



Sen. Andy Manar

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1 AMENDMENT TO HOUSE BILL 3479

2 AMENDMENT NO. _____. Amend House Bill 3479 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Pharmacy Benefits Manager Licensing Act.

6 Section 5. Definitions. As used in this Act:

7 "Average reimbursement" means a statistical methodology
8 selected by the Department through any rules adopted pursuant
9 to this Section that shall include, at a minimum, the median
10 and mean.

11 "Department" means the Department of Insurance.

12 "Director" means the Director of Insurance.

13 "Person beneficially interested", with respect to an
14 applicant for a pharmacy benefits manager license, means:

15 (1) if the applicant is a partnership or other
16 unincorporated association, each partner or member;

1 (2) if the applicant is a corporation, each of its
2 officers, directors, and stockholders, except that a
3 natural person shall not be deemed to be beneficially
4 interested in a nonprofit corporation; or

5 (3) if the applicant is a limited liability company,
6 each officer, manager, or member.

7 "Pharmacist" has the meaning given to the term in the
8 Pharmacy Practice Act.

9 "Pharmacy" has the meaning given to the term in the
10 Pharmacy Practice Act.

11 "Pharmacy benefits manager" means a person, business, or
12 other entity that, pursuant to a contract or under an
13 employment relationship with a plan sponsor, insurer, or other
14 third-party payer, either directly or through an intermediary,
15 manages the prescription drug coverage provided by the plan
16 sponsor, insurer, or other third-party payer, including, but
17 not limited to, the processing and payment of claims for
18 prescription drugs, the performance of drug utilization
19 review, the processing of drug prior authorization requests,
20 the adjudication of appeals or grievances related to
21 prescription drug coverage, contracting with network
22 pharmacies, and controlling the cost of covered prescription
23 drugs.

24 "Pharmacy provider" means a pharmacy or pharmacist.

25 "Proprietary information" means information on pricing,
26 costs, revenue, taxes, market share, negotiating strategies,

1 customers, and personnel that is held by a pharmacy benefits
2 manager and used for its business purposes.

3 Section 10. Pharmacy benefits manager licensing
4 requirements.

5 (a) A pharmacy benefits manager shall be licensed by the
6 Department before conducting business in this State.

7 (b) A pharmacy benefits manager license under this Section
8 is not transferable.

9 (c) The Department shall develop, by rule, application
10 forms for pharmacy benefits manager licensure. The application
11 form for the pharmacy benefits manager license shall require
12 the pharmacy benefits manager to submit all of the following
13 information to the Department:

14 (1) the name of the pharmacy benefits manager;

15 (2) the address and contact telephone number for the
16 pharmacy benefits manager;

17 (3) the name and address of the pharmacy benefits
18 manager's agent for service of process in this State;

19 (4) the name and address of each person beneficially
20 interested in the pharmacy benefits manager; and

21 (5) the name and address of each person with management
22 or control over the pharmacy benefits manager.

23 (d) If the applicant is a partnership or other
24 unincorporated association, a limited liability company, or a
25 corporation and the number of partners, members, or

1 stockholders, as the case may be, exceeds 5, the application
2 shall so state and shall further state the name, address, usual
3 occupation, and professional qualifications of each of the 5
4 partners, members, or stockholders who own the 5 largest
5 interests in the applicant entity. Upon request by the
6 Department, the applicant shall furnish the Department with the
7 name, address, usual occupation, and professional
8 qualifications of partners, members, or stockholders not named
9 in the application or shall refer the Department to an
10 appropriate source of that information.

11 (e) The application shall contain a statement to the effect
12 that the applicant has not been convicted of a felony and has
13 not violated any of the provisions of this Act. If the
14 applicant cannot make this statement, the application shall
15 contain a statement of the violation, if any, or reasons that
16 prevent the applicant from being able to comply with the
17 requirements with respect to the statement.

18 (f) Within 30 days after a change in any of the information
19 disclosed to the Department on an application for licensure,
20 the pharmacy benefits manager shall notify the Department of
21 that change in writing.

22 (g) The Department may, by rule, set a fee for the license
23 issued under this Act. The fee shall not exceed the actual
24 costs incurred by the Department in carrying out its duties
25 under this Act.

