

CHAPTER 98

INSURANCE

HOUSE BILL 20-1078

BY REPRESENTATIVE(S) Jaquez Lewis and Mullica, Bird, Buckner, Duran, Esgar, Froelich, Herod, Hooton, Kennedy, Lontine, Melton, Michaelson Jenet, Roberts, Tipper, Titone, Valdez A., Buentello, Cutter, Jackson, Snyder, Valdez D., Young, Becker; also SENATOR(S) Winter, Crowder, Danielson, Ginal, Moreno, Pettersen.

AN ACT

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

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) 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.

(b) THIS SUBSECTION (1) DOES NOT PROHIBIT A PHARMACY BENEFIT MANAGEMENT FIRM FROM REIMBURSING AN AFFILIATE FOR SATISFYING THE TERMS OF A PERFORMANCE-BASED CONTRACT.

(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.

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) 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); AN OTHER 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.

Approved: April 1, 2020