

First Extraordinary Session
Seventy-fifth General Assembly
STATE OF COLORADO

BILLPAPER

LLS NO. 25B-0011.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

DeGraaf,

SENATE SPONSORSHIP

(None),

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PRESCRIPTION DRUG SOURCING PROVIDED PURSUANT TO**
102 **A HEALTH BENEFIT PLAN.**

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 creates the "Prescription Drug Sourcing Transparency and Integrity Act" to prohibit a pharmacy benefit manager (PBM) or a health-care consultant from knowingly making or disseminating false or misleading statements or claims to an employer, health benefit plan sponsor, or policyholder about the legality or safety of a lawful alternative prescription drug sourcing program.

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.

Upon written request by a self-funded employer or health benefit plan sponsor, a PBM or health-care consultant is required to provide certain cost information for each prescription drug dispensed under the health benefit plan.

A violation of either the prohibition or information-sharing provisions of the bill is an unfair method of competition and unfair or deceptive act or practice in the business of insurance (unfair act or practice). In addition to imposing the existing penalties for engaging in an unfair act or practice, the bill authorizes the commissioner of insurance to impose additional penalties for a violation of the prohibition or information-sharing provisions of the bill in an amount up to \$5,000 for a fourth or subsequent violation (additional penalties). Additional penalties collected are credited to the health insurance affordability cash fund to facilitate a reduction in insurance premium increases and to help avoid health insurance coverage loss.

The prohibition and information-sharing provisions of the bill do not restrict or limit the rights of a self-funded employer or health benefit plan sponsor to purchase prescription drugs through and contract for a lawful alternative prescription drug sourcing program. The bill also recognizes that a pharmacy stewardship program is an effective cost-containment tool and is authorized when implemented in compliance with federal law and with the bill.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Improving transparency and integrity in prescription drug
5 purchasing protects employers and health benefit plan sponsors, supports
6 patient safety, and reduces unnecessary costs, while preserving clinical
7 decision-making; and

8 (b) It is the policy of this state to permit pharmacy stewardship
9 programs and alternative prescription drug sourcing programs
10 implemented in compliance with federal law in order to reduce net plan
11 costs without disrupting patient care.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 10-16-171 as
13 follows:

1 **10-16-171. Pharmacy benefit managers - health-care**
2 **consultants - prescription drug sourcing - disclosure requirements -**
3 **enforcement - short title - definitions. (1) Short title.** THE SHORT TITLE
4 OF THIS SECTION IS THE "PRESCRIPTION DRUG SOURCING TRANSPARENCY
5 AND INTEGRITY ACT".

6 (2) **Definitions.** AS USED IN THIS SECTION:

7 (a) (I) "ALTERNATIVE PRESCRIPTION DRUG SOURCING PROGRAM"
8 MEANS A LAWFUL ARRANGEMENT OPERATED BY OR ON BEHALF OF A
9 SELF-FUNDED EMPLOYER OR HEALTH BENEFIT PLAN SPONSOR UNDER
10 WHICH A DEFINED SUBSET OF PRESCRIPTION DRUGS FOR COVERED PERSONS
11 MAY BE DISPENSED THROUGH CHANNELS OTHER THAN THE PLAN'S
12 PHARMACY BENEFIT MANAGER OR CARRIER-ADMINISTERED NETWORK, IF
13 AUTHORIZED BY FEDERAL LAW, TO REDUCE THE NET PLAN COST WHILE
14 MAINTAINING PATIENT SAFETY, CONTINUITY OF THERAPY, AND EQUAL OR
15 LOWER MEMBER COST SHARE. AN ALTERNATIVE PRESCRIPTION DRUG
16 SOURCING PROGRAM IS NOT INSURANCE, AND PRESCRIPTIONS NOT
17 FULFILLED THROUGH THE PROGRAM CONTINUE TO PROCESS UNDER A
18 PLAN'S EXISTING PHARMACY BENEFIT MANAGER, CARRIER, AND NETWORK.

