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HOUSE BILL 23-1201

BY REPRESENTATIVE(S) Daugherty and Soper, Bacon, Bird, Boesenecker, Brown, Duran, Garcia, Jodeh, Lieder, Lindsay, McCormick, Sharbini, Sirota, Snyder, Titone, Valdez, Velasco, Woodrow, McCluskie; also SENATOR(S) Mullica and Smallwood, Bridges, Ginal, Hinrichsen, Priola.

CONCERNING PRESCRIPTION DRUG BENEFITS CONTRACT TERM REQUIREMENTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-163 as follows:

10-16-163. Contracts - health benefit plans - pharmacy benefit managers - policyholders - transparency requirements - rules - definitions. (1) FOR A CONTRACT BETWEEN A CARRIER OR PHARMACY BENEFIT MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT IS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2025, THE AMOUNT CHARGED BY THE CARRIER OR PBM TO THE CERTIFICATE HOLDER OR POLICYHOLDER FOR A PRESCRIPTION DRUG DISPENSED TO A COVERED PERSON MUST BE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

EQUAL TO OR LESS THAN THE AMOUNT PAID BY THE CARRIER OR PBM TO A CONTRACTED PHARMACY FOR SUCH PRESCRIPTION DRUG DISPENSED TO SUCH COVERED PERSON RESIDING IN COLORADO.

(2) (a) FOR GROUP HEALTH BENEFIT PLANS IN EFFECT DURING CALENDAR YEAR 2025, AND EACH CALENDAR YEAR THEREAFTER, A CARRIER OR PHARMACY BENEFIT MANAGER SHALL DISCLOSE TO EACH POLICYHOLDER OR THE POLICYHOLDER'S SPECIFICALLY DESIGNATED BROKER OR CONSULTANT THE PRESCRIPTION DRUG CONTRACT TERMS REQUIRED BY THIS SUBSECTION (2). FOR GROUP HEALTH BENEFIT PLANS IN EFFECT DURING CALENDAR YEAR 2023 OR 2024, OR BOTH, THE DISCLOSURE MUST ALSO INCLUDE ANY CHANGES IN TERMS BETWEEN EACH CALENDAR YEAR.

(b) THE DISCLOSURES REQUIRED PURSUANT TO THIS SUBSECTION (2) MUST INCLUDE:

(I) THE INGREDIENT COST AVERAGE REIMBURSEMENT RATE FOR:

(A) GENERIC DRUGS DISPENSED AT RETAIL PHARMACIES;

(B) BRAND-NAME DRUGS DISPENSED AT RETAIL PHARMACIES;

(C) SPECIALTY DRUGS DISPENSED AT RETAIL PHARMACIES;

(D) GENERIC DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

(E) BRAND-NAME DRUGS DISPENSED AT MAIL-ORDER PHARMACIES;

(F) SPECIALTY DRUGS DISPENSED AT MAIL-ORDER PHARMACIES; AND

(G) SPECIALTY DRUGS DISPENSED AT ANY SPECIALTY PHARMACY, INCLUDING A PHARMACY THAT IS FULLY OR PARTIALLY OWNED BY A CONTRACTING PBM, CARRIER, OR THE PBM'S OR CARRIER'S HOLDING COMPANIES OR AFFILIATES;

(II) THE AVERAGE DISPENSING FEE PAID TO EACH TYPE OF PHARMACY, INCLUDING EACH RETAIL, MAIL-ORDER, AND SPECIALTY PHARMACY;

(III) THE CHARGE PER PRIOR AUTHORIZATION;

(IV) UTILIZATION MANAGEMENT PROGRAMS AND ASSOCIATED FEES;

(V) ANY OTHER CONTRACTED SERVICES AND ASSOCIATED FEES;

(VI) THE AVERAGE REBATE ACROSS ALL PAID PRESCRIPTIONS FOR THE RESPECTIVE GROUP HEALTH BENEFIT PLAN AND THE AVERAGE REBATE ACROSS ALL PAID PRESCRIPTIONS THAT PAY A REBATE FOR THE RESPECTIVE GROUP HEALTH BENEFIT PLAN; AND

(VII) THE REBATE GUARANTEE, WHERE APPLICABLE.

