

1 AN ACT in relation to health.

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

4 Section 1. Short title. This Act may be cited as the
5 Mental Health Drug Open Access Authorization Act.

6 Section 5. Legislative findings; purpose.

7 (a) The General Assembly finds as follows:

8 (1) Recipients of medical assistance under the
9 Illinois Public Aid Code are often the State's most
10 disadvantaged citizens, burdened with significant
11 medical, financial, and social needs. Those recipients
12 benefit from an integrated approach to health care with
13 open and continuous access to physician-prescribed
14 medications.

15 (2) Mental health patients, including, but not
16 limited to, patients with severe mental illnesses such as
17 schizophrenia, bipolar disorder (manic-depressive
18 illness), or depression, require individually tailored
19 treatments determined by an appropriately trained health
20 care provider.

21 (3) Medications for mental illness are not the
22 same; medications can vary greatly in effectiveness in
23 treating specific symptoms or disorders or in their side
24 effects. Patient needs vary greatly, and not all patients
25 respond in the same way to a given treatment.

26 (4) There is ample evidence that new medications
27 offer therapeutic advantages over older medications.
28 These new medications can cost more but can also be
29 better for patients.

30 (5) The determination of the most appropriate
31 medication for a particular patient with a mental illness

1 should be made on the basis of patient acceptability,
2 prior individual drug response, individual side-effect
3 profile, and long-term treatment planning, and should not
4 be made on the basis of cost.

5 (6) As the direct caregiver, a patient's physician
6 should determine the most appropriate treatment.

7 (b) The purpose of this Act is to ensure that recipients
8 of medical assistance under the Illinois Public Aid Code, and
9 other similarly situated patients, who need treatment for
10 mental illness have open and continuous access to the
11 medications deemed appropriate by their physicians.

12 Section 10. Definitions. In this Act:

13 "Cross-indicated" means that a drug is used for a purpose
14 generally held to be reasonable, appropriate, and within the
15 community standards of practice even though that use is not
16 included in the federal Food and Drug Administration's
17 approved label indications for the drug.

18 "Department" means the following:

19 (1) In the case of the Children's Health Insurance
20 Program under the Children's Health Insurance Program Act
21 or the medial assistance program under the Illinois
22 Public Aid Code: the Department of Public Aid.

23 (2) In the case of the program of pharmaceutical
24 assistance under the Senior Citizens and Disabled Persons
25 Property Tax Relief and Pharmaceutical Assistance Act:
26 the Department of Revenue.

27 (3) In the case of any other State prescription
28 drug assistance program: the State agency that
29 administers that program.

30 "Mental illness" has the meaning ascribed to that term in
31 the most recent edition of the Diagnostic and Statistical
32 Manual of Mental Disorders, published by the American
33 Psychiatric Association.

1 "Prior authorization" means a procedure by which the
2 prescriber or dispenser of a drug must verify with the
3 Department or its contractor that the proposed medical use of
4 that drug for a patient meets predetermined criteria for
5 coverage under a program described in Section 15.

6 Section 15. Affected programs. This Act applies to the
7 following programs:

8 (1) The Children's Health Insurance Program under
9 the Children's Health Insurance Program Act.

10 (2) The medial assistance program under Article V
11 of the Illinois Public Aid Code, as well as medical
12 assistance provided to recipients of General Assistance
13 under Article VI of that Code.

14 (3) The program of pharmaceutical assistance under
15 the Senior Citizens and Disabled Persons Property Tax
16 Relief and Pharmaceutical Assistance Act.

17 (4) Any other State prescription drug assistance
18 program.

19 Section 20. Prior authorization of mental health drugs
20 prohibited. The Department may not use or require the use of
21 a prior authorization procedure in connection with the
22 dispensing of a prescription drug, or reimbursement for the
23 dispensing of a drug, that meets either of the following
24 criteria:

25 (1) According to the most recent edition of the AMA
26 Drug Evaluations or the Physician's Desk Reference, the
27 drug is:

28 (A) classified as an anti-anxiety,
29 antidepressant, or antipsychotic central nervous
30 system drug; or

31 (B) cross-indicated for a central nervous
32 system drug classification.

1 (2) The drug is prescribed for the treatment of
2 mental illness.

