Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0010.01 Christy Chase x2008 **HOUSE BILL 20-1160**

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A BILL FOR AN ACT

CONCERNING MEASURES TO REDUCE HEALTH CARE COSTS RELATED TO PRESCRIPTION DRUG PRICES, AND, IN CONNECTION THEREWITH, CREATING THE "COLORADO PRESCRIPTION DRUG PRICE TRANSPARENCY ACT OF 2020" TO REQUIRE HEALTH INSURERS, PRESCRIPTION DRUG MANUFACTURERS, PHARMACY BENEFIT MANAGEMENT FIRMS, AND NONPROFIT ORGANIZATIONS TO REPORT SPECIFIED INFORMATION ABOUT THE COSTS OF PRESCRIPTION DRUGS TO THE COMMISSIONER OF INSURANCE AND TO DIRECT THE COMMISSIONER TO ANALYZE THE INFORMATION AND SUBMIT A REPORT REGARDING THE EFFECTS OF PRESCRIPTION DRUG COSTS ON HEALTH INSURANCE PREMIUMS; AND REQUIRING HEALTH INSURERS TO REDUCE INSURANCE PREMIUMS TO ADJUST FOR REBATES THE INSURERS

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.)

Section 1 of the bill enacts the "Colorado Prescription Drug Price TransparencyAct of 2020", which requires:

- Health insurers, starting in 2021, to submit to the commissioner of insurance (commissioner) information regarding prescription drugs covered under their health insurance plans that the health insurers paid for in the preceding calendar year, including information about rebates received from prescription drug manufacturers, a certification regarding how rebates were accounted for in insurance premiums, and a list of all pharmacy benefit management firms (PBMs) with whom they contract;
- Prescription drug manufacturers to notify the commissioner, state purchasers, health insurers, PBMs, pharmacies, and hospitals when the manufacturer, on or after January 1, 2021, increases the price of certain prescription drugs by more than specified amounts or introduces a new specialty drug in the commercial market;
- Prescription drug manufacturers, within 15 days after the end of each calendar quarter that starts on or after January 1, 2021, to provide specified information to the commissioner regarding the drugs about which the manufacturer notified purchasers;
- Health insurers or, if applicable, PBMs to annually report specified information to the commissioner regarding rebates and administrative fees received from manufacturers for prescription drugs they paid for in the prior calendar year and the average wholesale price paid for prescription drugs by individuals, small employers, and large employers enrolled in health plans issued by the health insurer or that contain prescription drug benefits managed or administered by the PBM; and
- Certain nonprofit organizations to compile and submit to the commissioner an annual report indicating the amount of each payment, donation, subsidy, or thing of value received by the nonprofit organization or its officers, employees, or

board members from a prescription drug manufacturer, PBM, health insurer, or trade association and the percentage of the nonprofit organization's total gross income that is attributable to those payments, donations, subsidies, or things of value.

The commissioner is required to post the information received from health insurers, prescription drug manufacturers, PBMs, and nonprofit organizations on the division of insurance's website, excluding any information that the commissioner determines is proprietary. Additionally, the commissioner, or a disinterested third-party contractor, is to analyze the data reported by health insurers, prescription drug manufacturers, PBMs, and nonprofit organizations and other relevant information to determine the effect of prescription drug costs on health insurance premiums. The commissioner is to publish a report each year, submit the report to the governor and specified legislative committees, and present the report during annual "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearings. The commissioner is authorized to adopt rules as necessary to implement the requirements of the bill.

Health insurers that fail to report the required data are subject to a fine of up to $10,000 per day per report. Nonprofit organizations are subject to a fine of up to $10,000 for failure to comply with reporting requirements.

Section 2 specifies that failing to ensure that a PBM that a health insurer uses to manage or administer its prescription drug benefits is complying with reporting requirements constitutes an unfair method of competition and an unfair or deceptive act or practice in the business of insurance.

Section 3 specifies that a PBM is an entity that manages or administers prescription drug benefits for a health insurer, either pursuant to a contract or as an entity associated with the health insurer.

Under **sections 4 and 5**, a prescription drug manufacturer that fails to notify purchasers or fails to report required data to the commissioner is subject to discipline by the state board of pharmacy, including a penalty of up to $10,000 per day for each day the manufacturer fails to comply with the notice or reporting requirements. The commissioner is to report manufacturer violations to the state board of pharmacy.

Section 6 requires a health insurer to reduce premiums for the health plans it issues or renews on or after January 1, 2022, to adjust for the rebates the health insurer received from prescription drug manufacturers in the previous plan year.

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

SECTION 1. In Colorado Revised Statutes, **add** part 12 to article 16 of title 10 as follows:

PART 12

PRESCRIPTION DRUG PRICE TRANSPARENCY

10-16-1201. Short title. THE SHORT TITLE OF THIS PART 12 IS THE "COLORADO PRESCRIPTION DRUG PRICE TRANSPARENCY ACT OF 2020".

10-16-1202. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE STATE OF COLORADO HAS A SUBSTANTIAL PUBLIC INTEREST IN THE PRICE AND COST OF PRESCRIPTION DRUGS BECAUSE THE STATE IS A MAJOR PURCHASER OF PRESCRIPTION DRUGS THROUGH PUBLIC HEALTH CARE PROGRAMS, STATE AGENCIES, AND STATE EMPLOYEE GROUP BENEFIT PLANS. PRESCRIPTION DRUG PRICES AND COSTS ARE ALSO AN IMPORTANT ISSUE FOR COLORADANS, MANY OF WHOM ARE DIRECTLY AND NEGATIVELY AFFECTED BY HIGH PRESCRIPTION DRUG PRICES. THEREFORE, THE PURPOSE OF THIS PART 12 IS TO PROVIDE NOTICE AND DISCLOSURE OF INFORMATION RELATING TO THE COST AND PRICING OF PRESCRIPTION DRUGS IN ORDER TO PROVIDE ACCOUNTABILITY TO THE STATE AND TO ALL COLORADANS FOR PRESCRIPTION DRUG PRICING.

(2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THIS PART 12 IS INTENDED TO CREATE TRANSPARENCY IN PRESCRIPTION DRUG PRICING AND DOES NOT:

(a) PRECLUDE A MANUFACTURER OF A PRESCRIPTION DRUG FROM MAKING PRICING DECISIONS REGARDING ITS PRESCRIPTION DRUGS, INCLUDING PRICE INCREASES; OR

(b) PRECLUDE PURCHASERS, BOTH PUBLIC AND PRIVATE, AS WELL AS PHARMACY BENEFIT MANAGEMENT FIRMS, FROM NEGOTIATING DISCOUNTS AND REBATES CONSISTENT WITH EXISTING STATE AND

FEDERAL LAW.

10-16-1203. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AVERAGE WHOLESALE PRICE" MEANS THE AVERAGE WHOLESALE PRICE OF A PRESCRIPTION DRUG AS DETERMINED AND PUBLISHED BY A NATIONALLY RECOGNIZED DRUG COMPENDIUM.

