

1 AN ACT in relation to public aid.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Public Aid Code is amended by
5 adding Sections 5-23 through 5-23.50 as follows:

6 (305 ILCS 5/5-23 new)

7 Sec. 5-23. Prescribed-drug spending-control program.

8 (a) Subject to appropriations, the Department of Public
9 Aid shall establish a Medicaid prescribed-drug
10 spending-control program that includes the components
11 described in Sections 5-23.5 through 5-23.50.

12 (b) The Department of Public Aid may contract all or any
13 part of the implementation of the Medicaid prescribed-drug
14 spending-control program to private organizations.
15 Notwithstanding any other provision of law, the Department,
16 at its discretion, may renew a contract or contracts for
17 fiscal intermediary services one or more times for periods
18 determined by the Department. All such renewals combined may
19 not exceed a total period longer than the term of the
20 original contract, however.

21 (305 ILCS 5/5-23.5 new)

22 Sec. 5-23.5. Brand-name-drug restriction.

23 (a) Except as otherwise provided in this Section and in
24 Section 5-23.10, Medicaid prescribed-drug coverage for
25 brand-name drugs for adult Medicaid recipients is limited to
26 the dispensing of 4 brand-name drugs per month per recipient.
27 Children are exempt from this restriction. Antiretroviral
28 agents are excluded from this restriction. No requirement for
29 prior authorization or other restrictions on medications used
30 to treat mental illnesses such as schizophrenia, severe

1 depression, or bipolar disorder may be imposed on Medicaid
2 recipients. Medications that must be available without
3 restriction for persons with mental illnesses include
4 atypical antipsychotic medications, conventional
5 antipsychotic medications, selective serotonin reuptake
6 inhibitors, and other medications used for the treatment of
7 serious mental illnesses. Although a drug may be included on
8 the preferred drug formulary, it is not exempt from the
9 4-brand-name-drug limit.

10 (b) The Department of Public Aid shall limit the amount
11 of a prescribed drug dispensed to no more than a 34-day
12 supply.

13 (c) The Department of Public Aid must continue to provide
14 unlimited generic drugs, contraceptive drugs and items, and
15 diabetic supplies.

16 (d) After the Department of Public Aid adopts a preferred
17 drug formulary under Section 5-23.30, if a product in the
18 formulary is one of the first 4 brand-name drugs used by a
19 recipient in a month, reimbursement for the drug is not
20 subject to prior authorization under Section 5-23.20.

21 (305 ILCS 5/5-23.10 new)

22 Sec. 5-23.10. Exception based on patient's treatment
23 needs. The Department of Public Aid may authorize an
24 exception to the brand-name-drug restriction under Section
25 5-23.5 based on a patient's treatment needs. The Department
26 may authorize such an exception only if it is based on prior
27 consultation provided by the Department or a Department
28 contractor. The Department must establish procedures to
29 ensure the following:

30 (1) There must be a response to a request for prior
31 consultation by telephone or other telecommunication
32 device within 24 hours after receipt of the request.

33 (2) A 72-hour supply of the drug prescribed must be

1 provided in an emergency or when the Department of Public
2 Aid does not provide a response within 24 hours as
3 required by paragraph (1).

4 (3) Except for the exception for nursing home
5 residents and other institutionalized adults under
6 Section 5-23.20 and except for drugs on the restricted
7 formulary for which prior authorization may be sought by
8 an institutional or community pharmacy, prior
9 authorization for an exception to the brand-name-drug
10 restriction may be sought only by the prescriber and not
11 by the pharmacy. When prior authorization for an
12 exception to the brand-name-drug restriction is granted
13 for a patient in an institutional setting, the approval
14 is authorized for 12 months and monthly prior
15 authorization is not required for that patient.

16 (305 ILCS 5/5-23.15 new)

17 Sec. 5-23.15. Reimbursement rate for prescribed drugs.
18 Medicaid reimbursements to pharmacies for prescribed drugs
19 must be set at the average wholesale price less 13.25%.