1 Section 15. Discipline; grounds.

2 (a) The Director may refuse to issue, restore, or remove or
3 may revoke, suspend, or place on probation a pharmacy benefits
4 manager's license under any of the following circumstances:

5 (1) The pharmacy benefits manager has engaged in
6 fraudulent activity that constitutes a violation of State
7 or federal law.

8 (2) The Department has received consumer complaints
9 that justify an action under this Section in order to
10 protect the safety and interests of consumers.

11 (3) The pharmacy benefits manager fails to pay an
12 application fee for the license.

13 (4) The pharmacy benefits manager fails to comply with
14 a requirement set forth in Section 20 or 25.

15 (b) The Department shall, by rule, develop procedures that
16 provide a pharmacy benefits manager subject to discipline under
17 subsection (a) with reasonable notice of, and an opportunity to
18 respond to, the Department before taking that action.

19 Section 20. Transparency requirements.

20 (a) A pharmacy benefits manager contracting with a managed
21 care organization to administer benefits provided under the
22 State Employees Group Insurance Act of 1971 or the Illinois
23 Public Aid Code shall provide the following information to the
24 Department no later than March 31, 2019 and for each year
25 thereafter for the previous calendar year that the pharmacy

1 benefits manager is contracted with a managed care organization
2 to administer benefits:

3 (1) the total amount paid to the pharmacy benefits
4 manager by a managed care organization to administer
5 benefits for each contract under which the pharmacy
6 benefits manager is contracted to administer benefits
7 under the State Employees Group Insurance Act of 1971 or
8 the Illinois Public Aid Code;

9 (2) the total amount paid in reimbursements to
10 pharmacies licensed in Illinois for each contract under
11 which the pharmacy benefits manager is contracted to
12 administer benefits under the State Employees Group
13 Insurance Act of 1971 or the Illinois Public Aid Code;

14 (3) the average reimbursement per contract by drug
15 ingredient cost, dispensing fee, and any other fee paid by
16 a pharmacy benefits manager to licensed pharmacies with
17 which the pharmacy benefits manager shares common
18 ownership, management, or control; or that are owned,
19 managed, or collected by any of the pharmacy benefits
20 manager's management companies, parent companies,
21 subsidiary companies, jointly held companies, or companies
22 otherwise affiliated by a common owner, manager, or holding
23 company; or that share any common members on the board of
24 directors; or that share managers in common;

25 (4) the average reimbursement per contract by drug
26 ingredient cost, dispensing fee, and any other fee, paid by

1 a pharmacy benefits manager to pharmacies licensed in
2 Illinois other than those subject to paragraph (3);

3 (5) any direct or indirect fees, charges, or any kind
4 of assessments imposed by the pharmacy benefits manager on
5 pharmacies licensed in Illinois with which the pharmacy
6 benefits manager shares common ownership, management, or
7 control; or that are owned, managed, or controlled by any
8 of the pharmacy benefits manager's management companies,
9 parent companies, subsidiary companies, jointly held
10 companies, or companies otherwise affiliated by a common
11 owner, manager, or holding company; or that share any
12 common members on the board of directors; or that share
13 managers in common;

14 (6) any direct or indirect fees, charges, or any kind
15 of assessments imposed by the pharmacy benefits manager on
16 pharmacies licensed in Illinois other than those subject to
17 paragraph (5); and

18 (7) all common ownership, management, common members
19 of a board of directors, shared managers, or control of a
20 pharmacy benefits manager, or any of the pharmacy benefits
21 manager's management companies, parent companies,
22 subsidiary companies, jointly held companies, or companies
23 otherwise affiliated by a common owner, manager, or holding
24 company with any managed care organization contracted to
25 administer Medicaid benefits, any entity that contracts on
26 behalf of a pharmacy, or any pharmacy services

1 administration organization, or any common ownership,
2 management, common members of a board of directors, shared
3 managers, or control of a pharmacy services administration
4 organization that is contracted with a pharmacy benefits
5 manager, with any drug wholesaler or distributors or any of
6 the pharmacy services administration organization,
7 management companies, parent companies, subsidiary
8 companies, jointly held companies, or companies otherwise
9 affiliated by a common owner, common members of a board of
10 directors, manager, or holding company.