(2) "COURSE OF THERAPY" MEANS EITHER:

(a) THE RECOMMENDED DAILY DOSAGE UNITS OF A PRESCRIPTION DRUG FOR A THIRTY-DAY TREATMENT PURSUANT TO THE PACKAGE INSERT FOR THE PRESCRIPTION DRUG AS APPROVED BY THE FDA; OR

(b) THE RECOMMENDED DAILY DOSAGE UNITS OF A PRESCRIPTION DRUG FOR A NORMAL COURSE OF TREATMENT THAT IS LESS THAN THIRTY DAYS PURSUANT TO THE PACKAGE INSERT FOR THE PRESCRIPTION DRUG AS APPROVED BY THE FDA.

(3) "DISINTERESTED THIRD PARTY" MEANS AN ENTITY THAT HAS NO FINANCIAL INTEREST IN, IS NOT EMPLOYED OR FUNDED BY, AND IS NOT OTHERWISE CONNECTED WITH ANY MANUFACTURER, HEALTH INSURER, PHARMACY BENEFIT MANAGEMENT FIRM, NONPROFIT ORGANIZATION THAT IS REQUIRED TO SUBMIT REPORTS TO THE COMMISSIONER PURSUANT TO SECTION 10-16-1208, OR OTHER PERSON THAT HAS A FINANCIAL INTEREST IN THE OUTCOME OF THE ANALYSES OR REPORTS REQUIRED BY THIS PART 12.

(4) "FDA" MEANS THE FEDERAL FOOD AND DRUG ADMINISTRATION.

(5) "HEALTH INSURER" MEANS:

(a) A CARRIER AS DEFINED IN SECTION 10-16-102 (8); AND

(b) A CARRIER, AS DEFINED IN SECTION 24-50-603 (2), THAT

PROVIDES OR ADMINISTERS A GROUP BENEFIT PLAN FOR STATE EMPLOYEES PURSUANT TO PART 6 OF ARTICLE 50 OF TITLE 24.

(6) "LINE EXTENSION" MEANS, WITH RESPECT TO A PRESCRIPTION DRUG, A NEW OR AN ADDITIONAL FORMULATION OF THE PRESCRIPTION DRUG, SUCH AS AN EXTENDED RELEASE FORMULATION.

(7) "MANUFACTURE" HAS THE SAME MEANING AS SPECIFIED IN SECTION 12-280-103 (26).

(8) "MANUFACTURER" MEANS:

(a) A PERSON THAT MANUFACTURES A PRESCRIPTION DRUG THAT IS MADE AVAILABLE IN COLORADO; AND

(b) A HOLDING COMPANY, PARENT COMPANY, OR OTHER AFFILIATE OF A PERSON DESCRIBED IN SUBSECTION (8)(a) OF THIS SECTION.

(9) "MEDICARE PART D PROGRAM" MEANS THE "MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003", PUB.L. 108-173, AS AMENDED, CODIFIED IN PART D OF TITLE XVIII OF THE "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1395w-101 ET SEQ.

(10) "PHARMACY" MEANS ANY FACILITY, OUTLET, OR OTHER SETTING WHERE PRESCRIPTION DRUGS ARE DISPENSED TO PATIENTS AND THAT IS REQUIRED PURSUANT TO ARTICLE 280 OF TITLE 12 TO BE REGISTERED BY THE STATE BOARD OF PHARMACY. "PHARMACY" INCLUDES AN IN-STATE OR NONRESIDENT PRESCRIPTION DRUG OUTLET, AS DEFINED IN SECTION 12-280-103 (43); AN OTHER OUTLET, AS DEFINED IN SECTION 12-280-103 (32); A HOSPITAL SATELLITE PHARMACY, AS DEFINED IN SECTION 12-280-103 (20); OR OTHER SETTING, INCLUDING A PRACTITIONER'S OFFICE OR CLINIC, WHERE A PRACTITIONER, AS DEFINED IN SECTION 12-280-103 (40), DISPENSES PRESCRIPTION DRUGS TO PATIENTS AS AUTHORIZED BY SECTION 12-280-120 (6).

(11) "PRESCRIPTION DRUG" HAS THE SAME MEANING AS SPECIFIED IN SECTION 12-280-103 (42).

(12) "PRICE" MEANS THE WHOLESALE ACQUISITION COST AS DEFINED IN 42 U.S.C. SEC. 1395w-3a (c)(6)(B).

(13) "PURCHASER" MEANS:

(a) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF HUMAN SERVICES, AND ANY OTHER STATE DEPARTMENT THAT PURCHASES PRESCRIPTION DRUGS ON BEHALF OF THE STATE OR AN ENTITY ACTING ON BEHALF OF A STATE DEPARTMENT, INCLUDING A PHARMACY BENEFIT MANAGEMENT FIRM;

(b) A HEALTH INSURER;

(c) A PHARMACY BENEFIT MANAGEMENT FIRM;

(d) A PHARMACY; OR

(e) A HOSPITAL.

(14) "REBATE" MEANS A REBATE, DISCOUNT, MARKET SHARE ALLOWANCE, REMUNERATION, COMPENSATION, OR OTHER PAYMENT OR PRICE CONCESSION PROVIDED BY A MANUFACTURER TO A PHARMACY BENEFIT MANAGEMENT FIRM OR HEALTH INSURER.

(15) "SPECIALTY DRUG" MEANS A PRESCRIPTION DRUG THAT MEETS THE THRESHOLD FOR A SPECIALTY DRUG UNDER THE MEDICARE PART D PROGRAM.

10-16-1204. Health insurer annual reports to commissioner - prescription drug costs - rules - penalty. (1) STARTING IN 2021, A HEALTH INSURER DESCRIBED IN SECTION 10-16-1203 (5)(a) SHALL REPORT TO THE COMMISSIONER, CONTEMPORANEOUS WITH ITS RATE FILING PURSUANT TO SECTION 10-16-107 AND IN THE FORM AND MANNER

SPECIFIED BY THE COMMISSIONER THAT ENSURES THE INFORMATION IS SEPARATED FROM THE RATE FILING INFORMATION, THE INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION AND THE CERTIFICATION REQUIRED BY SUBSECTION (3) OF THIS SECTION. A HEALTH INSURER DESCRIBED IN SECTION 10-16-1203 (5)(b) SHALL FILE THE INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION AND THE CERTIFICATION REQUIRED BY SUBSECTION (3) OF THIS SECTION WITH THE COMMISSIONER BY A DATE SPECIFIED BY THE COMMISSIONER THAT COINCIDES WITH RATE FILINGS FOR HEALTH INSURERS DESCRIBED IN SECTION 10-16-1203 (5)(a).

