

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0021.01 Yelana Love x2295

HOUSE BILL 20-1078

HOUSE SPONSORSHIP

Jaquez Lewis and Mullica,

SENATE SPONSORSHIP

Winter,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PRESCRIPTION DRUG CLAIMS SUBMITTED BY A
102 PHARMACY, AND, IN CONNECTION THEREWITH, PROHIBITING
103 RETROACTIVE FEES.

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 bill specifies the amount that a pharmacy benefit management firm (PBM) is required to reimburse a pharmacy for clean claims and reasonable dispensing fees.

The bill also prohibits PBMs from retroactively reducing payment on a clean claim submitted by a pharmacy unless the PBM determines,

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.

through an audit conducted in accordance with state law, that the claim was not a clean claim. Health insurers that contract with PBMs must ensure that the PBMs are complying with this prohibition and the reporting requirements and are subject to penalties for failure to do so.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-122.3 as
3 follows:

4 **10-16-122.3. Pharmacy benefit management firm payments on**
5 **clean claims and dispensing fees - retroactive reduction prohibited -**

6 **enforcement - definitions.** (1) (a) A PHARMACY BENEFIT MANAGEMENT
7 FIRM SHALL NOT REIMBURSE A PHARMACY IN AN AMOUNT LESS THAN:

8 (I) FOR A CLEAN CLAIM, THE AMOUNT THAT THE PHARMACY
9 BENEFIT MANAGEMENT FIRM REIMBURSES ANY AFFILIATE FOR THE SAME
10 PHARMACY SERVICES; AND

11 (II) FOR A REASONABLE DISPENSING FEE, FOUR DOLLARS.

12 (b) THE PHARMACY BENEFIT MANAGEMENT FIRM SHALL
13 REIMBURSE A CLEAN CLAIM IN AN AMOUNT THAT IS NOT LESS THAN THE
14 AMOUNT DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION AND THAT IS
15 EITHER:

16 (I) CALCULATED ON A PER-UNIT BASIS USING THE SAME GENERIC
17 PRODUCT IDENTIFIER OR GENERIC CODE NUMBER; OR

18 (II) SUFFICIENT TO PAY OR REIMBURSE A PHARMACY FOR THE
19 INGREDIENT DRUG PRODUCT COMPONENT OF PHARMACIST SERVICES LESS
20 THE NATIONAL AVERAGE DRUG ACQUISITION COST OR, IF THE NATIONAL
21 AVERAGE DRUG ACQUISITION COST IS UNAVAILABLE, THE WHOLESALE
22 ACQUISITION COST.

23 (2) (a) A CONTRACT OR AGREEMENT BETWEEN A PHARMACY

1 BENEFIT MANAGEMENT FIRM AND A PHARMACY WITH RESPECT TO
2 PRESCRIPTION DRUG BENEFITS ADMINISTERED OR MANAGED BY THE
3 PHARMACY BENEFIT MANAGEMENT FIRM MUST PROVIDE THAT AFTER THE
4 DATE THE PHARMACY BENEFIT MANAGEMENT FIRM RECEIVES A CLEAN
5 CLAIM SUBMITTED BY A PHARMACY, THE PHARMACY BENEFIT
6 MANAGEMENT FIRM SHALL NOT RETROACTIVELY REDUCE PAYMENT ON
7 THE CLAIM, EITHER DIRECTLY OR INDIRECTLY, THROUGH A NET
8 REIMBURSEMENT AMOUNT OR BY ANY OTHER MECHANISM; EXCEPT THAT,
9 IF DURING THE COURSE OF AN AUDIT CONDUCTED IN ACCORDANCE WITH
10 SECTION 10-16-122.5, THE PHARMACY BENEFIT MANAGEMENT FIRM
11 DETERMINES THAT A CLAIM IS NOT A CLEAN CLAIM, THE PHARMACY
12 BENEFIT MANAGEMENT FIRM MAY RETROACTIVELY REDUCE PAYMENT ON
13 THE CLAIM.

14 (b) NOTHING IN THIS SUBSECTION (2) PROHIBITS A PHARMACY
15 BENEFIT MANAGEMENT FIRM FROM RETROACTIVELY INCREASING A
16 PAYMENT TO A PHARMACY PURSUANT TO A WRITTEN AGREEMENT
17 BETWEEN THE PHARMACY BENEFIT MANAGEMENT FIRM AND THE
18 PHARMACY.

