

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 06-0034.01 Michele Hanigsberg

SENATE BILL 06-001

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Madden,

Senate Committees

Health and Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REDUCTION IN THE COST OF PRESCRIPTION DRUGS, AND**
102 **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.)

Requires the department of health care policy and financing ("department") to apply for federal authorization, as necessary, to enter into a multi-state drug purchasing pool ("purchasing pool") for the benefit of the state's medicaid recipients. Requires the department to contract, through a competitive bidding process, with one or more for-profit or nonprofit entities for purposes of the purchasing pool.

Requires the executive director of the department to promulgate

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
Amended 2nd Reading
April 19, 2006

any rules necessary for the state to receive the federal authorization necessary to implement the purchasing pool and for the state to generate the maximum amount of savings to the state medicaid program. Contains a reporting requirement.

Establishes the Colorado cares Rx program ("program") in the department to allow an eligible person, any political subdivision of the state, and any business to purchase prescription drugs at the discounted rate negotiated by the entity administering the program. Defines the eligibility criteria for the program. Requires the department's contract with one or more entities to implement and administer the program.

Requires a pharmaceutical manufacturing company to annually disclose to the medical services board ("board") specific expenditure information, including but not limited to expenditures on direct marketing to consumers and lobbying. Describes the reporting requirements and the disclosure exemptions. Requires the board to make the disclosure information and other specified information regarding prescription drugs available to the public through an internet website.

Refers the question of whether the state of Colorado shall enact these measures to reduce the cost of prescription drugs to the electors of Colorado at the next general election.

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

2 **SECTION 1. Legislative declaration.** (1) (a) The general
3 assembly finds that:

4 (I) The state of Colorado pays a substantial amount for
5 prescription drugs under the state's medicaid program. This expenditure
6 is one of the fastest-growing obligations in the state's medicaid program.

7 (II) Every year, there has been an increase in the state's medicaid
8 enrollment, and this increase is even more significant in times of
9 economic decline;

10 (III) The ever-increasing costs of providing prescription drugs to
11 medicaid recipients coupled with the state's revenue restrictions demand
12 that the state attempt to decrease expenditures through available discounts
13 wherever possible.

14 (b) The general assembly, therefore, declares that it is in the best

1 interest of the state to join a multi-state prescription drug purchasing pool
2 to obtain prescription drugs for medicaid recipients at the lowest possible
3 cost.

4 (2) (a) The general assembly finds that:

5 (I) As the population of Colorado ages, there is an increasing
6 demand on Colorado's long-term care system;

7 (II) It is healthier for an individual, and less expensive, to enable
8 a person to stay in their home as long as possible;

9 (III) Funding for mental health services for one of the state's most
10 vulnerable populations has been significantly cut in recent years due to
11 the state's budget constraints.

12 (b) It is, therefore, the intent of the general assembly to use the
13 savings generated by the implementation of the multi-state prescription
14 drug purchasing pool to help pay for the increased need in long-term care
15 services and ___ to restore cuts in mental health services.

16 (3) (a) The general assembly finds that:

17 (I) Uninsured and underinsured residents of Colorado pay a
18 disproportionately greater share of their income for prescription drugs.
19 In many cases, current drug prices have the effect of denying residents
20 access to necessary medical care, thereby threatening their health and
21 safety.

22 (II) The new medicare prescription drug benefit prohibits people
23 from insuring themselves in order to fully cover their prescription drug
24 needs. This restriction on an individual's ability to purchase adequate
25 coverage may threaten the individual's health and safety.

26 (III) Prescription drugs are playing an increasingly important role
27 in improving or stabilizing a person's health status and in reducing overall

1 health care costs;

2 (IV) Direct-to-consumer advertising affects both prescription drug
3 use and a consumer's shift to higher-priced prescription drugs;

4 (V) The practices of direct-to-consumer advertising, lobbying, and
5 educating and entertaining medical professionals for the purpose of
6 increasing sales of prescription drugs results in an inordinate and
7 unnecessary escalation of the cost of prescription drugs to consumers;

8 (VI) It is important for a consumer to understand what drives the
9 cost of prescription drugs in order for the consumer to make more
10 educated choices.

