

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 07-0166.01 Jerry Barry

SENATE BILL 07-001

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Madden,

Senate Committees

Health and Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A GENERIC AND NONPATENTED PRESCRIPTION DRUG**
102 **PROGRAM, AND MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

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

Establishes in the department of health care policy and financing ("department") the Colorado Cares Rx program to provide generic and non-patented prescription drugs to eligible persons at discounted prices. Specifies eligibility requirements. Directs the medical services board to adopt rules. Requires pharmacies to provide generic and nonpatented prescription drugs to eligible persons at the lesser of:

An amount negotiated by the department and the generic or

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.

SENATE
3rd Reading Unamended
January 26, 2007

SENATE
Amended 2nd Reading
January 25, 2007

nonpatented drug manufacturer that is between the average manufacturer's price and the federal upper limit established by the federal government, plus a dispensing fee; or The customary charge for the drug at the pharmacy.

Clarifies that making a false statement in an application constitutes 2nd degree perjury.

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

2 **SECTION 1.** Title 25.5, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 2.5**

5 **Colorado Cares**

6 **Prescription Drug Program**

7 **25.5-2.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND
8 MAY BE CITED AS THE "COLORADO CARES RX ACT".

9 **25.5-2.5-102. Legislative declaration.** (1) THE GENERAL
10 ASSEMBLY FINDS THAT:

11 (a) UNINSURED, UNDERINSURED, AND OLDER COLORADANS PAY A
12 DISPROPORTIONATELY GREATER SHARE OF THEIR INCOME FOR
13 PRESCRIPTION DRUGS. IN MANY CASES, CURRENT DRUG PRICES HAVE THE
14 EFFECT OF DENYING RESIDENTS ACCESS TO NECESSARY MEDICAL CARE,
15 THEREBY THREATENING THEIR HEALTH AND SAFETY.

16 (b) PRESCRIPTION DRUGS PLAY AN INCREASINGLY IMPORTANT
17 ROLE IN IMPROVING OR STABILIZING A PERSON'S HEALTH AND IN REDUCING
18 OVERALL HEALTH CARE COSTS;

19 (c) ADDITIONALLY, THE NEW MEDICARE PRESCRIPTION DRUG
20 BENEFIT RESTRICTS PERSONS FROM PURCHASING INSURANCE IN ORDER TO
21 FULLY COVER THEIR PRESCRIPTION DRUG NEEDS. THIS RESTRICTION ON A
22 PERSON'S ABILITY TO PURCHASE ADEQUATE COVERAGE MAY THREATEN

1 THE PERSON'S HEALTH AND SAFETY.

2 (d) CURRENTLY, THERE IS NO LIMIT ON THE AMOUNT THAT A
3 PHARMACY MAY CHARGE FOR A GENERIC OR NONPATENTED DRUG, AND,
4 ALTHOUGH SOME RETAIL PHARMACIES ARE OFFERING SOME GENERIC AND
5 NONPATENTED DRUGS AT DISCOUNTED PRICES, THERE ARE NO
6 GUARANTEES THAT THE PHARMACIES WILL CONTINUE TO DO SO.

7 (2) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT IT IS
8 NECESSARY TO PROVIDE A MECHANISM FOR PERSONS TO PURCHASE
9 LOWER-COST GENERIC AND NONPATENTED PRESCRIPTION DRUGS THROUGH
10 THE IMPLEMENTATION OF "COLORADO CARES RX ACT" IN ORDER TO
11 PROTECT THE HEALTH OF UNINSURED, UNDERINSURED, AND OLDER
12 COLORADANS WHILE AT THE SAME TIME PROTECTING PHARMACIES FROM
13 BEARING THE COST OF PROVIDING THE DRUGS TO SUCH PERSONS.

14 **25.5-2.5-103. Definitions.** AS USED IN THIS ARTICLE 2.5, UNLESS
15 THE CONTEXT OTHERWISE REQUIRES:

16 (1) "PARTICIPATING PHARMACY" MEANS A PHARMACY THAT
17 ENTERS INTO AN AGREEMENT WITH THE STATE DEPARTMENT PURSUANT TO
18 SECTION 25.5-2.5-104 (4).

