

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 23-0773.02 Kristen Forrestal x4217

**HOUSE BILL 23-1201**

**HOUSE SPONSORSHIP**

**Daugherty and Soper**, Bacon, Bird, Boesenecker, Brown, Duran, Garcia, Jodeh, Lieder, Lindsay, McCluskie, McCormick, Sharbini, Sirota, Snyder, Titone, Valdez, Velasco, Woodrow

**SENATE SPONSORSHIP**

**Mullica and Smallwood**,

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**House Committees**

Health & Insurance  
Appropriations

**Senate Committees**

Health & Human Services  
Appropriations

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**A BILL FOR AN ACT**

101      **CONCERNING PRESCRIPTION DRUG BENEFITS CONTRACT TERM**  
102                    **REQUIREMENTS, AND, IN CONNECTION THEREWITH, MAKING AN**  
103                    **APPROPRIATION.**

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**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>.)*

For group benefit plan contracts between a pharmacy benefit manager (PBM) or a health insurance carrier (carrier) and an employer, certificate holder, or policyholder, the bill requires that the amount charged by the PBM or carrier to the employer, certificate holder, or policyholder for a prescription drug be equal to or less than the amount

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.*  
*Dashes through the words or numbers indicate deletions from existing law.*

SENATE  
2nd Reading Unamended  
May 1, 2023

HOUSE  
3rd Reading Unamended  
April 15, 2023

HOUSE  
Amended 2nd Reading  
April 14, 2023

paid by the PBM or carrier to the contracted pharmacy for the drug.

The bill creates transparency requirements for PBMs and carriers regarding prescription drug benefits and grants audit authority to the department of health care policy and financing for self-funded plans and to the commissioner of insurance for fully insured plans, on request of the office of the attorney general, to ensure compliance with the requirements.

A violation of the requirements of the bill is a deceptive trade practice under the "Colorado Consumer Protection Act", with regard to self-funded plans, and a deceptive trade practice in the business of insurance, with regard to fully insured plans.

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

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3 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-158 as  
4 follows:

5 **10-16-158. Contracts - health benefit plans - pharmacy benefit**  
6 **managers - policyholders - transparency requirements - rules -**  
7 **definitions.** (1) FOR A CONTRACT BETWEEN A CARRIER OR PHARMACY  
8 BENEFIT MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT  
9 IS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2025, THE AMOUNT  
10 CHARGED BY THE CARRIER OR PBM TO THE CERTIFICATE HOLDER OR  
11 POLICYHOLDER FOR A PRESCRIPTION DRUG DISPENSED TO A COVERED  
12 PERSON MUST BE EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE  
13 CARRIER OR PBM TO A CONTRACTED PHARMACY FOR SUCH PRESCRIPTION  
14 DRUG DISPENSED TO SUCH COVERED PERSON RESIDING IN COLORADO.

15 (2) (a) FOR GROUP HEALTH BENEFIT PLANS IN EFFECT DURING  
16 CALENDAR YEAR 2025, AND EACH CALENDAR YEAR THEREAFTER, A  
17 CARRIER OR PHARMACY BENEFIT MANAGER SHALL DISCLOSE TO EACH  
18 POLICYHOLDER OR THE POLICYHOLDER'S SPECIFICALLY DESIGNATED  
19 BROKER OR CONSULTANT THE PRESCRIPTION DRUG CONTRACT TERMS

1 REQUIRED BY THIS SUBSECTION (2). FOR GROUP HEALTH BENEFIT PLANS IN  
2 EFFECT DURING CALENDAR YEAR 2023 OR 2024, OR BOTH, THE  
3 DISCLOSURE MUST ALSO INCLUDE ANY CHANGES IN TERMS BETWEEN EACH  
4 CALENDAR YEAR.

5 (b) THE DISCLOSURES REQUIRED PURSUANT TO THIS SUBSECTION  
6 (2) MUST INCLUDE:

7 (I) THE INGREDIENT COST AVERAGE REIMBURSEMENT RATE FOR:

8 (A) GENERIC DRUGS DISPENSED AT RETAIL PHARMACIES;

9 (B) BRAND-NAME DRUGS DISPENSED AT RETAIL PHARMACIES;

10 (C) SPECIALTY DRUGS DISPENSED AT RETAIL PHARMACIES;

11 (D) GENERIC DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

12 (E) BRAND-NAME DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

13 (F) SPECIALTY DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

14 AND

15 (G) SPECIALTY DRUGS DISPENSED AT ANY SPECIALTY PHARMACY,  
16 INCLUDING A PHARMACY THAT IS FULLY OR PARTIALLY OWNED BY A  
17 CONTRACTING PBM, CARRIER, OR THE PBM'S OR CARRIER'S HOLDING  
18 COMPANIES OR AFFILIATES;

