

**102ND GENERAL ASSEMBLY****State of Illinois****2021 and 2022****SB3729**

Introduced 1/21/2022, by Sen. Mattie Hunter and Sara Feigenholtz

**SYNOPSIS AS INTRODUCED:**

See Index

Amends the Illinois Insurance Code. Provides that a contract between a pharmacy benefit manager or third-party payer and a covered entity under Section 340B of the federal Public Health Service Act shall not contain specified provisions. Provides that a violation by a pharmacy benefit manager constitutes an unfair or deceptive act or practice in the business of insurance, and that a provision that violates the prohibition on certain provisions in a contract between a pharmacy benefit manager or a third-party payer and a 340B covered entity that is entered into, amended, or renewed after July 1, 2022 shall be void and unenforceable. Defines terms. Amends the Illinois Public Aid Code. In provisions concerning pharmacy payments, provides that no later than January 1, 2023, the Department of Healthcare and Family Services shall implement a mechanism for entities participating in the federal drug pricing program and their contracted pharmacies to submit quarterly retrospective utilization files containing the minimum fields necessary to accurately identify the drugs to the Department or its contractor for processing Medicaid drug rebate requests to Medicaid beneficiaries or Medicaid managed care organization enrollees. Provides that the Department or its contractor shall use the utilization files to remove 340B claims from the Department's Medicaid drug rebate requests and that the Department shall not require the entities or their contracted pharmacies to use any other method or billing code to identify 340B drugs billed to Medicaid or Medicaid managed care organizations. In provisions concerning pharmacy benefits, provides that a Medicaid managed care organization or pharmacy benefit manager administering or managing benefits on behalf of a Medicaid managed organization shall not include specified provisions in a contract with a covered entity or with any pharmacy owned by or contracted with the covered entity. Provides that a violation by a Medicaid managed care organization or its pharmacy benefit manager constitutes an unfair or deceptive act or practice in the business of insurance, and that a provision that violates the prohibition on certain provisions in a contract between a Medicaid managed care organization or its pharmacy benefit manager and a 340B covered entity entered into, amended, or renewed after July 1, 2022 shall be void and unenforceable. Effective July 1, 2022.

LRB102 24376 BMS 33610 b

**A BILL FOR**

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 424 and 513b1 as follows:

6 (215 ILCS 5/424) (from Ch. 73, par. 1031)

7 Sec. 424. Unfair methods of competition and unfair or  
8 deceptive acts or practices defined. The following are hereby  
9 defined as unfair methods of competition and unfair and  
10 deceptive acts or practices in the business of insurance:

11 (1) The commission by any person of any one or more of  
12 the acts defined or prohibited by Sections 134, 143.24c,  
13 147, 148, 149, 151, 155.22, 155.22a, 155.42, 236, 237,  
14 364, ~~and 469,~~ and 513b1 of this Code.

15 (2) Entering into any agreement to commit, or by any  
16 concerted action committing, any act of boycott, coercion  
17 or intimidation resulting in or tending to result in  
18 unreasonable restraint of, or monopoly in, the business of  
19 insurance.

20 (3) Making or permitting, in the case of insurance of  
21 the types enumerated in Classes 1, 2, and 3 of Section 4,  
22 any unfair discrimination between individuals or risks of  
23 the same class or of essentially the same hazard and

1 expense element because of the race, color, religion, or  
2 national origin of such insurance risks or applicants. The  
3 application of this Article to the types of insurance  
4 enumerated in Class 1 of Section 4 shall in no way limit,  
5 reduce, or impair the protections and remedies already  
6 provided for by Sections 236 and 364 of this Code or any  
7 other provision of this Code.

8 (4) Engaging in any of the acts or practices defined  
9 in or prohibited by Sections 154.5 through 154.8 of this  
10 Code.

11 (5) Making or charging any rate for insurance against  
12 losses arising from the use or ownership of a motor  
13 vehicle which requires a higher premium of any person by  
14 reason of his physical disability, race, color, religion,  
15 or national origin.

16 (6) Failing to meet any requirement of the Unclaimed  
17 Life Insurance Benefits Act with such frequency as to  
18 constitute a general business practice.

19 (7) Committing any act prohibited by subsection (h-5)  
20 of Section 5-36 of the Illinois Public Aid Code.

21 (Source: P.A. 99-143, eff. 7-27-15; 99-893, eff. 1-1-17.)