20 (305 ILCS 5/5-23.20 new)

21 Sec. 5-23.20. Prior authorization.

22 (a) Except for mental health-related drugs,
23 anti-retroviral drugs, and drugs for nursing home residents
24 and other institutional residents, reimbursement for drugs
25 not included in the formulary established under Section
26 5-23.30 is subject to prior authorization.

27 (b) The Department of Public Aid may establish prior
28 authorization requirements for certain populations of
29 Medicaid beneficiaries, certain drug classes, or particular
30 drugs to prevent fraud, abuse, overuse, and possible
31 dangerous drug interactions.

32 (c) The Medicaid Pharmaceutical and Therapeutics

1 Committee created under Section 5-23.35 shall make
2 recommendations to the Department of Public Aid regarding
3 drugs for which prior authorization is required. The
4 Department shall inform the committee of the Department's
5 decisions regarding drugs subject to prior authorization.

6 (305 ILCS 5/5-23.25 new)

7 Sec. 5-23.25. Manufacturer rebates for generic drugs. The
8 Department of Public Aid may enter into arrangements under
9 which manufacturers of generic drugs prescribed to Medicaid
10 recipients must provide rebates of at least 15.1% of the
11 average manufacturer price for the manufacturer's generic
12 products. These arrangements must require that if a
13 generic-drug manufacturer pays federal rebates for
14 Medicaid-reimbursed drugs at a level below 15.1%, the
15 manufacturer must provide a supplemental rebate to the State
16 in an amount necessary to achieve a 15.1% rebate level.

17 (305 ILCS 5/5-23.30 new)

18 Sec. 5-23.30. Preferred drug formulary; supplemental
19 rebates.

20 (a) The Department of Public Aid may establish a
21 preferred drug formulary in accordance with 42 U.S.C.
22 1396r-8. In establishing the formulary, the Department may
23 negotiate supplemental rebates from manufacturers that are in
24 addition to those required by Title XIX of the Social
25 Security Act and at no less than 10% of the average
26 manufacturer price as defined in 42 U.S.C. 1396r-8 on the
27 last day of a quarter unless the federal or supplemental
28 rebate, or both, equals or exceeds 25%. There is no upper
29 limit on the supplemental rebates the Department may
30 negotiate. The Department may determine that specific
31 products, brand-name or generic, are competitive at lower
32 rebate percentages. The Department may contract with an

1 outside agency or contractor to conduct negotiations for
2 supplemental rebates.

3 (b) Agreement to pay the minimum supplemental rebate
4 percentage shall guarantee a manufacturer that the Medicaid
5 Pharmaceutical and Therapeutics Committee created under
6 Section 5-23.35 will consider a product for inclusion in the
7 preferred drug formulary. A pharmaceutical manufacturer is
8 not guaranteed placement of a drug in the formulary simply by
9 paying the minimum supplemental rebate, however. Department
10 of Public Aid decisions must be based on the clinical
11 efficacy of a drug and recommendations of the Medicaid
12 Pharmaceutical and Therapeutics Committee, as well as the
13 price of competing products minus federal and State rebates.

14 (c) In this Section, "supplemental rebates" may include,
15 at the Department of Public Aid's discretion, cash rebates
16 and other program benefits that offset a Medicaid
17 expenditure. Those other program benefits may include, but
18 need not be limited to, disease management programs, drug
19 product donation programs, drug utilization control programs,
20 prescriber and beneficiary counseling and education, fraud
21 and abuse initiatives, and other services or administrative
22 investments with guaranteed savings to the Medicaid program
23 in the same year that the rebate reduction is included in the
24 appropriation to the Department for operation of the Medicaid
25 program.

26 (d) The Department of Public Aid shall seek any waivers
27 of federal law or regulations necessary to implement this
28 Section.

29 (e) A Medicaid recipient may appeal a decision of the
30 Department of Public Aid concerning the preferred drug
31 formulary in the same manner as the appeal of other decisions
32 of the Department under this Article.

33 (f) The Department of Public Aid shall publish and
34 disseminate the preferred drug formulary to all Medicaid

1 vendors in the State.

