

CHAPTER 328

HEALTH CARE POLICY AND FINANCING

SENATE BILL 03-011

BY SENATOR(S) Hagedorn, Hanna, Entz, and Groff;
also REPRESENTATIVE(S) Spradley, Jahn, Tochtrop, Boyd, Butcher, Carroll, Coleman, Paccione, Salazar, Stafford, Williams
S., and Young.

AN ACT

**CONCERNING PRESCRIPTION MEDICATIONS UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AND
MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. 26-4-406, Colorado Revised Statutes, is amended to read:

26-4-406. Providers - drug reimbursement. (1) (a) As to drugs for which payment is made, the state ~~department's~~ BOARD'S rules ~~and regulations~~ for the payment therefor shall include ~~but need not be limited to the use of generic names on commonly used drugs~~ THE REQUIREMENT THAT THE GENERIC EQUIVALENT OF A BRAND-NAME DRUG BE PRESCRIBED IF THE GENERIC EQUIVALENT IS A THERAPEUTIC EQUIVALENT TO THE BRAND-NAME DRUG, EXCEPT WHEN REIMBURSEMENT TO THE STATE FOR A BRAND-NAME DRUG MAKES THE BRAND-NAME DRUG LESS EXPENSIVE THAN THE COST OF THE GENERIC EQUIVALENT. THE STATE DEPARTMENT SHALL GRANT AN EXCEPTION TO THIS REQUIREMENT IF THE PATIENT HAS BEEN STABILIZED ON A MEDICATION AND THE TREATING PHYSICIAN, OR A PHARMACIST WITH THE CONCURRENCE OF THE TREATING PHYSICIAN, IS OF THE OPINION THAT A TRANSITION TO THE GENERIC EQUIVALENT OF THE BRAND-NAME DRUG WOULD BE UNACCEPTABLY DISRUPTIVE. THE REQUIREMENTS OF THIS SUBSECTION (1) SHALL NOT APPLY TO MEDICATIONS FOR THE TREATMENT OF BIOLOGICALLY BASED MENTAL ILLNESS, AS DEFINED IN SECTION 10-16-104 (5.5), C.R.S., THE TREATMENT OF CANCER, THE TREATMENT OF EPILEPSY, OR THE TREATMENT OF HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(b) THE PROVISIONS OF THIS SUBSECTION (1) SHALL APPLY TO FEE-FOR-SERVICE AND PRIMARY CARE PHYSICIAN PROGRAM RECIPIENTS.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) IT IS THE GENERAL ASSEMBLY'S INTENT THAT REQUIRING THE USE OF A GENERIC EQUIVALENT OF A BRAND-NAME DRUG WILL PRODUCE SAVINGS WITHIN THE STATE'S MEDICAID PROGRAM. THE STATE DEPARTMENT, THEREFORE, IS AUTHORIZED TO USE SAVINGS IN THE MEDICAL SERVICES PREMIUMS APPROPRIATIONS TO FUND THE ADMINISTRATIVE REVIEW PROCESS REQUIRED BY SUBSECTION (1) OF THIS SECTION.

SECTION 2. Part 4 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-406.5. Prescription drug benefits - authorization - dual-eligible participation. THE STATE DEPARTMENT IS AUTHORIZED TO ENSURE THE PARTICIPATION OF COLORADO MEDICAL ASSISTANCE RECIPIENTS, WHO ARE ALSO ELIGIBLE FOR MEDICARE, IN ANY FEDERAL PRESCRIPTION DRUG BENEFIT ENACTED FOR MEDICARE RECIPIENTS.

SECTION 3. Part 4 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-407.5. Prescribed drugs - mail order. (1) THE STATE BOARD SHALL ADOPT BY RULE A SYSTEM TO ALLOW MEDICAL ASSISTANCE RECIPIENTS WHO SUFFER FROM A PHYSICAL HARDSHIP THAT PROHIBITS THE RECIPIENT FROM OBTAINING PRESCRIPTION MEDICATIONS FROM A LOCAL PHARMACY TO RECEIVE PRESCRIBED MAINTENANCE MEDICATIONS THROUGH MAIL ORDER. THE STATE BOARD SHALL INCLUDE IN THE RULES THE DEFINITION OF MAINTENANCE MEDICATIONS. THE RULES MAY ALLOW FOR A MEDICAL ASSISTANCE RECIPIENT, WHO QUALIFIES TO RECEIVE MEDICATION THROUGH MAIL ORDER PURSUANT TO THIS SECTION, TO RECEIVE UP TO A THREE-MONTH SUPPLY, OR THE MAXIMUM ALLOWED UNDER FEDERAL LAW, OF MAINTENANCE MEDICATIONS USED TO TREAT CHRONIC MEDICAL CONDITIONS. THE STATE BOARD SHALL, TO THE EXTENT POSSIBLE, REQUIRE THE USE OF LOCAL PHARMACIES THAT ARE ABLE TO PROVIDE THE SAME SERVICES AS MAIL ORDER. TO THE EXTENT ALLOWED BY FEDERAL LAW, THE STATE DEPARTMENT SHALL REQUIRE THAT THE SAME COPAYMENT AMOUNT BE PAID BY A MEDICAL ASSISTANCE RECIPIENT RECEIVING PRESCRIPTION MEDICATION THROUGH MAIL ORDER AS A MEDICAL ASSISTANCE RECIPIENT RECEIVING PRESCRIPTION MEDICATION FROM A LOCAL PHARMACY.

(2) THE STATE DEPARTMENT SHALL SEEK ANY FEDERAL AUTHORIZATION NECESSARY TO IMPLEMENT THIS SECTION.

