HOUSE BILL 20-1078

A BILL FOR AN ACT

CONCERNING PRESCRIPTION DRUG CLAIMS SUBMITTED BY A PHARMACY, AND, IN CONNECTION THEREWITH, PROHIBITING 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,
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.

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

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

10-16-122.3. Pharmacy benefit management firm payments - retroactive reduction prohibited - enforcement - definitions.

(1) A PHARMACY BENEFIT MANAGEMENT FIRM SHALL NOT REIMBURSE A PHARMACY IN AN AMOUNT LESS THAN THE AMOUNT THAT THE PHARMACY BENEFIT MANAGEMENT FIRM REIMBURSES ANY AFFILIATE FOR THE SAME PHARMACY SERVICES.

(2) (a) A CONTRACT OR AGREEMENT, INCLUDING A PERFORMANCE-BASED OR VALUE-BASED CONTRACT OR AGREEMENT, BETWEEN A PHARMACY BENEFIT MANAGEMENT FIRM AND A PHARMACY OR A PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION WITH RESPECT TO PRESCRIPTION DRUG BENEFITS ADMINISTERED OR MANAGED BY THE PHARMACY BENEFIT MANAGEMENT FIRM MUST PROVIDE THAT AFTER THE DATE THE PHARMACY BENEFIT MANAGEMENT FIRM RECEIVES A CLEAN CLAIM SUBMITTED BY A PHARMACY, THE PHARMACY BENEFIT MANAGEMENT FIRM SHALL NOT RETROACTIVELY REDUCE PAYMENT ON THE CLAIM AFTER THE POINT OF SALE EXCEPT AS THE RESULT OF AN AUDIT CONDUCTED IN ACCORDANCE WITH SECTION 10-16-122.5.

(b) NOTHING IN THIS SUBSECTION (2) PROHIBITS A PHARMACY BENEFIT MANAGEMENT FIRM FROM RETROACTIVELY INCREASING A PAYMENT TO A PHARMACY PURSUANT TO A WRITTEN AGREEMENT...
BETWEEN THE PHARMACY BENEFIT MANAGEMENT FIRM AND THE
PHARMACY OR MAKING ADJUSTMENTS TO CLAIMS IN THE CASE OF A
CLERICAL ERROR.

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

(4) THE DIVISION MAY PROMULGATE RULES TO ESTABLISH THE
MANNER IN WHICH CARRIERS AND PHARMACY BENEFIT MANAGEMENT
FIRMS ARE REQUIRED TO SHOW COMPLIANCE WITH THIS SECTION.

(5) THIS SECTION APPLIES TO CONTRACTS AND AGREEMENTS
BETWEEN PHARMACY BENEFIT MANAGEMENT FIRMS AND PHARMACIES OR
PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS IN EFFECT ON OR
AFTER JANUARY 1, 2021.

(6) AS USED IN THIS SECTION:

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

(b) "CLEAN CLAIM" MEANS A CLAIM THAT HAS NO DEFECT OR
IMPROPRIETY, INCLUDING ANY LACK OF REQUIRED SUBSTANTIATING
DOCUMENTATION, OR PARTICULAR CIRCUMSTANCE REQUIRING SPECIAL
TREATMENT THAT PREVENTS TIMELY PAYMENT FROM BEING MADE ON THE CLAIM. "CLEAN CLAIM" DOES NOT INCLUDE A CLAIM BASED ON FRAUD, WASTE, OR ABUSE.

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

SECTION 2. Act subject to petition - effective date - applicability. (1) 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 5, 2020, if adjournment sine die is on May 6, 2020); 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 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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