

## CHAPTER 84

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**HEALTH AND ENVIRONMENT**

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**SENATE BILL 05-165**

BY SENATOR(S) Tochtrop, Hagedorn, Entz, Fitz-Gerald, Groff, Grossman, Hanna, Isgar, Johnson, Kester, Lamborn, Mitchell, Sandoval, Shaffer, Spence, Teck, Veiga, and Williams;  
also REPRESENTATIVE(S) Hefley, Berens, Borodkin, Boyd, Carroll T., Coleman, Curry, Frangas, Green, Hall, Kerr, Madden, Marshall, McGihon, Merrifield, Paccione, Pommer, Schultheis, Solano, and Todd.

**AN ACT****CONCERNING THE COLORADO CANCER DRUG REPOSITORY PROGRAM.**

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

**SECTION 1.** Title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 35**  
**Colorado Cancer Drug Repository Program**

**25-35-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO CANCER DRUG REPOSITORY ACT".

**25-35-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CANCER DRUG" MEANS A PRESCRIPTION DRUG THAT IS USED TO TREAT CANCER OR THE SIDE EFFECTS OF CANCER.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(3) "DISPENSE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 12-22-102 (9), C.R.S.

(4) "ELIGIBLE PATIENT" MEANS AN UNINSURED OR UNDERINSURED CANCER PATIENT WHO MEETS THE ELIGIBILITY CRITERIA ESTABLISHED IN RULE BY THE STATE BOARD.

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

(5) "HEALTH CARE FACILITY" MEANS A HOSPITAL, HOSPICE, OR HOSPITAL UNIT THAT IS REQUIRED TO BE LICENSED PURSUANT TO SECTION 25-3-101.

(6) "MEDICAL CLINIC" MEANS A COMMUNITY HEALTH CLINIC REQUIRED TO BE LICENSED OR CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103.

(7) "MEDICAL DEVICE" MEANS AN INSTRUMENT, APPARATUS, IMPLEMENT, MACHINE, CONTRIVANCE, IMPLANT, OR SIMILAR OR RELATED ARTICLE THAT IS REQUIRED UNDER FEDERAL LAW TO BEAR THE LABEL, "**CAUTION: FEDERAL LAW REQUIRES DISPENSING BY OR ON THE ORDER OF A PHYSICIAN.**" "DEVICE" ALSO INCLUDES ANY COMPONENT PART OF, OR ACCESSORY OR ATTACHMENT TO, ANY SUCH ARTICLE, WHETHER OR NOT THE COMPONENT PART, ACCESSORY, OR ATTACHMENT IS SEPARATELY SO LABELED.

(8) "PHARMACIST" MEANS AN INDIVIDUAL LICENSED BY THIS STATE PURSUANT TO THE PROVISIONS OF ARTICLE 22 OF TITLE 12, C.R.S, TO ENGAGE IN THE PRACTICE OF PHARMACY.

(9) "PROGRAM" MEANS THE COLORADO CANCER DRUG REPOSITORY PROGRAM CREATED IN SECTION 25-35-103.

(10) "STATE BOARD" MEANS THE STATE BOARD OF HEALTH.

**25-35-103. Cancer drug repository - administration - donation - dispensing - cancer drugs - medical devices.** (1) THERE IS HEREBY ESTABLISHED THE COLORADO CANCER DRUG REPOSITORY PROGRAM FOR THE PURPOSE OF ALLOWING A CANCER PATIENT OR THE PATIENT'S FAMILY TO DONATE UNUSED CANCER DRUGS AND MEDICAL DEVICES TO UNINSURED AND UNDERINSURED CANCER PATIENTS IN THE STATE OF COLORADO. THE PROGRAM SHALL BE ADMINISTERED BY THE DEPARTMENT.

(2) THE PROGRAM SHALL ALLOW A CANCER PATIENT OR THE PATIENT'S FAMILY TO DONATE UNUSED CANCER DRUGS OR MEDICAL DEVICES TO A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY THAT ELECTS TO PARTICIPATE IN THE PROGRAM. A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY THAT RECEIVES A DONATED CANCER DRUG OR MEDICAL DEVICE UNDER THE PROGRAM MAY DISTRIBUTE THE CANCER DRUG TO ANOTHER ELIGIBLE HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY FOR USE UNDER THE PROGRAM.

(3) A PHARMACIST MAY ACCEPT AND DISPENSE CANCER DRUGS AND MEDICAL DEVICES DONATED UNDER THE PROGRAM TO ELIGIBLE PATIENTS IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

(a) THE CANCER DRUG IS IN ITS ORIGINAL, UNOPENED, SEALED, AND TAMPER-EVIDENT UNIT DOSE PACKAGING OR, IF PACKAGED IN SINGLE-UNIT DOSES, THE SINGLE-UNIT-DOSE PACKAGING IS UNOPENED;

(b) THE CANCER DRUG BEARS AN EXPIRATION DATE THAT HAS NOT EXPIRED;

(c) THE CANCER DRUG OR MEDICAL DEVICE IS NOT ADULTERATED OR MISBRANDED, AS DETERMINED BY A PHARMACIST EMPLOYED BY OR UNDER CONTRACT WITH THE

HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY; AND

(d) THE CANCER DRUG OR MEDICAL DEVICE IS PRESCRIBED BY A PRACTITIONER, AS DEFINED IN SECTION 12-22-102 (27), C.R.S., FOR USE BY AN ELIGIBLE PATIENT AND IS DISPENSED BY A PHARMACIST.

(4) A CANCER DRUG OR MEDICAL DEVICE DONATED UNDER THE PROGRAM MAY NOT BE RESOLD. A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY MAY CHARGE AN ELIGIBLE PATIENT A HANDLING FEE TO RECEIVE A DONATED CANCER DRUG OR MEDICAL DEVICE, WHICH FEE MAY NOT EXCEED THE AMOUNT SPECIFIED IN RULE BY THE STATE BOARD.

(5) NOTHING IN THIS SECTION REQUIRES A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY TO PARTICIPATE IN THE PROGRAM.

**25-35-104. Rules.** (1) THE STATE BOARD, IN CONSULTATION WITH THE STATE BOARD OF PHARMACY, SHALL PROMULGATE ANY RULES NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE PROGRAM. THE RULES SHALL INCLUDE, AT A MINIMUM:

(a) REQUIREMENTS FOR HEALTH CARE FACILITIES, MEDICAL CLINICS, AND PHARMACIES TO ACCEPT AND DISPENSE DONATED CANCER DRUGS AND MEDICAL DEVICES UNDER THE PROGRAM, INCLUDING BUT NOT LIMITED TO:

(I) ELIGIBILITY CRITERIA; AND

(II) STANDARDS AND PROCEDURES FOR A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY TO ACCEPT, SAFELY STORE, AND DISPENSE DONATED CANCER DRUGS AND MEDICAL DEVICES.

(b) ELIGIBILITY CRITERIA FOR INDIVIDUALS TO RECEIVE DONATED CANCER DRUGS OR MEDICAL DEVICES DISPENSED UNDER THE PROGRAM. THE CRITERIA SHALL PRIORITIZE DISPENSATION TO CANCER PATIENTS WHO ARE UNINSURED OR UNDERINSURED, BUT SHALL PERMIT DISPENSATION TO OTHER CANCER PATIENTS IF AN UNINSURED OR UNDERINSURED CANCER PATIENT IS NOT AVAILABLE.

(c) A MEANS BY WHICH AN ELIGIBLE PATIENT MAY INDICATE THE INDIVIDUAL'S ELIGIBILITY UNDER THE PROGRAM;

(d) THE MAXIMUM HANDLING FEE THAT A HEALTH CARE FACILITY, MEDICAL CLINIC, OR PHARMACY MAY CHARGE FOR DISTRIBUTING OR DISPENSING DONATED CANCER DRUGS OR MEDICAL DEVICES; AND

(e) A LIST OF CANCER DRUGS, ARRANGED BY CATEGORY OR INDIVIDUAL CANCER DRUG, THAT THE PROGRAM WILL ACCEPT AND WILL NOT ACCEPT FOR DISPENSING. THE LIST OF CANCER DRUGS THE PROGRAM WILL NOT ACCEPT SHALL INCLUDE THE REASON A CANCER DRUG IS INELIGIBLE FOR DONATION.

**25-35-105. Liability - prescription drug manufacturers.** NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO CREATE OR ABROGATE ANY LIABILITY ON BEHALF OF A PRESCRIPTION DRUG MANUFACTURER FOR THE STORAGE, DONATION,

ACCEPTANCE, OR DISPENSING OF A CANCER DRUG OR MEDICAL DEVICE, OR TO CREATE ANY CIVIL CAUSE OF ACTION AGAINST A PRESCRIPTION DRUG MANUFACTURER, IN ADDITION TO THAT WHICH IS AVAILABLE UNDER APPLICABLE LAW.

**SECTION 2. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 10, 2005, if adjournment sine die is on May 11, 2005); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 14, 2005