(2) (a) FOR ALL COVERED PRESCRIPTION DRUGS DISPENSED AT A PHARMACY AND PAID FOR BY A HEALTH INSURER IN THIS STATE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR, INCLUDING GENERIC PRESCRIPTION DRUGS, BRAND-NAME PRESCRIPTION DRUGS, AND SPECIALTY DRUGS, THE HEALTH INSURER SHALL REPORT THE FOLLOWING INFORMATION IN A FORM AND MANNER AND WITH SPECIFIED DETAILS PRESCRIBED BY THE COMMISSIONER BY RULE:

(I) THE TOP FIFTY PRESCRIPTION DRUGS, BY VOLUME, CALCULATED BY UNIT, FOR WHICH THE HEALTH INSURER PAID;

(II) THE FIFTY MOST COSTLY PRESCRIPTION DRUGS, BY TOTAL ANNUAL PLAN SPENDING, FOR WHICH THE HEALTH INSURER PAID;

(III) THE FIFTY PRESCRIPTION DRUGS PAID FOR BY THE HEALTH INSURER THAT ACCOUNTED FOR THE HIGHEST INCREASE IN TOTAL ANNUAL PLAN SPENDING WHEN COMPARED WITH THE TOTAL ANNUAL PLAN SPENDING FOR THE SAME PRESCRIPTION DRUGS IN THE YEAR IMMEDIATELY PRECEDING THE YEAR FOR WHICH THE INFORMATION IS REPORTED;

(IV) THE FIFTY PRESCRIPTION DRUGS THAT CAUSED THE GREATEST INCREASE IN THE HEALTH INSURER'S PREMIUMS;

(V) THE FIFTY PRESCRIPTION DRUGS THAT THE HEALTH INSURER PAID FOR THE MOST FREQUENTLY AND FOR WHICH THE HEALTH INSURER RECEIVED A REBATE FROM MANUFACTURERS;

(VI) THE FIFTY PRESCRIPTION DRUGS FOR WHICH THE HEALTH INSURER RECEIVED THE HIGHEST REBATE, AS A PERCENTAGE OF THE PRICE OF THE PRESCRIPTION DRUG; AND

(VII) THE FIFTY PRESCRIPTION DRUGS FOR WHICH THE HEALTH INSURER RECEIVED THE HIGHEST REBATES.

(b) THE COMMISSIONER, BY RULE, MAY CHANGE THE NUMBER OF PRESCRIPTION DRUGS ABOUT WHICH HEALTH INSURERS ARE REQUIRED TO REPORT PURSUANT TO THIS SUBSECTION (2); EXCEPT THAT THE COMMISSIONER SHALL NOT REDUCE THE NUMBER TO FEWER THAN TWENTY-FIVE PRESCRIPTION DRUGS.

(3) EACH HEALTH INSURER SHALL SUBMIT TO THE COMMISSIONER, IN A FORM AND MANNER PRESCRIBED BY THE COMMISSIONER AND IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION:

(a) A WRITTEN CERTIFICATION, INCLUDING SUPPORTING DOCUMENTATION, FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR CERTIFYING THAT THE HEALTH INSURER ACCOUNTED FOR ALL REBATES IN CALCULATING THE PREMIUM FOR HEALTH BENEFIT PLANS THAT THE HEALTH INSURER ISSUED OR RENEWED DURING THAT CALENDAR YEAR AND SPECIFYING THE MANNER BY WHICH THE HEALTH INSURER ACCOUNTED FOR THE REBATES IN HEALTH BENEFIT PLAN PREMIUMS; AND

(b) A LIST OF ALL PHARMACY BENEFIT MANAGEMENT FIRMS THE HEALTH INSURER USES. A HEALTH INSURER SHALL PROVIDE THE COMMISSIONER, WITHIN TEN BUSINESS DAYS AFTER A CHANGE, WITH UPDATED INFORMATION ABOUT ANY CHANGE IN THE PHARMACY BENEFIT

MANAGEMENT FIRMS THE HEALTH INSURER USES, INCLUDING A CHANGE IN THE NAME OR CONTACT INFORMATION OF THE PHARMACY BENEFIT MANAGEMENT FIRM.

(4) A HEALTH INSURER THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION IS SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS PER REPORT PER DAY FOR EACH DAY THE HEALTH INSURER FAILS TO COMPLY WITH THIS SECTION. THE COMMISSIONER SHALL TRANSMIT ANY MONEY COLLECTED UNDER THIS SUBSECTION (4) TO THE STATE TREASURER FOR DEPOSIT IN THE GENERAL FUND.

(5) AN EMPLOYER OR THIRD-PARTY ADMINISTRATOR OF A SELF-INSURED EMPLOYER PLAN THAT IS NOT OTHERWISE SUBJECT TO THE JURISDICTION OF THE COMMISSIONER IS ENCOURAGED BUT NOT REQUIRED TO SUBMIT THE INFORMATION SPECIFIED IN SUBSECTION (1) OF THIS SECTION TO THE COMMISSIONER.

10-16-1205. Drug manufacturers - notice to purchasers and commissioner - drug price increases - new drugs in the market - rules. (1) THIS SECTION APPLIES TO A MANUFACTURER OF A PRESCRIPTION DRUG THAT IS PURCHASED OR REIMBURSED BY A PURCHASER.

(2) (a) (I) THE MANUFACTURER OF A PRESCRIPTION DRUG WITH A PRICE OF MORE THAN FIFTY DOLLARS FOR A COURSE OF THERAPY SHALL NOTIFY THE COMMISSIONER, IN A FORM AND MANNER SPECIFIED BY THE COMMISSIONER, AND EACH PURCHASER THAT HAS REGISTERED WITH THE DIVISION PURSUANT TO SUBSECTION (4) OF THIS SECTION OF AN INCREASE IN THE PRICE OF THE PRESCRIPTION DRUG THAT WILL BE IMPLEMENTED ON OR AFTER JANUARY 1, 2021, IF THE INCREASE IN THE PRICE IS:

(A) TEN PERCENT OR MORE OVER THE PREVIOUS TWELVE-MONTH PERIOD;

(B) SIXTEEN PERCENT OR MORE OVER THE PREVIOUS TWENTY-FOUR-MONTH PERIOD; OR

(C) TWENTY PERCENT OR MORE OVER THE PREVIOUS THIRTY-SIX-MONTH PERIOD.

(II) FOR THE 2022 CALENDAR YEAR AND EACH CALENDAR YEAR THEREAFTER, THE COMMISSIONER, BY RULE, SHALL ADJUST THE THRESHOLD PRICE OF PRESCRIPTION DRUGS SPECIFIED IN THIS SUBSECTION (2)(a) BASED ON THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS APPLICABLE PREDECESSOR OR SUCCESSOR INDEX.

(b) THE MANUFACTURER SHALL PROVIDE THE NOTICE REQUIRED BY THIS SUBSECTION (2) IN WRITING TO THE COMMISSIONER AND EACH PURCHASER THAT HAS REGISTERED WITH THE DIVISION PURSUANT TO SUBSECTION (4) OF THIS SECTION AT LEAST ONE DAY BEFORE THE PLANNED EFFECTIVE DATE OF THE INCREASE IN THE PRICE.

(c) THE MANUFACTURER SHALL INCLUDE IN THE NOTICE REQUIRED BY THIS SUBSECTION (2):

(I) THE DATE OF THE INCREASE, THE CURRENT PRICE OF THE PRESCRIPTION DRUG, AND THE DOLLAR AMOUNT OF THE FUTURE INCREASE IN THE PRICE OF THE PRESCRIPTION DRUG; AND

(II) A STATEMENT REGARDING WHETHER A CHANGE OR IMPROVEMENT IN THE PRESCRIPTION DRUG NECESSITATES THE PRICE INCREASE AND, IF SO, A DESCRIPTION OF THE CHANGE OR IMPROVEMENT.

