

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 01-0794.01 Julie Hoerner

HOUSE BILL 01-1320

HOUSE SPONSORSHIP

Spradley,

SENATE SPONSORSHIP

Phillips, and Takis

House Committees

Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A CONSUMER RIGHT TO EQUITABLE ACCESS TO**
102 **PRESCRIPTION DRUGS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Declares that certain practices of pharmacy benefit managers limit choices available to Colorado consumers and are discouraging Colorado consumers from using Colorado businesses in favor of out-of-state businesses.

Defines "pharmacy benefit management firm".

Prohibits a pharmacy benefit management firm or intermediary that administers prescription drug benefits in connection with a managed care plan from imposing different conditions upon covered persons for

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.

HOUSE
3rd Reading Unamended
February 23, 2001

HOUSE
Amended 2nd Reading
February 22, 2001

prescription drugs obtained through mail-order pharmacy providers.

Requires a pharmacy benefit management firm or intermediary to identify all retail pharmacy providers from whom covered persons are authorized to obtain prescription drug benefits in a list of participating providers furnished to covered persons under a managed care plan.

Precludes unauthorized transfers of accounts of prescription drug customers.

Makes violations of the provisions of this bill an unfair method of competition and unfair or deceptive act or practice in the business of insurance.

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

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

4 (a) Pharmacy benefit managers contract with Colorado employers
5 and insurance companies to design pharmacy benefit plans to provide
6 prescription drug benefits to Colorado citizens;

7 (b) Pharmacy benefit managers sometimes impose higher
8 copayments for retail prescriptions than for mail-order prescriptions;

9 (c) In addition, pharmacy benefit managers sometimes impose
10 restrictions that limit a Colorado consumer's choices to receive only a
11 thirty-day prescription drug supply through a retail pharmacy while the
12 Colorado consumer may receive a ninety-day supply only through a
13 mail-order pharmacy;

14 (d) These practices tend to drive market share to mail-order
15 pharmacies;

16 (e) Most mail-order pharmacies that do business in Colorado are
17 out-of-state companies;

18 (f) Out-of-state mail-order pharmacies that do business in
19 Colorado are not licensed by, but are only registered with, the Colorado
20 board of pharmacy and are not required to follow Colorado pharmacy

1 practice regulations;

2 (g) By imposing higher copayments and restricting the length of
3 the permitted prescription, pharmacy benefit managers place Colorado
4 businesses at a disadvantage in respect to out-of-state companies,
5 discourage such consumers from using Colorado businesses in favor of
6 out-of-state businesses, and limit the choices available to consumers; and

7 (h) Allowing pharmacy benefit managers to use differential
8 copayments and impose conditions limiting consumers to taking their
9 prescriptions to out-of-state businesses is harmful to the Colorado
10 economy, and therefore the use of such differential copayments and
11 conditions should be prohibited.

12 **SECTION 2.** 10-16-102, Colorado Revised Statutes, is amended
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **10-16-102. Definitions.** As used in this article, unless the context
15 otherwise requires:

16 (29.5) "PHARMACY BENEFIT MANAGEMENT FIRM" MEANS ANY
17 ENTITY DOING BUSINESS IN THIS STATE THAT CONTRACTS TO ADMINISTER
18 OR MANAGE PRESCRIPTION DRUG BENEFITS ON BEHALF OF ANY CARRIER
19 THAT PROVIDES PRESCRIPTION DRUG BENEFITS TO RESIDENTS OF THIS
20 STATE.

21 **SECTION 3.** 10-16-122, Colorado Revised Statutes, is amended
22 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
23 read:

24 **10-16-122. Access to prescription drugs.** (4) (a) NO CARRIER
25 OFFERING A MANAGED CARE PLAN AND NO INTERMEDIARY, INCLUDING A
26 PHARMACY BENEFIT MANAGEMENT FIRM, THAT CONTRACTS WITH A
27 CARRIER TO ADMINISTER OR MANAGE PRESCRIPTION DRUG BENEFITS IN

1 CONNECTION WITH A MANAGED CARE PLAN SHALL IMPOSE UPON COVERED
2 PERSONS COPAYMENTS OR CONDITIONS INCLUDING, BUT NOT LIMITED TO,
3 CONDITIONS CONCERNING ANY DIFFERENCE IN THE AMOUNT OR LENGTH OF
4 A PRESCRIPTION, FOR PRESCRIPTION DRUGS OBTAINED THROUGH
5 MAIL-ORDER PHARMACY PROVIDERS THAT ARE DIFFERENT FROM THE
6 COPAYMENTS OR CONDITIONS FOR PRESCRIPTION DRUGS OBTAINED IN
7 PERSON AT A RETAIL PHARMACY PROVIDER. ANY LIST OF PARTICIPATING
8 PROVIDERS MAINTAINED BY A CARRIER OR INTERMEDIARY FOR USE BY
9 COVERED PERSONS UNDER A MANAGED CARE PLAN SHALL IDENTIFY ALL
10 RETAIL PHARMACY PROVIDERS FROM WHOM SUCH COVERED PERSONS ARE
11 AUTHORIZED TO OBTAIN PRESCRIPTION DRUG BENEFITS.