19 (II) "ALTERNATIVE PRESCRIPTION DRUG SOURCING PROGRAM"
20 INCLUDES A PROGRAM FOR IMPORTING PRESCRIPTION DRUGS AUTHORIZED
21 BY FEDERAL LAW OR FDA REGULATION.

22 (b) "HEALTH-CARE CONSULTANT" MEANS AN INDIVIDUAL OR
23 ENTITY THAT PROVIDES PROFESSIONAL ADVICE, ANALYSIS, OR SERVICES
24 TO A SELF-FUNDED EMPLOYER OR HEALTH BENEFIT PLAN SPONSOR
25 REGARDING HEALTH BENEFIT PLAN DESIGN OR ADMINISTRATION,
26 INCLUDING SERVICES RELATED TO PRESCRIPTION DRUG BENEFITS.

27 (c) "NATIONAL DRUG CODE" HAS THE MEANING SET FORTH IN

1 SECTION 10-16-122.9 (2)(f).

2 (d) (I) "PHARMACY STEWARDSHIP PROGRAM" MEANS A PROGRAM
3 OPERATED BY OR ON BEHALF OF A SELF-FUNDED EMPLOYER OR HEALTH
4 BENEFIT PLAN SPONSOR TO OPTIMIZE THE FINANCIAL PERFORMANCE OF
5 THE SELF-FUNDED EMPLOYER'S PHARMACY BENEFIT. ALL PRESCRIPTIONS
6 NOT FULFILLED THROUGH THE PROGRAM CONTINUE UNDER THE PLAN'S
7 EXISTING PHARMACY BENEFIT MANAGER, CARRIER, AND NETWORK.
8 ACTIVITIES UNDER A PHARMACY STEWARDSHIP PROGRAM MAY INCLUDE:

9 (A) A CLINICALLY APPROPRIATE GENERIC BIOSIMILAR
10 SUBSTITUTION;

11 (B) USE OF FEDERALLY LAWFUL TIER 1 SOURCING PATHWAYS;

12 (C) USE OF MANUFACTURE AND FOUNDATION PATIENT ASSISTANCE
13 PROGRAMS, WHERE ELIGIBLE;

14 (D) SITE-OF-CARE OPTIMIZATION WHEN CLINICALLY APPROPRIATE;
15 AND

16 (E) FULFILLMENT OF A DEFINED SUBSET OF PRESCRIPTIONS
17 THROUGH LAWFUL CHANNELS THAT REDUCE NET PLAN COST WHILE
18 MAINTAINING SAFETY, CONTINUITY OF THERAPY, AND EQUAL OR LOWER
19 MEMBER COST SHARE.

20 (II) A "PHARMACY STEWARDSHIP PROGRAM" IS NOT:

21 (A) INSURANCE OR A POLICY OF INSURANCE;

22 (B) A HEALTH PLAN;

23 (C) A PBM; OR

24 (D) A THIRD-PARTY ADMINISTRATOR.

25 (e) "SELF-FUNDED EMPLOYER" MEANS AN EMPLOYER THAT OFFERS
26 A SELF-INSURED HEALTH PLAN TO THEIR EMPLOYEES.

27 (3) **Prohibition against misinformation.** A PHARMACY BENEFIT

1 MANAGER OR HEALTH-CARE CONSULTANT SHALL NOT KNOWINGLY MAKE
2 OR DISSEMINATE FALSE OR MISLEADING STATEMENTS OR CLAIMS TO AN
3 EMPLOYER, HEALTH BENEFIT PLAN SPONSOR, OR POLICYHOLDER ABOUT
4 THE LEGALITY OR SAFETY OF A LAWFUL ALTERNATIVE PRESCRIPTION DRUG
5 SOURCING PROGRAM.

