

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 20-0046.01 Christy Chase x2008

SENATE BILL 20-107

SENATE SPONSORSHIP

Ginal,

HOUSE SPONSORSHIP

Mullica and Jackson,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING AN ANALYSIS OF PRESCRIPTION DRUG MANUFACTURER**
102 **DATA ON HIGH-COST PRESCRIPTION DRUGS PAID FOR BY**
103 **SPECIFIED STATE DEPARTMENTS TO DETERMINE THE**
104 **COMPONENTS OF THE PRODUCTION PROCESS THAT DRIVE THE**
105 **PRICE OF THE PRESCRIPTION DRUGS, AND, IN CONNECTION**
106 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill directs the department of health care policy and financing

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 (a) HEALTH CARE COSTS CONTINUE TO BE ONE OF THE TOP
2 CONCERNS OF COLORADANS, AND THE MAJORITY OF COLORADANS WANT
3 CLEARER INFORMATION ABOUT PRESCRIPTION DRUGS, A MAIN COST
4 DRIVER;

5 (b) THE PRICES FOR THE HIGHEST-COST PRESCRIPTION DRUGS HAVE
6 BEEN AMONG THE MOST SIGNIFICANT COST DRIVERS IN THE HIGH RATE OF
7 INFLATION OF MEDICAL COSTS;

8 (c) IN COLORADO, TOTAL PRESCRIPTION DRUG SPENDING FOR
9 MEDICAID GREW BY FOUR HUNDRED THIRTY-FIVE MILLION DOLLARS FROM
10 2014 TO 2019 AND REACHED OVER ONE BILLION DOLLARS FOR THE 2019
11 CALENDAR YEAR;

12 (d) ACCORDING TO A MAGELLAN STRATEGIES SURVEY
13 CONDUCTED IN 2018, NINETY-FOUR PERCENT OF COLORADANS SAY THE
14 PUBLIC HAS A RIGHT TO KNOW THE FACTORS THAT GO INTO THE PRICE OF
15 PRESCRIPTION DRUGS;

16 (e) THE STATE PURCHASES PRESCRIPTION DRUGS WITHOUT BEING
17 PROVIDED FULL AND ADEQUATE INFORMATION FROM MANUFACTURERS
18 THAT CAN ASSIST THE STATE IN UNDERSTANDING THE BASIS FOR PRICES;

19 (f) COST REPORTING ON THE PRESCRIPTION DRUGS WITH THE
20 HIGHEST COST PER COURSE OF THERAPY WILL BE USEFUL TO
21 POLICYMAKERS, STATE AGENCIES, AND THE GENERAL PUBLIC SEEKING TO
22 UNDERSTAND THE PRICING AND VALUE OF HIGH-PRICED PRESCRIPTION
23 DRUGS; AND

24 (g) TRANSPARENCY IN THE HEALTH CARE INDUSTRY INFORMS
25 CONSUMERS, POLICYMAKERS, AND STATE AGENCIES ABOUT UNDERLYING
26 COST DRIVERS, WHICH ENABLES THE FORMATION OF MORE EFFECTIVE
27 HEALTH CARE POLICY.

1 **25.5-1-803. Definitions.** AS USED IN THIS PART 8, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "CARRIER" HAS THE SAME MEANING AS SET FORTH IN SECTION
4 10-16-102 (8).

5 (2) "COMPREHENSIVE LIST" MEANS THE LIST OF PRESCRIPTION
6 DRUGS COMPILED BY THE DEPARTMENTS IN ACCORDANCE WITH SECTION
7 25.5-1-805 (1)(a)(I) OR (1)(a)(II).

8 (3) "CONSOLIDATED COMPREHENSIVE LIST" MEANS A SINGLE,
9 CONSOLIDATED LIST OF PRESCRIPTION DRUGS CONSISTING OF THE
10 COMPREHENSIVE LISTS OF PRESCRIPTION DRUGS COMPILED BY THE
11 DEPARTMENTS PURSUANT TO SECTION 25.5-1-805 (1)(a)(I) AND (1)(a)(II).

12 (4) "COURSE OF THERAPY" MEANS EITHER:

13 (a) THE RECOMMENDED DAILY DOSAGE UNITS OF A PRESCRIPTION
14 DRUG FOR A THIRTY-DAY TREATMENT PURSUANT TO THE PACKAGE INSERT
15 FOR THE PRESCRIPTION DRUG AS APPROVED BY THE FDA; OR

16 (b) THE RECOMMENDED DAILY DOSAGE UNITS OF A PRESCRIPTION
17 DRUG FOR A NORMAL COURSE OF TREATMENT THAT IS LESS THAN THIRTY
18 DAYS PURSUANT TO THE PACKAGE INSERT FOR THE PRESCRIPTION DRUG AS
19 APPROVED BY THE FDA.