19 (2) "PROGRAM" MEANS THE COLORADO CARES RX PROGRAM
20 ESTABLISHED IN SECTION 25.5-2.5-104.

21 (3) "PROGRAM CARD" MEANS A CARD ISSUED PURSUANT TO
22 SECTION 25.5-2.5-104 (4) THAT INDICATES A PERSON'S ELIGIBILITY TO
23 PARTICIPATE IN THE PROGRAM.

24 **25.5-2.5-104. Program - rules.** (1) THERE IS HEREBY
25 ESTABLISHED IN THE STATE DEPARTMENT THE COLORADO CARES RX
26 PROGRAM TO PROVIDE GENERIC AND NONPATENTED PRESCRIPTION DRUGS
27 TO ELIGIBLE PERSONS AT DISCOUNTED RATES.

1 (2) FOR PURPOSES OF THE PROGRAM, AN ELIGIBLE PERSON SHALL
2 BE A PERSON:

3 (a) WHO IS A RESIDENT OF THE STATE OF COLORADO;

4 (b) WHO DOES NOT HAVE HEALTH INSURANCE AND IS NOT ELIGIBLE
5 FOR MEDICAL ASSISTANCE PURSUANT TO ARTICLES 4 TO 6 OF THIS TITLE OR
6 THE CHILDREN'S BASIC HEALTH PLAN PURSUANT TO ARTICLE 8 OF THIS
7 TITLE; AND

8 (c) WHOSE FAMILY INCOME DOES NOT EXCEED THREE HUNDRED
9 PERCENT OF THE FEDERAL POVERTY LEVEL, ADJUSTED FOR FAMILY SIZE.

10 (3) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (b) OF
11 SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT, AFTER
12 CONSULTATION WITH HEALTH INSURANCE CARRIERS, MAY EXPAND
13 ELIGIBILITY TO A PERSON WHO IS COVERED BY A HIGH DEDUCTIBLE
14 HEALTH PLAN AS DEFINED BY THE STATE DEPARTMENT.

15 (4) TO PARTICIPATE IN THE PROGRAM, AN ELIGIBLE PERSON SHALL
16 SUBMIT AN APPLICATION TO THE STATE DEPARTMENT ON A FORM
17 APPROVED BY THE STATE BOARD BY RULE AND PAY A REGISTRATION FEE
18 IN AN AMOUNT ESTABLISHED BY THE STATE BOARD BY RULE TO COVER THE
19 ADMINISTRATIVE COSTS OF THE PROGRAM. THE REGISTRATION FEE
20 ESTABLISHED BY THE STATE BOARD SHALL NOT EXCEED TWENTY DOLLARS
21 AND SHALL BE DEPOSITED INTO THE COLORADO CARES RX PROGRAM FUND
22 ESTABLISHED PURSUANT TO SECTION 25.5-2.5-105. THE STATE
23 DEPARTMENT SHALL ISSUE TO AN ELIGIBLE PERSON WHO SUBMITS AN
24 APPLICATION AND PAYS THE REQUIRED REGISTRATION FEE A PROGRAM
25 CARD INDICATING THE PERSON'S ELIGIBILITY FOR THE PROGRAM

26 (5) FOR PURPOSES OF THE PROGRAM, A PARTICIPATING PHARMACY
27 SHALL BE A LICENSED OR REGISTERED PHARMACY THAT ENTERS INTO AN

1 AGREEMENT WITH THE STATE DEPARTMENT AND AGREES TO PROVIDE
2 GENERIC OR NONPATENTED DRUGS TO ELIGIBLE PERSONS THROUGH THE
3 PROGRAM.

