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Health Program

GENERIC RETAIL DRUG PRICING AND STATES

\$4 and free drug promotions by large chains affected by s

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The issue of prescription drug costs has grabbed state legislative attention and popular hea But in the fall of 2006 the topic took on a new aspect, when Wal-Mart announced a start-up deeply-discounted \$4.00 prices for a 30-day supply for a diverse list of generic prescription on October 5, 2006, within two weeks the company announced programs with elected offic Arkansas, Arizona, Delaware, Florida, Illinois, Indiana, Nevada, New Jersey, New Mexico, Carolina, Oregon, Texas and Vermont. By November, they added the final states totaling According to <http://www.rxlist.com/top200.htm>, the coverage list of 331 products "includes prescribed medications in the United States."

Several months earlier, K-Mart had launched a similar program with \$5 per month prices. I 2006, the deep-discount offerings spread to several other large national and regional chain Wegmans and BJ's Wholesale Club, among others.

In 2007, another retail chain, Publix, announced an offer of seven prescription antibiotics for free, in the commonly used 14-day supply. The free antibiotics are offered to customers regardless of their pres provider. Walgreens, the nation's largest drugstore chain, now features over 300 generics supply; others at \$9.99 for a 30 day supply. In April 2008 the King Soopers and City Mark by Kroger Company launched its own general program for \$4 generics.

These retail and commercial marketing plans have attracted widespread attention from TV small-town papers. However, the economics and the ripple effects of these programs hav

- **Potential Savings From Greater Use of \$4 Generic Drugs** -- Discounted generi programs (\$4 per 30-day supply or \$10 per 90-day supply) are currently offered a Researchers found that about half the people in the survey filled a prescription during 2007 and about half of those people used a drug that is available as a generic for \$4. But less than 6 p drugs purchased them in the \$4 programs offered by the retailers. "The societal s billion in 2007 if all potential users switched to a \$4 program," the authors note, w be a savings of 2.5 percent of the nation's total health expenditures. ([Archives of 3/14/2011](#))

- The \$4 generic concept is a step toward simpler pricing in an area where it's sorel University of Minnesota marketing professor. "Wal-Mart and Target are trying to

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price point," he said. "They're trying to simplify things and remind you that they're reasonable on this product where there's been a lot of concern about pricing." (Twin Cities Pioneer, 12/3/06)

- Andrea Hofelich, spokeswoman for the Generic Pharmaceutical Association, noted that many of the generic drugs offered under the \$4-a-month plans have been around for a while, and are already made by several competing manufacturers. "These are commodity products. In some cases there are multiple manufacturers for each product, sometimes seven." That competition has made many of the drugs cheap already, much more so than the average generic, she said. (Bucks County [PA] Courier Times, 11/30/06).
- Charles Sewell, representing the independent pharmacists, attacked Wal-Mart's \$4 generic program as a loss leader and a bait-and-switch ploy. "It's not really 300 drugs, it's only 143. Wal-Mart is always trying to force small businesses out of business. This is predatory pricing." ([Governing Magazine](#), 11/21/06)
- Giant Food stores is giving free generic antibiotics to customers with a prescription for the next three months (January-March 2009) in what retail experts called an aggressive move in supermarkets' heated battle for shoppers. The free prescription drug program also will be offered at Giant's sister chain, Stop & Shop. "Times are tough," said Robin Michel, executive vice president for Giant Food. "If this is the way that we can help most people, why not?" ([Washington Post](#), 1/6/09)
- The Wal-Mart prescription program "has proven wildly popular, already saving customers some \$350 million in costs, according to Wal-Mart. The program, which now accounts for more than 35% of all prescriptions filled at Wal-Mart, helped drive its pharmacy-business sales and profitability in the most recent quarter." The company has more than 3,500 pharmacies in Wal-Mart and Neighborhood Market stores and another 485 in Sam's Club stores. Most of those offer a \$4 fee on certain prescription drugs beginning last September. ([MarketWatch](#) 8/7/07).
- "In its first year, this program has already saved our customers over \$610 million. The list of eligible drugs in this program represents nearly 40% of the prescriptions Wal-Mart pharmacies dispense each year, and includes preventive medications as well as treatments for conditions and diseases in over 18 categories." (Wal-Mart online statement, accessed 10/31/07.)
- In fall 2007 Wal-Mart announced a new additional line of common drugs for \$9 a prescription, including treatments for ADHD and family planning items. (10/07)

The following table and links are intended only as examples for policymakers; other retail and commercial locations may have comparable offerings.