19 (II) THE AVERAGE DISPENSING FEE PAID TO EACH TYPE OF  
20 PHARMACY, INCLUDING EACH RETAIL, MAIL-ORDER, AND SPECIALTY  
21 PHARMACY;

22 (III) THE CHARGE PER PRIOR AUTHORIZATION;

23 (IV) UTILIZATION MANAGEMENT PROGRAMS AND ASSOCIATED  
24 FEES;

25 (V) ANY OTHER CONTRACTED SERVICES AND ASSOCIATED FEES;

26 (VI) THE AVERAGE REBATE ACROSS ALL PAID PRESCRIPTIONS FOR  
27 THE RESPECTIVE GROUP HEALTH BENEFIT PLAN AND THE AVERAGE REBATE

1 ACROSS ALL PAID PRESCRIPTIONS THAT PAY A REBATE FOR THE  
2 RESPECTIVE GROUP HEALTH BENEFIT PLAN; AND

3 (VII) THE REBATE GUARANTEE, WHERE APPLICABLE.

4 (c) FOR CONTRACTS BETWEEN A CARRIER OR PHARMACY BENEFIT  
5 MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT ARE  
6 RENEWED IN CALENDAR YEAR 2025, AND EACH CALENDAR YEAR  
7 THEREAFTER, THE CARRIER OR PBM SHALL CALCULATE AND  
8 COMMUNICATE TO THE CERTIFICATE HOLDER OR POLICYHOLDER THE  
9 VALUE OF THE DIFFERENCE BETWEEN THE CONTRACT TERMS IN THE  
10 RENEWED CONTRACTS AND THE CONTRACTS THAT WERE IN EFFECT THE  
11 PREVIOUS CALENDAR YEAR, ANNUALIZING THE PREVIOUS YEAR'S ACTUAL  
12 DATA FOR EACH RESPECTIVE CERTIFICATE HOLDER OR POLICYHOLDER. THE  
13 VALUE COMMUNICATED SHALL INCLUDE ANNUAL AGGREGATE SAVINGS,  
14 ANNUAL AGGREGATE SAVINGS PER EMPLOYEE PER YEAR, AND ANNUAL  
15 AGGREGATE SAVINGS PER COVERED PERSON PER YEAR.

16 (d) A CARRIER OR PHARMACY BENEFIT MANAGER SHALL PROVIDE  
17 TO EACH CERTIFICATE HOLDER OR POLICYHOLDER, FOR VOLUNTARY  
18 CONSIDERATION, OPTIONS TO REPURPOSE AGGREGATE SAVINGS IN THE  
19 FORM OF REDUCTIONS TO OUT-OF-POCKET COSTS SUCH AS DEDUCTIBLES,  
20 COPAYMENT AMOUNTS, COINSURANCE, OR PREMIUM CONTRIBUTIONS. THE  
21 CARRIER OR PBM SHALL PROVIDE THE INFORMATION TO CERTIFICATE  
22 HOLDERS OR POLICYHOLDERS NO LESS THAN NINETY DAYS BEFORE THE  
23 DATE OF THE CONTRACT RENEWAL.

24 (e) A CARRIER OR PBM SHALL PROVIDE THE INFORMATION  
25 SPECIFIED IN SUBSECTIONS (2)(b), (2)(c), AND (2)(d) OF THIS SECTION TO  
26 ALL CERTIFICATE HOLDERS AND POLICYHOLDERS FOR CONTRACTS IN  
27 EFFECT DURING CALENDAR YEAR 2025, INCLUDING CERTIFICATE HOLDERS

1 AND POLICYHOLDERS THAT MAY NOT RECEIVE A RENEWAL NOTICE DUE TO  
2 A MULTIYEAR CONTRACTUAL AGREEMENT OR FOR ANY OTHER REASON,  
3 EXCEPT NOTICE OF TERMINATION.

4 (f) THE DISCLOSURES REQUIRED IN SUBSECTIONS (2)(b)(VI) AND  
5 (2)(b)(VII) OF THIS SECTION MUST NOT DISCLOSE ANY PROPRIETARY  
6 REBATE INFORMATION BETWEEN A DRUG MANUFACTURER AND THE  
7 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE. THE  
8 DISCLOSURE OF DATA REQUIRED BY THESE SUBSECTIONS MUST REPRESENT  
9 THE AGGREGATE VALUE OF REBATES PASSING THROUGH FROM THE  
10 PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE TO THE HEALTH  
11 BENEFIT PLAN AS DEFINED BY RULE OF THE COMMISSIONER.