4 (6) (a) ON AND AFTER SEPTEMBER 1, 2007, A PARTICIPATING
5 PHARMACY SHALL CHARGE A PERSON WHO PRESENTS A PROGRAM CARD
6 FOR A THIRTY-DAY SUPPLY OF GENERIC OR NONPATENTED PRESCRIPTION
7 DRUG THE LESSER OF:

8 (I) AN AMOUNT NEGOTIATED BETWEEN THE STATE DEPARTMENT
9 AND THE GENERIC OR NONPATENTED DRUG MANUFACTURER THAT SHALL
10 BE NOT MORE THAN THE LOWEST PRICE THAT THE MANUFACTURER SELLS
11 THE DRUG FOR DISTRIBUTION IN COLORADO, LESS ANY REBATES OR
12 DISCOUNTS, PLUS A DISPENSING FEE ESTABLISHED BY RULE OF THE STATE
13 BOARD; OR

14 (II) THE CUSTOMARY CHARGE FOR THE DRUG AT THE
15 PARTICIPATING PHARMACY.

16 (b) A PARTICIPATING PHARMACY SHALL NOT BE REQUIRED TO SELL
17 A GENERIC OR NONPATENTED DRUG FOR LESS THAN THE ACTUAL COST OF
18 THE DRUG TO THE PHARMACY, PLUS THE DISPENSING FEE.

19 (7) A PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR
20 FRAUDULENT STATEMENT OR REPRESENTATION ON AN APPLICATION
21 SUBMITTED PURSUANT TO SUBSECTION (4) OF THIS SECTION SHALL BE
22 GUILTY OF A VIOLATION OF SECTION 18-8-503, C.R.S.

23 **25.5-2.5-105. Cash fund.** (1) THERE IS HEREBY CREATED IN THE
24 STATE TREASURY THE COLORADO CARES RX PROGRAM CASH FUND,
25 REFERRED TO IN THIS SECTION AS THE "FUND", THAT SHALL CONSIST OF
26 REGISTRATION FEES PAID BY ELIGIBLE PERSONS PURSUANT TO SECTION
27 25.5-2.5-104 (3). THE MONEYS IN THE FUND SHALL BE SUBJECT TO

1 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND
2 INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS
3 ARTICLE.

4 (2) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE
5 OF THIS ARTICLE MAY BE INVESTED BY THE STATE TREASURER AS
6 PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE
7 INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED
8 TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS
9 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN
10 THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE
11 GENERAL FUND OR ANOTHER FUND.

12 (3) ANY GENERAL FUND MONEYS APPROPRIATED FOR THE FISCAL
13 YEAR COMMENCING ON JULY 1, 2006, FOR IMPLEMENTATION OF THIS
14 SECTION SHALL BE REPAID TO THE GENERAL FUND FROM THE FUND ON OR
15 BEFORE JULY 1, 2008.

16 **25.5-2.5-106. Repeal.** THIS ARTICLE IS REPEALED, EFFECTIVE
17 JUNE 30, 2013. PRIOR TO SUCH REPEAL, THE "COLORADO CARES RX ACT"
18 SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

19 **SECTION 2.** 24-34-104, Colorado Revised Statutes, is amended
20 BY THE ADDITION OF A NEW SUBSECTION to read:

21 **24-34-104. General assembly review of regulatory agencies**
22 **and functions for termination, continuation, or reestablishment.**

23 (43.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL
24 TERMINATE ON JUNE 30, 2013: THE "COLORADO CARES RX ACT",
25 CREATED BY ARTICLE 2.5 OF TITLE 25.5, C.R.S.

26 **SECTION 3. Appropriation.** (1) In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 general fund not otherwise appropriated, to the department of health care
2 policy and financing, for allocation to the executive director's office, for
3 the fiscal year beginning July 1, 2006, the sum of one hundred forty-five
4 thousand nine hundred twenty-seven dollars (\$145,927), or so much
5 thereof as may be necessary, for the implementation of this act.

6 (2) In addition to any other appropriation, there is hereby
7 appropriated, out of any moneys in the Colorado cares RX program cash
8 fund created in section 25.5-2.5-105 (1), Colorado Revised Statutes, not
9 otherwise appropriated, to the department of health care policy and
10 financing, for allocation to the executive director's office, for the fiscal
11 year beginning July 1, 2007, the sum of two million two hundred
12 fifty-three thousand nine hundred fifty-three dollars (\$2,253,953) and 2.5
13 FTE, or so much thereof as may be necessary, for the implementation of
14 this act.

15 **SECTION 4. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.