(c) FOR CONTRACTS BETWEEN A CARRIER OR PHARMACY BENEFIT MANAGER AND A CERTIFICATE HOLDER OR POLICYHOLDER THAT ARE RENEWED IN CALENDAR YEAR 2025, AND EACH CALENDAR YEAR THEREAFTER, THE CARRIER OR PBM SHALL CALCULATE AND COMMUNICATE TO THE CERTIFICATE HOLDER OR POLICYHOLDER THE VALUE OF THE DIFFERENCE BETWEEN THE CONTRACT TERMS IN THE RENEWED CONTRACTS AND THE CONTRACTS THAT WERE IN EFFECT THE PREVIOUS CALENDAR YEAR, ANNUALIZING THE PREVIOUS YEAR'S ACTUAL DATA FOR EACH RESPECTIVE CERTIFICATE HOLDER OR POLICYHOLDER. THE VALUE COMMUNICATED SHALL INCLUDE ANNUAL AGGREGATE SAVINGS, ANNUAL AGGREGATE SAVINGS PER EMPLOYEE PER YEAR, AND ANNUAL AGGREGATE SAVINGS PER COVERED PERSON PER YEAR.

(d) A CARRIER OR PHARMACY BENEFIT MANAGER SHALL PROVIDE TO EACH CERTIFICATE HOLDER OR POLICYHOLDER, FOR VOLUNTARY CONSIDERATION, OPTIONS TO REPURPOSE AGGREGATE SAVINGS IN THE FORM OF REDUCTIONS TO OUT-OF-POCKET COSTS SUCH AS DEDUCTIBLES, COPAYMENT AMOUNTS, COINSURANCE, OR PREMIUM CONTRIBUTIONS. THE CARRIER OR PBM SHALL PROVIDE THE INFORMATION TO CERTIFICATE HOLDERS OR POLICYHOLDERS NO LESS THAN NINETY DAYS BEFORE THE DATE OF THE CONTRACT RENEWAL.

(e) A CARRIER OR PBM SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTIONS (2)(b), (2)(c), AND (2)(d) OF THIS SECTION TO ALL CERTIFICATE HOLDERS AND POLICYHOLDERS FOR CONTRACTS IN EFFECT DURING CALENDAR YEAR 2025, INCLUDING CERTIFICATE HOLDERS AND POLICYHOLDERS THAT MAY NOT RECEIVE A RENEWAL NOTICE DUE TO A MULTIYEAR CONTRACTUAL AGREEMENT OR FOR ANY OTHER REASON, EXCEPT NOTICE OF TERMINATION.

(f) THE DISCLOSURES REQUIRED IN SUBSECTIONS (2)(b)(VI) AND (2)(b)(VII) OF THIS SECTION MUST NOT DISCLOSE ANY PROPRIETARY REBATE INFORMATION BETWEEN A DRUG MANUFACTURER AND THE PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE. THE DISCLOSURE OF DATA REQUIRED BY THESE SUBSECTIONS MUST REPRESENT THE AGGREGATE VALUE OF REBATES PASSING THROUGH FROM THE PHARMACY BENEFIT MANAGER OR ITS CARRIER AFFILIATE TO THE HEALTH BENEFIT PLAN AS DEFINED BY RULE OF THE COMMISSIONER.