(3) ON OR AFTER JANUARY 1, 2021, A MANUFACTURER THAT INTRODUCES A NEW SPECIALTY DRUG TO THE COMMERCIAL MARKET SHALL

NOTIFY THE COMMISSIONER, IN A FORM AND MANNER SPECIFIED BY THE COMMISSIONER, AND EACH PURCHASER THAT HAS REGISTERED WITH THE DIVISION PURSUANT TO SUBSECTION (4) OF THIS SECTION, IN WRITING, WITHIN THREE DAYS AFTER THE RELEASE OF THE SPECIALTY DRUG IN THE COMMERCIAL MARKET. A MANUFACTURER MAY MAKE THIS NOTIFICATION PENDING FDA APPROVAL IF COMMERCIAL AVAILABILITY OF THE SPECIALTY DRUG IS EXPECTED WITHIN THREE DAYS AFTER FDA APPROVAL.

(4) (a) TO RECEIVE THE NOTICES REQUIRED BY THIS SECTION, A PURCHASER MUST REGISTER WITH THE DIVISION IN THE FORM AND MANNER SPECIFIED BY THE COMMISSIONER. BEFORE REGISTERING A PURCHASER, THE DIVISION MUST VERIFY THAT THE PURCHASER QUALIFIES AS A PURCHASER PURSUANT TO SECTION 10-16-1203 (13).THE DIVISION SHALL MAINTAIN A LIST OF REGISTERED PURCHASERS AND MAKE THE LIST AVAILABLE TO MANUFACTURERS FOR THE PURPOSE OF PROVIDING THE NOTICES REQUIRED BY THIS SECTION.

(b) THE DIVISION MAY IMPOSE A FEE AGAINST PURCHASERS DESCRIBED IN SECTION 10-16-1203 (13)(b) TO (13)(e) FOR REGISTERING WITH THE DIVISION TO OFFSET THE DIVISION'S COSTS IN REGISTERING AND MAINTAINING A LIST OF PURCHASERS.

10-16-1206. Drug manufacturer reports to commissioner - drug price increases - new specialty drugs - rules. (1) (a) WITHIN FIFTEEN DAYS AFTER THE END OF EACH CALENDAR QUARTER THAT STARTS ON OR AFTER JANUARY 1, 2021, A MANUFACTURER SHALL REPORT TO THE COMMISSIONER, IN A FORM AND MANNER AND WITH SPECIFIED DETAILS PRESCRIBED BY THE COMMISSIONER BY RULE, THE FOLLOWING INFORMATION FOR EACH PRESCRIPTION DRUG FOR WHICH THE

MANUFACTURER WAS REQUIRED TO NOTIFY PURCHASERS OF AN INCREASE IN THE PRICE PURSUANT TO SECTION 10-16-1205 (2) IN THE PRIOR QUARTER:

(I) THE NAME AND PRICE OF THE PRESCRIPTION DRUG AND THE INCREASE, EXPRESSED AS A PERCENTAGE, IN THE PRICE OF THE PRESCRIPTION DRUG OVER THE COURSE OF THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(II) THE LENGTH OF TIME THE PRESCRIPTION DRUG HAS BEEN ON THE MARKET;

(III) A DESCRIPTION OF THE SPECIFIC FINANCIAL FACTORS AND NONFINANCIAL FACTORS, SUCH AS OFF-LABEL USE, CHANGES IN FDA POLICY THAT AFFECT REQUIREMENTS, THE COST OF CURRENT TREATMENTS, AND OTHER NONFINANCIAL FACTORS, USED TO MAKE THE DECISION TO INCREASE THE PRICE OF THE PRESCRIPTION DRUG AND THE AMOUNT OF THE INCREASE, INCLUDING AN EXPLANATION OF HOW THE FACTORS DRIVE THE INCREASE IN THE PRICE OF THE PRESCRIPTION DRUG;

(IV) THE INTRODUCTORY PRICE OF THE PRESCRIPTION DRUG WHEN IT WAS APPROVED FOR MARKETING BY THE FDA AND THE NET YEARLY INCREASE, LISTED BY CALENDAR YEAR, IN THE PRICE OF THE PRESCRIPTION DRUG DURING THE FIVE IMMEDIATELY PRECEDING CALENDAR YEARS;

(V) IF THE PRESCRIPTION DRUG WAS ACQUIRED BY THE MANUFACTURER WITHIN THE PREVIOUS FIVE YEARS, THE FOLLOWING INFORMATION:

(A) THE PRICE OF THE PRESCRIPTION DRUG AT THE TIME OF ACQUISITION AND IN THE CALENDAR YEAR IMMEDIATELY PRECEDING THE ACQUISITION;

(B) THE NAME OF THE COMPANY FROM WHOM THE PRESCRIPTION

DRUG WAS ACQUIRED, THE DATE ACQUIRED, AND THE PURCHASE PRICE; AND

(C) THE YEAR THE PRESCRIPTION DRUG WAS INTRODUCED TO THE MARKET AND THE PRICE OF THE PRESCRIPTION DRUG WHEN IT WAS INTRODUCED TO THE MARKET;

(VI) THE PATENT EXPIRATION DATE OF THE PRESCRIPTION DRUG, IF IT IS UNDER PATENT;

(VII) WHETHER THE PRESCRIPTION DRUG IS AN INNOVATOR MULTIPLE SOURCE DRUG, A NONINNOVATOR MULTIPLE SOURCE DRUG, OR A SINGLE SOURCE DRUG, AS DEFINED IN 42 U.S.C. SEC. 1396r-8 (k)(7), OR HAS A LINE EXTENSION;

(VIII) A DESCRIPTION OF THE CHANGE OR IMPROVEMENT IN THE PRESCRIPTION DRUG, IF ANY, THAT NECESSITATES THE PRICE INCREASE;

(IX) THE TOTAL GROSS REVENUES FROM SALES OF THE PRESCRIPTION DRUG IN COLORADO FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(X) THE NAME OF ANY GENERIC VERSION OF THE PRESCRIPTION DRUG THAT IS AVAILABLE ON THE MARKET;

(XI) THE TEN HIGHEST PRICES AND THE TEN LOWEST PRICES PAID FOR THE PRESCRIPTION DRUG DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR IN ANY COUNTRY OTHER THAN THE UNITED STATES;

(XII) ANY OTHER INFORMATION THAT THE MANUFACTURER DEEMS RELEVANT TO THE PRICE INCREASE; AND

(XIII) THE DOCUMENTATION NECESSARY TO SUPPORT THE INFORMATION REPORTED PURSUANT TO THIS SUBSECTION (1)(a).

(b) THE COMMISSIONER MAY REQUEST AND USE ANY PRESCRIPTION DRUG PRICE INFORMATION THE COMMISSIONER DEEMS APPROPRIATE TO

VERIFY THAT MANUFACTURERS HAVE PROPERLY REPORTED PRICE INCREASES AS REQUIRED BY THIS SUBSECTION (1).

