

**First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 15-0365.01 Christy Chase x2008

**SENATE BILL 15-123**

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**SENATE SPONSORSHIP**

**Crowder,**

**HOUSE SPONSORSHIP**

**Primavera,**

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**Senate Committees**  
Health & Human Services

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE ABILITY OF A PERSON ELIGIBLE FOR PRESCRIPTION**  
102                    **DRUG BENEFITS UNDER A HEALTH BENEFIT PLAN TO CHOOSE THE**  
103                    **PHARMACY AT WHICH TO FILL A PRESCRIPTION DRUG ORDER**  
104                    **FOR CERTAIN MEDICATIONS.**

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**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://www.leg.state.co.us/billsummaries>.)*

Pharmacy benefit management firms (PBM) that administer prescription drug benefits and carriers, under the terms of the health benefit plans offering prescription drug benefits, may require a person

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

who is eligible for prescription drug benefits to fill a prescription drug order through either a mail-order pharmacy or another pharmacy designated by the PBM or carrier. The bill allows a covered person who receives a prescription order for a specialty drug or biological product to fill the prescription order at a network pharmacy chosen by the covered person if the covered person properly notifies the PBM or carrier. For proper notification, the covered person must include in the notice an attestation from the chosen local pharmacy that the pharmacy:

- ! Is able to comply with applicable state and federal laws and the requirements of the manufacturer and the U.S. Pharmacopeial Convention for the particular medication; and
- ! Accepts the payment terms for specialty drugs and biological products provided under the applicable health benefit plan to existing network pharmacies.

The PBM or carrier must pay claims for specialty drugs or biological products timely and in the same manner as it pays claims for other prescriptions.

A PBM or carrier is prohibited from:

- ! Imposing different payment terms than those imposed when a covered person fills a prescription for a specialty drug or biological product at a mail-order or other designated pharmacy; or
- ! Providing an incentive for a covered person to fill a specialty drug or biological product prescription at a mail-order or other designated pharmacy.

Violation of the requirements of the bill constitutes an unfair or deceptive act or practice in the business of insurance.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** 10-16-142 as  
3 follows:

4           **10-16-142. Patient choice of pharmacy - notice to carrier or**  
5 **pharmacy benefit management firm - prohibited practices - rules.**

6 (1) (a) IF A COVERED PERSON IS REQUIRED, EITHER BY A PHARMACY  
7 BENEFIT MANAGEMENT FIRM THAT MANAGES THE COVERED PERSON'S  
8 PRESCRIPTION DRUG BENEFITS OR UNDER THE TERMS OF THE HEALTH  
9 BENEFIT PLAN THAT PROVIDES PRESCRIPTION DRUG BENEFITS TO THE

1 COVERED PERSON, TO FILL A PRESCRIPTION ORDER FOR A SPECIALTY DRUG  
2 OR BIOLOGICAL PRODUCT AT A MAIL ORDER SPECIALTY PHARMACY,  
3 SPECIALTY NETWORK PHARMACY, OR OTHER PHARMACY DESIGNATED BY  
4 THE PHARMACY BENEFIT MANAGEMENT FIRM OR HEALTH BENEFIT PLAN  
5 THAT IS NOT THE COVERED PERSON'S PREFERRED PHARMACY, THE  
6 COVERED PERSON HAS THE RIGHT TO OBTAIN THE SPECIALTY DRUG OR  
7 BIOLOGICAL PRODUCT AT A NETWORK PHARMACY SELECTED BY THE  
8 COVERED PERSON IF THE COVERED PERSON PROPERLY NOTIFIES THE  
9 PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER THAT ISSUED THE  
10 HEALTH BENEFIT PLAN. A COVERED PERSON PROPERLY NOTIFIES A  
11 PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER BY SUBMITTING A  
12 NOTIFICATION CONTAINING THE ATTESTATION SPECIFIED IN PARAGRAPH  
13 (b) OF THIS SUBSECTION (1) BY: TELEPHONE, FACSIMILE, OR ELECTRONIC  
14 MAIL; VIA A WEB SITE; OR BY OTHER ELECTRONIC MEANS.

15 (b) THE NOTIFICATION MUST CONTAIN AN ATTESTATION FROM THE  
16 PHARMACY AT WHICH THE COVERED PERSON ELECTS TO FILL A  
17 PRESCRIPTION ORDER FOR A SPECIALTY DRUG OR BIOLOGICAL PRODUCT  
18 THAT:

19 (I) THE PHARMACY IS ABLE TO COMPLY WITH THE REQUIREMENTS  
20 OF STATE AND FEDERAL LAW, THE SPECIALTY DRUG OR BIOLOGICAL  
21 PRODUCT MANUFACTURER, AND THE UNITED STATES PHARMACOPEIAL  
22 CONVENTION FOR THE PRESCRIBED SPECIALTY DRUG OR BIOLOGICAL  
23 PRODUCT; AND

24 (II) THE PHARMACY ACCEPTS THE PAYMENT TERMS FOR SPECIALTY  
25 DRUG OR BIOLOGICAL PRODUCT PRESCRIPTIONS THAT ARE PROVIDED  
26 UNDER THE APPLICABLE HEALTH BENEFIT PLAN TO EXISTING SPECIALTY  
27 NETWORK PHARMACIES.