12 (g) A CARRIER MAY EXEMPT A SEGMENT OF ITS BUSINESS FROM  
13 THIS SUBSECTION (2). THE CARRIER'S EXEMPTED BUSINESS SEGMENT MUST  
14 PROVIDE THE MAJORITY OF COVERED MEDICAL PROFESSIONAL SERVICES  
15 THROUGH A SINGLE, CONTRACTED MEDICAL GROUP AND OPERATE ITS OWN  
16 PHARMACIES THROUGH WHICH AT LEAST EIGHTY-FIVE PERCENT OF ITS  
17 AGGREGATE PRESCRIPTION DRUG CLAIMS ARE FILLED. ON AND AFTER THE  
18 EFFECTIVE DATE OF THIS SECTION, A CARRIER THAT MEETS THE EXEMPTION  
19 CRITERIA IN THIS SUBSECTION (2)(g) SHALL SUBMIT AN ATTESTATION TO  
20 THE DIVISION OF SUCH COMPLIANCE WITH EACH RATE FILING REQUIRED  
21 PURSUANT TO SECTION 10-16-107. THE CARRIER OR PBM SHALL DISCLOSE  
22 ALL DATA REQUIREMENTS AS OUTLINED IN THIS SUBSECTION (2) TO THE  
23 CARRIER'S GROUP POLICYHOLDERS THAT ARE PRIMARILY ACCESSING  
24 PRESCRIPTION DRUG BENEFITS THROUGH A THIRD-PARTY PBM  
25 CONTRACTED WITH THE CARRIER.

26 (3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT  
27 THIS SECTION.

1 (4) (a) THE COMMISSIONER MAY CONDUCT AN AUDIT OR MARKET  
2 CONDUCT EXAMINATION OF A CARRIER OR PHARMACY BENEFIT MANAGER  
3 TO ENSURE COMPLIANCE WITH THIS SECTION. THE COMMISSIONER,  
4 PURSUANT TO ANY RULES PROMULGATED BY THE DIVISION, MAY AUDIT  
5 A CARRIER OR PBM ANNUALLY TO DETERMINE IF THERE IS A VIOLATION  
6 OF THIS SECTION.

7 (b) THE COMMISSIONER MAY DETERMINE A CARRIER'S OR PBM'S  
8 COMPLIANCE WITH THIS SECTION BASED ON A SAMPLING OF DATA OR  
9 BASED ON A FULL CLAIMS AUDIT. THE SAMPLING OF DATA AND ANY  
10 EXTRAPOLATION FROM THE DATA USED TO DETERMINE PENALTIES MUST  
11 BE REASONABLY VALID FROM A STATISTICAL STANDPOINT AND IN  
12 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS. A  
13 CARRIER OR PBM THAT DOES NOT COMPLY WITH A DIVISION REQUEST FOR  
14 THE DATA REQUIRED TO COMPLETE AN AUDIT VIOLATES THIS SECTION AND  
15 MAY BE SUBJECT TO PENALTIES.

16 (c) INFORMATION OBTAINED THROUGH AN AUDIT CONDUCTED  
17 PURSUANT TO THIS SUBSECTION (4) IS PROPRIETARY AND CONFIDENTIAL  
18 INFORMATION, AVAILABLE ONLY TO THE COMMISSIONER AND THE  
19 COMMISSIONER'S AUDITING DESIGNEE AND IS NOT SUBJECT TO DISCLOSURE  
20 UNLESS SPECIFICALLY REQUIRED BY STATE OR FEDERAL LAW.

21 (5) THE FAILURE OF A CARRIER OR PBM TO COMPLY WITH THIS  
22 SECTION IS AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR A  
23 DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT  
24 TO SECTION 10-3-1104 (1).

25 (6) (a) THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (4) OF  
26 THIS SECTION APPLY TO AN EMPLOYER-SPONSORED HEALTH BENEFIT PLAN,  
27 AN ASSOCIATED PHARMACY BENEFIT MANAGER, AND THE HEALTH BENEFIT

1 PLAN MEMBERS ONLY IF A PERSON, TAFT-HARTLEY TRUST, MUNICIPALITY,  
2 STATE, LABOR UNION, PLAN SPONSOR, OR EMPLOYER THAT PROVIDES THE  
3 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN ELECTS TO BE SUBJECT TO  
4 SUBSECTIONS (1), (2), AND (4) OF THIS SECTION FOR ITS MEMBERS THAT  
5 RESIDE IN COLORADO.