12 (b) A CONTRACT BETWEEN A CARRIER OFFERING A MANAGED CARE
13 PLAN AND AN INTERMEDIARY, INCLUDING A PHARMACY BENEFIT
14 MANAGEMENT FIRM, SHALL CONTAIN PROVISIONS REQUIRING COMPLIANCE
15 WITH THIS SUBSECTION (4).

16 (c) THIS SUBSECTION (4) SHALL NOT APPLY TO PROPERTY AND
17 CASUALTY CONTRACTS.

18 (d) THIS SUBSECTION (4) SHALL NOT APPLY TO A HEALTH
19 MAINTENANCE ORGANIZATION THAT HAS RECEIVED A CERTIFICATE OF
20 AUTHORITY PURSUANT TO PART 4 OF THIS ARTICLE FOR THE BENEFITS THE
21 HEALTH MAINTENANCE ORGANIZATION SUPPLIES TO ITS SUBSCRIBERS
22 THROUGH AN IN-HOUSE PRESCRIPTION DRUG OUTLET.

23 (5) NO PHARMACY BENEFIT MANAGER OR CARRIER OFFERING A
24 MANAGED CARE PLAN SHALL REQUEST THE TRANSFER OF A CUSTOMER'S
25 ACCOUNT, WHOLLY OR IN PART, TO A DIFFERENT PROVIDER THAN THE
26 PROVIDER SELECTED BY THE CUSTOMER UNLESS ONE OR MORE OF THE
27 FOLLOWING CONDITIONS HAVE BEEN MET:

1 (a) THE PROVIDER TO WHOM THE CUSTOMER'S ACCOUNT IS TO BE
2 TRANSFERRED HAS OBTAINED A DOCUMENT, SIGNED BY THE CUSTOMER,
3 THAT CONTAINS A CLEAR, CONSPICUOUS, AND UNEQUIVOCAL REQUEST BY
4 THE CUSTOMER FOR A CHANGE OF PROVIDER; OR

5 (b) THE PROVIDER TO WHOM THE CUSTOMER'S ACCOUNT IS TO BE
6 TRANSFERRED HAS OBTAINED THE CUSTOMER'S ORAL AUTHORIZATION FOR
7 THE TRANSFER AND IS ABLE TO FURNISH PROOF OF SUCH AUTHORIZATION
8 THROUGH VERIFICATION BY AN INDEPENDENT THIRD PARTY OR AN
9 ELECTRONIC RECORD.

10 (6) NOTHING IN THIS SECTION SHALL PROHIBIT THE USE OF
11 MAIL-ORDER PHARMACY BENEFITS FOR PRESCRIPTION DRUGS.

12 (7) IN THE EVENT A CARRIER INCREASES THE AMOUNT OF A
13 COPAYMENT FOR PRESCRIPTION DRUGS, THE COPAYMENT AMOUNT SHALL BE
14 THE SAME FOR A MAIL-ORDER PHARMACY PROVIDER AS FOR A RETAIL
15 PHARMACY.

16 (8) SUBSECTIONS (4) AND (5) OF THIS SECTION SHALL NOT BE
17 CONSTRUED TO CHANGE PRICING, COST SHARING, OR ANY OF THE
18 PARAMETERS WITH REGARD TO HOW A HEALTH BENEFIT PLAN OPERATES.

19 **SECTION 4.** 10-3-1104 (1), Colorado Revised Statutes, is
20 amended BY THE ADDITION OF THE FOLLOWING NEW
21 PARAGRAPHS to read:

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

26 (cc) VIOLATION OF THE PROVISIONS OF SECTION 10-16-122
27 CONCERNING ACCESS TO PRESCRIPTION DRUGS;

1 (dd) VIOLATIONS OF THE PROVISIONS OF SECTION 10-16-122 (5)
2 CONCERNING UNAUTHORIZED TRANSFER OF A PRESCRIPTION DRUG
3 CUSTOMER'S ACCOUNT.

4 **SECTION 5. Effective date.** (1) This act shall take effect January
5 1, 2002, unless a referendum petition is filed during the ninety-day period
6 after final adjournment of the general assembly that is allowed for
7 submitting a referendum petition pursuant to article V, section 1 (3) of the
8 state constitution. If such a referendum petition is filed against this act or
9 an item, section, or part of this act within such period, then the act, item,
10 section, or part, if approved by the people, shall take effect on the date of
11 the official declaration of the vote thereon by proclamation of the
12 governor.

13 (2) The provisions of this act shall apply to all contracts for pricing
14 and terms for the administration of a prescription drug benefit negotiated,
15 renegotiated, or renewed by insurers subject to article 16 of title 10,
16 Colorado Revised Statutes, on or after the effective date of this act.