(2) WITHIN FIFTEEN DAYS AFTER THE END OF EACH CALENDAR QUARTER THAT STARTS ON OR AFTER JANUARY 1, 2021, A MANUFACTURER SHALL REPORT TO THE COMMISSIONER, IN A FORM AND MANNER AND WITH SPECIFIED DETAILS PRESCRIBED BY THE COMMISSIONER BY RULE, THE FOLLOWING INFORMATION FOR EACH NEW SPECIALTY DRUG INTRODUCED TO THE MARKET IN THE PRIOR QUARTER:

(a) A DESCRIPTION OF THE MARKETING AND PRICING PLANS USED IN THE LAUNCH OF THE SPECIALTY DRUG IN COLORADO AND ALL COSTS ASSOCIATED WITH THE MARKETING AND PRICING PLANS;

(b) THE ESTIMATED NUMBER OF PATIENTS IN COLORADO THAT MIGHT BE PRESCRIBED THE SPECIALTY DRUG FOR THE USE APPROVED BY THE FDA;

(c) WHETHER THE SPECIALTY DRUG WAS GRANTED BREAKTHROUGH THERAPY DESIGNATION OR PRIORITY REVIEW BY THE FDA PRIOR TO FINAL APPROVAL; AND

(d) THE DATE AND PRICE OF ACQUISITION IF THE SPECIALTY DRUG WAS NOT DEVELOPED BY THE MANUFACTURER.

(3) AFTER RECEIVING A REPORT OF INFORMATION DESCRIBED IN SUBSECTION (1) OR (2) OF THIS SECTION, THE COMMISSIONER MAY REQUEST, IN WRITING, THAT A MANUFACTURER PROVIDE SUPPORTING DOCUMENTATION OR ADDITIONAL INFORMATION CONCERNING THE REPORTED INFORMATION. THE COMMISSIONER SHALL PRESCRIBE BY RULE THE TIME PERIODS FOR REQUESTING ADDITIONAL DOCUMENTATION OR INFORMATION AND FOR MANUFACTURERS TO RESPOND TO THE REQUEST, INCLUDING EXTENSIONS FOR MANUFACTURERS TO RESPOND.

10-16-1207. Health insurer and pharmacy benefit management firms - required reports - rules. (1) (a) STARTING IN 2021, EXCEPT AS SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION, A HEALTH INSURER SHALL REPORT TO THE COMMISSIONER, CONTEMPORANEOUS WITH ITS RATE FILING PURSUANT TO SECTION 10-16-107 AND IN THE FORM AND MANNER SPECIFIED BY THE COMMISSIONER THAT ENSURES THE INFORMATION IS SEPARATED FROM THE RATE FILING INFORMATION, THE INFORMATION SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS SECTION. IF A HEALTH INSURER USES A PHARMACY BENEFIT MANAGEMENT FIRM, THE PHARMACY BENEFIT MANAGEMENT FIRM SHALL REPORT THE INFORMATION SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS SECTION BY A DATE SPECIFIED BY THE COMMISSIONER THAT COINCIDES WITH HEALTH INSURER RATE FILINGS PURSUANT TO SECTION 10-16-107.

(b) FOR PURPOSES OF THE REPORT OF INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION THAT IS REQUIRED TO BE SUBMITTED IN THE 2021 CALENDAR YEAR, THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM SHALL REPORT INFORMATION ON ANY PRESCRIPTION DRUG FOR WHICH THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM RECEIVED A NOTICE FROM A MANUFACTURER PURSUANT TO SECTION 10-16-1205 DURING THE FIRST QUARTER OF THE CALENDAR YEAR. FOR THE 2022 CALENDAR YEAR AND EACH CALENDAR YEAR THEREAFTER, THE REPORT OF INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION MUST CONTAIN INFORMATION ON ALL PRESCRIPTION DRUGS FOR WHICH A NOTICE WAS RECEIVED FROM A MANUFACTURER DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(2) FOR EACH PRESCRIPTION DRUG INCLUDED IN A

MANUFACTURER'S NOTICE TO A HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM PURSUANT TO SECTION 10-16-1205 IN THE PRIOR CALENDAR YEAR, THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM SHALL REPORT:

(a) THE TOTAL AMOUNT OF ALL REBATES THAT THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM RECEIVED FROM THE MANUFACTURERS OF THE PRESCRIPTION DRUG DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(b) THE TOTAL AMOUNT OF ALL REBATES DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION RETAINED BY THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM;

(c) THE TOTAL AMOUNT OF ADMINISTRATIVE FEES THE PHARMACY BENEFIT MANAGEMENT FIRM RECEIVED FROM MANUFACTURERS AND HEALTH INSURERS FOR THE PRESCRIPTION DRUG;

(d) THE TOTAL ANNUAL PAYMENTS, INCLUDING REIMBURSEMENTS AND FEES, PAID TO COLORADO PHARMACIES FOR DISPENSING THE PRESCRIPTION DRUG, SEPARATELY IDENTIFYING:

(I) THE AMOUNT ATTRIBUTABLE TO DISPENSING FEES; AND

(II) THE AMOUNT ATTRIBUTABLE TO SERVICE OR ADMINISTRATIVE FEES, INCLUDING THE ADMINISTRATIVE FEES ATTRIBUTABLE TO COST-MANAGEMENT PROGRAMS AND OTHER ADMINISTRATION AS DEFINED BY RULE OF THE COMMISSIONER; AND

(e) AN EXPLANATION OF ALL OTHER SERVICES OFFERED BY THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM, EXCLUDING PROPRIETARY AND CLIENT-SPECIFIC INFORMATION.

(3) (a) A HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM SHALL REPORT THE AVERAGE WHOLESALE PRICE PAID FOR THE

FOLLOWING CATEGORIES OF PRESCRIPTION DRUGS:

(I) BRAND NAME PRESCRIPTION DRUGS PURCHASED AT A RETAIL PHARMACY;

(II) GENERIC PRESCRIPTION DRUGS PURCHASED AT A RETAIL PHARMACY;

(III) BRAND NAME PRESCRIPTION DRUGS PURCHASED FROM A MAIL-ORDER PHARMACY;

(IV) GENERIC PRESCRIPTION DRUGS PURCHASED FROM A MAIL-ORDER PHARMACY;

(V) PRESCRIPTION DRUGS DISPENSED BY A PRACTITIONER IN ACCORDANCE WITH SECTION 12-280-120 (6);

(VI) SPECIALTY DRUGS ADMINISTERED IN AN INPATIENT HOSPITAL SETTING; AND

(VII) SPECIALTY DRUGS ADMINISTERED IN AN OUTPATIENT HOSPITAL SETTING.

(b) THE HEALTH INSURER OR PHARMACY BENEFIT MANAGEMENT FIRM SHALL REPORT THE AVERAGE WHOLESALE PRICE FOR THE PRESCRIPTION DRUGS SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION PAID BY EACH OF THE FOLLOWING MARKET SECTORS ENROLLED IN A HEALTH COVERAGE PLAN THAT THE HEALTH INSURER ISSUED OR THAT INCLUDES PRESCRIPTION DRUG BENEFITS MANAGED OR ADMINISTERED BY THE PHARMACY BENEFIT MANAGEMENT FIRM:

(I) INDIVIDUALS;

(II) SMALL EMPLOYERS;

(III) LARGE EMPLOYERS WITH AT LEAST ONE HUNDRED ONE BUT NOT MORE THAN FIVE HUNDRED ELIGIBLE EMPLOYEES ON BUSINESS DAYS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(IV) LARGE EMPLOYERS WITH AT LEAST FIVE HUNDRED ONE BUT NOT MORE THAN FIVE THOUSAND ELIGIBLE EMPLOYEES ON BUSINESS DAYS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR; AND

(V) LARGE EMPLOYERS WITH MORE THAN FIVE THOUSAND ELIGIBLE EMPLOYEES ON BUSINESS DAYS DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(4) (a) EACH HEALTH INSURER THAT USES A PHARMACY BENEFIT MANAGEMENT FIRM SHALL REQUIRE THAT THE PHARMACY BENEFIT MANAGEMENT FIRM COMPLY WITH THIS SECTION. THE HEALTH INSURER SHALL PERIODICALLY AUDIT THE PHARMACY BENEFIT MANAGEMENT FIRM TO MONITOR AND ENSURE COMPLIANCE WITH THIS SECTION.