20 (5) "DEPARTMENTS" MEANS THE DEPARTMENT OF CORRECTIONS,
21 THE DEPARTMENT OF HUMAN SERVICES, THE DEPARTMENT OF PERSONNEL,
22 AND THE STATE DEPARTMENT.

23 (6) "DESIGNATED CONTRACTOR" MEANS AN ORGANIZATION OR
24 ENTITY WITH WHICH THE STATE DEPARTMENT CONTRACTS UNDER SECTION
25 25.5-1-804 TO COLLECT, ANALYZE, AND REPORT PRESCRIPTION DRUG
26 PRICE DATA PURSUANT TO SECTION 25.5-1-805.

27 (7) "FDA" MEANS THE FEDERAL FOOD AND DRUG ADMINISTRATION

1 IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

2 (8) "MANUFACTURER" MEANS:

3 (a) A PERSON THAT MANUFACTURES A PRESCRIPTION DRUG THAT
4 IS MADE AVAILABLE IN COLORADO; AND

5 (b) A HOLDING COMPANY, PARENT COMPANY, OR OTHER AFFILIATE
6 OF A PERSON DESCRIBED IN SUBSECTION (8)(a) OF THIS SECTION.

7 (9) "PRESCRIPTION DRUG" HAS THE SAME MEANING AS SET FORTH
8 IN SECTION 12-280-103 (42); EXCEPT THAT THE TERM INCLUDES ONLY
9 DRUGS THAT ARE INTENDED FOR HUMAN USE.

10 (10) "WHOLESALE ACQUISITION COST" HAS THE SAME MEANING AS
11 SET FORTH IN 42 U.S.C. SEC. 1395w-3a (c)(6)(B).

12 **25.5-1-804. Establishing transparency - state department or**
13 **contractor to collect and analyze production cost data - funding.**

14 (1) (a) THE STATE DEPARTMENT OR A DESIGNATED CONTRACTOR, AS
15 APPLICABLE, SHALL COLLECT, ANALYZE, AND REPORT PRESCRIPTION DRUG
16 PRODUCTION COST DATA PURSUANT TO SECTION 25.5-1-805. THE STATE
17 DEPARTMENT OR DESIGNATED CONTRACTOR, AS APPLICABLE, SHALL
18 COLLECT DATA FROM THE ALL-PAYER HEALTH CLAIMS DATABASE
19 ESTABLISHED PURSUANT TO SECTION 25.5-1-204, THE DIVISION OF
20 INSURANCE, THE DEPARTMENTS, AND ANY OTHER SOURCES THAT HAVE
21 RELEVANT INFORMATION.

22 (b) IF THE STATE DEPARTMENT CONTRACTS WITH A THIRD-PARTY
23 CONTRACTOR TO PERFORM ANY OF ITS DUTIES SET FORTH IN THIS SECTION:

24 (I) IN SELECTING AND CONTRACTING WITH A THIRD-PARTY
25 CONTRACTOR, THE STATE DEPARTMENT IS NOT BOUND BY THE
26 "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE 24; AND

27 (II) THE STATE DEPARTMENT SHALL SELECT A THIRD-PARTY

1 CONTRACTOR THAT:

2 (A) DEMONSTRATES THAT IT IS QUALIFIED TO COLLECT AND
3 ANALYZE DATA FROM MANUFACTURERS AND IDENTIFY COST COMPONENTS
4 USED TO DETERMINE THE WHOLESALE ACQUISITION COST OF PRESCRIPTION
5 DRUGS; AND

6 (B) HAS NO FINANCIAL INTEREST IN, IS NOT EMPLOYED BY, AND IS
7 NOT OTHERWISE CONNECTED WITH ANY MANUFACTURER WHOSE
8 PRESCRIPTION DRUGS WILL BE ANALYZED BY THE CONTRACTOR, ANY
9 CARRIER, OR ANY OTHER PERSON THAT HAS A FINANCIAL INTEREST IN THE
10 OUTCOME OF THE DRUG PRICE TRANSPARENCY ANALYSIS OR REPORT
11 REQUIRED BY THIS PART 8.

12 (2) THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FROM
13 THE GENERAL FUND TO THE STATE DEPARTMENT TO IMPLEMENT AND
14 ADMINISTER THIS PART 8.

