

CHAPTER 362

HEALTH AND ENVIRONMENT

HOUSE BILL 14-1213

BY REPRESENTATIVE(S) Kraft-Tharp, Joshi, Vigil, Ginal, Hullinghorst, May, Ryden, Schafer, Tyler, Young;
also SENATOR(S) Crowder, Guzman, Kefalas, Nicholson.

AN ACT

CONCERNING PHARMACY BENEFIT MANAGER MAXIMUM ALLOWABLE COST PRICING REQUIREMENTS FOR PRESCRIPTION DRUGS, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS.

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

SECTION 1. In Colorado Revised Statutes, 25-37-102, **add** (13) as follows:

25-37-102. Definitions. As used in this article, unless the context otherwise requires:

(13) "PHARMACY BENEFIT MANAGER" MEANS AN ENTITY DOING BUSINESS IN THIS STATE THAT CONTRACTS TO ADMINISTER OR MANAGE PRESCRIPTION DRUG BENEFITS ON BEHALF OF ANY CARRIER THAT PROVIDES PRESCRIPTION DRUG BENEFITS TO RESIDENTS OF THIS STATE. "PHARMACY BENEFIT MANAGER" DOES NOT INCLUDE THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING CREATED IN SECTION 25.5-1-104, C.R.S.

SECTION 2. In Colorado Revised Statutes, **add** 25-37-103.5 as follows:

25-37-103.5. Pharmacy benefit managers - contracts with pharmacies - maximum allowable cost pricing. (1) (a) IN EACH CONTRACT BETWEEN A PHARMACY BENEFIT MANAGER AND A PHARMACY, THE PHARMACY SHALL BE GIVEN THE RIGHT TO OBTAIN FROM THE PHARMACY BENEFIT MANAGER, WITHIN TEN DAYS AFTER ANY REQUEST, A CURRENT LIST OF THE SOURCES USED TO DETERMINE MAXIMUM ALLOWABLE COST PRICING. THE PHARMACY BENEFIT MANAGER SHALL UPDATE THE PRICING INFORMATION AT LEAST EVERY SEVEN DAYS AND PROVIDE A MEANS BY WHICH CONTRACTED PHARMACIES MAY PROMPTLY REVIEW PRICING UPDATES IN A FORMAT THAT IS READILY AVAILABLE AND ACCESSIBLE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) A PHARMACY BENEFIT MANAGER SHALL MAINTAIN A PROCEDURE TO ELIMINATE PRODUCTS FROM THE LIST OF DRUGS SUBJECT TO MAXIMUM ALLOWABLE COST PRICING IN A TIMELY MANNER IN ORDER TO REMAIN CONSISTENT WITH PRICING CHANGES IN THE MARKETPLACE.

(2) IN ORDER TO PLACE A PRESCRIPTION DRUG ON A MAXIMUM ALLOWABLE COST LIST, A PHARMACY BENEFIT MANAGER SHALL ENSURE THAT:

(a) THE DRUG IS LISTED AS "A" OR "B" RATED IN THE MOST RECENT VERSION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION'S APPROVED DRUG PRODUCTS WITH THERAPEUTIC EQUIVALENCE EVALUATIONS, ALSO KNOWN AS THE ORANGE BOOK, OR HAS AN "NR" OR "NA" RATING OR SIMILAR RATING BY A NATIONALLY RECOGNIZED REFERENCE; AND

(b) THE DRUG IS GENERALLY AVAILABLE FOR PURCHASE BY PHARMACIES IN THIS STATE FROM A NATIONAL OR REGIONAL WHOLESALER AND IS NOT OBSOLETE.

(3) EACH CONTRACT BETWEEN A PHARMACY BENEFIT MANAGER AND A PHARMACY MUST INCLUDE A PROCESS TO APPEAL, INVESTIGATE, AND RESOLVE DISPUTES REGARDING MAXIMUM ALLOWABLE COST PRICING THAT INCLUDES:

(a) A TWENTY-ONE-DAY LIMIT ON THE RIGHT TO APPEAL FOLLOWING THE INITIAL CLAIM;

(b) A REQUIREMENT THAT THE APPEAL BE INVESTIGATED AND RESOLVED WITHIN TWENTY-ONE DAYS AFTER THE APPEAL;

(c) A TELEPHONE NUMBER AT WHICH THE PHARMACY MAY CONTACT THE PHARMACY BENEFIT MANAGER TO SPEAK TO A PERSON RESPONSIBLE FOR PROCESSING APPEALS;

(d) A REQUIREMENT THAT A PHARMACY BENEFIT MANAGER PROVIDE A REASON FOR ANY APPEAL DENIAL AND THE IDENTIFICATION OF THE NATIONAL DRUG CODE OF A DRUG THAT MAY BE PURCHASED BY THE PHARMACY AT A PRICE AT OR BELOW THE BENCHMARK PRICE AS DETERMINED BY THE PHARMACY BENEFIT MANAGER; AND

(e) A REQUIREMENT THAT A PHARMACY BENEFIT MANAGER MAKE AN ADJUSTMENT TO A DATE NO LATER THAN ONE DAY AFTER THE DATE OF DETERMINATION. THIS REQUIREMENT DOES NOT PROHIBIT A PHARMACY BENEFIT MANAGER FROM RETROACTIVELY ADJUSTING A CLAIM FOR THE APPEALING PHARMACY OR FOR ANOTHER SIMILARLY SITUATED PHARMACY.

SECTION 3. Appropriation - adjustments to 2014 long bill. (1) For the implementation of this act, the general fund appropriation made in the annual general appropriation act to the controlled maintenance trust fund created in section 24-75-302.5 (2) (a), Colorado Revised Statutes, for the fiscal year beginning July 1, 2014, is decreased by \$44,519.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for the fiscal year beginning July 1,

2014, the sum of \$129,831, or so much thereof as may be necessary, for allocation to the indigent care program for the children's basic health plan medical and dental costs related to the implementation of this act. Of said sum, \$44,519 is from the general fund and \$85,312 is from federal funds.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2015; 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 the ninety-day period after final adjournment of the general assembly, 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 2014 and, in such case, will take effect on January 1, 2015, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to contracts issued, renewed, or amended on or after the applicable effective date of this act.

Approved: June 6, 2014