Retail chain	Program details (with web links)	States/ exceptions
Albertson's / Savon.com	\$4.99, over 500 generics, 30-day supply. \$10 one-time enrollment fee.	Most states.
BJ's Wholesale Club	\$4 generics, 30-day supply; 68 stores; no BJ membership required. News release 11/16/06	9 states: DE, FL, GA, MD, MA, NH, NJ, NY, VA.
Giant Foods, Stop-and-Shop	<u>Free</u> generic Antibiotics. (limited offer, valid 1/9/09-3/21/09)	160 store pahramcies: DC, MD, VA. Northeast region
K-Mart	\$15 generics for 90 day supply. K-Mart's generic price list Expanded list = 225 products	most states.
King Soopers /City Market / Kroger Co.	\$4 generics, 30-say supply, as of 4/08. \$10 for 90-day supply, as of 5/08. Expanded list of "over 300 products" 10/08	Most states. A few prices higher in CO & WY.
Meijer	<u>Free</u> antibiotics, 14-day supply; 176 stores (began 10/23/06) Meijer offers free antibiotics	IL, IN, KY, MI, OH.
Publix	<u>Free</u> (\$0) antibiotics, 14-day supply (began August '07). All 684 stores with pharmacies. Publix pharmacies offers free antibiotics	5 states: AL, FL, GA, SC, TN.
Target	\$4 generics, 30-day supply, 1,200 stores. Target's \$4 Price list online	47 states (<u>not</u> AK, HI, ND); some prices higher in 10 states.
United Drugs	Flat-rate prescription pricing "helps this cooperative of maintain the ability to compete in the marketplace and provide good service to patients."	1,026 independent pharmacies in 32 states
Walgreens	\$12.99 generics for a 90-day supply; some \$9.99 for a	49 states and Puerto Rico;

30 day supply; includes "over 400" medications. up to 6,148 stores.

Member fee required: \$20/year individual; \$35 families for 1 year.

Wal-Mart / Sam's Club / Neighborhood Market	Includes 358 Rx Products \$4 Rx generics program now in all US pharmacies \$4 for 30 day supply; \$10 for 90 day supply: Price List online <i>[updated 6/5/08]</i>	49 states (<u>not</u> ND); some prices higher in 9 states. 3,810 stores.
Wegmans	\$11.99 for 90 day supply Generic price list	5 states: MD, NJ, NY, PA, VA.

All store data are subject to change without notice; NCSL is not responsible for information on listed third-party web sites.

"Unfair Practices Acts" May Prohibit Excessive Discounts in Some States

In about eight states (some think up to 21 states), existing laws termed "Unfair Practices Acts" ban certain types of "predatory pricing." For example, a 1937 Colorado law prohibits retailers from selling "below cost." As a result, several national programs have excluded a number of drugs from the sales programs operating in individual states. For example, about 14 generic drugs are priced higher by Target and about 55 generic drugs are priced higher by Wal-Mart in about ten states due to these state laws. The laws cited are in:

1. **California** (Cal. Business and Professions Code §§[17000](#), [17043](#))
* **[Colorado]** (Colo. Rev. Stat. §6-2-101, et seq.) [1937; *Amended April 2007 - see below* *]
2. **Hawaii** (Hawaii Rev. Stat. §[481-1](#))
3. **Minnesota** (Minn. Stat. §[325D.04](#))
4. **Montana** (Mont. Code Ann. §§30-14-201, 207, 209)
5. **Pennsylvania** (Pa. Cons. Stat. tit. 73 §201-1, et seq.)
6. **Tennessee** (Tenn. Code Ann. §47-205-203)
7. **Wisconsin** (Wis. Stat. §[100.30](#))
8. **Wyoming** (Wyo. Stat. §[40-4-107](#))