11 (b) All information provided by a pharmacy benefits manager
12 pursuant to this Section shall reflect data for the most recent
13 full calendar year and shall be divided by quarter. This
14 information shall be managed by the Department and shall be
15 exempt from the Freedom of Information Act. The Department
16 shall submit a report to the General Assembly annually and
17 publish the report on its website on the information provided
18 in this Section provided the information is presented in the
19 aggregate. The report to the General Assembly shall be filed
20 with the Clerk of the House of Representatives and the
21 Secretary of the Senate in electronic form only, in the manner
22 that the Clerk and the Secretary shall direct.

23 (c) Contract information between a pharmacy benefits
24 manager and a pharmacy provider shall be exempt from the
25 Freedom of Information Act.

1 Section 25. Duties to pharmacy providers.

2 (a) A pharmacy benefits manager shall not include in a
3 contract with a pharmacy provider any of the following
4 provisions:

5 (1) a provision that prohibits the pharmacy provider
6 from informing a patient of a more affordable alternative
7 to a prescribed medication if a more affordable alternative
8 is available;

9 (2) a provision prohibiting a pharmacy provider from
10 disclosing any contract information to the Department or
11 any other government agency or an elected official; or

12 (3) a provision requiring the pharmacy provider to
13 participate in a managed care organization's provider
14 network to administer benefits under the State Employees
15 Group Insurance Act of 1971 or the Illinois Public Aid Code
16 as a condition of participation in a national pharmacy
17 provider contract.

18 (b) A pharmacy benefits manager shall be subject to the
19 following requirements regarding reimbursement appeals:

20 (1) A pharmacy provider may appeal a reimbursement to a
21 pharmacy benefits manager within 60 days after the date of
22 service and the pharmacy benefits manager shall respond no
23 later than 7 days after the appeal is filed with the
24 pharmacy benefits manager. If the pharmacy benefits
25 manager fails to respond within 7 days after the appeal is
26 filed with the pharmacy benefits manager, the appeal is to

1 be ruled in favor of the pharmacy provider.

2 (2) A pharmacy provider may appeal the remuneration
3 rate to the managed care organization within 60 days after
4 the date of service, and the managed care organization
5 shall respond no later than 7 days after the appeal is
6 filed with the managed care organization. If the managed
7 care organization fails to respond within 7 days after the
8 appeal is filed with the managed care organization, the
9 appeal is to be ruled in favor of the pharmacy provider.

10 (c) A pharmacy benefits manager that performs pharmacy
11 audits or contracts with an auditing entity for the purpose of
12 administering pharmacy audits shall not engage in conduct
13 prohibited under Section 30. An auditing entity's conduct under
14 Section 30 shall be attributed to the contracting pharmacy
15 benefits manager for purposes of Section 15.

16 (d) The Department shall, by rule, develop procedures that
17 provide a pharmacy provider the opportunity to file a complaint
18 of violations of this Section and receive a resolution.

19 Section 30. Audits.

20 (a) As used in this Section:

21 "Auditing entity" means a person or company contracted to
22 perform a pharmacy audit.

23 "Business day" means any day of the week excluding
24 Saturday, Sunday, and any legal holiday, as defined in Section
25 17 of the Promissory Note and Bank Holiday Act.

1 "Covered entity" has the meaning given to it under 45 CFR
2 160.103.

3 "Covered individual" means a member, participant,
4 enrollee, or beneficiary of a covered entity, including a
5 dependent or other person covered through the policy or
6 contract of a covered individual.

7 "Extrapolation" means the practice of inferring a
8 frequency of dollar amount of overpayments, underpayments,
9 nonvalid claims, or other errors on any portion of claims
10 submitted, based on the frequency of dollar amount of
11 overpayments, underpayments, nonvalid claims, or other errors
12 actually measured in a sample of claims.

13 "Misfill" means a prescription that was not dispensed,
14 dispensing of an incorrect dose, amount, or type of medication,
15 dispensing a prescription drug to the wrong person, a
16 prescription in which the prescriber denied the authorization
17 request, or a prescription in which an additional dispensing
18 fee was charged.

19 "Pharmacy audit" means an audit conducted of any records of
20 a pharmacy for prescriptions or non-proprietary drugs
21 dispensed by a pharmacy to a covered individual.

22 "Pharmacy record" means any record stored electronically
23 or as a hard copy by a pharmacy that relates to the provision
24 of a prescription or pharmacy services or other component of
25 pharmacist care that is included in the practice of pharmacy.