(b) FAILURE OF A HEALTH INSURER TO COMPLY WITH THIS SUBSECTION (4) OR TO ENSURE THAT A PHARMACY BENEFIT MANAGEMENT FIRM THAT THE HEALTH INSURER USES IS COMPLYING WITH THIS SECTION IS AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT TO SECTION 10-3-1104 (1)(tt).

10-16-1208. Nonprofit organizations - required reports - rules.

(1) THIS SECTION APPLIES TO A NONPROFIT ORGANIZATION:

(a) WHOSE MISSION FOCUSES ON ISSUES REGARDING PHARMACEUTICAL TREATMENT FOR COLORADANS; AND

(b) THAT HAS RECEIVED A PAYMENT, DONATION, SUBSIDY, OR THING OF VALUE THAT EXCEEDS, IN THE AGGREGATE, ONE THOUSAND DOLLARS IN VALUE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR FROM A SINGLE MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, HEALTH INSURER THAT IS SUBJECT TO THE REPORTING REQUIREMENTS OF THIS PART 12, OR A TRADE ASSOCIATION REPRESENTING

ANY OF THOSE INDUSTRIES.

(2) STARTING IN 2021, A NONPROFIT ORGANIZATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL COMPILE AND SUBMIT TO THE COMMISSIONER, IN A FORM AND MANNER AND BY A DATE DETERMINED BY THE COMMISSIONER BY RULE, A REPORT THAT INCLUDES:

(a) THE AMOUNT OF EACH PAYMENT, DONATION, SUBSIDY, OR THING OF VALUE RECEIVED DIRECTLY OR INDIRECTLY FROM EACH MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, HEALTH INSURER, AND TRADE ASSOCIATION; AND

(b) THE PERCENTAGE OF THE NONPROFIT ORGANIZATION'S TOTAL GROSS INCOME ATTRIBUTABLE TO PAYMENTS, DONATIONS, SUBSIDIES, OR OTHER THINGS OF VALUE RECEIVED DIRECTLY OR INDIRECTLY FROM EACH MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, HEALTH INSURER, AND TRADE ASSOCIATION IN THE PREVIOUS CALENDAR YEAR.

(3) THE NONPROFIT ORGANIZATION SHALL INCLUDE IN THE REPORT REQUIRED BY SUBSECTION (2) OF THIS SECTION THE INFORMATION SPECIFIED IN SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION FOR ANY PAYMENT, DONATION, SUBSIDY, OR THING OF VALUE THAT EXCEEDS, IN THE AGGREGATE, ONE THOUSAND DOLLARS IN VALUE RECEIVED DIRECTLY OR INDIRECTLY BY AN OFFICER, EMPLOYEE, OR MEMBER OF THE BOARD OF DIRECTORS OF THE ORGANIZATION.

(4) A NONPROFIT ORGANIZATION SUBJECT TO THE REPORTING REQUIREMENTS OF THIS SECTION THAT FAILS TO COMPLY WITH THE REQUIREMENTS IS SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS.

10-16-1209. Commissioner to publish information - reporting requirements. (1) (a) EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION, THE COMMISSIONER SHALL POST ON THE DIVISION'S

WEBSITE:

(I) THE INFORMATION REPORTED BY HEALTH INSURERS PURSUANT TO SECTION 10-16-1204;

(II) THE INFORMATION IN THE NOTICES PROVIDED BY MANUFACTURERS PURSUANT TO SECTION 10-16-1205;

(III) THE INFORMATION REPORTED BY MANUFACTURERS PURSUANT TO SECTION 10-16-1206, LISTING THE PRESCRIPTION DRUGS ABOUT WHICH MANUFACTURERS REPORTED AND THE NAMES OF THE MANUFACTURERS OF THOSE PRESCRIPTION DRUGS;

(IV) THE INFORMATION REPORTED BY ALL HEALTH INSURERS AND PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO SECTION 10-16-1207; AND

(V) THE INFORMATION REPORTED BY NONPROFIT ORGANIZATIONS PURSUANT TO SECTION 10-16-1208.

(b) (I) IF A HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION CLAIMS THAT INFORMATION CONTAINED IN A REPORT SUBMITTED TO THE COMMISSIONER IS PROPRIETARY IN ACCORDANCE WITH SECTION 24-72-204 (3)(a)(IV), THE COMMISSIONER SHALL REVIEW THE INFORMATION AND REDACT SPECIFIC ITEMS THAT THE HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION DEMONSTRATES TO BE PROPRIETARY INFORMATION FROM THE INFORMATION POSTED ON THE DIVISION'S WEBSITE. A HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION ASSERTING THAT INFORMATION SUBMITTED TO THE COMMISSIONER IS PROPRIETARY BEARS THE BURDEN OF PROOF ON THAT ISSUE.

(II) THE COMMISSIONER SHALL NOT DISCLOSE THE REDACTED

ITEMS TO THE PUBLIC OR ANY PERSON OUTSIDE THE DIVISION, OTHER THAN A DISINTERESTED THIRD PARTY WITH WHOM THE COMMISSIONER CONTRACTS TO PERFORM THE ANALYSIS REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION OR OTHER STATE AGENCIES THAT ARE PURCHASERS, EXCEPT AS OTHERWISE REQUIRED PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24.

(2) (a) (I) THE COMMISSIONER, OR A DISINTERESTED THIRD PARTY WITH WHOM THE COMMISSIONER CONTRACTS, SHALL ANALYZE THE DATA REPORTED BY HEALTH INSURERS PURSUANT TO SECTION 10-16-1204, THE DATA REPORTED BY MANUFACTURERS PURSUANT TO SECTION 10-16-1206, THE DATA REPORTED BY PHARMACY BENEFIT MANAGEMENT FIRMS PURSUANT TO SECTION 10-16-1207, THE DATA REPORTED BY NONPROFIT ORGANIZATIONS PURSUANT TO SECTION 10-16-1208, THE HEALTH INSURER RATE INFORMATION FILED PURSUANT TO SECTION 10-16-107, AND ANY OTHER RELEVANT DATA THE COMMISSIONER POSSESSES IN ORDER TO DETERMINE THE OVERALL EFFECT OF PRESCRIPTION DRUG COSTS ON PREMIUMS. THE COMMISSIONER SHALL ISSUE A REPORT, AS PART OF THE REPORT PREPARED PURSUANT TO SECTION 10-16-111 (4)(c), ANALYZING THE PRESCRIPTION DRUG COST DATA AND THE EFFECT OF PRESCRIPTION DRUG COSTS ON PREMIUMS.