6 **(4) Disclosure requirements.** UPON WRITTEN REQUEST BY A
7 SELF-FUNDED EMPLOYER OR HEALTH BENEFIT PLAN SPONSOR, A
8 PHARMACY BENEFIT MANAGER OR HEALTH-CARE CONSULTANT SHALL
9 PROVIDE DETAILED COST INFORMATION FOR EACH PRESCRIPTION DRUG
10 DISPENSED UNDER THE PLAN, INCLUDING:

- 11 (a) TOTAL DRUG COST PER CLAIM;
- 12 (b) TOTAL INGREDIENT COST PER CLAIM;
- 13 (c) TOTAL DISPENSING FEE PER CLAIM;
- 14 (d) TOTAL MEMBER-PAID PORTION PER CLAIM;
- 15 (e) TOTAL PLAN- OR EMPLOYER-PAID PORTION PER CLAIM; AND
- 16 (f) NATIONAL DRUG CODE, QUANTITY, STRENGTH, AND DAYS OF
17 SUPPLY.

18 **(5) Self-funded employer and health benefit plan sponsor**
19 **rights.** THIS SECTION DOES NOT RESTRICT OR LIMIT THE RIGHT OF A
20 SELF-FUNDED EMPLOYER OR HEALTH BENEFIT PLAN SPONSOR TO PURCHASE
21 PRESCRIPTION DRUGS THROUGH ANOTHER LAWFUL ALTERNATIVE
22 PRESCRIPTION DRUG SOURCING PROGRAM. A SELF-FUNDED EMPLOYER AND
23 HEALTH BENEFIT PLAN SPONSOR RETAIN THE RIGHT TO CONTRACT FOR ANY
24 LEGAL ALTERNATIVE PRESCRIPTION DRUG SOURCING PROGRAM,
25 INCLUDING IMPORTATION PROGRAMS PERMITTED UNDER FEDERAL LAW,
26 FOR DRUGS USED BY THEIR HEALTH BENEFIT PLAN'S COVERED PERSONS.

27 **(6) (a) Pharmacy stewardship programs.** A PHARMACY

1 STEWARDSHIP PROGRAM THAT IS DESIGNED TO IMPROVE THE
2 COST-EFFECTIVENESS OF MEDICATION USE WHILE MAINTAINING PATIENT
3 SAFETY IS RECOGNIZED AS AN EFFECTIVE COST-CONTAINMENT TOOL.

4 (b) PHARMACY STEWARDSHIP PROGRAMS AND ALTERNATIVE
5 PRESCRIPTION DRUG SOURCING PROGRAMS ARE AUTHORIZED BY STATE
6 LAW WHEN IMPLEMENTED IN COMPLIANCE WITH FEDERAL LAW AND WITH
7 THIS SECTION. SUCH AUTHORIZED PROGRAMS INCLUDE PROGRAMS FOR
8 IMPORTING PRESCRIPTION DRUGS WHEN AUTHORIZED UNDER FEDERAL
9 LAW.

10 (c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE A
11 NEW INSURANCE PRODUCT OR MANDATORY COVERAGE.

12 (7) **No state cost or self-funded employer or health benefit**
13 **plan sponsor mandate.** (a) THIS SECTION DOES NOT:

14 (I) CREATE A FISCAL REQUIREMENT FOR ANY STATE AGENCY OR AN
15 APPROPRIATION FROM THE GENERAL FUND;

16 (II) REQUIRE A SELF-FUNDED EMPLOYER OR HEALTH BENEFIT PLAN
17 SPONSOR TO ADOPT OR PARTICIPATE IN AN ALTERNATIVE PRESCRIPTION
18 DRUG SOURCING PROGRAM OR PHARMACY STEWARDSHIP PROGRAM; OR

19 (III) REQUIRE THAT RESOURCES BE EXPENDED AS A RESULT OF THIS
20 SECTION.

21 (b) THE COMMISSIONER SHALL IMPLEMENT AND ENFORCE THIS
22 SECTION WITHIN EXISTING APPROPRIATIONS.