26 (b) When conducting a pharmacy audit on behalf of a

1 pharmacy benefits manager, an auditing entity shall:

2 (1) not conduct an on-site audit of a pharmacy at any
3 time during the first 3 business days of a month;

4 (2) notify the pharmacy or its contracting agent no
5 later than 15 days before the date of initial on-site
6 audit; the notification to the pharmacy or its contracting
7 agent shall be in writing delivered either:

8 (A) by mail or common carrier, return receipt
9 requested; or

10 (B) electronically with electronic receipt
11 confirmation, addressed to the supervising pharmacist
12 of record and pharmacy corporate office, if
13 applicable, at least 15 days before the date of an
14 initial on-site audit;

15 (3) limit the audit period to 24 months after the date
16 a claim is submitted to or adjudicated by the pharmacy
17 benefits manager;

18 (4) include in the written advance notice of an on-site
19 audit the list of specific prescription numbers to be
20 included in the audit that may or may not include the final
21 2 digits of the prescription numbers;

22 (5) use the written and verifiable records of a
23 hospital, physician, or other authorized practitioner that
24 are transmitted by any means of communication to validate
25 the pharmacy records in accordance with State and federal
26 law;

1 (6) limit the number of prescriptions audited to no
2 more than 100 randomly selected in a 12-month period,
3 except in cases of fraud;

4 (7) provide the pharmacy or its contracting agent with
5 a copy of the preliminary audit report within 45 days after
6 the conclusion of the audit;

7 (8) be allowed to conduct a follow-up audit on-site if
8 a remote or desk audit reveals the necessity for a review
9 of additional claims;

10 (9) in the case of invoice audits, accept as validation
11 invoices from any wholesaler registered with the
12 Department of Financial and Professional Regulation from
13 which the pharmacy has purchased prescription drugs or, in
14 the case of durable medical equipment or sickroom supplies,
15 invoices from an authorized distributor other than a
16 wholesaler;

17 (10) provide the pharmacy or its contracting agent with
18 the ability to provide documentation to address a
19 discrepancy or audit finding; the documentation must be
20 received by the pharmacy benefits manager no later than the
21 45th day after the preliminary audit report was provided to
22 the pharmacy or its contracting agent; the pharmacy
23 benefits manager shall consider a reasonable request from
24 the pharmacy for an extension of time to submit
25 documentation to address or correct any findings in the
26 report;

1 (11) provide the pharmacy or its contracting agent with
2 the final audit report no later than 60 days after the
3 preliminary audit report was provided to the pharmacy or
4 its contracting agent unless an extension was granted
5 pursuant to paragraph (10), in which case the final audit
6 report is due 30 days after the expiration of the
7 extension; and

8 (12) conduct the audit in consultation with a
9 pharmacist if the audit involves clinical or professional
10 judgment.

11 (c) Except as otherwise provided by federal or State law,
12 an auditing entity conducting a pharmacy audit may have access
13 to a pharmacy's previous audit report only if the report was
14 prepared by that auditing entity.

15 (d) Information collected during a pharmacy audit shall be
16 confidential by law, except that the auditing entity conducting
17 the pharmacy audit may share the information with the covered
18 entity for which a pharmacy audit is being conducted and with
19 any regulatory agencies and law enforcement agencies as
20 required by law.

21 (e) A pharmacy may not be subject to a charge-back or
22 recoupment for a clerical or recordkeeping error in a required
23 document or record, including a typographical error or computer
24 error, unless the error resulted in overpayment to the
25 pharmacy.

26 (f) A pharmacy shall have the right to file a written

1 appeal of a preliminary and final pharmacy audit report in
2 accordance with the procedures established by the entity
3 conducting the pharmacy audit.

4 (g) An auditing entity conducting a pharmacy audit may not
5 charge-back, recoup, or collect penalties from a pharmacy until
6 the time period to file an appeal of the final pharmacy audit
7 report has passed or the appeals process has been exhausted,
8 whichever is later, unless the identified discrepancy is
9 expected to exceed \$25,000, in which case the auditing entity
10 may withhold future payments in excess of that amount until the
11 final resolution of the audit.

12 (h) No interest shall accrue for any party during the audit
13 period, beginning with the notice of the pharmacy audit and
14 ending with the conclusion of the appeals process.