11 (b) The general assembly, therefore, declares that:

12 (I) It is necessary to provide a mechanism for individuals to
13 purchase lower-cost prescription drugs through the implementation of the
14 Colorado Cares Rx program in order to protect the health status of
15 uninsured and underinsured individuals and older Coloradans; and

16 (II) It is necessary for the Colorado Cares Rx program to educate
17 consumers regarding the factors that drive the cost of their prescription
18 drugs.

19 **SECTION 2.** Part 1 of article 1 of title 25.5, Colorado Revised
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
21 read:

22 **25.5-1-114. Multi-state prescription drug purchasing pool -**
23 **federal authorization - contracting - implementation - rules.** (1) THE
24 STATE DEPARTMENT SHALL APPLY FOR FEDERAL AUTHORIZATION, AS
25 NECESSARY, TO ENTER INTO A MULTI-STATE PRESCRIPTION DRUG
26 PURCHASING POOL FOR THE BENEFIT OF THE STATE'S MEDICAID
27 RECIPIENTS.

1 (2) THE STATE DEPARTMENT SHALL CONTRACT, THROUGH A
2 COMPETITIVE BIDDING PROCESS, WITH ONE OR MORE FOR-PROFIT OR
3 NONPROFIT ENTITIES CAPABLE OF ADMINISTERING THE NECESSARY
4 COMPONENTS OF A MULTI-STATE PRESCRIPTION DRUG PURCHASING
5 PROGRAM, INCLUDING BUT NOT LIMITED TO A SUPPLEMENTAL REBATE
6 PROGRAM, IN ORDER TO COMBINE THE PURCHASING POWER OF THE STATE'S
7 MEDICAL ASSISTANCE PROGRAM WITH OTHER STATES' MEDICAID
8 PROGRAMS TO OBTAIN PRESCRIPTION DRUGS AT DISCOUNTED RATES. THE
9 STATE DEPARTMENT SHALL HAVE THE CONTRACT IN PLACE ON OR BEFORE
10 FEBRUARY 1, 2007.

11 (3) IN ADDITION TO THE RULE-MAKING AUTHORITY GRANTED IN
12 SECTION 25.5-1-108, THE EXECUTIVE DIRECTOR SHALL PROMULGATE ANY
13 RULES NECESSARY FOR THE STATE TO RECEIVE THE FEDERAL
14 AUTHORIZATION SPECIFIED IN SUBSECTION (1) OF THIS SECTION AND FOR
15 THE STATE TO GENERATE THE MAXIMUM AMOUNT OF SAVINGS TO THE
16 MEDICAL ASSISTANCE PROGRAM THROUGH PARTICIPATION IN A
17 MULTI-STATE PRESCRIPTION DRUG PURCHASING POOL.

18 (4) THE STATE DEPARTMENT MAY PURCHASE PRESCRIPTION DRUGS
19 OUTSIDE OF ANY MULTI-STATE PURCHASING AGREEMENT AUTHORIZED BY
20 THIS SECTION IF THE STATE DEPARTMENT IS ABLE TO PURCHASE THE
21 PRESCRIPTION DRUGS FOR A LOWER PRICE THAN IS AVAILABLE UNDER THE
22 MULTI-STATE PURCHASING AGREEMENT.

23 (5) ON OR BEFORE JULY 1, 2007, THE STATE DEPARTMENT SHALL
24 REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ON
25 THE IMPLEMENTATION OF THE REQUIREMENTS OF THIS SECTION.

26 **SECTION 3.** Article 1 of title 25.5, Colorado Revised Statutes,
27 is amended BY THE ADDITION OF A NEW PART to read:

1 PART 6

2 THE COLORADO CARES RX PROGRAM

3 **25.5-1-601. Short title.** THIS PART 6 SHALL BE KNOWN AND MAY
4 BE CITED AS "COLORADO CARES RX".

