

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

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 07-0166.01 Jerry Barry

**SENATE BILL 07-001**

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**SENATE SPONSORSHIP**

**Hagedorn,**

**HOUSE SPONSORSHIP**

**Madden,**

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**Senate Committees**

Health and Human Services  
Appropriations

**House Committees**

Health and Human Services  
Appropriations

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**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.*

HOUSE  
Amended 2nd Reading  
January 31, 2007

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.

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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 LESS THAN THE AVERAGE MANUFACTURER PRICE AND NOT MORE  
11 THAN THE WHOLESALE ACQUISITION COST, PLUS A DISPENSING FEE  
12 ESTABLISHED BY RULE OF THE STATE BOARD; OR

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

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

18 (7) NOTHING IN THIS ARTICLE SHALL PREVENT THE STATE  
19 DEPARTMENT FROM NEGOTIATING WITH ANY DRUG MANUFACTURER TO  
20 PARTICIPATE IN THE PROGRAM AND FROM INCLUDING ADDITIONAL DRUGS  
21 IN THE PROGRAM.

22 (8) (a) THE EXECUTIVE DIRECTOR SHALL APPOINT A COLORADO  
23 CARES RX PHARMACY ADVISORY COUNCIL, REFERRED TO IN THIS SECTION  
24 AS THE "COUNCIL", TO ADVISE THE STATE DEPARTMENT AND THE STATE  
25 BOARD ON RULES NECESSARY TO IMPLEMENT THE PROGRAM. THE  
26 COUNCIL SHALL CONSIST OF THE FOLLOWING THREE PERSONS:

27 (I) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF

1 PHARMACISTS;

2 (II) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF  
3 INDEPENDENT PHARMACIES; AND

4 (III) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF CHAIN  
5 PHARMACIES.

6 (b) MEMBERS OF THE COUNCIL SHALL NOT RECEIVE  
7 COMPENSATION NOR BE REIMBURSED FOR THEIR EXPENSES IN ATTENDING  
8 MEETINGS OF THE COUNCIL.

9 (c) THIS SUBSECTION (7) IS REPEALED, EFFECTIVE JULY 1, 2009.

10 (9) A PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR  
11 FRAUDULENT STATEMENT OR REPRESENTATION ON AN APPLICATION  
12 SUBMITTED PURSUANT TO SUBSECTION (4) OF THIS SECTION SHALL BE  
13 GUILTY OF A VIOLATION OF SECTION 18-8-503, C.R.S.

14 **25.5-2.5-105. Cash fund.** (1) THERE IS HEREBY CREATED IN THE  
15 STATE TREASURY THE COLORADO CARES RX PROGRAM CASH FUND,  
16 REFERRED TO IN THIS SECTION AS THE "FUND", THAT SHALL CONSIST OF  
17 REGISTRATION FEES PAID BY ELIGIBLE PERSONS PURSUANT TO SECTION  
18 25.5-2.5-104 (3). THE MONEYS IN THE FUND SHALL BE SUBJECT TO  
19 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND  
20 INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS  
21 ARTICLE.

22 (2) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE  
23 OF THIS ARTICLE MAY BE INVESTED BY THE STATE TREASURER AS  
24 PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE  
25 INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED  
26 TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS  
27 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN

1 THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE  
2 GENERAL FUND OR ANOTHER FUND.

3 (3) AFTER THE PAYMENT OF NECESSARY ADMINISTRATIVE  
4 EXPENSES, ANY GENERAL FUND MONEYS APPROPRIATED FOR THE FISCAL  
5 YEAR COMMENCING ON JULY 1, 2006, FOR IMPLEMENTATION OF THIS  
6 SECTION SHALL BE REPAID TO THE GENERAL FUND FROM THE FUND AS  
7 SOON AS POSSIBLE.

8 **25.5-2.5-106. Repeal.** THIS ARTICLE IS REPEALED, EFFECTIVE  
9 JUNE 30, 2013. PRIOR TO SUCH REPEAL, THE "COLORADO CARES RX ACT"  
10 SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

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

13 **24-34-104. General assembly review of regulatory agencies**  
14 **and functions for termination, continuation, or reestablishment.**

15 (43.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL  
16 TERMINATE ON JUNE 30, 2013: THE "COLORADO CARES RX ACT",  
17 CREATED BY ARTICLE 2.5 OF TITLE 25.5, C.R.S.

18 **SECTION 3. Appropriation.** (1) In addition to any other  
19 appropriation, there is hereby appropriated, out of any moneys in the  
20 general fund not otherwise appropriated, to the department of health care  
21 policy and financing, for allocation to the executive director's office, for  
22 the fiscal year beginning July 1, 2006, the sum of one hundred forty-five  
23 thousand nine hundred twenty-seven dollars (\$145,927), or so much  
24 thereof as may be necessary, for the implementation of this act.

25 (2) In addition to any other appropriation, there is hereby  
26 appropriated, out of any moneys in the Colorado cares RX program cash  
27 fund created in section 25.5-2.5-105 (1), Colorado Revised Statutes, not

1 otherwise appropriated, to the department of health care policy and  
2 financing, for allocation to the executive director's office, for the fiscal  
3 year beginning July 1, 2007, the sum of two million two hundred  
4 fifty-three thousand nine hundred fifty-three dollars (\$2,253,953) and 2.5  
5 FTE, or so much thereof as may be necessary, for the implementation of  
6 this act.

7 (3) For the fiscal year beginning July 1, 2007, as moneys become  
8 available to the Colorado cares RX program cash fund created in section  
9 25.5-2.5-105 (1), Colorado Revised Statutes, pursuant to section 25.5-2.5-  
10 105 (3) Colorado Revised Statutes, the state treasurer shall reimburse the  
11 general fund for expenditures incurred pursuant to subsection (1) of this  
12 section after revenues in the Colorado cares RX program cash fund  
13 exceed the amount of expenditures appropriated from the fund in  
14 subsection (2) of this section.

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.