15 (i) The auditing entity may not compensate the employee or
16 contractor conducting the audit based on a percentage of the
17 amount claimed or recouped pursuant to the audit.

18 (j) The auditing entity may not use extrapolation to
19 calculate penalties or amounts to be charged back or recouped
20 unless otherwise required by federal law or regulation. Any
21 amount to be charged back or recouped due to overpayment may
22 not exceed the amount the pharmacy was overpaid.

23 (k) The auditing entity may not include dispensing fees in
24 the calculation of overpayments unless a prescription is
25 considered a misfill.

26 (l) An auditing entity shall conduct a pharmacy audit under

1 the same standards and parameters as conducted for other
2 similarly situated pharmacies audited by the auditing entity.

3 (m) Any claim that was retroactively denied for a clerical
4 error, typographical error, scrivener's error, or computer
5 error shall be paid if the prescription was properly and
6 correctly dispensed, unless a pattern of such errors exists,
7 fraudulent billing is alleged, or the error results in actual
8 financial loss to the entity. A clerical error is an error that
9 does not result in actual financial harm to the covered entity
10 or consumer and does not include the dispensing of an incorrect
11 dose, amount or type of medication, or dispensing a
12 prescription drug to the wrong person.

13 (n) This Section does not apply to:

14 (1) audits in which suspected fraudulent activity or
15 other intentional or willful misrepresentation is
16 evidenced by a physical review, review of claims data or
17 statements, or other investigative methods; or

18 (2) concurrent reviews or desk audits that occur within
19 3 business days after transmission of a claim and where no
20 charge-back or recoupment is demanded.

21 Section 35. Rulemaking. No later than 90 days after the
22 effective date of this Act, the Department shall adopt rules
23 necessary to implement the provisions of this Act.

24 Section 90. The Freedom of Information Act is amended by

1 changing Section 7 as follows:

2 (5 ILCS 140/7) (from Ch. 116, par. 207)

3 Sec. 7. Exemptions.

4 (1) When a request is made to inspect or copy a public
5 record that contains information that is exempt from disclosure
6 under this Section, but also contains information that is not
7 exempt from disclosure, the public body may elect to redact the
8 information that is exempt. The public body shall make the
9 remaining information available for inspection and copying.
10 Subject to this requirement, the following shall be exempt from
11 inspection and copying:

12 (a) Information specifically prohibited from
13 disclosure by federal or State law or rules and regulations
14 implementing federal or State law.

15 (b) Private information, unless disclosure is required
16 by another provision of this Act, a State or federal law or
17 a court order.

18 (b-5) Files, documents, and other data or databases
19 maintained by one or more law enforcement agencies and
20 specifically designed to provide information to one or more
21 law enforcement agencies regarding the physical or mental
22 status of one or more individual subjects.

23 (c) Personal information contained within public
24 records, the disclosure of which would constitute a clearly
25 unwarranted invasion of personal privacy, unless the

1 disclosure is consented to in writing by the individual
2 subjects of the information. "Unwarranted invasion of
3 personal privacy" means the disclosure of information that
4 is highly personal or objectionable to a reasonable person
5 and in which the subject's right to privacy outweighs any
6 legitimate public interest in obtaining the information.
7 The disclosure of information that bears on the public
8 duties of public employees and officials shall not be
9 considered an invasion of personal privacy.

10 (d) Records in the possession of any public body
11 created in the course of administrative enforcement
12 proceedings, and any law enforcement or correctional
13 agency for law enforcement purposes, but only to the extent
14 that disclosure would:

15 (i) interfere with pending or actually and
16 reasonably contemplated law enforcement proceedings
17 conducted by any law enforcement or correctional
18 agency that is the recipient of the request;

19 (ii) interfere with active administrative
20 enforcement proceedings conducted by the public body
21 that is the recipient of the request;

22 (iii) create a substantial likelihood that a
23 person will be deprived of a fair trial or an impartial
24 hearing;

25 (iv) unavoidably disclose the identity of a
26 confidential source, confidential information

1 furnished only by the confidential source, or persons
2 who file complaints with or provide information to
3 administrative, investigative, law enforcement, or
4 penal agencies; except that the identities of
5 witnesses to traffic accidents, traffic accident
6 reports, and rescue reports shall be provided by
7 agencies of local government, except when disclosure
8 would interfere with an active criminal investigation
9 conducted by the agency that is the recipient of the
10 request;

11 (v) disclose unique or specialized investigative
12 techniques other than those generally used and known or
13 disclose internal documents of correctional agencies
14 related to detection, observation or investigation of
15 incidents of crime or misconduct, and disclosure would
16 result in demonstrable harm to the agency or public
17 body that is the recipient of the request;

18 (vi) endanger the life or physical safety of law
19 enforcement personnel or any other person; or

20 (vii) obstruct an ongoing criminal investigation
21 by the agency that is the recipient of the request.

