

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

PREAMENDED

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

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.*

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

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

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

20 (4) FOR PURPOSES OF THE PROGRAM, A PARTICIPATING PHARMACY
21 SHALL BE A LICENSED OR REGISTERED PHARMACY THAT ENTERS INTO AN
22 AGREEMENT WITH THE STATE DEPARTMENT AND AGREES TO PROVIDE
23 GENERIC OR NONPATENTED DRUGS TO ELIGIBLE PERSONS THROUGH THE
24 PROGRAM.

25 (5) (a) ON AND AFTER SEPTEMBER 1, 2007, A PARTICIPATING
26 PHARMACY SHALL CHARGE A PERSON WHO PRESENTS A PROGRAM CARD
27 FOR A THIRTY-DAY SUPPLY OF GENERIC OR NONPATENTED PRESCRIPTION

1 DRUG THE LESSER OF:

2 (I) AN AMOUNT NEGOTIATED BETWEEN THE STATE DEPARTMENT
3 AND THE GENERIC OR NONPATENTED DRUG MANUFACTURER THAT SHALL
4 BE NOT MORE THAN THE LOWEST PRICE THAT THE MANUFACTURER SELLS
5 THE DRUG FOR DISTRIBUTION IN COLORADO, LESS ANY SUPPLEMENTAL
6 REBATES OR DISCOUNTS, PLUS A DISPENSING FEE ESTABLISHED BY RULE OF
7 THE STATE BOARD, WHICH FEE SHALL BE NOT LESS THAN FOUR DOLLARS;

8 OR

9 (II) THE CUSTOMARY CHARGE FOR THE DRUG AT THE
10 PARTICIPATING PHARMACY.

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

14 (6) A PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR
15 FRAUDULENT STATEMENT OR REPRESENTATION ON AN APPLICATION
16 SUBMITTED PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL BE
17 GUILTY OF A VIOLATION OF SECTION 18-8-503, C.R.S.

18 **25.5-2.5-105. Cash fund.** (1) THERE IS HEREBY CREATED IN THE
19 STATE TREASURY THE COLORADO CARES RX PROGRAM CASH FUND,
20 REFERRED TO IN THIS SECTION AS THE "FUND", THAT SHALL CONSIST OF
21 REGISTRATION FEES PAID BY ELIGIBLE PERSONS PURSUANT TO SECTION
22 25.5-2.5-104 (3). THE MONEYS IN THE FUND SHALL BE SUBJECT TO
23 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND
24 INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS
25 ARTICLE.

26 (2) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE
27 OF THIS ARTICLE MAY BE INVESTED BY THE STATE TREASURER AS

1 PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE
2 INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED
3 TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS
4 REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN
5 THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE
6 GENERAL FUND OR ANOTHER FUND.

7 **25.5-2.5-106. Repeal.** THIS ARTICLE IS REPEALED, EFFECTIVE
8 JUNE 30, 2013. PRIOR TO SUCH REPEAL, THE "COLORADO CARES RX ACT"
9 SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

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

12 **24-34-104. General assembly review of regulatory agencies**
13 **and functions for termination, continuation, or reestablishment.**
14 (43.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL
15 TERMINATE ON JUNE 30, 2013: THE "COLORADO CARES RX ACT",
16 CREATED BY ARTICLE 2.5 OF TITLE 25.5, C.R.S.

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

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

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

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