3 Section 90. The Children's Health Insurance Program Act
4 is amended by adding Section 27 as follows:

5 (215 ILCS 106/27 new)

6 Sec. 27. Prior authorization of mental health drugs
7 prohibited. Health benefits coverage provided to eligible
8 children under this Act is subject to the Mental Health Drug
9 Open Access Authorization Act.

10 Section 93. The Illinois Public Aid Code is amended by
11 changing Sections 5-5.12 and 6-11 as follows:

12 (305 ILCS 5/5-5.12) (from Ch. 23, par. 5-5.12)

13 Sec. 5-5.12. Pharmacy payments.

14 (a) Every request submitted by a pharmacy for
15 reimbursement under this Article for prescription drugs
16 provided to a recipient of aid under this Article shall
17 include the name of the prescriber or an acceptable
18 identification number as established by the Department.

19 (b) Pharmacies providing prescription drugs under this
20 Article shall be reimbursed at a rate which shall include a
21 professional dispensing fee as determined by the Illinois
22 Department, plus the current acquisition cost of the
23 prescription drug dispensed. The Illinois Department shall
24 update its information on the acquisition costs of all
25 prescription drugs no less frequently than every 30 days.
26 However, the Illinois Department may set the rate of
27 reimbursement for the acquisition cost, by rule, at a
28 percentage of the current average wholesale acquisition cost.

29 (c) Reimbursement under this Article for prescription
30 drugs shall be limited to reimbursement for 4 brand-name

1 prescription drugs per patient per month. This subsection
2 applies only if (i) the brand-name drug was not prescribed
3 for an acute or urgent condition, (ii) the brand-name drug
4 was not prescribed for Alzheimer's disease, arthritis,
5 diabetes, HIV/AIDS, a mental health condition, or respiratory
6 disease, and (iii) a therapeutically equivalent generic
7 medication has been approved by the federal Food and Drug
8 Administration.

9 (d) The Department shall not impose requirements for
10 prior approval based on a preferred drug list for
11 anti-retroviral or any atypical antipsychotics, conventional
12 antipsychotics, or anticonvulsants used for the treatment of
13 serious mental illnesses until 30 days after it has conducted
14 a study of the impact of such requirements on patient care
15 and submitted a report to the Speaker of the House of
16 Representatives and the President of the Senate. In the case
17 of a conflict between this subsection and the Mental Health
18 Drug Open Access Authorization Act, the Mental Health Drug
19 Open Access Authorization Act controls.

20 (Source: P.A. 92-597, eff. 6-28-02; 92-825, eff. 8-21-02;
21 revised 9-19-02.)

22 (305 ILCS 5/6-11) (from Ch. 23, par. 6-11)

23 Sec. 6-11. State funded General Assistance.

24 (a) Effective July 1, 1992, all State funded General
25 Assistance and related medical benefits shall be governed by
26 this Section. Other parts of this Code or other laws related
27 to General Assistance shall remain in effect to the extent
28 they do not conflict with the provisions of this Section. If
29 any other part of this Code or other laws of this State
30 conflict with the provisions of this Section, the provisions
31 of this Section shall control.

32 (b) State funded General Assistance shall consist of 2
33 separate programs. One program shall be for adults with no

1 children and shall be known as State Transitional Assistance.
2 The other program shall be for families with children and for
3 pregnant women and shall be known as State Family and
4 Children Assistance.

5 (c) (1) To be eligible for State Transitional Assistance
6 on or after July 1, 1992, an individual must be ineligible
7 for assistance under any other Article of this Code, must be
8 determined chronically needy, and must be one of the
9 following:

10 (A) age 18 or over or

11 (B) married and living with a spouse, regardless of
12 age.

13 (2) The Illinois Department or the local governmental
14 unit shall determine whether individuals are chronically
15 needy as follows:

16 (A) Individuals who have applied for Supplemental
17 Security Income (SSI) and are awaiting a decision on
18 eligibility for SSI who are determined disabled by the
19 Illinois Department using the SSI standard shall be
20 considered chronically needy, except that individuals
21 whose disability is based solely on substance addictions
22 (drug abuse and alcoholism) and whose disability would
23 cease were their addictions to end shall be eligible only
24 for medical assistance and shall not be eligible for cash
25 assistance under the State Transitional Assistance
26 program.

