

First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0095.03 Kristen Forrester x4217

HOUSE BILL 25-1094

HOUSE SPONSORSHIP

Brown and Johnson,

SENATE SPONSORSHIP

Pelton B. and Roberts,

House Committees
Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PHARMACY BENEFIT MANAGER PRACTICES THAT AFFECT
102 PRESCRIPTION DRUG COSTS.

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:

- Allows a pharmacy benefit manager (PBM) to earn income derived from the assessment of a flat-dollar service fee;
- Prohibits a PBM from earning income based on the cost of a prescription drug;
- Prohibits a PBM from designing a formulary to favor a

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.

- certain branded pharmaceutical or biologic;
- Sets the amount that a PBM shall reimburse an unaffiliated pharmacy or a PBM-affiliated retail, mail order, or specialty pharmacy for a prescription drug;
- Requires a PBM to credit income derived from a source other than a flat-dollar service fee to a health insurance carrier (carrier) or a self-funded health benefit plan; and
- Requires a PBM to make certain documents and data available to a carrier, a self-funded plan, or the commissioner of insurance upon request.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-122.8 as
3 follows:

4 **10-16-122.8. Pharmacy benefit manager practices -**
5 **agreements - fees - documentation - rules.** (1) A PHARMACY BENEFIT
6 MANAGER MAY EARN INCOME DERIVED FROM THE ASSESSMENT OF A
7 SINGLE, FLAT-DOLLAR SERVICE FEE FOR THE PROVISION OF A PRESCRIPTION
8 DRUG, WHICH SERVICE FEE IS TRANSPARENTLY EXPRESSED IN A WRITTEN
9 AGREEMENT BETWEEN THE PBM AND A CARRIER OR A SELF-FUNDED
10 HEALTH BENEFIT PLAN. THE SINGLE, FLAT-DOLLAR SERVICE FEE MAY VARY
11 FROM CLIENT TO CLIENT BASED ON THE NUMBER OF PLAN PARTICIPANTS,
12 CLINICAL AND ADMINISTRATIVE SERVICES PROVIDED, VALUE-BASED
13 PAYMENT ARRANGEMENT, AND OTHER CONSIDERATIONS.

14 (2) (a) A PBM SHALL NOT:

15 (I) EARN ANY INCOME THAT IS DIRECTLY OR INDIRECTLY BASED ON
16 THE NET ACQUISITION COST OF A PRESCRIPTION DRUG, INCLUDING INCOME
17 FROM PRESCRIPTION DRUG MARK-UPS, COPAYMENTS THAT EXCEED THE
18 COST OF PRESCRIPTION DRUGS, UP-CHARGING OR SPREAD-PRICING, GROUP
19 PURCHASING ORGANIZATION REVENUES, MANUFACTURER-DERIVED
20 REVENUES, OR ANY OTHER ARRANGEMENTS CONCERNING THE PRICING OF

1 PRESCRIPTION DRUGS; OR

2 (II) DESIGN A PRESCRIPTION DRUG FORMULARY TO FAVOR A
3 CERTAIN BRANDED PHARMACEUTICAL OR BIOLOGIC OVER A
4 THERAPEUTICALLY EQUIVALENT GENERIC OR BIOSIMILAR, UNLESS THE
5 BRANDED PHARMACEUTICAL OR BIOLOGIC HAS A LOWER DISCOUNTED NET
6 ACQUISITION COST AND THAT LOWER COST IS REFLECTED IN A LOWER
7 OUT-OF-POCKET EXPENSE FOR CONSUMERS.

8 (b) THIS SUBSECTION (2) DOES NOT PREVENT A PBM FROM
9 NEGOTIATING A PRESCRIPTION DRUG REBATE OR OTHER DISCOUNT AS A
10 PERCENTAGE OF THE PRESCRIPTION DRUG'S LIST PRICE.

11 (3)(a) A PBM SHALL REIMBURSE AN UNAFFILIATED PHARMACY OR
12 A PBM-AFFILIATED RETAIL, MAIL ORDER, OR SPECIALTY PHARMACY FOR
13 THE FULFILLMENT OF A PRESCRIPTION DRUG IN AN AMOUNT EQUAL TO THE
14 NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE DISPENSED
15 PRESCRIPTION DRUG INGREDIENTS PLUS A TWO-DOLLAR FEE AND A
16 PROFESSIONAL DISPENSING FEE AS DETERMINED IN THE PHARMACY
17 CONTRACT. IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS NOT
18 AVAILABLE AT THE TIME A PRESCRIPTION DRUG IS ADMINISTERED OR
19 DISPENSED, A PBM SHALL NOT REIMBURSE IN AN AMOUNT THAT IS LESS
20 THAN THE WHOLESALE ACQUISITION COST OF THE PRESCRIPTION DRUG.

21 (b) A PBM SHALL CREDIT ANY INCOME DERIVED FROM SOURCES
22 OTHER THAN THE SINGLE, FLAT-DOLLAR SERVICE FEE DESCRIBED IN
23 SUBSECTION (1) OF THIS SECTION TO THE CARRIER OR SELF-FUNDED
24 HEALTH BENEFIT PLAN WITH WHICH THE PBM HAS CONTRACTED.

25 (4) UPON REQUEST OF A CARRIER, A SELF-FUNDED HEALTH BENEFIT
26 PLAN, A FIDUCIARY OF THE CARRIER OR SELF-FUNDED HEALTH BENEFIT
27 PLAN, OR THE COMMISSIONER, A PBM SHALL MAKE AVAILABLE, WITHIN

1 THIRTY DAYS AFTER THE DATE OF THE REQUEST AND WITHOUT CHARGE,
2 DOCUMENTATION AND DATA AS REQUESTED OR AS REQUIRED TO FULFILL
3 THE CARRIER'S OR SELF-FUNDED HEALTH BENEFIT PLAN'S FIDUCIARY
4 OBLIGATIONS TO COVERED PERSONS. THE DOCUMENTATION AND DATA
5 INCLUDE:

6 (a) THE AGGREGATE DOLLAR AND PER UNIT AMOUNT OF ALL PBM
7 INCOME DERIVED FROM THE FLAT-DOLLAR SERVICE FEE ASSESSED TO THE
8 CARRIER OR SELF-FUNDED HEALTH BENEFIT PLAN;

9 (b) THE PRESCRIPTION DRUG CLAIMS PROCESSED BY THE PBM FOR
10 THE CARRIER'S HEALTH BENEFIT PLAN OR THE SELF-FUNDED HEALTH
11 BENEFIT PLAN; AND

12 (c) THE PBM'S REIMBURSEMENTS FOR ALL RETAIL, MAIL ORDER,
13 UNAFFILIATED, AND SPECIALTY PHARMACIES THAT FILL PRESCRIPTIONS
14 FOR COVERED PERSONS.

15 (5) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO
16 ENFORCE THIS SECTION.

17 **SECTION 2. Act subject to petition - effective date -**
18 **applicability.** (1) This act takes effect January 1, 2026; except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within the ninety-day period after final adjournment of the general
22 assembly, then the act, item, section, or part will not take effect unless
23 approved by the people at the general election to be held in November
24 2026 and, in such case, will take effect on the date of the official
25 declaration of the vote thereon by the governor.

26 (2) This act applies to conduct occurring on or after the applicable
27 effective date of this act.