6 (b) AS USED IN THIS SUBSECTION (6), "PHARMACY BENEFIT  
7 MANAGER" MEANS AN ENTITY DOING BUSINESS IN THIS STATE THAT  
8 ADMINISTERS OR MANAGES PRESCRIPTION DRUG BENEFITS, INCLUDING  
9 CLAIMS PROCESSING SERVICES AND OTHER PRESCRIPTION DRUG OR DEVICE  
10 SERVICES AS DEFINED IN SECTION 10-16-122.1, THAT IS IN A CONTRACTUAL  
11 RELATIONSHIP DIRECTLY OR INDIRECTLY THROUGH AN AFFILIATE WITH AN  
12 EMPLOYER-SPONSORED HEALTH BENEFIT PLAN, WHICH INCLUDES PLANS  
13 THAT ARE SELF-INSURED OR REGULATED BY THE FEDERAL "EMPLOYEE  
14 RETIREMENT INCOME SECURITY ACT OF 1974", 29 U.S.C. SEC. 1001 ET  
15 SEQ., AS AMENDED, OFFERED BY:

- 16 (I) A PERSON;
- 17 (II) A TAFT-HARTLEY TRUST;
- 18 (III) A MUNICIPALITY;
- 19 (IV) THE STATE;
- 20 (V) A LABOR UNION;
- 21 (VI) A PLAN SPONSOR;
- 22 (VII) AN EMPLOYER; OR
- 23 (VIII) A COALITION OF EMPLOYERS OR AGGREGATION OF  
24 EMPLOYERS WORKING TOGETHER TO NEGOTIATE IMPROVED CONTRACT  
25 TERMS WITH A PHARMACY BENEFIT MANAGER.

26 (7) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
27 REQUIRES:

1 (a) "CONTRACTED PHARMACY" MEANS A PHARMACY THAT HAS  
2 CONTRACTED WITH A CARRIER, A PHARMACY BENEFIT MANAGER, OR AN  
3 AFFILIATE OF THE CARRIER OR PBM.

4 (b) "INGREDIENT COST" MEANS THE ACTUAL AMOUNT PAID TO A  
5 PHARMACY BY A PHARMACY BENEFIT MANAGER FOR A PRESCRIPTION  
6 DRUG, NOT INCLUDING A DISPENSING FEE OR PATIENT COST-SHARING  
7 AMOUNT.

8 (c) "PHARMACY" MEANS AN ENTITY WHERE MEDICINAL DRUGS ARE  
9 DISPENSED AND SOLD, INCLUDING A RETAIL PHARMACY, MAIL-ORDER  
10 PHARMACY, SPECIALTY PHARMACY, HOSPITAL OUTPATIENT SETTING, OR  
11 OTHER RELATED PHARMACY.

12 **SECTION 2.** In Colorado Revised Statutes, **add 25.5-1-133** as  
13 follows:

14 **25.5-1-133. Prescription benefits - department and pharmacy**  
15 **manager - contracts - audit - rules.** (1) FOR CONTRACTS BETWEEN A  
16 PHARMACY BENEFIT MANAGER AND THE STATE DEPARTMENT OR ONE OF  
17 ITS AFFILIATED MANAGED CARE ORGANIZATIONS OFFERING A  
18 PRESCRIPTION BENEFIT PLAN THAT IS ISSUED OR RENEWED ON OR AFTER  
19 JANUARY 1, 2025, THE AMOUNT CHARGED BY THE PHARMACY BENEFIT  
20 MANAGER TO THE STATE DEPARTMENT OR MANAGED CARE ORGANIZATION  
21 FOR A PRESCRIPTION DRUG DISPENSED TO AN ENROLLEE IN THE PROGRAM  
22 OF MEDICAL ASSISTANCE CREATED PURSUANT TO SECTION 25.5-4-104  
23 MUST BE EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE PHARMACY  
24 BENEFIT MANAGER TO A MEDICAID PHARMACY FOR THE PRESCRIPTION  
25 DRUG DISPENSED TO THE ENROLLEE.

26 (2) THE STATE BOARD SHALL PROMULGATE RULES TO IMPLEMENT  
27 THIS SECTION, INCLUDING RULES GUIDING AN AUDIT OF MANAGED CARE OR



1 FEE-FOR-SERVICE CLAIMS, TO ENSURE THAT THERE IS NO VIOLATION OF  
2 SUBSECTION (1) OF THIS SECTION.

3 **SECTION 3. Appropriation.** For the 2023-24 state fiscal year,  
4 \$10,000 is appropriated to the department of regulatory agencies for use  
5 by the division of insurance. This appropriation is from the division of  
6 insurance cash fund created in section 10-1-103 (3), C.R.S. To implement  
7 this act, the division may use this appropriation for personal services.

8 **SECTION 4. Act subject to petition - effective date.** This act  
9 takes effect at 12:01 a.m. on the day following the expiration of the  
10 ninety-day period after final adjournment of the general assembly; except  
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
12 of the state constitution against this act or an item, section, or part of this  
13 act within such period, then the act, item, section, or part will not take  
14 effect unless approved by the people at the general election to be held in  
15 November 2024 and, in such case, will take effect on the date of the  
16 official declaration of the vote thereon by the governor.