(g) A CARRIER MAY EXEMPT A SEGMENT OF ITS BUSINESS FROM THIS SUBSECTION (2). THE CARRIER'S EXEMPTED BUSINESS SEGMENT MUST PROVIDE THE MAJORITY OF COVERED MEDICAL PROFESSIONAL SERVICES THROUGH A SINGLE, CONTRACTED MEDICAL GROUP AND OPERATE ITS OWN PHARMACIES THROUGH WHICH AT LEAST EIGHTY-FIVE PERCENT OF ITS AGGREGATE PRESCRIPTION DRUG CLAIMS ARE FILLED. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A CARRIER THAT MEETS THE EXEMPTION CRITERIA IN THIS SUBSECTION (2)(g) SHALL SUBMIT AN ATTESTATION TO THE DIVISION OF SUCH COMPLIANCE WITH EACH RATE FILING REQUIRED PURSUANT TO SECTION 10-16-107. THE CARRIER OR PBM SHALL DISCLOSE ALL DATA REQUIREMENTS AS OUTLINED IN THIS SUBSECTION (2) TO THE CARRIER'S GROUP POLICYHOLDERS THAT ARE PRIMARILY ACCESSING PRESCRIPTION DRUG BENEFITS THROUGH A THIRD-PARTY PBM CONTRACTED WITH THE CARRIER.

(3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION.

(4) (a) THE COMMISSIONER MAY CONDUCT AN AUDIT OR MARKET CONDUCT EXAMINATION OF A CARRIER OR PHARMACY BENEFIT MANAGER TO ENSURE COMPLIANCE WITH THIS SECTION. THE COMMISSIONER, PURSUANT TO ANY RULES PROMULGATED BY THE DIVISION, MAY AUDIT A CARRIER OR PBM ANNUALLY TO DETERMINE IF THERE IS A VIOLATION OF THIS SECTION.

(b) THE COMMISSIONER MAY DETERMINE A CARRIER'S OR PBM'S COMPLIANCE WITH THIS SECTION BASED ON A SAMPLING OF DATA OR BASED ON A FULL CLAIMS AUDIT. THE SAMPLING OF DATA AND ANY EXTRAPOLATION FROM THE DATA USED TO DETERMINE PENALTIES MUST BE REASONABLY VALID FROM A STATISTICAL STANDPOINT AND IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS. A CARRIER OR PBM THAT DOES NOT COMPLY WITH A DIVISION REQUEST FOR THE DATA REQUIRED

TO COMPLETE AN AUDIT VIOLATES THIS SECTION AND MAY BE SUBJECT TO PENALTIES.

(c) INFORMATION OBTAINED THROUGH AN AUDIT CONDUCTED PURSUANT TO THIS SUBSECTION (4) IS PROPRIETARY AND CONFIDENTIAL INFORMATION, AVAILABLE ONLY TO THE COMMISSIONER AND THE COMMISSIONER'S AUDITING DESIGNEE AND IS NOT SUBJECT TO DISCLOSURE UNLESS SPECIFICALLY REQUIRED BY STATE OR FEDERAL LAW.

(5) THE FAILURE OF A CARRIER OR PBM TO COMPLY WITH THIS SECTION IS AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR A DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT TO SECTION 10-3-1104 (1).

(6)(a) THE REQUIREMENTS OF SUBSECTIONS (1), (2), AND (4) OF THIS SECTION APPLY TO AN EMPLOYER-SPONSORED HEALTH BENEFIT PLAN, AN ASSOCIATED PHARMACY BENEFIT MANAGER, AND THE HEALTH BENEFIT PLAN MEMBERS ONLY IF A PERSON, TAFT-HARTLEY TRUST, MUNICIPALITY, STATE, LABOR UNION, PLAN SPONSOR, OR EMPLOYER THAT PROVIDES THE EMPLOYER-SPONSORED HEALTH BENEFIT PLAN ELECTS TO BE SUBJECT TO SUBSECTIONS (1), (2), AND (4) OF THIS SECTION FOR ITS MEMBERS THAT RESIDE IN COLORADO.