SECTION 4. 26-4-408 (1), Colorado Revised Statutes, is amended, and the said 26-4-408 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-4-408. Prescribed drugs - utilization review. (1) The state department shall DEVELOP AND implement a drug utilization review process ~~using health care providers~~ to assure the appropriate utilization of drugs by patients receiving medical assistance ~~under this article~~ IN THE FEE-FOR-SERVICE AND PRIMARY CARE PHYSICIAN PROGRAMS. The review process shall include the monitoring of prescription information and shall address at a minimum underutilization and overutilization of benefit drugs. Periodic reports of findings and recommendations shall be forwarded to the state department.

(1.5) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE IMPLEMENTATION OF A DRUG UTILIZATION REVIEW PROCESS FOR THE FEE-FOR-SERVICE AND PRIMARY CARE PHYSICIAN PROGRAMS WILL PRODUCE SAVINGS WITHIN THE STATE'S MEDICAID PROGRAM. THE STATE DEPARTMENT, THEREFORE, IS AUTHORIZED TO USE SAVINGS IN THE MEDICAL SERVICES PREMIUMS APPROPRIATIONS TO FUND THE DEVELOPMENT AND IMPLEMENTATION OF A DRUG UTILIZATION REVIEW PROCESS FOR THESE PROGRAMS, AS REQUIRED BY SUBSECTION (1) OF THIS SECTION. THE STATE DEPARTMENT MAY CONTRACT ON A CONTINGENCY BASIS FOR THE DEVELOPMENT OR IMPLEMENTATION OF THE REVIEW PROCESS REQUIRED BY SUBSECTION (1) OF THIS SECTION.

SECTION 5. Appropriation - adjustments to 2003 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 for the fiscal year beginning July 1, 2003, shall be adjusted as follows:

(a) The appropriation for the executive director's office, personal services, is increased by fifty-six thousand five hundred thirty-one dollars (\$56,531) and 0.8 FTE. Of said sum, fourteen thousand one hundred thirty-four dollars (\$14,134) shall be general fund and forty-two thousand three hundred ninety-seven dollars (\$42,397) shall be federal funds.

(b) The appropriation for the executive director's office, operating expenses, is increased by four thousand fifty-four dollars (\$4,054). Of said sum, one thousand thirteen dollars (\$1,013) shall be general fund and three thousand forty-one dollars (\$3,041) shall be federal funds.

(c) The appropriation for the executive director's office, Medicaid Management Information System, is increased by five hundred seventeen thousand five hundred sixteen dollars (\$517,516). Of said sum, one hundred twenty-nine thousand three hundred seventy-eight dollars (\$129,378) shall be general fund and three hundred eighty-eight thousand one hundred thirty-eight dollars (\$388,138) shall be federal funds.

(d) The appropriation to the executive director's office, drug utilization review, is increased by three hundred thousand dollars (\$300,000). Of said sum, seventy-five thousand dollars (\$75,000) shall be general fund and two hundred twenty-five thousand dollars (\$225,000) shall be federal funds.

(e) The appropriation for medical services premiums is decreased by two million four hundred sixty-seven thousand three hundred fourteen dollars (\$2,467,314). Of said sum, one million three hundred eight thousand six hundred fifty-seven dollars (\$1,308,657) shall be from the general fund and one million one hundred fifty-eight thousand six hundred fifty-seven dollars (\$1,158,657) shall be from federal funds.

SECTION 6. Appropriation - adjustments to 2003 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 for the fiscal year beginning July 1, 2003, shall be adjusted as follows:

(a) The appropriation for the executive director's office, personal services, is increased by fifty-six thousand five hundred thirty-one dollars (\$56,531) and 0.8

FTE. Of said sum, fourteen thousand one hundred thirty-four dollars (\$14,134) shall be from the general fund and forty-two thousand three hundred ninety-seven dollars (\$42,397) shall be from federal funds.

(b) The appropriation for the executive director's office, operating expenses, is increased by four thousand fifty-four dollars (\$4,054). Of said sum, one thousand thirteen dollars (\$1,013) shall be from the general fund and three thousand forty-one dollars (\$3,041) shall be from federal funds.

(c) The appropriation for the executive director's office, medicaid management information system, is increased by five hundred seventeen thousand five hundred sixteen dollars (\$517,516). Of said sum, one hundred twenty-nine thousand three hundred seventy-eight dollars (\$129,378) shall be from the general fund and three hundred eighty-eight thousand one hundred thirty-eight dollars (\$388,138) shall be from federal funds.

(d) The appropriation to the executive director's office, drug utilization review, is increased by three hundred thousand dollars (\$300,000). Of said sum, seventy-five thousand dollars (\$75,000) shall be from the general fund and two hundred twenty-five thousand dollars (\$225,000) shall be from federal funds.

(e) The appropriation for medical services premiums is decreased by one million five hundred twelve thousand six hundred twenty-seven dollars (\$1,512,627). Of said sum, eight hundred one thousand seven hundred fifty-seven dollars (\$801,757) shall be from the general fund and seven hundred ten thousand eight hundred seventy dollars (\$710,870) shall be from federal funds.

SECTION 7. Effective date. (1) This act shall take effect upon passage, except that:

(a) Section 5 of this act shall not take effect if Senate Bill 03-294, as enacted at the First Regular Session of the Sixty-fourth General Assembly, becomes law.

(b) Section 6 of this act shall not take effect if Senate Bill 03-294, as enacted at the First Regular Session of the Sixty-fourth General Assembly, does not become law.

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

Approved: May 22, 2003