2 (305 ILCS 5/5-23.35 new)

3 Sec. 5-23.35. Medicaid Pharmaceutical and Therapeutics
4 Committee.

5 (a) The Medicaid Pharmaceutical and Therapeutics
6 Committee is created within the Department of Public Aid for
7 the purpose of developing a preferred drug formulary under 42
8 U.S.C. 1396r-8. The committee shall be comprised as specified
9 in 42 U.S.C. 1396r-8 and shall consist of 11 members
10 appointed by the Governor. Five members must be physicians
11 licensed to practice medicine in all of its branches, one of
12 whom must possess the degree of doctor of osteopathy or
13 osteopathic medicine; 5 members must be pharmacists licensed
14 under the Pharmacy Practice Act of 1987; and one member must
15 be a consumer representative. The Governor shall ensure that
16 at least some of the members of the committee represent
17 Medicaid participating physicians and pharmacies serving all
18 segments and diversity of the Medicaid population, and have
19 experience in either developing or practicing under a
20 preferred drug formulary. At least one of the members must
21 represent the interests of pharmaceutical manufacturers.

22 The Governor shall appoint members to serve for terms of
23 2 years from the date of their appointment. The Governor may
24 appoint members to more than one term.

25 (b) Committee members shall select a chairperson and a
26 vice chairperson each year from the committee membership.

27 (c) The committee shall meet at least once each calendar
28 quarter and may meet at other times at the discretion of the
29 chairperson and members. The committee shall comply with
30 rules adopted by the Department of Public Aid, including
31 rules for providing notice of any committee meetings as
32 required under the Open Meetings Act.

33 (d) The Department of Public Aid shall provide staff for

1 the committee and shall assist the committee with all
2 ministerial duties.

3 (305 ILCS 5/5-23.40 new)

4 Sec. 5-23.40. Committee; preferred drug formulary.

5 (a) The Medicaid Pharmaceutical and Therapeutics
6 Committee shall develop its preferred drug formulary
7 recommendations by considering the clinical efficacy, safety,
8 and cost effectiveness of a product. To the extent feasible,
9 the committee shall review all drug classes included in the
10 preferred drug formulary at least every 12 months. The
11 committee may recommend additions to and deletions from the
12 formulary so that the formulary provides for medically
13 appropriate drug therapies for Medicaid patients which
14 achieve cost savings contained in appropriations to the
15 Department of Public Aid for operation of the Medicaid
16 program.

17 (b) The Medicaid Pharmaceutical and Therapeutics
18 Committee shall ensure that pharmaceutical manufacturers
19 agreeing to provide a supplemental rebate as provided in
20 Section 5-23.30 have an opportunity to present evidence
21 supporting inclusion of a product in the preferred drug
22 formulary. Upon timely notice, the Department of Public Aid
23 shall ensure that any drug that has been approved or had any
24 of its particular uses approved by the United States Food and
25 Drug Administration under a priority review classification is
26 reviewed by the committee at the committee's next regularly
27 scheduled meeting. To the extent possible, upon notice by a
28 manufacturer, the Department shall also schedule a product
29 review for any new product at the committee's next regularly
30 scheduled meeting.

31 (305 ILCS 5/5-23.45 new)

32 Sec. 5-23.45. Advisory committee; institutionalized

1 persons. The Department of Public Aid shall establish an
2 advisory committee to study the feasibility of using a
3 restricted drug formulary for nursing home residents and
4 other institutionalized adults. The committee shall be
5 comprised of 7 members appointed by the Director of Public
6 Aid. The committee members must include 2 physicians
7 licensed to practice medicine in all of its branches and 5
8 pharmacists licensed under the Pharmacy Practice Act of 1987.
9 Three of the pharmacists must be appointed from a list of
10 recommendations provided by a statewide organization
11 representing pharmacists who provide pharmacy services in a
12 long-term care setting.

13 (305 ILCS 5/5-23.50 new)

14 Sec. 5-23.50. Report. The Department of Public Aid must
15 submit a report to the Governor, the President of the Senate,
16 and the Speaker of the House of Representatives by January 15
17 of each year. The report must include, but need not be
18 limited to, a discussion of the progress made in implementing
19 Medicaid cost-containment measures and their effect on
20 Medicaid prescribed-drug expenditures.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.