15 **25.5-1-805. Reporting requirements - departments to compile**
16 **list of high-cost prescription drugs - information from manufacturers**
17 **- data analysis - legislative reports.** (1) (a) (I) BY DECEMBER 1, 2020,
18 AND BY EACH DECEMBER 1 THEREAFTER, THE DEPARTMENTS SHALL
19 JOINTLY COMPILE A COMPREHENSIVE LIST CONTAINING THE NAMES AND
20 WHOLESALE ACQUISITION COSTS OF THE FOLLOWING PRESCRIPTION DRUGS
21 THAT EACH DEPARTMENT PURCHASED OR PAID FOR DURING THE
22 IMMEDIATELY PRECEDING STATE FISCAL YEAR:

23 (A) THE TWENTY HIGHEST-COST PRESCRIPTION DRUGS PER COURSE
24 OF THERAPY; AND

25 (B) THE TWENTY HIGHEST-COST PRESCRIPTION DRUGS BASED ON
26 THE TOTAL SPENDING BY EACH DEPARTMENT.

27 (II) IN ADDITION TO THE COMPREHENSIVE LIST COMPILED

1 PURSUANT TO SUBSECTION (1)(a)(I) OF THIS SECTION, BY DECEMBER 1,
2 2020, AND BY EACH DECEMBER 1 THEREAFTER, THE DEPARTMENT OF
3 PERSONNEL SHALL COMPILE A COMPREHENSIVE LIST CONTAINING THE
4 NAMES AND WHOLESALE ACQUISITION COSTS OF THE FOLLOWING
5 PRESCRIPTION DRUGS THE DEPARTMENT OF PERSONNEL PURCHASED OR
6 PAID FOR DURING THE IMMEDIATELY PRECEDING STATE FISCAL YEAR,
7 BASED ON THE TOTAL AMOUNT SPENT BY THE DEPARTMENT OF PERSONNEL
8 AFTER ACCOUNTING FOR ANY REBATES, DISCOUNTS, OR OTHER COST
9 SAVINGS:

10 (A) THE TWENTY HIGHEST-COST PRESCRIPTION DRUGS PER COURSE
11 OF THERAPY; AND

12 (B) THE TWENTY HIGHEST-COST PRESCRIPTION DRUGS BASED ON
13 TOTAL SPENDING BY THE DEPARTMENT OF PERSONNEL.

14 (III) THE DEPARTMENTS SHALL DETERMINE THE PRESCRIPTION
15 DRUGS TO INCLUDE ON THE COMPREHENSIVE LISTS COMPILED PURSUANT
16 TO SUBSECTIONS (1)(a)(I) AND (1)(a)(II) OF THIS SECTION BASED ON THE
17 PRICE PAID BY THE DEPARTMENTS FOR EACH PRESCRIPTION DRUG.

18 (b) THE DEPARTMENTS SHALL PROVIDE A CONSOLIDATED
19 COMPREHENSIVE LIST TO THE STATE DEPARTMENT, AND, IF THE STATE
20 DEPARTMENT HAS CONTRACTED WITH A THIRD-PARTY CONTRACTOR
21 PURSUANT TO SECTION 25.5-1-804, THE STATE DEPARTMENT SHALL MAKE
22 THE CONSOLIDATED COMPREHENSIVE LIST AVAILABLE TO THE DESIGNATED
23 CONTRACTOR.

24 (2) (a) BY FEBRUARY 1, 2021, AND BY EACH FEBRUARY 1
25 THEREAFTER, THE STATE DEPARTMENT OR DESIGNATED CONTRACTOR, AS
26 APPLICABLE, SHALL SUBMIT A WRITTEN REQUEST TO EACH
27 MANUFACTURER FOR INFORMATION SHOWING THE BASIS FOR AND

1 COMPONENTS OF THE WHOLESALE ACQUISITION COST OF EACH
2 PRESCRIPTION DRUG ON THE CONSOLIDATED COMPREHENSIVE LIST THAT
3 THE MANUFACTURER PRODUCED, INCLUDING THE FOLLOWING:

- 4 (I) RESEARCH AND DEVELOPMENT COSTS;
- 5 (II) CLINICAL TRIAL COSTS;
- 6 (III) REGULATORY COSTS;
- 7 (IV) COSTS FOR MATERIALS, MANUFACTURING, AND
8 ADMINISTRATION ATTRIBUTABLE TO THE PRESCRIPTION DRUG;
- 9 (V) INCOME FROM OTHER ENTITIES, INCLUDING GRANTS,
10 SUBSIDIES, OR OTHER SUPPORT, THAT OFFSETS THE RESEARCH AND
11 DEVELOPMENT, CLINICAL TRIAL, OR OTHER DEVELOPMENT COSTS;
- 12 (VI) THE COST TO ACQUIRE THE TECHNOLOGY ASSOCIATED WITH
13 THE PRESCRIPTION DRUG OR THE RIGHTS OR OWNERSHIP OF THE
14 PRESCRIPTION DRUG FROM A THIRD PARTY;
- 15 ==
- 16 (VII) PROMOTIONAL MARKETING COSTS, INCLUDING THE COSTS OF
17 DIRECT-TO-CONSUMER ADVERTISING; AND
- 18 (VIII) ANY OTHER INFORMATION THE MANUFACTURER DEEMS
19 RELEVANT TO THE PRICING OF THE PRESCRIPTION DRUG.

20 (b) WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIPT OF A
21 WRITTEN REQUEST UNDER SUBSECTION (2)(a) OF THIS SECTION BUT NO
22 LATER THAN JUNE 1 OF THE SAME YEAR, A MANUFACTURER SHALL
23 PROVIDE TO THE STATE DEPARTMENT OR DESIGNATED CONTRACTOR, AS
24 APPLICABLE, FULL AND COMPLETE DOCUMENTATION SHOWING THE BASIS
25 FOR THE WHOLESALE ACQUISITION COST OF EACH PRESCRIPTION DRUG ON
26 THE CONSOLIDATED COMPREHENSIVE LIST THAT THE MANUFACTURER
27 PRODUCED.

1 (c) THE STATE DEPARTMENT SHALL ESTABLISH A PROCESS FOR A
2 MANUFACTURER TO DESIGNATE INFORMATION REPORTED PURSUANT TO
3 THIS SUBSECTION (2) AS PROPRIETARY OR A TRADE SECRET, AS DEFINED IN
4 SECTION 7-74-102 (4).

5 (3) UPON RECEIPT OF THE INFORMATION FROM MANUFACTURERS
6 REQUESTED UNDER SUBSECTION (2) OF THIS SECTION, THE STATE
7 DEPARTMENT OR DESIGNATED CONTRACTOR, AS APPLICABLE, SHALL
8 ANALYZE THE DOCUMENTATION ON EACH PRESCRIPTION DRUG ON THE
9 CONSOLIDATED COMPREHENSIVE LIST TO DETERMINE THE BASIS FOR THE
10 WHOLESALE ACQUISITION COST OF THE DRUG. THE STATE DEPARTMENT OR
11 DESIGNATED CONTRACTOR, AS APPLICABLE, SHALL PREPARE A REPORT
12 DETAILING ITS FINDINGS ON THE BASIS FOR THE WHOLESALE ACQUISITION
13 COST OF EACH PRESCRIPTION DRUG ON THE CONSOLIDATED
14 COMPREHENSIVE LIST AND SHALL SPECIFY THE PERCENTAGE OF THE
15 WHOLESALE ACQUISITION COST THAT IS ATTRIBUTABLE TO EACH
16 COMPONENT SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION THAT IS
17 DRIVING THE WHOLESALE ACQUISITION COST OF THE PRESCRIPTION DRUG.

18 (4) (a) BY DECEMBER 1, 2021, AND BY EACH DECEMBER 1
19 THEREAFTER, THE STATE DEPARTMENT OR DESIGNATED CONTRACTOR, AS
20 APPLICABLE, SHALL PROVIDE A FINAL PRESCRIPTION DRUG PRODUCTION
21 COST TRANSPARENCY REPORT ON THE PRESCRIPTION DRUGS CONTAINED
22 ON THE CONSOLIDATED COMPREHENSIVE LIST COMPILED IN THE
23 IMMEDIATELY PRECEDING CALENDAR YEAR TO THE HEALTH AND
24 INSURANCE AND PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEES
25 OF THE HOUSE OF REPRESENTATIVES, THE HEALTH AND HUMAN SERVICES
26 COMMITTEE OF THE SENATE, AND THE JOINT BUDGET COMMITTEE, OR
27 THEIR SUCCESSOR COMMITTEES. THE REPORT MUST:

1 (I) CONTAIN A STATEMENT INDICATING THAT THE REPORT DOES
2 NOT INCLUDE A MANUFACTURER'S COSTS FOR RESEARCH AND
3 DEVELOPMENT FOR PRODUCTS THAT FAILED TO MAKE IT TO MARKET; AND

