUP
26 SHALL AGREE, BEFORE PARTICIPATING IN THE PBM REVERSE AUCTION, TO
27 ACCEPT THE PRESCRIPTION DRUG PRICING PLAN THAT IS SELECTED

1 THROUGH THE PBM REVERSE AUCTION PROCESS.

2 (III) ANY PBM PROVIDING SERVICES TO THE DEPARTMENT, TO
3 SELF-FUNDED PUBLIC SECTOR HEALTH PLANS, OR TO SELF-FUNDED
4 PRIVATE SECTOR HEALTH PLANS AS DESCRIBED IN THIS SECTION SHALL
5 PROVIDE THE DEPARTMENT AND THE PLAN ACCESS TO COMPLETE
6 PHARMACY CLAIMS DATA NECESSARY TO CONDUCT THE REVERSE AUCTION
7 AND CARRY OUT THEIR ADMINISTRATIVE AND MANAGEMENT DUTIES.

8 (11) NOTWITHSTANDING SECTION 24-50-1204 (1), THE
9 DEPARTMENT MAY ELECT TO VACATE THE OUTCOME OF A PBM REVERSE
10 AUCTION IF THE LOWEST COST PBM BID IS NOT LESS THAN THE PROJECTED
11 COST TREND FOR THE INCUMBENT PBM CONTRACT AS VERIFIED BY THE
12 DEPARTMENT. THE DEPARTMENT MAY UTILIZE A CONSULTANT TO MAKE
13 THE VERIFICATION. THE COST TREND SHALL BE PROJECTED BY THE
14 TECHNOLOGY PLATFORM OPERATOR USING INDUSTRY-RECOGNIZED DATA
15 SOURCES AND IS SUBJECT TO REVIEW AND APPROVAL BY THE DEPARTMENT
16 IN ADVANCE OF THE REVERSE AUCTION. METHODOLOGY MUST BE APPLIED
17 CONSISTENTLY IN PROJECTION OF COST AND SAVINGS TO THE STATE WITH
18 REGARD TO THE INCUMBENT PBM CONTRACT AND COMPETING PBM
19 REVERSE AUCTION BIDS.

20 **SECTION 2. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety.