

CHAPTER 1

HEALTH CARE POLICY AND FINANCING

SENATE BILL 07-001

BY SENATOR(S) Hagedorn, Bacon, Boyd, Fitz-Gerald, Gordon, Groff, Isgar, Johnson, Keller, Morse, Romer, Schwartz, Shaffer, Takis, Tapia, Tochtrop, Tupa, Veiga, Ward, Williams, and Windels;
also REPRESENTATIVE(S) Madden, Borodkin, Buescher, Butcher, Carroll M., Carroll T., Casso, Cerbo, Curry, Fischer, Frangas, Gagliardi, Gallegos, Hodge, Kefalas, Kerr A., King, Labuda, Levy, Marshall, McFadyen, McGihon, Merrifield, Peniston, Primavera, Rice, Riesberg, Romanoff, Solano, Todd, and Weissmann.

AN ACT

CONCERNING A GENERIC AND NONPATENTED PRESCRIPTION DRUG PROGRAM, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 2.5
Colorado Cares
Prescription Drug Program

25.5-2.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO CARES RX ACT".

25.5-2.5-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) UNINSURED, UNDERINSURED, AND OLDER COLORADANS PAY A DISPROPORTIONATELY GREATER SHARE OF THEIR INCOME FOR PRESCRIPTION DRUGS. IN MANY CASES, CURRENT DRUG PRICES HAVE THE EFFECT OF DENYING RESIDENTS ACCESS TO NECESSARY MEDICAL CARE, THEREBY THREATENING THEIR HEALTH AND SAFETY.

(b) PRESCRIPTION DRUGS PLAY AN INCREASINGLY IMPORTANT ROLE IN IMPROVING OR STABILIZING A PERSON'S HEALTH AND IN REDUCING OVERALL HEALTH CARE

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

COSTS;

(c) ADDITIONALLY, THE NEW MEDICARE PRESCRIPTION DRUG BENEFIT RESTRICTS PERSONS FROM PURCHASING INSURANCE IN ORDER TO FULLY COVER THEIR PRESCRIPTION DRUG NEEDS. THIS RESTRICTION ON A PERSON'S ABILITY TO PURCHASE ADEQUATE COVERAGE MAY THREATEN THE PERSON'S HEALTH AND SAFETY.

(d) CURRENTLY, THERE IS NO LIMIT ON THE AMOUNT THAT A PHARMACY MAY CHARGE FOR A GENERIC OR NONPATENTED DRUG, AND, ALTHOUGH SOME RETAIL PHARMACIES ARE OFFERING SOME GENERIC AND NONPATENTED DRUGS AT DISCOUNTED PRICES, THERE ARE NO GUARANTEES THAT THE PHARMACIES WILL CONTINUE TO DO SO.

(2) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT IT IS NECESSARY TO PROVIDE A MECHANISM FOR PERSONS TO PURCHASE LOWER-COST GENERIC AND NONPATENTED PRESCRIPTION DRUGS THROUGH THE IMPLEMENTATION OF "COLORADO CARES RX ACT" IN ORDER TO PROTECT THE HEALTH OF UNINSURED, UNDERINSURED, AND OLDER COLORADANS WHILE AT THE SAME TIME PROTECTING PHARMACIES FROM BEARING THE COST OF PROVIDING THE DRUGS TO SUCH PERSONS.

25.5-2.5-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "PARTICIPATING PHARMACY" MEANS A PHARMACY THAT ENTERS INTO AN AGREEMENT WITH THE STATE DEPARTMENT PURSUANT TO SECTION 25.5-2.5-104(4).

(2) "PROGRAM" MEANS THE COLORADO CARES RX PROGRAM ESTABLISHED IN SECTION 25.5-2.5-104.

(3) "PROGRAM CARD" MEANS A CARD ISSUED PURSUANT TO SECTION 25.5-2.5-104(4) THAT INDICATES A PERSON'S ELIGIBILITY TO PARTICIPATE IN THE PROGRAM.

25.5-2.5-104. Program - rules. (1) THERE IS HEREBY ESTABLISHED IN THE STATE DEPARTMENT THE COLORADO CARES RX PROGRAM TO PROVIDE GENERIC AND NONPATENTED PRESCRIPTION DRUGS TO ELIGIBLE PERSONS AT DISCOUNTED RATES.