22 (d-5) A law enforcement record created for law
23 enforcement purposes and contained in a shared electronic
24 record management system if the law enforcement agency that
25 is the recipient of the request did not create the record,
26 did not participate in or have a role in any of the events

1 which are the subject of the record, and only has access to
2 the record through the shared electronic record management
3 system.

4 (e) Records that relate to or affect the security of
5 correctional institutions and detention facilities.

6 (e-5) Records requested by persons committed to the
7 Department of Corrections or a county jail if those
8 materials are available in the library of the correctional
9 facility or jail where the inmate is confined.

10 (e-6) Records requested by persons committed to the
11 Department of Corrections or a county jail if those
12 materials include records from staff members' personnel
13 files, staff rosters, or other staffing assignment
14 information.

15 (e-7) Records requested by persons committed to the
16 Department of Corrections if those materials are available
17 through an administrative request to the Department of
18 Corrections.

19 (e-8) Records requested by a person committed to the
20 Department of Corrections or a county jail, the disclosure
21 of which would result in the risk of harm to any person or
22 the risk of an escape from a jail or correctional
23 institution or facility.

24 (e-9) Records requested by a person in a county jail or
25 committed to the Department of Corrections containing
26 personal information pertaining to the person's victim or

1 the victim's family, including, but not limited to, a
2 victim's home address, home telephone number, work or
3 school address, work telephone number, social security
4 number, or any other identifying information, except as may
5 be relevant to a requester's current or potential case or
6 claim.

7 (e-10) Law enforcement records of other persons
8 requested by a person committed to the Department of
9 Corrections or a county jail, including, but not limited
10 to, arrest and booking records, mug shots, and crime scene
11 photographs, except as these records may be relevant to the
12 requester's current or potential case or claim.

13 (f) Preliminary drafts, notes, recommendations,
14 memoranda and other records in which opinions are
15 expressed, or policies or actions are formulated, except
16 that a specific record or relevant portion of a record
17 shall not be exempt when the record is publicly cited and
18 identified by the head of the public body. The exemption
19 provided in this paragraph (f) extends to all those records
20 of officers and agencies of the General Assembly that
21 pertain to the preparation of legislative documents.

22 (g) Trade secrets and commercial or financial
23 information obtained from a person or business where the
24 trade secrets or commercial or financial information are
25 furnished under a claim that they are proprietary,
26 privileged or confidential, and that disclosure of the

1 trade secrets or commercial or financial information would
2 cause competitive harm to the person or business, and only
3 insofar as the claim directly applies to the records
4 requested.

5 The information included under this exemption includes
6 all trade secrets and commercial or financial information
7 obtained by a public body, including a public pension fund,
8 from a private equity fund or a privately held company
9 within the investment portfolio of a private equity fund as
10 a result of either investing or evaluating a potential
11 investment of public funds in a private equity fund. The
12 exemption contained in this item does not apply to the
13 aggregate financial performance information of a private
14 equity fund, nor to the identity of the fund's managers or
15 general partners. The exemption contained in this item does
16 not apply to the identity of a privately held company
17 within the investment portfolio of a private equity fund,
18 unless the disclosure of the identity of a privately held
19 company may cause competitive harm.

20 Nothing contained in this paragraph (g) shall be
21 construed to prevent a person or business from consenting
22 to disclosure.

23 (h) Proposals and bids for any contract, grant, or
24 agreement, including information which if it were
25 disclosed would frustrate procurement or give an advantage
26 to any person proposing to enter into a contractor

1 agreement with the body, until an award or final selection
2 is made. Information prepared by or for the body in
3 preparation of a bid solicitation shall be exempt until an
4 award or final selection is made.