19 (3) (a) EACH CARRIER THAT CONTRACTS WITH A PHARMACY
20 BENEFIT MANAGEMENT FIRM TO MANAGE OR ADMINISTER PRESCRIPTION
21 DRUG BENEFITS ON THE CARRIER'S BEHALF SHALL INCLUDE IN A NEW,
22 AMENDED, OR RENEWED CONTRACT WITH THE PHARMACY BENEFIT
23 MANAGEMENT FIRM A REQUIREMENT THAT THE PHARMACY BENEFIT
24 MANAGEMENT FIRM COMPLY WITH THIS SECTION. THE CARRIER SHALL
25 ANNUALLY AUDIT THE PHARMACY BENEFIT MANAGEMENT FIRM TO
26 MONITOR AND ENSURE COMPLIANCE WITH THIS SECTION.

27 (b) FAILURE OF A CARRIER TO COMPLY WITH THIS SUBSECTION (3)

1 OR TO ENSURE THAT A PHARMACY BENEFIT MANAGEMENT FIRM WITH
2 WHOM THE CARRIER CONTRACTS IS COMPLYING WITH THIS SECTION IS AN
3 UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR DECEPTIVE ACT OR
4 PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT TO SECTION
5 10-3-1104 (1)(tt).

6 (4) THIS SECTION APPLIES TO CONTRACTS AND AGREEMENTS
7 BETWEEN PHARMACY BENEFIT MANAGEMENT FIRMS AND PHARMACIES IN
8 EFFECT ON OR AFTER JANUARY 1, 2021.

9 (5) AS USED IN THIS SECTION:

10 (a) "AFFILIATE" MEANS A PHARMACY THAT DIRECTLY OR
11 INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, OWNS OR
12 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON
13 OWNERSHIP OR CONTROL WITH A PHARMACY BENEFIT MANAGEMENT FIRM.

14 (b) "CLEAN CLAIM" MEANS A CLAIM THAT HAS NO DEFECT OR
15 IMPROPRIETY, INCLUDING ANY LACK OF REQUIRED SUBSTANTIATING
16 DOCUMENTATION, OR PARTICULAR CIRCUMSTANCE REQUIRING SPECIAL
17 TREATMENT THAT PREVENTS TIMELY PAYMENT FROM BEING MADE ON THE
18 CLAIM.

19 (c) "PHARMACY" MEANS AN IN-STATE OR NONRESIDENT
20 PRESCRIPTION DRUG OUTLET, AS DEFINED IN SECTION 12-280-103 (43); AN
21 OTHER OUTLET, AS DEFINED IN SECTION 12-280-103 (32); A HOSPITAL
22 SATELLITE PHARMACY, AS DEFINED IN SECTION 12-280-103 (20); OR
23 OTHER SETTING, INCLUDING A PRACTITIONER'S OFFICE OR CLINIC, WHERE
24 A PRACTITIONER, AS DEFINED IN SECTION 12-280-103 (40), DISPENSES
25 PRESCRIPTION DRUGS TO PATIENTS AS AUTHORIZED BY SECTION
26 12-280-120 (6).

27 **SECTION 2.** In Colorado Revised Statutes, 10-3-1104, **add**

1 (1)(tt) as follows:

2 **10-3-1104. Unfair methods of competition - unfair or deceptive**
3 **acts or practices.** (1) The following are defined as unfair methods of
4 competition and unfair or deceptive acts or practices in the business of
5 insurance:

6 (tt) FAILING TO COMPLY WITH SECTION 10-16-122.3 AND TO
7 ENSURE A PHARMACY BENEFIT MANAGEMENT FIRM WITH WHOM A
8 CARRIER, AS DEFINED IN SECTION 10-16-102 (8), CONTRACTS IS
9 COMPLYING WITH SECTION 10-16-122.3.

10 **SECTION 3. Act subject to petition - effective date -**
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
12 the expiration of the ninety-day period after final adjournment of the
13 general assembly (August 5, 2020, if adjournment sine die is on May 6,
14 2020); except that, if a referendum petition is filed pursuant to section 1
15 (3) of article V of the state constitution against this act or an item, section,
16 or part of this act within such period, then the act, item, section, or part
17 will not take effect unless approved by the people at the general election
18 to be held in November 2020 and, in such case, will take effect on the
19 date of the official declaration of the vote thereon by the governor.

20 (2) This act applies to contracts and agreements in effect on or
21 after January 1, 2021.