(II) THE COMMISSIONER SHALL INCLUDE IN THE REPORT REQUIRED BY THIS SUBSECTION (2)(a), BASED ON INFORMATION REPORTED BY HEALTH INSURERS PURSUANT TO SECTION 10-16-1204 (2) AND THE HEALTH INSURERS' CERTIFICATIONS SUBMITTED PURSUANT TO SECTION 10-16-1204 (3), A DESCRIPTION OF THE REBATE PRACTICES OF HEALTH INSURERS, INCLUDING:

(A) AN EXPLANATION OF THE MANNER IN WHICH HEALTH

INSURERS ACCOUNTED FOR REBATES IN CALCULATING PREMIUMS FOR HEALTH BENEFIT PLANS ISSUED OR RENEWED DURING THE YEAR;

(B) ANY OTHER MANNER IN WHICH HEALTH INSURERS APPLIED REBATES DURING THE YEAR; AND

(C) OTHER INFORMATION THE COMMISSIONER DEEMS RELEVANT FOR PURPOSES OF THE REPORT REQUIRED BY THIS SUBSECTION (2).

(III) IF A HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION CLAIMS, PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, THAT INFORMATION CONTAINED IN A REPORT SUBMITTED TO THE COMMISSIONER IS PROPRIETARY IN ACCORDANCE WITH SECTION 24-72-204 (3)(a)(IV), THE COMMISSIONER SHALL REVIEW THE INFORMATION AND EXCLUDE FROM THE REPORT PREPARED PURSUANT TO THIS SUBSECTION (2) ANY INFORMATION THAT THE HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION DEMONSTRATES IS PROPRIETARY. IF THE COMMISSIONER CONTRACTS WITH A DISINTERESTED THIRD PARTY TO CONDUCT THE ANALYSIS, THE DISINTERESTED THIRD PARTY SHALL NOT DISCLOSE TO THE PUBLIC OR ANY PERSON OUTSIDE THE DIVISION ANY INFORMATION THAT THE HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION DEMONSTRATES TO BE PROPRIETARY PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION. A HEALTH INSURER, MANUFACTURER, PHARMACY BENEFIT MANAGEMENT FIRM, OR NONPROFIT ORGANIZATION ASSERTING THAT INFORMATION SUBMITTED TO THE COMMISSIONER IS PROPRIETARY BEARS THE BURDEN OF PROOF ON THAT ISSUE.

(b) BY DECEMBER 1, 2021, AND BY EACH DECEMBER 1 THEREAFTER, THE COMMISSIONER SHALL PUBLISH THE REPORT REQUIRED

BY THIS SUBSECTION (2) ON THE DIVISION'S WEBSITE, WHICH REPORT MUST ANALYZE THE DATA SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION THAT THE COMMISSIONER RECEIVED THROUGH JULY OF THE CALENDAR YEAR IN WHICH THE REPORT IS PUBLISHED.

(c) BY DECEMBER 1, 2021, AND BY EACH DECEMBER 1 THEREAFTER, THE COMMISSIONER SHALL SUBMIT THE REPORT TO THE GOVERNOR, THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES, AND THE HOUSE OF REPRESENTATIVES COMMITTEES ON HEALTH AND INSURANCE AND PUBLIC HEALTH CARE AND HUMAN SERVICES, OR THEIR SUCCESSOR COMMITTEES. ADDITIONALLY, THE COMMISSIONER SHALL PRESENT THE REPORT TO THE LEGISLATIVE COMMITTEES DURING THE COMMITTEES' HEARINGS HELD PRIOR TO THE 2022 LEGISLATIVE SESSION AND PRIOR TO EACH LEGISLATIVE SESSION THEREAFTER UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

(d) THE COMMISSIONER, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF HUMAN SERVICES, AND ANY OTHER STATE DEPARTMENT THAT PURCHASES OR REIMBURSES THE COST OF PRESCRIPTION DRUGS ON BEHALF OF THE STATE OR AN ENTITY ACTING ON BEHALF OF A STATE DEPARTMENT, SHALL INCLUDE IN THE REPORT REQUIRED BY THIS SUBSECTION (2) ANY RECOMMENDATIONS FOR LEGISLATIVE CHANGES TO CONTAIN THE COSTS OF PRESCRIPTION DRUGS AND REDUCE THE EFFECTS OF PRICE INCREASES ON:

(I) CONSUMERS;

(II) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING,

THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF HUMAN SERVICES, AND ANY OTHER STATE DEPARTMENT THAT PURCHASES OR REIMBURSES THE COST OF PRESCRIPTION DRUGS ON BEHALF OF THE STATE OR AN ENTITY ACTING ON BEHALF OF A STATE DEPARTMENT;

(III) HEALTH INSURANCE PREMIUMS IN THE COMMERCIAL MARKET; AND

(IV) HEALTH INSURANCE PREMIUMS FOR STATE GROUP BENEFIT PLANS.

(e) THE REPORTING REQUIREMENT IN THIS SUBSECTION (2) IS NOT SUBJECT TO EXPIRATION UNDER SECTION 24-1-136 (11)(a)(I).

10-16-1210. Rules - coordination with other state entities. (1) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS PART 12, INCLUDING RULES:

(a) SPECIFYING THE FORM AND MANNER IN WHICH HEALTH INSURERS, MANUFACTURERS, PHARMACY BENEFIT MANAGEMENT FIRMS, AND NONPROFIT ORGANIZATIONS ARE TO REPORT INFORMATION REQUIRED BY SECTIONS 10-16-1204, 10-16-1206, 10-16-1207, AND 10-16-1208; AND

(b) ESTABLISHING FILING FEES TO BE PAID BY HEALTH INSURERS, MANUFACTURERS, AND PHARMACY BENEFIT MANAGEMENT FIRMS, WHICH FEES MUST BE USED SOLELY TO PAY THE OPERATIONAL COSTS OF THE DIVISION IN IMPLEMENTING AND ADMINISTERING THIS PART 12.

(2) THE COMMISSIONER MAY CONSULT WITH THE STATE BOARD OF PHARMACY, THE SECRETARY OF STATE, THE ATTORNEY GENERAL, AND THE STATE DEPARTMENTS THAT ARE PURCHASERS, AS SPECIFIED IN SECTION 10-16-1203 (13), IN ADOPTING NECESSARY RULES PURSUANT TO SUBSECTION (1) OF THIS SECTION, IN POSTING INFORMATION ON THE DIVISION'S WEBSITE PURSUANT TO SECTION 10-16-1209 (1), AND IN

TAKING ANY OTHER ACTION FOR THE PURPOSE OF IMPLEMENTING THIS PART 12.

10-16-1211. Violations - enforcement. (1) A MANUFACTURER ENGAGES IN UNPROFESSIONAL CONDUCT UNDER SECTION 12-280-126 (1)(t) AND IS SUBJECT TO DISCIPLINE UNDER SECTION 12-280-127, INCLUDING PENALTIES UNDER SECTION 12-280-127 (5)(d), IF THE MANUFACTURER:

(a) FAILS TO NOTIFY PURCHASERS OF A PRESCRIPTION DRUG PRICE INCREASE OR A NEW SPECIALTY DRUG INTRODUCED TO THE MARKET AS REQUIRED BY SECTION 10-16-1205;

(b) FAILS TO REPORT TO THE COMMISSIONER THE INFORMATION REQUIRED BY SECTION 10-16-1206; OR

(c) FAILS TO PAY FILING FEES AS REQUIRED PURSUANT TO SECTION 10-16-1210 (1)(b).