5 (i) Valuable formulae, computer geographic systems,
6 designs, drawings and research data obtained or produced by
7 any public body when disclosure could reasonably be
8 expected to produce private gain or public loss. The
9 exemption for "computer geographic systems" provided in
10 this paragraph (i) does not extend to requests made by news
11 media as defined in Section 2 of this Act when the
12 requested information is not otherwise exempt and the only
13 purpose of the request is to access and disseminate
14 information regarding the health, safety, welfare, or
15 legal rights of the general public.

16 (j) The following information pertaining to
17 educational matters:

18 (i) test questions, scoring keys and other
19 examination data used to administer an academic
20 examination;

21 (ii) information received by a primary or
22 secondary school, college, or university under its
23 procedures for the evaluation of faculty members by
24 their academic peers;

25 (iii) information concerning a school or
26 university's adjudication of student disciplinary

1 cases, but only to the extent that disclosure would
2 unavoidably reveal the identity of the student; and

3 (iv) course materials or research materials used
4 by faculty members.

5 (k) Architects' plans, engineers' technical
6 submissions, and other construction related technical
7 documents for projects not constructed or developed in
8 whole or in part with public funds and the same for
9 projects constructed or developed with public funds,
10 including but not limited to power generating and
11 distribution stations and other transmission and
12 distribution facilities, water treatment facilities,
13 airport facilities, sport stadiums, convention centers,
14 and all government owned, operated, or occupied buildings,
15 but only to the extent that disclosure would compromise
16 security.

17 (l) Minutes of meetings of public bodies closed to the
18 public as provided in the Open Meetings Act until the
19 public body makes the minutes available to the public under
20 Section 2.06 of the Open Meetings Act.

21 (m) Communications between a public body and an
22 attorney or auditor representing the public body that would
23 not be subject to discovery in litigation, and materials
24 prepared or compiled by or for a public body in
25 anticipation of a criminal, civil or administrative
26 proceeding upon the request of an attorney advising the

1 public body, and materials prepared or compiled with
2 respect to internal audits of public bodies.

3 (n) Records relating to a public body's adjudication of
4 employee grievances or disciplinary cases; however, this
5 exemption shall not extend to the final outcome of cases in
6 which discipline is imposed.

7 (o) Administrative or technical information associated
8 with automated data processing operations, including but
9 not limited to software, operating protocols, computer
10 program abstracts, file layouts, source listings, object
11 modules, load modules, user guides, documentation
12 pertaining to all logical and physical design of
13 computerized systems, employee manuals, and any other
14 information that, if disclosed, would jeopardize the
15 security of the system or its data or the security of
16 materials exempt under this Section.

17 (p) Records relating to collective negotiating matters
18 between public bodies and their employees or
19 representatives, except that any final contract or
20 agreement shall be subject to inspection and copying.

21 (q) Test questions, scoring keys, and other
22 examination data used to determine the qualifications of an
23 applicant for a license or employment.

24 (r) The records, documents, and information relating
25 to real estate purchase negotiations until those
26 negotiations have been completed or otherwise terminated.

1 With regard to a parcel involved in a pending or actually
2 and reasonably contemplated eminent domain proceeding
3 under the Eminent Domain Act, records, documents and
4 information relating to that parcel shall be exempt except
5 as may be allowed under discovery rules adopted by the
6 Illinois Supreme Court. The records, documents and
7 information relating to a real estate sale shall be exempt
8 until a sale is consummated.

9 (s) Any and all proprietary information and records
10 related to the operation of an intergovernmental risk
11 management association or self-insurance pool or jointly
12 self-administered health and accident cooperative or pool.
13 Insurance or self insurance (including any
14 intergovernmental risk management association or self
15 insurance pool) claims, loss or risk management
16 information, records, data, advice or communications.

17 (t) Information contained in or related to
18 examination, operating, or condition reports prepared by,
19 on behalf of, or for the use of a public body responsible
20 for the regulation or supervision of financial
21 institutions or insurance companies, unless disclosure is
22 otherwise required by State law.

