

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Appropriations

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 █ HEALTH BENEFIT PLAN. THE
10 SINGLE, FLAT-DOLLAR SERVICE FEE MAY VARY FROM CLIENT TO CLIENT OF
11 THE PBM BASED ON THE NUMBER OF HEALTH BENEFIT PLAN
12 PARTICIPANTS, CLINICAL AND ADMINISTRATIVE SERVICES PROVIDED,
13 VALUE-BASED 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) IF A PBM, WHICH MAY BE A PARENT OR SUBSIDIARY ENTITY TO
9 OR OTHERWISE INTEGRATED WITH AN INSURANCE CARRIER THAT OFFERS
10 A HEALTH BENEFIT PLAN, INADVERTENTLY COLLECTS INCOME DERIVED
11 FROM SOURCES PROHIBITED BY SUBSECTION (2)(a)(I) OF THIS SECTION, THE
12 PBM SHALL PASS THE INCOME THROUGH TO THE HEALTH BENEFIT PLAN
13 BENEFICIARIES.

14 (c) A PBM MUST BE REIMBURSED BY A HEALTH BENEFIT PLAN FOR
15 LOWERING AGGREGATED PRESCRIPTION DRUG SPENDING FOR THE PLAN
16 OVER A GIVEN PERIOD OF TIME. A PBM MUST ALSO BE REIMBURSED FOR
17 THE DIRECT SERVICES THE PBM PROVIDES TO THE HEALTH BENEFIT PLAN.

18 (d) THIS SUBSECTION (2) DOES NOT PREVENT A PBM FROM
19 NEGOTIATING A PRESCRIPTION DRUG REBATE OR OTHER DISCOUNT AS A
20 PERCENTAGE OF THE PRESCRIPTION DRUG'S LIST PRICE.

21 (3) A PBM SHALL REIMBURSE AN UNAFFILIATED PHARMACY OR A
22 PBM-AFFILIATED RETAIL, MAIL ORDER, OR SPECIALTY PHARMACY FOR THE
23 FULFILLMENT OF A PRESCRIPTION DRUG IN AN AMOUNT EQUAL TO THE
24 NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE DISPENSED
25 PRESCRIPTION DRUG INGREDIENTS AND A REASONABLE AND ADEQUATE
26 DISPENSING FEE. IF THE NATIONAL AVERAGE DRUG ACQUISITION COST IS
27 NOT AVAILABLE AT THE TIME A PRESCRIPTION DRUG IS ADMINISTERED OR

1 DISPENSED, A PBM SHALL NOT REIMBURSE IN AN AMOUNT THAT IS LESS
2 THAN THE WHOLESALE ACQUISITION COST OF THE PRESCRIPTION DRUG.

3 [REDACTED]

4 (4) (a) A CONTRACT BETWEEN A PBM AND A COVERED PERSON'S
5 HEALTH BENEFIT PLAN MUST INCLUDE A PROVISION THAT REQUIRES THE
6 PBM TO DISCLOSE PRESCRIPTION DRUG COST INFORMATION TO THE
7 HEALTH BENEFIT PLAN, INCLUDING CLAIMS-LEVEL PHARMACY DATA AND
8 PBM CREDITS TO THE HEALTH BENEFIT PLAN. THE INFORMATION MUST BE
9 PROVIDED WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTIFICATION TO
10 THE PBM BY THE HEALTH BENEFIT PLAN OR AT REGULAR NEGOTIATED
11 REPORTING INTERVALS NECESSARY FOR THE HEALTH BENEFIT PLAN TO
12 DETERMINE THE PBM'S COMPLIANCE WITH THE CONTRACT TERMS AND
13 THIS SECTION. THE PBM SHALL ASSESS NO ADDITIONAL FEES WITH
14 REGARD TO PROVISION OF THIS INFORMATION.

15 (b) THE CONTRACT BETWEEN THE PBM AND A COVERED PERSON'S
16 HEALTH BENEFIT PLAN MUST INCLUDE A PROVISION AUTHORIZING THE
17 COVERED PERSON'S HEALTH BENEFIT PLAN TO ANNUALLY EXECUTE AN
18 AUDIT FOR THE PURPOSE OF VALIDATING COMPLIANCE WITH CONTRACT
19 TERMS AND THIS SECTION.

20 (5) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO
21 ENFORCE THIS SECTION.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect January 1, 2027; except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within the ninety-day period after final adjournment of the general
27 assembly, then the act, item, section, or part will not take effect unless

1 approved by the people at the general election to be held in November
2 2026 and, in such case, will take effect January 1, 2027, or on the date of
3 the official declaration of the vote thereon by the governor, whichever is
4 later.

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