AN ACT in relation to public aid.

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

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

(305 ILCS 5/5-23 new)

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

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

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

(305 ILCS 5/5-23.5 new)

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

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

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

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

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

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

(305 ILCS 5/5-23.10 new)

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

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

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

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

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

(305 ILCS 5/5-23.15 new)

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

(305 ILCS 5/5-23.20 new)

Sec. 5-23.20. Prior authorization.

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

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

(c) The Medicaid Pharmaceutical and Therapeutics

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

(305 ILCS 5/5-23.25 new)

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

(305 ILCS 5/5-23.30 new)

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

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

outside agency or contractor to conduct negotiations for supplemental rebates.

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

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

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

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

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

vendors in the State.

(305 ILCS 5/5-23.35 new)

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

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

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

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

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

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

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

(305 ILCS 5/5-23.40 new)

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

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

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

(305 ILCS 5/5-23.45 new)

Sec. 5-23.45. Advisory committee; institutionalized

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

(305 ILCS 5/5-23.50 new)

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

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