(2) FOR PURPOSES OF THE PROGRAM, AN ELIGIBLE PERSON SHALL BE A PERSON:

(a) WHO IS A RESIDENT OF THE STATE OF COLORADO;

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

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

(3) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT, AFTER CONSULTATION WITH HEALTH INSURANCE CARRIERS, MAY EXPAND ELIGIBILITY TO A PERSON WHO IS COVERED BY A HIGH DEDUCTIBLE HEALTH PLAN AS DEFINED BY THE STATE DEPARTMENT.

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

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

(6) (a) ON AND AFTER SEPTEMBER 1, 2007, A PARTICIPATING PHARMACY SHALL CHARGE A PERSON WHO PRESENTS A PROGRAM CARD FOR A THIRTY-DAY SUPPLY OF GENERIC OR NONPATENTED PRESCRIPTION DRUG THE LESSER OF:

(I) AN AMOUNT NEGOTIATED BETWEEN THE STATE DEPARTMENT AND THE GENERIC OR NONPATENTED DRUG MANUFACTURER THAT SHALL BE NOT LESS THAN THE AVERAGE MANUFACTURER PRICE AND NOT MORE THAN THE WHOLESALE ACQUISITION COST, PLUS A DISPENSING FEE ESTABLISHED BY RULE OF THE STATE BOARD; OR

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

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

(7) NOTHING IN THIS ARTICLE SHALL PREVENT THE STATE DEPARTMENT FROM NEGOTIATING WITH ANY DRUG MANUFACTURER TO PARTICIPATE IN THE PROGRAM AND FROM INCLUDING ADDITIONAL DRUGS IN THE PROGRAM.

(8) (a) THE EXECUTIVE DIRECTOR SHALL APPOINT A COLORADO CARES RX PHARMACY ADVISORY COUNCIL, REFERRED TO IN THIS SECTION AS THE "COUNCIL", TO ADVISE THE STATE DEPARTMENT AND THE STATE BOARD ON RULES NECESSARY TO IMPLEMENT THE PROGRAM. THE COUNCIL SHALL CONSIST OF THE FOLLOWING THREE PERSONS:

(I) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF PHARMACISTS;

(II) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF INDEPENDENT PHARMACIES; AND

(III) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF CHAIN PHARMACIES.

(b) MEMBERS OF THE COUNCIL SHALL NOT RECEIVE COMPENSATION NOR BE REIMBURSED FOR THEIR EXPENSES IN ATTENDING MEETINGS OF THE COUNCIL.

(c) THIS SUBSECTION (8) IS REPEALED, EFFECTIVE JULY 1, 2009.

(9) A PERSON WHO KNOWINGLY MAKES A FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION ON AN APPLICATION SUBMITTED PURSUANT TO SUBSECTION (4) OF THIS SECTION SHALL BE GUILTY OF A VIOLATION OF SECTION 18-8-503, C.R.S.

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

(2) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS ARTICLE MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(3) AFTER THE PAYMENT OF NECESSARY ADMINISTRATIVE EXPENSES, ANY GENERAL FUND MONEYS APPROPRIATED FOR THE FISCAL YEAR COMMENCING ON JULY 1, 2006, FOR IMPLEMENTATION OF THIS SECTION SHALL BE REPAID TO THE GENERAL FUND FROM THE FUND AS SOON AS POSSIBLE.

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

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

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

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

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado cares RX program cash fund created in section 25.5-2.5-105 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of health care policy and financing, for allocation to the executive director's office, for

the fiscal year beginning July 1, 2007, the sum of two million two hundred fifty-three thousand nine hundred fifty-three dollars (\$2,253,953) and 2.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) For the fiscal year beginning July 1, 2007, as moneys become available to the Colorado cares RX program cash fund created in section 25.5-2.5-105 (1), Colorado Revised Statutes, pursuant to section 25.5-2.5-105 (3), Colorado Revised Statutes, the state treasurer shall reimburse the general fund for expenditures incurred pursuant to subsection (1) of this section after revenues in the Colorado cares RX program cash fund exceed the amount of expenditures appropriated from the fund in subsection (2) of this section.

SECTION 4. 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: February 5, 2007