27 (B) If an individual has been denied SSI due to a
28 finding of "not disabled" (either at the Administrative
29 Law Judge level or above, or at a lower level if that
30 determination was not appealed), the Illinois Department
31 shall adopt that finding and the individual shall not be
32 eligible for State Transitional Assistance or any related
33 medical benefits. Such an individual may not be
34 determined disabled by the Illinois Department for a

1 period of 12 months, unless the individual shows that
2 there has been a substantial change in his or her medical
3 condition or that there has been a substantial change in
4 other factors, such as age or work experience, that might
5 change the determination of disability.

6 (C) The Illinois Department, by rule, may specify
7 other categories of individuals as chronically needy;
8 nothing in this Section, however, shall be deemed to
9 require the inclusion of any specific category other than
10 as specified in paragraphs (A) and (B).

11 (3) For individuals in State Transitional Assistance,
12 medical assistance shall be provided in an amount and nature
13 determined by the Illinois Department of Public Aid by rule.
14 The amount and nature of medical assistance provided need not
15 be the same as that provided under paragraph (4) of
16 subsection (d) of this Section, and nothing in this paragraph
17 (3) shall be construed to require the coverage of any
18 particular medical service. In addition, the amount and
19 nature of medical assistance provided may be different for
20 different categories of individuals determined chronically
21 needy.

22 (4) The Illinois Department shall determine, by rule,
23 those assistance recipients under Article VI who shall be
24 subject to employment, training, or education programs
25 including Earnfare, the content of those programs, and the
26 penalties for failure to cooperate in those programs.

27 (5) The Illinois Department shall, by rule, establish
28 further eligibility requirements, including but not limited
29 to residence, need, and the level of payments.

30 (d) (1) To be eligible for State Family and Children
31 Assistance, a family unit must be ineligible for assistance
32 under any other Article of this Code and must contain a child
33 who is:

34 (A) under age 18 or

1 (B) age 18 and a full-time student in a secondary
2 school or the equivalent level of vocational or technical
3 training, and who may reasonably be expected to complete
4 the program before reaching age 19.

5 Those children shall be eligible for State Family and
6 Children Assistance.

7 (2) The natural or adoptive parents of the child living
8 in the same household may be eligible for State Family and
9 Children Assistance.

10 (3) A pregnant woman whose pregnancy has been verified
11 shall be eligible for income maintenance assistance under the
12 State Family and Children Assistance program.

13 (4) The amount and nature of medical assistance provided
14 under the State Family and Children Assistance program shall
15 be determined by the Illinois Department of Public Aid by
16 rule. The amount and nature of medical assistance provided
17 need not be the same as that provided under paragraph (3) of
18 subsection (c) of this Section, and nothing in this paragraph
19 (4) shall be construed to require the coverage of any
20 particular medical service.

21 (5) The Illinois Department shall, by rule, establish
22 further eligibility requirements, including but not limited
23 to residence, need, and the level of payments.

24 (d-5) Medical assistance benefits provided to eligible
25 recipients under this Section are subject to the Mental
26 Health Drug Open Access Authorization Act.

27 (e) A local governmental unit that chooses to
28 participate in a General Assistance program under this
29 Section shall provide funding in accordance with Section
30 12-21.13 of this Act. Local governmental funds used to
31 qualify for State funding may only be expended for clients
32 eligible for assistance under this Section 6-11 and related
33 administrative expenses.

34 (f) In order to qualify for State funding under this

1 Section, a local governmental unit shall be subject to the
2 supervision and the rules and regulations of the Illinois
3 Department.

4 (g) Notwithstanding any other provision in this Code,
5 the Illinois Department is authorized to reduce payment
6 levels used to determine cash grants provided to recipients
7 of State Transitional Assistance at any time within a Fiscal
8 Year in order to ensure that cash benefits for State
9 Transitional Assistance do not exceed the amounts
10 appropriated for those cash benefits. Changes in payment
11 levels may be accomplished by emergency rule under Section
12 5-45 of the Illinois Administrative Procedure Act, except
13 that the limitation on the number of emergency rules that may
14 be adopted in a 24-month period shall not apply and the
15 provisions of Sections 5-115 and 5-125 of the Illinois
16 Administrative Procedure Act shall not apply. This provision
17 shall also be applicable to any reduction in payment levels
18 made upon implementation of this amendatory Act of 1995.