5 **25.5-1-602. Definitions.** AS USED IN THIS PART 6, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (1) "CLINICAL TRIAL" MEANS AN APPROVED CLINICAL TRIAL
8 CONDUCTED IN CONNECTION WITH THE UNITED STATES FOOD AND DRUG
9 ADMINISTRATION'S APPROVAL PROCESS, A RESEARCH STUDY DESIGNED TO
10 ANSWER SPECIFIC QUESTIONS ABOUT VACCINES, NEW THERAPIES, OR NEW
11 WAYS OF USING KNOWN TREATMENTS, ANY RESEARCH PERFORMED
12 CONCERNING THE EFFICACY OR SIDE EFFECTS OF A PRESCRIPTION DRUG OR
13 THERAPY, OR ANY OTHER RESEARCH PERFORMED REGARDING ANY
14 PRESCRIPTION DRUG OR THERAPY PRIOR OR SUBSEQUENT TO THE DRUG'S
15 APPROVAL BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

16 (2) "ELIGIBLE ENTITY" MEANS A CITY, COUNTY, CITY AND COUNTY,
17 OR POLITICAL SUBDIVISION OF THE STATE OF COLORADO, OR A BUSINESS
18 ENTITY THAT IS AUTHORIZED TO CONDUCT AND IS CONDUCTING BUSINESS
19 IN THE STATE OF COLORADO.

20 (3) "ELIGIBLE PERSON" MEANS A PERSON WHO:
21 (a) IS A RESIDENT OF THE STATE OF COLORADO;
22 (b) IS NOT ELIGIBLE FOR MEDICAL ASSISTANCE PURSUANT TO
23 ARTICLE 4 OF TITLE 26, C.R.S., OR THE CHILDREN'S BASIC HEALTH PLAN
24 PURSUANT TO ARTICLE 19 OF TITLE 26, C.R.S.; AND
25 (c) DOES NOT HAVE EMPLOYER PROVIDED HEALTH INSURANCE
26 COVERAGE, UNLESS THE ONLY COVERAGE OFFERED IS A HIGH DEDUCTIBLE
27 HEALTH INSURANCE PLAN.

1 (4) "PHARMACEUTICAL MANUFACTURING COMPANY" MEANS ANY
2 ENTITY THAT IS ENGAGED IN THE PRODUCTION, PREPARATION,
3 PROPAGATION, COMPOUNDING, CONVERSION, OR PROCESSING OF
4 PRESCRIPTION DRUGS, EITHER DIRECTLY OR INDIRECTLY, BY EXTRACTION
5 FROM SUBSTANCES OF NATURAL ORIGIN, OR INDEPENDENTLY BY MEANS OF
6 CHEMICAL SYNTHESIS, OR BY A COMBINATION OF EXTRACTION AND
7 CHEMICAL SYNTHESIS. "PHARMACEUTICAL MANUFACTURING COMPANY"
8 ALSO INCLUDES ANY ENTITY ENGAGED IN THE PACKAGING, REPACKAGING,
9 LABELING, RELABELING, OR DISTRIBUTION OF PRESCRIPTION DRUGS;
10 EXCEPT THAT "PHARMACEUTICAL MANUFACTURING COMPANY" DOES NOT
11 INCLUDE A WHOLESALER AS DEFINED IN SECTION 12-22-102 (34), C.R.S.,
12 OR A PHARMACIST LICENSED PURSUANT TO ARTICLE 22 OF TITLE 12, C.R.S.

13 (5) "PHARMACEUTICAL MARKETER" MEANS A PERSON WHO, WHILE
14 EMPLOYED BY OR UNDER CONTRACT TO REPRESENT A PHARMACEUTICAL
15 MANUFACTURING COMPANY, ENGAGES IN PHARMACEUTICAL DETAILING,
16 PROMOTIONAL ACTIVITIES, OR OTHER MARKETING OF PRESCRIPTION DRUGS
17 IN THIS STATE TO ANY PHYSICIAN, HOSPITAL, NURSING HOME,
18 PHARMACIST, HEALTH BENEFIT PLAN ADMINISTRATOR, OR ANY OTHER
19 PERSON AUTHORIZED TO PRESCRIBE, DISPENSE, OR PURCHASE
20 PRESCRIPTION DRUGS. "PHARMACEUTICAL MARKETER" DOES NOT
21 INCLUDE A WHOLESALER, AS DEFINED IN SECTION 12-22-102 (34), C.R.S.,
22 OR A WHOLESALER'S REPRESENTATIVE WHO PROMOTES OR OTHERWISE
23 MARKETS THE SERVICES OF THE WHOLESALE DRUG DISTRIBUTOR IN
24 CONNECTION WITH A PRESCRIPTION DRUG.