In addition, NCPA** interprets laws with similar effects in:

1. Arkansas (Ark. §4-88-107)
2. Idaho
3. Kentucky
4. Louisiana (La. Rev. Stat. Ann. §[51:422](#))
5. Maine
6. Maryland
7. Massachusetts
8. North Dakota (*has no operational discount programs as of 1/07*)
9. Oklahoma (Oklahoma Unfair Sales Law, 1949)
10. Rhode Island
11. Utah
12. West Virginia

** = National Community Pharmacists Association

With only limited practical experience for operating \$4 generic plans, it is too early to know if these existing pricing laws actually prohibit specific discounts and sales on specific products. None of these listed states have pharmaceutical price controls, and most of the laws do not mention pharmaceuticals by category or name.

However, on November 3, 2006, a jury decision by the U.S. District Court in Colorado concluded that grocery stores (in particular King Soopers) violated the state's Unfair Practices Act by selling gas below cost via a frequent-customer 10-cent a gallon discount program, and ordered the program to be discontinued. The jury also said the grocery chains should pay monetary damages, according to court documents. Case citation: [Parish Oil Co., Inc. et al v. Dillon Company, Inc;](#) 1:05-CV-00081-REB-PAC. As a result the Colorado legislature enacted [HB 07-1208](#), signed April 16, 2007, intended to allow such sales as long as they are not intended for "injuring competitors and to destroy competition."*

A Minnesota Discussion: According to one local news report, "Minnesota's statute was one of many written during the Depression as a way to protect small retailers against competition from large chain stores, said William L. Sippel, a lawyer with Oppenheimer Wolff & Donnelly in Minneapolis. While some of those laws are still on the books, Sippel said, modern courts look at whether a retailer's low price could drive competitors out of business and enable the retailer to recoup losses later with higher prices. The concerns about protecting small retailers, including pharmacies, from big-store competition persist today.

Tim Gallagher, president-elect of the Minnesota Pharmacists Association, said he didn't know that the Minnesota statute included protections for small pharmacy operations. But such a shield against big-store competition is needed, he said, because small pharmacies might otherwise be driven out of rural areas, which, in the long run, would hurt competition. (Twin Cities Pioneer, 12/3/06)

*** Colorado Statutes: Unfair Practices Act -- §6-2-105. Unlawful to sell below cost.**

AS AMENDED BY HB 07-1208, signed April 16, 2007:

"It is unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state to sell, offer for sale, or advertise for sale any [article or] product or service [or output of a service trade for less than the cost thereof to such vendor, or give, offer to give, or advertise the intent to give away any article or product or service or output of a service trade] for the purpose of injuring competitors and destroying competition. A vendor who violates this section is guilty of a misdemeanor..."

§6-2-113 [ADDED] ...IN ALL SALES INVOLVING MORE THAN ONE PRODUCT OR SERVICE AND IN ALL SALES INVOLVING THE GIVING OF ANY CONCESSION OF ANY KIND, THE COMBINED TOTAL SELLING PRICE OF ALL PRODUCTS OR SERVICES SHALL BE COMPARED TO THE COMBINED TOTAL COST OF ALL PRODUCTS OR SERVICES INVOLVED IN THE SALES TO DETERMINE WHETHER THE VENDOR OR DISTRIBUTOR IS SELLING BELOW COST.

RELATED RESOURCES:

- In March, 2013 Express Scripts Holding Co., released an interactive webpage, [The Drug Trend Report](#). Both the [Prescription Price Index](#) and the [Commercial Overview](#) offer detailed and helpful new data. Back to [Pharmaceuticals Overview](#) | [Health Issues, A to Z](#) | [Health Menu Page](#)

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