23 (8) **Enforcement.** (a) THE COMMISSIONER SHALL ENFORCE THIS
24 SECTION WITH RESPECT TO A PBM OR HEALTH-CARE CONSULTANT THAT
25 ADMINISTERS OR MANAGES PRESCRIPTION DRUG BENEFITS FOR A HEALTH
26 BENEFIT PLAN. A VIOLATION OF THIS SECTION BY A PBM OR A
27 HEALTH-CARE CONSULTANT IS AN UNFAIR METHOD OF COMPETITION AND

1 UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE
2 PURSUANT TO SECTION 10-3-1104 (1)(uu). EACH DAY DURING WHICH A
3 VIOLATION CONTINUES CONSTITUTES A SEPARATE VIOLATION. IN ADDITION
4 TO THE PENALTIES APPLICABLE TO AN UNFAIR OR DECEPTIVE ACT OR
5 PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT TO SECTION
6 10-3-1104 (1)(uu), THE COMMISSIONER MAY:

7 (I) FOR A FIRST VIOLATION, ISSUE A PUBLIC LETTER OF
8 ADMONITION;

9 (II) FOR A SECOND VIOLATION, IMPOSE A PENALTY OF UP TO ONE
10 THOUSAND DOLLARS;

11 (III) FOR A THIRD VIOLATION, IMPOSE A PENALTY OF UP TO TWO
12 THOUSAND DOLLARS; AND

13 (IV) FOR A FOURTH OR SUBSEQUENT VIOLATION:

14 (A) FOR A PBM, REVOKE THE PBM'S REGISTRATION PURSUANT TO
15 SECTION 10-16-122.1; OR

16 (B) REFER THE MATTER TO THE ATTORNEY GENERAL TO
17 COMMENCE A CIVIL ACTION FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER
18 REMEDIES AVAILABLE AT LAW, INCLUDING RECOVERY OF COSTS AND
19 ATTORNEY FEES.

20 (b) PENALTIES COLLECTED PURSUANT TO SUBSECTION (8)(a)(II),
21 (8)(a)(III), OR (8)(a)(IV) OF THIS SECTION SHALL BE CREDITED TO THE
22 HEALTH INSURANCE AFFORDABILITY CASH FUND CREATED IN SECTION
23 10-16-1206 (1) TO HELP:

24 (I) FACILITATE A REDUCTION IN PREMIUM INCREASES ASSOCIATED
25 WITH THE HEALTH INSURANCE AFFORDABILITY ENTERPRISE CREATED IN
26 SECTION 10-16-1204 (1)(a); AND

27 (II) AVOID HEALTH INSURANCE COVERAGE LOSS FOR THOSE IN THE

1 INDIVIDUAL MARKET AND THOSE UNABLE TO PURCHASE HEALTH
2 INSURANCE THROUGH THE HEALTH BENEFIT EXCHANGE CREATED IN
3 SECTION 10-22-104.

4 **SECTION 3.** In Colorado Revised Statutes, 10-3-1104, **add**
5 (1)(uu) as follows:

6 **10-3-1104. Unfair methods of competition - unfair or deceptive**
7 **practices - rules - definitions.** (1) The following are defined as unfair
8 methods of competition and unfair or deceptive acts or practices in the
9 business of insurance:

10 (uu) VIOLATING SECTION 10-16-171.

11 **SECTION 4.** In Colorado Revised Statutes, 10-16-1206, **amend**
12 (1)(g) and (1)(h); and **add** (1)(i) as follows:

13 **10-16-1206. Health insurance affordability cash fund -**
14 **creation.** (1) There is created in the state treasury the health insurance
15 affordability cash fund. The fund consists of:

16 (g) The federal share of the medical assistance payments received
17 pursuant to section 25.5-4-503 (2); ~~and~~

18 (h) Gifts, grants, or donations received from private or public
19 sources; AND

20 (i) MONEY CREDITED TO THE FUND PURSUANT TO SECTION
21 10-16-171 (8)(b).

22 **SECTION 5. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly; except that, if a referendum petition is filed pursuant
26 to section 1 (3) of article V of the state constitution against this act or an
27 item, section, or part of this act within such period, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2026 and, in such case, will take
3 effect on the date of the official declaration of the vote thereon by the
4 governor.

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