4 (II) INDICATE THE TOTAL AMOUNT REBATED BACK TO THE STATE
5 DEPARTMENT IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR
6 PRESCRIPTION DRUGS PAID FOR UNDER THE MEDICAL ASSISTANCE
7 PROGRAM ADMINISTERED PURSUANT TO THE "COLORADO MEDICAL
8 ASSISTANCE ACT", ARTICLES 4 TO 6 OF THIS TITLE 25.5, AND THE
9 PERCENTAGE OF THE STATE DEPARTMENT'S BUDGET FOR THE MEDICAL
10 ASSISTANCE PROGRAM THAT IS SPENT ON PRESCRIPTION DRUGS, INCLUDING
11 REBATES.

12 (b) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
13 REPORTING REQUIREMENT IN THIS SUBSECTION (4) CONTINUES
14 INDEFINITELY.

15 (5) THE STATE DEPARTMENT AND THE DESIGNATED CONTRACTOR,
16 IF THE STATE DEPARTMENT CONTRACTS WITH A DESIGNATED CONTRACTOR
17 PURSUANT TO SECTION 25.5-1-804, SHALL MAINTAIN CONFIDENTIALITY OF
18 INFORMATION OBTAINED FROM A MANUFACTURER THAT IS DESIGNATED AS
19 PROPRIETARY OR A TRADE SECRET IN ACCORDANCE WITH THE PROCESS
20 ESTABLISHED BY THE STATE DEPARTMENT PURSUANT TO SUBSECTION
21 (2)(C) OF THIS SECTION, AND ANY PROPRIETARY INFORMATION OR TRADE
22 SECRETS ARE EXEMPT FROM THE "COLORADO OPEN RECORDS ACT", PART
23 2 OF ARTICLE 72 OF THIS TITLE 24.

24 **25.5-1-806. Rules.** THE EXECUTIVE DIRECTOR MAY ADOPT RULES
25 AS NECESSARY TO IMPLEMENT AND ADMINISTER THIS PART 8.

26 **25.5-1-807. Enforcement - civil penalties.** (1) A
27 MANUFACTURER THAT FAILS TO REPORT THE INFORMATION REQUESTED BY

1 THE STATE DEPARTMENT IN ACCORDANCE WITH SECTION 25.5-1-805 (2) IS
2 SUBJECT TO A CIVIL PENALTY OF UP TO TEN THOUSAND DOLLARS PER DAY
3 FOR EACH DAY THE MANUFACTURER FAILS TO REPORT THE INFORMATION.

4 (2) THE EXECUTIVE DIRECTOR SHALL REPORT MANUFACTURER
5 VIOLATIONS OF THE REPORTING REQUIREMENTS SPECIFIED IN SECTION
6 25.5-1-805 (2) TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL AND
7 THE DISTRICT ATTORNEYS OF THE JUDICIAL DISTRICTS OF THE STATE ARE
8 AUTHORIZED TO INSTITUTE APPROPRIATE PROCEEDINGS IN THE PROPER
9 COURTS TO PROSECUTE THE MATTER IN THE MANNER REQUIRED BY LAW.

10 **25.5-1-808. Repeal of part - subject to review.** THIS PART 8 IS
11 REPEALED, EFFECTIVE SEPTEMBER 1, 2025. BEFORE THE REPEAL, THE
12 FUNCTIONS OF THE STATE DEPARTMENT UNDER THIS PART 8 ARE
13 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

14 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **add**
15 **(26)(a)(IX) as follows:**

16 **24-34-104. General assembly review of regulatory agencies**
17 **and functions for repeal, continuation, or reestablishment - legislative**
18 **declaration - repeal.** (26) (a) The following agencies, functions, or both,
19 are scheduled for repeal on September 1, 2025:

20 **(IX) THE FUNCTIONS OF THE DEPARTMENT OF HEALTH CARE**
21 **POLICY AND FINANCING WITH REGARD TO THE ANALYSIS AND REPORTING**
22 **ON PRESCRIPTION DRUG PRODUCTION COSTS PURSUANT TO PART 8 OF**
23 **ARTICLE 1 OF TITLE 25.5.**

24 **SECTION 3. Appropriation.** For the 2020-21 state fiscal year,
25 **\$250,000 is appropriated to the department of health care policy and**
26 **financing. This appropriation is from the general fund. To implement this**
27 **act, the department may use this appropriation for general professional**

1 services and special projects.

2 **SECTION 4. Effective date.** This act takes effect July 1, 2020.

3 **SECTION 5. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, or safety.