19 (Source: P.A. 92-111, eff. 1-1-02.)

20 Section 95. The Senior Citizens and Disabled Persons
21 Property Tax Relief and Pharmaceutical Assistance Act is
22 amended by changing Section 4 as follows:

23 (320 ILCS 25/4) (from Ch. 67 1/2, par. 404)

24 Sec. 4. Amount of Grant.

25 (a) In general. Any individual 65 years or older or any
26 individual who will become 65 years old during the calendar
27 year in which a claim is filed, and any surviving spouse of
28 such a claimant, who at the time of death received or was
29 entitled to receive a grant pursuant to this Section, which
30 surviving spouse will become 65 years of age within the 24
31 months immediately following the death of such claimant and
32 which surviving spouse but for his or her age is otherwise

1 qualified to receive a grant pursuant to this Section, and
2 any disabled person whose annual household income is less
3 than \$14,000 for grant years before the 1998 grant year, less
4 than \$16,000 for the 1998 and 1999 grant years, and less than
5 (i) \$21,218 for a household containing one person, (ii)
6 \$28,480 for a household containing 2 persons, or (iii)
7 \$35,740 for a household containing 3 or more persons for the
8 2000 grant year and thereafter and whose household is liable
9 for payment of property taxes accrued or has paid rent
10 constituting property taxes accrued and is domiciled in this
11 State at the time he or she files his or her claim is
12 entitled to claim a grant under this Act. With respect to
13 claims filed by individuals who will become 65 years old
14 during the calendar year in which a claim is filed, the
15 amount of any grant to which that household is entitled shall
16 be an amount equal to 1/12 of the amount to which the
17 claimant would otherwise be entitled as provided in this
18 Section, multiplied by the number of months in which the
19 claimant was 65 in the calendar year in which the claim is
20 filed.

21 (b) Limitation. Except as otherwise provided in
22 subsections (a) and (f) of this Section, the maximum amount
23 of grant which a claimant is entitled to claim is the amount
24 by which the property taxes accrued which were paid or
25 payable during the last preceding tax year or rent
26 constituting property taxes accrued upon the claimant's
27 residence for the last preceding taxable year exceeds 3 1/2%
28 of the claimant's household income for that year but in no
29 event is the grant to exceed (i) \$700 less 4.5% of household
30 income for that year for those with a household income of
31 \$14,000 or less or (ii) \$70 if household income for that year
32 is more than \$14,000.

33 (c) Public aid recipients. If household income in one
34 or more months during a year includes cash assistance in

1 excess of \$55 per month from the Department of Public Aid or
2 the Department of Human Services (acting as successor to the
3 Department of Public Aid under the Department of Human
4 Services Act) which was determined under regulations of that
5 Department on a measure of need that included an allowance
6 for actual rent or property taxes paid by the recipient of
7 that assistance, the amount of grant to which that household
8 is entitled, except as otherwise provided in subsection (a),
9 shall be the product of (1) the maximum amount computed as
10 specified in subsection (b) of this Section and (2) the ratio
11 of the number of months in which household income did not
12 include such cash assistance over \$55 to the number twelve.
13 If household income did not include such cash assistance over
14 \$55 for any months during the year, the amount of the grant
15 to which the household is entitled shall be the maximum
16 amount computed as specified in subsection (b) of this
17 Section. For purposes of this paragraph (c), "cash
18 assistance" does not include any amount received under the
19 federal Supplemental Security Income (SSI) program.

20 (d) Joint ownership. If title to the residence is held
21 jointly by the claimant with a person who is not a member of
22 his or her household, the amount of property taxes accrued
23 used in computing the amount of grant to which he or she is
24 entitled shall be the same percentage of property taxes
25 accrued as is the percentage of ownership held by the
26 claimant in the residence.

27 (e) More than one residence. If a claimant has occupied
28 more than one residence in the taxable year, he or she may
29 claim only one residence for any part of a month. In the
30 case of property taxes accrued, he or she shall prorate $1/12$
31 of the total property taxes accrued on his or her residence
32 to each month that he or she owned and occupied that
33 residence; and, in the case of rent constituting property
34 taxes accrued, shall prorate each month's rent payments to

1 the residence actually occupied during that month.