(2) THE COMMISSIONER SHALL REPORT MANUFACTURER VIOLATIONS OF THIS PART 12 TO THE STATE BOARD OF PHARMACY.

SECTION 2. In Colorado Revised Statutes, 10-3-1104, **add** (1)(tt) as follows:

10-3-1104. Unfair methods of competition - unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(tt) FAILING TO COMPLY WITH SECTION 10-16-1207 (4) AND TO ENSURE THAT A PHARMACY BENEFIT MANAGEMENT FIRM THAT A HEALTH INSURER, AS DEFINED IN SECTION 10-16-1203 (5), USES TO MANAGE OR ADMINISTER PRESCRIPTION DRUG BENEFITS FOR THE HEALTH INSURER IS COMPLYING WITH SECTION 10-16-1207.

SECTION 3. In Colorado Revised Statutes, 10-16-102, **amend**

(49) as follows:

10-16-102. Definitions. As used in this article 16, unless the context otherwise requires:

(49) "Pharmacy benefit management firm" means any entity doing business in this state that ~~contracts to administer or manage~~ ADMINISTERS OR MANAGES prescription drug benefits on behalf of any carrier that provides prescription drug benefits to residents of this state, EITHER PURSUANT TO A CONTRACT WITH THE CARRIER OR AS AN ENTITY THAT IS RELATED TO, ASSOCIATED BY COMMON OR OTHER OWNERSHIP WITH, OR OTHERWISE ASSOCIATED WITH THE CARRIER.

SECTION 4. In Colorado Revised Statutes, 12-280-126, **add** (1)(t) as follows:

12-280-126. Unprofessional conduct - grounds for discipline. (1) The board may take disciplinary or other action as authorized in section 12-20-404, after a hearing held in accordance with the provisions of sections 12-20-403 and 12-280-127, upon proof that the licensee, certificant, or registrant:

(t) (I) HAS FAILED TO NOTIFY PURCHASERS OF PRESCRIPTION DRUG PRICE INCREASES OR OF NEW SPECIALTY DRUGS INTRODUCED TO THE MARKET AS REQUIRED BY SECTION 10-16-1205;

(II) HAS FAILED TO REPORT THE INFORMATION REQUIRED BY SECTION 10-16-1206 TO THE COMMISSIONER OF INSURANCE; OR

(III) HAS FAILED TO PAY FILING FEES AS REQUIRED PURSUANT TO SECTION 10-16-1210 (1)(b).

SECTION 5. In Colorado Revised Statutes, 12-280-127, **amend** (5)(a); and **add** (5)(d) as follows:

12-280-127. Disciplinary actions. (5) (a) Except as provided in

~~subsections~~ SUBSECTION (5)(b), ~~and~~ (5)(c), OR (5)(d) of this section, in addition to any other penalty the board may impose pursuant to this section, the board may fine any registrant violating this article 280 or any rules promulgated pursuant to this article 280 not less than five hundred dollars and not more than five thousand dollars for each violation.

(d) IN ADDITION TO ANY OTHER PENALTY THE BOARD MAY IMPOSE PURSUANT TO THIS SECTION, THE BOARD MAY IMPOSE AN ADMINISTRATIVE FINE ON A REGISTRANT FOR FAILING TO NOTIFY PURCHASERS OR REPORT INFORMATION TO THE COMMISSIONER OF INSURANCE AS SPECIFIED IN SECTION 12-280-126 (1)(t) UP TO TEN THOUSAND DOLLARS PER DAY FOR EACH DAY THE REGISTRANT FAILS TO COMPLY WITH THE NOTICE OR REPORTING REQUIREMENTS.

SECTION 6. In Colorado Revised Statutes, **add** 10-16-152 as follows:

10-16-152. Cost-sharing for prescription drugs - required rebate reductions - definitions - rules - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) WITH APPROXIMATELY ONE HUNDRED FIFTY BILLION DOLLARS IN PRESCRIPTION DRUG REBATES IN THE HEALTH CARE SYSTEM EACH YEAR, IT IS UNCLEAR IF THESE REBATES ARE BEING USED TO BENEFIT CONSUMERS BY PROVIDING THEM MAXIMIZED COST SAVINGS;

(b) MOST COLORADANS EXPERIENCE INCREASES IN PRESCRIPTION DRUG COSTS AND DO NOT BENEFIT FROM INCREASING REBATES WITH CORRESPONDING OFFSETS IN THEIR COSTS; AND

(c) REQUIRING HEALTH INSURERS TO PASS REBATE SAVINGS ON TO CONSUMERS BY LOWERING PREMIUMS BASED ON THE REBATES THEY RECEIVED FROM MANUFACTURERS FOR PRESCRIPTION DRUGS COVERED

UNDER THEIR HEALTH COVERAGE PLANS WILL PROVIDE IMMEDIATE FINANCIAL RELIEF FOR COLORADANS AND ENABLE THEM TO OFFSET THEIR RISING PRESCRIPTION DRUG COSTS.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "HEALTH INSURER" MEANS:

(I) A CARRIER AS DEFINED IN SECTION 10-16-102 (8); AND

(II) A CARRIER, AS DEFINED IN SECTION 24-50-603 (2), THAT PROVIDES OR ADMINISTERS A GROUP BENEFIT PLAN FOR STATE EMPLOYEES PURSUANT TO PART 6 OF ARTICLE 50 OF TITLE 24.

(b) "MANUFACTURE" HAS THE SAME MEANING AS SPECIFIED IN SECTION 12-280-103 (26).

(c) "MANUFACTURER" MEANS:

(I) A PERSON THAT MANUFACTURES A PRESCRIPTION DRUG THAT IS MADE AVAILABLE IN COLORADO; AND

(II) A HOLDING COMPANY OR OTHER AFFILIATE OF A PERSON DESCRIBED IN SUBSECTION (2)(c)(I) OF THIS SECTION.

(d) "PRESCRIPTION DRUG" HAS THE MEANING AS SPECIFIED IN SECTION 12-280-103 (42).

(e) "REBATE" MEANS A REBATE, DISCOUNT, MARKET SHARE ALLOWANCE, REMUNERATION, COMPENSATION, OR OTHER PAYMENT OR PRICE CONCESSION PROVIDED BY A MANUFACTURER TO A PHARMACY BENEFIT MANAGEMENT FIRM OR HEALTH INSURER.

(3) FOR EACH HEALTH COVERAGE PLAN, INCLUDING A GROUP BENEFIT PLAN, ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2022, A HEALTH INSURER SHALL REDUCE PREMIUMS FOR THE PLAN BY AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE ESTIMATED REBATES FOR

PRESCRIPTION DRUGS THAT THE HEALTH INSURER RECEIVED FOR THAT PLAN IN THE PREVIOUS PLAN YEAR.

(4) THE COMMISSIONER SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION IN A MANNER THAT MAXIMIZES THE REDUCTION IN PREMIUMS.

(5) THE COMMISSIONER MAY USE ANY OF THE COMMISSIONER'S ENFORCEMENT POWERS UNDER THIS TITLE 10 TO OBTAIN A HEALTH INSURER'S COMPLIANCE WITH THIS SECTION.

SECTION 7. Effective date. This act takes effect July 1, 2020.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.