(b) AS USED IN THIS SUBSECTION (6), "PHARMACY BENEFIT MANAGER" MEANS AN ENTITY DOING BUSINESS IN THIS STATE THAT ADMINISTERS OR MANAGES PRESCRIPTION DRUG BENEFITS, INCLUDING CLAIMS PROCESSING SERVICES AND OTHER PRESCRIPTION DRUG OR DEVICE SERVICES AS DEFINED IN SECTION 10-16-122.1, THAT IS IN A CONTRACTUAL RELATIONSHIP DIRECTLY OR INDIRECTLY THROUGH AN AFFILIATE WITH AN EMPLOYER-SPONSORED HEALTH BENEFIT PLAN, WHICH INCLUDES PLANS THAT ARE SELF-INSURED OR REGULATED BY THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", 29 U.S.C. SEC. 1001 ET SEQ., AS AMENDED, OFFERED BY:

- (I) A PERSON;
- (II) A TAFT-HARTLEY TRUST;
- (III) A MUNICIPALITY;

(IV) THE STATE;

(V) A LABOR UNION;

(VI) A PLAN SPONSOR;

(VII) AN EMPLOYER; OR

(VIII) A COALITION OF EMPLOYERS OR AGGREGATION OF EMPLOYERS WORKING TOGETHER TO NEGOTIATE IMPROVED CONTRACT TERMS WITH A PHARMACY BENEFIT MANAGER.

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

(a) "CONTRACTED PHARMACY" MEANS A PHARMACY THAT HAS CONTRACTED WITH A CARRIER, A PHARMACY BENEFIT MANAGER, OR AN AFFILIATE OF THE CARRIER OR PBM.

(b) "INGREDIENT COST" MEANS THE ACTUAL AMOUNT PAID TO A PHARMACY BY A PHARMACY BENEFIT MANAGER FOR A PRESCRIPTION DRUG, NOT INCLUDING A DISPENSING FEE OR PATIENT COST-SHARING AMOUNT.

(c) "PHARMACY" MEANS AN ENTITY WHERE MEDICINAL DRUGS ARE DISPENSED AND SOLD, INCLUDING A RETAIL PHARMACY, MAIL-ORDER PHARMACY, SPECIALTY PHARMACY, HOSPITAL OUTPATIENT SETTING, OR OTHER RELATED PHARMACY.

SECTION 2. In Colorado Revised Statutes, **add** 25.5-1-134 as follows:

25.5-1-134. Prescription benefits - department and pharmacy manager - contracts - audit - rules. (1) FOR CONTRACTS BETWEEN A PHARMACY BENEFIT MANAGER AND THE STATE DEPARTMENT OR ONE OF ITS AFFILIATED MANAGED CARE ORGANIZATIONS OFFERING A PRESCRIPTION BENEFIT PLAN THAT IS ISSUED OR RENEWED ON OR AFTER JANUARY 1, 2025, THE AMOUNT CHARGED BY THE PHARMACY BENEFIT MANAGER TO THE STATE DEPARTMENT OR MANAGED CARE ORGANIZATION FOR A PRESCRIPTION DRUG DISPENSED TO AN ENROLLEE IN THE PROGRAM OF MEDICAL ASSISTANCE CREATED PURSUANT TO SECTION 25.5-4-104 MUST BE EQUAL TO OR LESS

THAN THE AMOUNT PAID BY THE PHARMACY BENEFIT MANAGER TO A MEDICAID PHARMACY FOR THE PRESCRIPTION DRUG DISPENSED TO THE ENROLLEE.

(2) THE STATE BOARD SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION, INCLUDING RULES GUIDING AN AUDIT OF MANAGED CARE OR FEE-FOR-SERVICE CLAIMS, TO ENSURE THAT THERE IS NO VIOLATION OF SUBSECTION (1) OF THIS SECTION.

SECTION 3. Appropriation. For the 2023-24 state fiscal year, \$10,000 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S. To implement this act, the division may use this appropriation for personal services.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; 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 such period, 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO