

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

INTRODUCED

LLS NO. 23-0629.02 Christy Chase x2008

HOUSE BILL 23-1227

HOUSE SPONSORSHIP

Jodeh and Ortiz,

SENATE SPONSORSHIP

Will,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ENFORCEMENT OF REQUIREMENTS IMPOSED ON**
102 **PHARMACY BENEFIT MANAGERS.**

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>.)

Under current law, pharmacy benefit managers (PBMs) are required to perform certain acts and are prohibited from engaging in certain acts. Specifically, PBMs are prohibited from:

- Requiring patients to obtain their prescription drugs through mail order;
- Charging pharmacies fees to adjudicate claims;

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.

- Requiring pharmacies to obtain accreditations or certifications that are different than what the PBM requires of its affiliated pharmacies;
- Retroactively reducing a payment made to a pharmacy on a drug claim after the point of sale or reimbursing a pharmacy in an amount that is less than the amount reimbursed to its own affiliated pharmacy for the same pharmacy service;
- Modifying the prescription drug formulary under a health benefit plan during the plan year;
- With regard to audits, using specified techniques in calculating a recoupment or penalty, subjecting a pharmacy to recoupment when a clerical error is discovered, and requiring pharmacies to be audited more than once a year;
- Prohibiting a pharmacy or pharmacist from, or penalizing a pharmacy or pharmacist for, providing information to patients about more affordable, therapeutically equivalent alternatives to a prescribed drug; or
- Requiring a pharmacy or pharmacist to charge or collect a copayment from an insured patient that exceeds the total charge submitted by the pharmacy for the prescription drug.

Additionally, PBMs are required to:

- Provide pharmacies 7 days' written notice before an audit, conduct an audit by or in consultation with a pharmacist, allow the pharmacy to supplement claims documentation, and establish an appeals process;
- Provide an insured individual, the insured's health-care provider, or a third party acting on behalf of the insured or provider with up-to-date and real-time cost, benefit, and coverage information under the terms of the insured's health benefit plan; and
- Provide contracted pharmacies with the list of sources the PBM used in determining maximum allowable cost pricing, update the information every 7 days, allow pharmacies the ability to readily review the information, follow specified requirements when placing a drug on the maximum allowable cost list, and establish an appeals process to resolve disputes.

The bill specifies that the commissioner of insurance (commissioner) has the power to enforce these prohibitions and requirements and impose penalties on PBMs for failing to comply with these prohibitions and requirements.

Additionally, the bill requires:

- PBMs to register with and pay a registration fee to the

- commissioner; and Health insurers to pay a fee when filing with the commissioner their list of PBMs they use for prescription drug benefits administration.

The fees imposed under the bill are to be used to fund the costs of the division of insurance in enforcing requirements and prohibitions on PBMs.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-122.1, **amend**
3 (2)(a); and **add** (2.5) and (4.5) as follows:

4 **10-16-122.1. Contracts between PBMs and pharmacies -**
5 **carrier submit list of PBMs - PBM registration - fees - prohibited**
6 **practices - exception - rules - enforcement - short title - definitions.**

7 (2) (a) (I) Starting in 2022, each carrier shall submit to the commissioner,
8 contemporaneously with its rate filing pursuant to section 10-16-107 and
9 in a form and manner specified by the commissioner by rule, a list of all
10 pharmacy benefit managers the carrier contracts with or otherwise uses
11 for claims processing services or other prescription drug or device
12 services under health coverage plans the carrier offers.

13 (II) STARTING IN 2024, THE COMMISSIONER SHALL COLLECT A FEE
14 FROM CARRIERS AT THE TIME OF FILING THE LIST OF PBMs REQUIRED BY
15 THIS SUBSECTION (2)(a), WHICH FEE SHALL BE TRANSMITTED TO THE STATE
16 TREASURER FOR DEPOSIT IN THE DIVISION OF INSURANCE CASH FUND
17 CREATED IN SECTION 10-1-103 (3). THE DIVISION SHALL USE THE FEES
18 COLLECTED PURSUANT TO THIS SUBSECTION (2)(a)(II) TO FUND THE
19 DIVISION'S COSTS IN ENFORCING REQUIREMENTS AND PROHIBITIONS ON THE
20 CONDUCT AND ACTIONS OF PBMs AS SPECIFIED IN THIS ARTICLE 16 AND
21 SECTION 25-37-103.5.

22 (2.5) (a) STARTING IN 2024, A PERSON SHALL NOT ESTABLISH OR

1 OPERATE AS A PBM IN THIS STATE UNLESS THE PERSON HAS REGISTERED
2 WITH THE COMMISSIONER IN ACCORDANCE WITH THIS SUBSECTION (2.5)
3 AND COMMISSIONER RULES.

4 (b) THE COMMISSIONER SHALL ESTABLISH, BY RULE, THE FORM
5 AND MANNER FOR A PERSON TO REGISTER WITH THE COMMISSIONER AND
6 SHALL CHARGE APPLICATION AND RENEWAL FEES AS ESTABLISHED BY
7 RULE.

8 (c) THE COMMISSIONER SHALL TRANSMIT ANY FEES COLLECTED
9 PURSUANT TO THIS SUBSECTION (2.5) TO THE STATE TREASURER FOR
10 DEPOSIT IN THE DIVISION OF INSURANCE CASH FUND CREATED IN SECTION
11 10-1-103 (3). THE COMMISSIONER SHALL USE THE FEES COLLECTED
12 PURSUANT TO THIS SUBSECTION (2.5) TO FUND THE DIVISION'S COSTS IN
13 ADMINISTERING AND ENFORCING THIS SUBSECTION (2.5) AND THE
14 REQUIREMENTS AND PROHIBITIONS ON THE CONDUCT AND ACTIONS OF
15 PBMS AS SPECIFIED IN THIS ARTICLE 16 AND SECTION 25-37-103.5.

16 (4.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION
17 APPLICABLE TO PBMS, THE COMMISSIONER HAS THE AUTHORITY TO
18 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY
19 AGAINST A PBM THAT FAILS TO COMPLY WITH THIS SECTION.

20 **SECTION 2.** In Colorado Revised Statutes, 10-16-122.3, **add**
21 (5.5) as follows:

22 **10-16-122.3. Pharmacy benefit management firm payments -**
23 **retroactive reduction prohibited - enforcement - rules - definitions.**

24 (5.5) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE
25 TO PHARMACY BENEFIT MANAGEMENT FIRMS, THE COMMISSIONER HAS THE
26 AUTHORITY TO ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR
27 OTHER REMEDY AGAINST A PHARMACY BENEFIT MANAGEMENT FIRM THAT

1 FAILS TO COMPLY WITH THIS SECTION.

2 **SECTION 3.** In Colorado Revised Statutes, 10-16-122.4, **add** (6)
3 as follows:

4 **10-16-122.4. Pharmacy benefits - formulary change**
5 **prohibition - exceptions - enforcement - definition - rules.** (6) WITH
6 REGARD TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMS,
7 THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND
8 TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO
9 COMPLY WITH THIS SECTION.

10 **SECTION 4.** In Colorado Revised Statutes, 10-16-122.5, **add**
11 (5.7) as follows:

12 **10-16-122.5. Pharmacy benefit manager - audit of pharmacies**
13 **- time limits on on-site audits - enforcement.** (5.7) WITH REGARD TO
14 THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PHARMACY BENEFIT
15 MANAGERS, THE COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS
16 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A
17 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS
18 SECTION.

19 **SECTION 5.** In Colorado Revised Statutes, 10-16-122.7, **amend**
20 (4) as follows:

21 **10-16-122.7. Disclosures between pharmacists and patients -**
22 **carrier and PBM prohibitions - enforcement - short title - legislative**
23 **declaration - preemption by federal law.** (4) (a) If the commissioner
24 determines that a carrier has not complied with this section, the
25 commissioner shall institute a corrective action plan for the carrier to
26 follow or use any of the commissioner's enforcement powers under this
27 title 10 to obtain the carrier's compliance with this section.

1 (b) WITH REGARD TO THE REQUIREMENTS OF THIS SECTION
2 APPLICABLE TO PBMs, THE COMMISSIONER HAS THE AUTHORITY TO
3 ENFORCE THIS SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY
4 AGAINST A PHARMACY BENEFIT MANAGEMENT FIRM THAT FAILS TO
5 COMPLY WITH THIS SECTION.

6 **SECTION 6.** In Colorado Revised Statutes, 10-16-122.9, **add**
7 (1.5) as follows:

8 **10-16-122.9. Prescription drug benefits - real-time access to**
9 **benefit information - enforcement - definitions.** (1.5) WITH REGARD
10 TO THE REQUIREMENTS OF THIS SECTION APPLICABLE TO PBMs, THE
11 COMMISSIONER HAS THE AUTHORITY TO ENFORCE THIS SECTION AND TO
12 IMPOSE A PENALTY OR OTHER REMEDY AGAINST A PBM THAT FAILS TO
13 COMPLY WITH THIS SECTION.

14 **SECTION 7.** In Colorado Revised Statutes, 25-37-103.5, **add** (4)
15 as follows:

16 **25-37-103.5. Pharmacy benefit managers - contracts with**
17 **pharmacies - maximum allowable cost pricing - enforcement.** (4) THE
18 COMMISSIONER OF INSURANCE HAS THE AUTHORITY TO ENFORCE THIS
19 SECTION AND TO IMPOSE A PENALTY OR OTHER REMEDY AGAINST A
20 PHARMACY BENEFIT MANAGER THAT FAILS TO COMPLY WITH THIS
21 SECTION.

22 **SECTION 8.** In Colorado Revised Statutes, 10-1-103, **amend** (3)
23 as follows:

24 **10-1-103. Division of insurance - division of insurance cash**
25 **fund created - division subject to repeal - repeal of functions.**
26 (3) (a) (I) All direct and indirect expenditures of the division are paid
27 from the division of insurance cash fund, which is hereby created in the

1 state treasury.

2 (II) All fees collected under sections 8-44-204 (7), ~~€:R:S;~~
3 8-44-205 (6), ~~€:R:S;~~ 10-2-413, 10-3-108, 10-3-207, 10-3.5-104,
4 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1),
5 **10-16-122.1 (2) AND (2.5)**, 10-23-102, 10-23-104, 24-10-115.5 (5),
6 ~~€:R:S;~~ and 29-13-102 (5), ~~€:R:S;~~ not including fees retained under
7 contracts entered into in accordance with section 10-2-402 (5) or
8 24-34-101, ~~€:R:S;~~ and all taxes collected under section 10-3-209 (4)
9 designated for the division of insurance, are transmitted to the state
10 treasurer, who shall credit the ~~moneys~~ MONEY to the division of insurance
11 cash fund.

12 (b) The division shall use all ~~moneys~~ MONEY credited to the
13 division of insurance cash fund as provided in this section and in section
14 24-48.5-106, ~~€:R:S;~~ subject to annual appropriation by the general
15 assembly, for the purposes authorized in this ~~title~~ TITLE 10 and as
16 otherwise authorized by law.

17 (c) ~~Moneys~~ MONEY in the fund ~~do~~ DOES not revert to the general
18 fund or to any other fund. In accordance with section 24-36-114, ~~€:R:S;~~
19 all interest derived from the deposit and investment of ~~moneys~~ MONEY in
20 the fund is credited to the general fund.

21 **SECTION 9. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly; except
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V
25 of the state constitution against this act or an item, section, or part of this
26 act within such period, then the act, item, section, or part will not take
27 effect unless approved by the people at the general election to be held in

1 November 2024 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.