

CHAPTER 340

INSURANCE

SENATE BILL 26-167

BY SENATOR(S) Benavidez and Mullica, Amabile, Ball, Cutter, Daugherty, Exum, Gonzales J., Hinrichsen, Jodeh, Kipp, Marchman, Snyder, Wallace, Weissman, Coleman;
also REPRESENTATIVE(S) Boesenecker and Lindsay, Bacon, Brown, Camacho, Clifford, Duran, English, Gonzalez R., Hamrick, McCormick, Nguyen, Ricks, Rutinel, Rydin, Sirota.

AN ACT

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

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

SECTION 1. Short title. The short title of this act is the "Making Health Care More Affordable Through Prescription Drug Purchases Act".

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

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

(2.5) (a) BEGINNING JANUARY 1, 2028, AND EXCEPT AS PROVIDED IN SUBSECTION (2.5)(d) OF THIS SECTION, WHEN CALCULATING A COVERED PERSON'S OVERALL CONTRIBUTION TO AN OUT-OF-POCKET MAXIMUM OR COST-SHARING REQUIREMENT UNDER THE COVERED PERSON'S HEALTH BENEFIT PLAN, A CARRIER THAT DELIVERS, ISSUES, RENEWS, AMENDS, OR CONTINUES COVERAGE FOR AN INDIVIDUAL OR GROUP HEALTH BENEFIT PLAN IN THIS STATE SHALL ACCOUNT FOR AND CREDIT TO THE COVERED PERSON'S OVERALL CONTRIBUTION TO THE OUT-OF-POCKET MAXIMUM OR COST-SHARING REQUIREMENT AN OUT-OF-POCKET EXPENSE THAT THE COVERED PERSON INCURS BY:

(I) PURCHASING A PRESCRIPTION DRUG; AND

(II) DIRECTLY PAYING A PHARMACY OR DIRECT-TO-CONSUMER PLATFORM FOR THE PRESCRIPTION DRUG.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) IN ORDER TO RECEIVE CREDIT FOR AN OUT-OF-POCKET EXPENSE AS DESCRIBED IN SUBSECTION (2.5)(a) OF THIS SECTION, A COVERED PERSON WHO PURCHASES A PRESCRIPTION DRUG IN ACCORDANCE WITH SUBSECTION (2.5)(a) OF THIS SECTION SHALL PROVIDE TO THE CARRIER PROOF OF PAYMENT FOR THE COVERED PERSON'S PURCHASE OF THE PRESCRIPTION DRUG WITHIN NINETY DAYS AFTER MAKING THE PURCHASE. SUCH PROOF OF PURCHASE MAY BE SHOWN BY DOCUMENTATION OF THE PURCHASE, INCLUDING BY AN ITEMIZED RECEIPT OR A PHARMACY RECORD. IF THE PROOF OF PURCHASE THAT IS SUBMITTED TO THE CARRIER IS INSUFFICIENT OR INCOMPLETE, THE CARRIER MAY REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION.

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

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

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

(II) IF THE COVERED PERSON:

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

(B) INCURRED THE OUT-OF-POCKET EXPENSE BY PURCHASING A PRESCRIPTION DRUG THAT IS NOT COVERED UNDER THE FORMULARY OF THE COVERED PERSON'S HEALTH BENEFIT PLAN, UNLESS THE CARRIER GRANTS AN EXCEPTION; OR

(C) DOES NOT COMPLY WITH THE CARRIER'S UTILIZATION MANAGEMENT PROCESSES, INCLUDING PRIOR AUTHORIZATION AND STEP THERAPY PROTOCOLS REQUIRED UNDER THE COVERED PERSON'S PLAN.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final

adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 3, 2026