25 (6) "PROGRAM" MEANS COLORADO CARES RX.

26 **25.5-1-603. Program.** (1) (a) THERE IS HEREBY ESTABLISHED
27 THE PROGRAM IN THE STATE DEPARTMENT. THE STATE DEPARTMENT

1 SHALL CONTRACT WITH ONE OR MORE ENTITIES CAPABLE OF
2 IMPLEMENTING AND ADMINISTERING THE PRESCRIPTION DRUG BENEFITS
3 UNDER THE PROGRAM. A CONTRACTED ENTITY MAY UTILIZE ONE OR MORE
4 OF THE FOLLOWING:

- 5 (I) A MULTI-STATE DRUG PURCHASING AGREEMENT;
- 6 (II) NEGOTIATION OF PRESCRIPTION DRUG PRICES WITH
7 PRESCRIPTION DRUG MANUFACTURERS, WHOLESALERS, AND RETAILERS;
- 8 (III) ANY OTHER METHOD FOR RECEIVING LOWER COST
9 PRESCRIPTION DRUGS FOR ELIGIBLE PERSONS.

10 (b) THE PROGRAM SHALL ALLOW AN ELIGIBLE PERSON OR AN
11 ELIGIBLE ENTITY TO PURCHASE PRESCRIPTION DRUGS AT A DISCOUNTED
12 RATE NEGOTIATED BY A CONTRACTED ENTITY. ANY REBATES NEGOTIATED
13 BY A CONTRACTED ENTITY SHALL BE USED TO LOWER THE RATES OF THE
14 PRESCRIPTION DRUGS AVAILABLE TO AN ELIGIBLE PERSON OR AN ELIGIBLE
15 ENTITY UNDER THE PROGRAM. A CONTRACTED ENTITY IS AUTHORIZED TO
16 CHARGE AN ANNUAL FEE TO ELIGIBLE PERSONS, NOT TO EXCEED
17 TWENTY-FIVE DOLLARS, AND ELIGIBLE ENTITIES FOR THE ADMINISTRATION
18 OF THE PROGRAM AND TO DETERMINE THE AMOUNT OF ANY DISPENSING
19 FEES UNDER THE PROGRAM. THE DISPENSING FEES AND DRUG
20 REIMBURSEMENT RATES TO PHARMACIES FOR PRESCRIPTION DRUGS UNDER
21 THE PROGRAM SHALL BE NO LESS THAN THE MEDICAID REIMBURSEMENT
22 RATE TO PHARMACIES FOR DISPENSING MEDICATIONS TO MEDICAID
23 RECIPIENTS. ANY PROGRAM CONTRACT BETWEEN A CONTRACTING ENTITY
24 AND A PHARMACY SHALL COMPLY WITH ALL STATUTES UNDER THE
25 "COLORADO MEDICAL ASSISTANCE ACT" RELATING TO PROVIDERS OF
26 PHARMACEUTICAL SERVICES AND THE CORRESPONDING RULES ADOPTED
27 BY THE STATE BOARD.

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25.5-1-604. Report. ON OR BEFORE JULY 1, 2007, THE STATE DEPARTMENT SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ON THE IMPLEMENTATION OF THE REQUIREMENTS OF THE PROGRAM.

SECTION 4. Appropriation - adjustments to 2006 long bill.

(1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, executive director's office, for the fiscal year beginning July 1, 2006, shall be adjusted as follows:

(a) The appropriation for personal services is increased by sixty-five thousand four dollars (\$65,004) and 1.7 FTE. Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of twenty-seven thousand eighty-five dollars (\$27,085) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

(b) The appropriation for operating expenses is increased by five thousand eight hundred thirteen dollars (\$5,813). Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of one thousand nine hundred thirty-eight dollars (\$1,938) in federal funds

1 for the implementation of this act. Although these federal funds are not
2 appropriated in this act, they are noted for the purpose of indicating the
3 assumptions used relative to these funds.

4 **SECTION 5. Effective date.** This act shall take effect July 1,
5 2006.

6 **SECTION 6. 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. ==