1           (2) THE PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER  
2 SHALL PROCESS AND PAY CLAIMS FOR COVERED SPECIALTY DRUGS OR  
3 BIOLOGICAL PRODUCTS TIMELY AND IN THE SAME MANNER AS IT  
4 PROCESSES AND PAYS CLAIMS FOR OTHER PRESCRIPTIONS FILLED BY THE  
5 PHARMACY.

6           (3) IF THE PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER  
7 RECEIVES PROPER NOTIFICATION FROM A COVERED PERSON FOR A  
8 PARTICULAR PHARMACY TO FILL A PRESCRIPTION ORDER FOR A SPECIALTY  
9 DRUG OR BIOLOGICAL PRODUCT FOR THE COVERED PERSON, THE  
10 PHARMACY IS AUTHORIZED TO FILL PRESCRIPTIONS FOR THE SPECIALTY  
11 DRUG OR BIOLOGICAL PRODUCT FOR ANY PATIENT UNDER THE PLAN  
12 WITHOUT THE NEED FOR FURTHER NOTIFICATION OR ATTESTATIONS.

13           (4) IF A COVERED PERSON PROPERLY NOTIFIES THE PHARMACY  
14 BENEFIT MANAGEMENT FIRM OR CARRIER AND FILLS A PRESCRIPTION  
15 ORDER FOR A SPECIALTY DRUG OR BIOLOGICAL PRODUCT AT THE NETWORK  
16 PHARMACY OF HIS OR HER CHOICE, THE PHARMACY BENEFIT MANAGEMENT  
17 FIRM OR CARRIER SHALL CHARGE NEITHER PREMIUM, COPAYMENT,  
18 DEDUCTIBLE, COINSURANCE, OR MAXIMUM OUT-OF-POCKET AMOUNTS NOR  
19 OR OTHER PAYMENT TERMS THAT:

20           (a) DIFFER FROM THOSE CHARGED TO THE COVERED PERSON FOR  
21 USING A MAIL ORDER SPECIALTY PHARMACY, SPECIALTY NETWORK  
22 PHARMACY, OR OTHER DESIGNATED PHARMACY; OR

23           (b) PROVIDE AN INCENTIVE TO THE COVERED PERSON TO USE A  
24 MAIL ORDER SPECIALTY PHARMACY, SPECIALTY NETWORK PHARMACY, OR  
25 OTHER DESIGNATED PHARMACY TO FILL A PRESCRIPTION ORDER FOR A  
26 SPECIALTY DRUG OR BIOLOGICAL PRODUCT.

27           (5) EVERY PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER

1 THAT PROVIDES PRESCRIPTION DRUG BENEFITS SHALL NOTIFY EVERY  
2 COVERED PERSON ELIGIBLE FOR PRESCRIPTION DRUG BENEFITS THAT THE  
3 COVERED PERSON HAS THE RIGHT TO FILL HIS OR HER PRESCRIPTION  
4 ORDERS FOR SPECIALTY DRUGS OR BIOLOGICAL PRODUCTS AT A QUALIFIED  
5 LOCAL PHARMACY OF THE COVERED PERSON'S CHOICE RATHER THAN AT A  
6 MAIL ORDER SPECIALTY PHARMACY, SPECIALTY NETWORK PHARMACY, OR  
7 OTHER PHARMACY DESIGNATED BY THE PHARMACY BENEFIT  
8 MANAGEMENT FIRM OR CARRIER. THE PHARMACY BENEFIT MANAGEMENT  
9 FIRM OR CARRIER SHALL INCLUDE THE NOTICE, WHICH MUST BE CLEARLY  
10 STATED, IN THE PHARMACY NETWORK CONTRACT AND IN EACH  
11 EXPLANATION OF BENEFITS. A PHARMACIST MAY ALSO INFORM THE  
12 COVERED PERSON OF HIS OR HER RIGHTS UNDER THIS SECTION.

13 (6) THE COMMISSIONER SHALL ADOPT RULES FOR THE  
14 IMPLEMENTATION AND ENFORCEMENT OF THIS SECTION.

15 (7) AS USED IN THIS SECTION, "BIOLOGICAL PRODUCT" HAS THE  
16 SAME MEANING AS SET FORTH IN 42 U.S.C. SEC. 262 (i) (1).

17 **SECTION 2.** In Colorado Revised Statutes, 10-3-1104, **amend**  
18 (1) (qq); and **add** (1) (ss) as follows:

19 **10-3-1104. Unfair methods of competition - unfair or deceptive**  
20 **acts or practices - repeal.** (1) The following are defined as unfair  
21 methods of competition and unfair or deceptive acts or practices in the  
22 business of insurance:

23 (qq) Failure to pay a final, nonappealable judgment award for  
24 failure to return or repay collateral received to secure a bond; or

25 (ss) VIOLATING SECTION 10-16-142.

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27 **SECTION 3. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect January 1, 2017; except that, if a  
2 referendum petition is filed pursuant to section 1 (3) of article V of the  
3 state constitution against this act or an item, section, or part of this act  
4 within the ninety-day period after final adjournment of the general  
5 assembly, then the act, item, section, or part will not take effect unless  
6 approved by the people at the general election to be held in November  
7 2016 and, in such case, will take effect on the date of the official  
8 declaration of the vote thereon by the governor.

9 (2) This act applies to health benefit plans issued, delivered, or  
10 renewed on or after the applicable effective date of this act.