2 (f) There is hereby established a program of
3 pharmaceutical assistance to the aged and disabled which
4 shall be administered by the Department in accordance with
5 this Act, to consist of payments to authorized pharmacies, on
6 behalf of beneficiaries of the program, for the reasonable
7 costs of covered prescription drugs. Each beneficiary who
8 pays \$5 for an identification card shall pay no additional
9 prescription costs. Each beneficiary who pays \$25 for an
10 identification card shall pay \$3 per prescription. In
11 addition, after a beneficiary receives \$2,000 in benefits
12 during a State fiscal year, that beneficiary shall also be
13 charged 20% of the cost of each prescription for which
14 payments are made by the program during the remainder of the
15 fiscal year. To become a beneficiary under this program a
16 person must: (1) be (i) 65 years of age or older, or (ii) the
17 surviving spouse of such a claimant, who at the time of death
18 received or was entitled to receive benefits pursuant to this
19 subsection, which surviving spouse will become 65 years of
20 age within the 24 months immediately following the death of
21 such claimant and which surviving spouse but for his or her
22 age is otherwise qualified to receive benefits pursuant to
23 this subsection, or (iii) disabled, and (2) be domiciled in
24 this State at the time he or she files his or her claim, and
25 (3) have a maximum household income of less than \$14,000 for
26 grant years before the 1998 grant year, less than \$16,000 for
27 the 1998 and 1999 grant years, and less than (i) \$21,218 for
28 a household containing one person, (ii) \$28,480 for a
29 household containing 2 persons, or (iii) \$35,740 for a
30 household containing 3 more persons for the 2000 grant year
31 and thereafter. In addition, each eligible person must (1)
32 obtain an identification card from the Department, (2) at the
33 time the card is obtained, sign a statement assigning to the
34 State of Illinois benefits which may be otherwise claimed

1 under any private insurance plans, and (3) present the
2 identification card to the dispensing pharmacist.

3 Whenever a generic equivalent for a covered prescription
4 drug is available, the Department shall reimburse only for
5 the reasonable costs of the generic equivalent, less the
6 co-pay established in this Section, unless (i) the covered
7 prescription drug contains one or more ingredients defined as
8 a narrow therapeutic index drug at 21 CFR 320.33, (ii) the
9 prescriber indicates on the face of the prescription "brand
10 medically necessary", and (iii) the prescriber specifies that
11 a substitution is not permitted. When issuing an oral
12 prescription for covered prescription medication described in
13 item (i) of this paragraph, the prescriber shall stipulate
14 "brand medically necessary" and that a substitution is not
15 permitted. If the covered prescription drug and its
16 authorizing prescription do not meet the criteria listed
17 above, the beneficiary may purchase the non-generic
18 equivalent of the covered prescription drug by paying the
19 difference between the generic cost and the non-generic cost
20 plus the beneficiary co-pay.

21 Pharmaceutical assistance benefits provided to eligible
22 persons under this Act are subject to the Mental Health Drug
23 Open Access Authorization Act.

24 Any person otherwise eligible for pharmaceutical
25 assistance under this Act whose covered drugs are covered by
26 any public program for assistance in purchasing any covered
27 prescription drugs shall be ineligible for assistance under
28 this Act to the extent such costs are covered by such other
29 plan.

30 The fee to be charged by the Department for the
31 identification card shall be equal to \$5 per coverage year
32 for persons below the official poverty line as defined by the
33 United States Department of Health and Human Services and \$25
34 per coverage year for all other persons.

1 In the event that 2 or more persons are eligible for any
2 benefit under this Act, and are members of the same
3 household, (1) each such person shall be entitled to
4 participate in the pharmaceutical assistance program,
5 provided that he or she meets all other requirements imposed
6 by this subsection and (2) each participating household
7 member contributes the fee required for that person by the
8 preceding paragraph for the purpose of obtaining an
9 identification card.

10 (Source: P.A. 91-357, eff. 7-29-99; 91-699, eff. 1-1-01;
11 92-131, eff. 7-23-01; 92-519, eff. 1-1-02; 92-651, eff.
12 7-11-02.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.