23 (u) Information that would disclose or might lead to
24 the disclosure of secret or confidential information,
25 codes, algorithms, programs, or private keys intended to be
26 used to create electronic or digital signatures under the

1 Electronic Commerce Security Act.

2 (v) Vulnerability assessments, security measures, and
3 response policies or plans that are designed to identify,
4 prevent, or respond to potential attacks upon a community's
5 population or systems, facilities, or installations, the
6 destruction or contamination of which would constitute a
7 clear and present danger to the health or safety of the
8 community, but only to the extent that disclosure could
9 reasonably be expected to jeopardize the effectiveness of
10 the measures or the safety of the personnel who implement
11 them or the public. Information exempt under this item may
12 include such things as details pertaining to the
13 mobilization or deployment of personnel or equipment, to
14 the operation of communication systems or protocols, or to
15 tactical operations.

16 (w) (Blank).

17 (x) Maps and other records regarding the location or
18 security of generation, transmission, distribution,
19 storage, gathering, treatment, or switching facilities
20 owned by a utility, by a power generator, or by the
21 Illinois Power Agency.

22 (y) Information contained in or related to proposals,
23 bids, or negotiations related to electric power
24 procurement under Section 1-75 of the Illinois Power Agency
25 Act and Section 16-111.5 of the Public Utilities Act that
26 is determined to be confidential and proprietary by the

1 Illinois Power Agency or by the Illinois Commerce
2 Commission.

3 (z) Information about students exempted from
4 disclosure under Sections 10-20.38 or 34-18.29 of the
5 School Code, and information about undergraduate students
6 enrolled at an institution of higher education exempted
7 from disclosure under Section 25 of the Illinois Credit
8 Card Marketing Act of 2009.

9 (aa) Information the disclosure of which is exempted
10 under the Viatical Settlements Act of 2009.

11 (bb) Records and information provided to a mortality
12 review team and records maintained by a mortality review
13 team appointed under the Department of Juvenile Justice
14 Mortality Review Team Act.

15 (cc) Information regarding interments, entombments, or
16 inurnments of human remains that are submitted to the
17 Cemetery Oversight Database under the Cemetery Care Act or
18 the Cemetery Oversight Act, whichever is applicable.

19 (dd) Correspondence and records (i) that may not be
20 disclosed under Section 11-9 of the Illinois Public Aid
21 Code or (ii) that pertain to appeals under Section 11-8 of
22 the Illinois Public Aid Code.

23 (ee) The names, addresses, or other personal
24 information of persons who are minors and are also
25 participants and registrants in programs of park
26 districts, forest preserve districts, conservation

1 districts, recreation agencies, and special recreation
2 associations.

3 (ff) The names, addresses, or other personal
4 information of participants and registrants in programs of
5 park districts, forest preserve districts, conservation
6 districts, recreation agencies, and special recreation
7 associations where such programs are targeted primarily to
8 minors.

9 (gg) Confidential information described in Section
10 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

11 (hh) The report submitted to the State Board of
12 Education by the School Security and Standards Task Force
13 under item (8) of subsection (d) of Section 2-3.160 of the
14 School Code and any information contained in that report.

15 (ii) Records requested by persons committed to or
16 detained by the Department of Human Services under the
17 Sexually Violent Persons Commitment Act or committed to the
18 Department of Corrections under the Sexually Dangerous
19 Persons Act if those materials: (i) are available in the
20 library of the facility where the individual is confined;
21 (ii) include records from staff members' personnel files,
22 staff rosters, or other staffing assignment information;
23 or (iii) are available through an administrative request to
24 the Department of Human Services or the Department of
25 Corrections.

26 (jj) Confidential information described in Section

1 5-535 of the Civil Administrative Code of Illinois.

2 (kk) Information described in Section 20 of the
3 Pharmacy Benefits Manager Licensing Act.

4 (1.5) Any information exempt from disclosure under the
5 Judicial Privacy Act shall be redacted from public records
6 prior to disclosure under this Act.

7 (2) A public record that is not in the possession of a
8 public body but is in the possession of a party with whom the
9 agency has contracted to perform a governmental function on
10 behalf of the public body, and that directly relates to the
11 governmental function and is not otherwise exempt under this
12 Act, shall be considered a public record of the public body,
13 for purposes of this Act.

14 (3) This Section does not authorize withholding of
15 information or limit the availability of records to the public,
16 except as stated in this Section or otherwise provided in this
17 Act.

18 (Source: P.A. 99-298, eff. 8-6-15; 99-346, eff. 1-1-16; 99-642,
19 eff. 7-28-16; 100-26, eff. 8-4-17; 100-201, eff. 8-18-17.)

20 Section 99. Effective date. This Act takes effect January
21 1, 2019."