22 (215 ILCS 5/513b1)

23 Sec. 513b1. Pharmacy benefit manager contracts.

24 (a) As used in this Section:

25 "340B covered entity" means an entity authorized to

1 participate in the 340B drug discount program, including any  
2 pharmacy owned, operated by, or under contract with the entity  
3 to dispense drugs on behalf of the entity.

4 "340B drug discount program" means the program established  
5 under Section 340B of the federal Public Health Service Act,  
6 42 U.S.C. 256b.

7 "Biological product" has the meaning ascribed to that term  
8 in Section 19.5 of the Pharmacy Practice Act.

9 "Maximum allowable cost" means the maximum amount that a  
10 pharmacy benefit manager will reimburse a pharmacy for the  
11 cost of a drug.

12 "Maximum allowable cost list" means a list of drugs for  
13 which a maximum allowable cost has been established by a  
14 pharmacy benefit manager.

15 "Pharmacy benefit manager" means a person, business, or  
16 entity, including a wholly or partially owned or controlled  
17 subsidiary of a pharmacy benefit manager, that provides claims  
18 processing services or other prescription drug or device  
19 services, or both, for health benefit plans.

20 "Retail price" means the price an individual without  
21 prescription drug coverage would pay at a retail pharmacy, not  
22 including a pharmacist dispensing fee.

23 "Third-party payer" means any entity that pays for  
24 prescription drugs on behalf of a patient other than a health  
25 care provider or sponsor of a plan subject to regulation under  
26 Medicare Part D, 42 U.S.C. 1395w-101, et seq.

1 (b) A contract between a health insurer and a pharmacy  
2 benefit manager must require that the pharmacy benefit  
3 manager:

4 (1) Update maximum allowable cost pricing information  
5 at least every 7 calendar days.

6 (2) Maintain a process that will, in a timely manner,  
7 eliminate drugs from maximum allowable cost lists or  
8 modify drug prices to remain consistent with changes in  
9 pricing data used in formulating maximum allowable cost  
10 prices and product availability.

11 (3) Provide access to its maximum allowable cost list  
12 to each pharmacy or pharmacy services administrative  
13 organization subject to the maximum allowable cost list.  
14 Access may include a real-time pharmacy website portal to  
15 be able to view the maximum allowable cost list. As used in  
16 this Section, "pharmacy services administrative  
17 organization" means an entity operating within the State  
18 that contracts with independent pharmacies to conduct  
19 business on their behalf with third-party payers. A  
20 pharmacy services administrative organization may provide  
21 administrative services to pharmacies and negotiate and  
22 enter into contracts with third-party payers or pharmacy  
23 benefit managers on behalf of pharmacies.

24 (4) Provide a process by which a contracted pharmacy  
25 can appeal the provider's reimbursement for a drug subject  
26 to maximum allowable cost pricing. The appeals process

1 must, at a minimum, include the following:

2 (A) A requirement that a contracted pharmacy has  
3 14 calendar days after the applicable fill date to  
4 appeal a maximum allowable cost if the reimbursement  
5 for the drug is less than the net amount that the  
6 network provider paid to the supplier of the drug.

7 (B) A requirement that a pharmacy benefit manager  
8 must respond to a challenge within 14 calendar days of  
9 the contracted pharmacy making the claim for which the  
10 appeal has been submitted.

11 (C) A telephone number and e-mail address or  
12 website to network providers, at which the provider  
13 can contact the pharmacy benefit manager to process  
14 and submit an appeal.

15 (D) A requirement that, if an appeal is denied,  
16 the pharmacy benefit manager must provide the reason  
17 for the denial and the name and the national drug code  
18 number from national or regional wholesalers.

19 (E) A requirement that, if an appeal is sustained,  
20 the pharmacy benefit manager must make an adjustment  
21 in the drug price effective the date the challenge is  
22 resolved and make the adjustment applicable to all  
23 similarly situated network pharmacy providers, as  
24 determined by the managed care organization or  
25 pharmacy benefit manager.

26 (5) Allow a plan sponsor contracting with a pharmacy

1 benefit manager an annual right to audit compliance with  
2 the terms of the contract by the pharmacy benefit manager,  
3 including, but not limited to, full disclosure of any and  
4 all rebate amounts secured, whether product specific or  
5 generalized rebates, that were provided to the pharmacy  
6 benefit manager by a pharmaceutical manufacturer.

7 (6) Allow a plan sponsor contracting with a pharmacy  
8 benefit manager to request that the pharmacy benefit  
9 manager disclose the actual amounts paid by the pharmacy  
10 benefit manager to the pharmacy.

11 (7) Provide notice to the party contracting with the  
12 pharmacy benefit manager of any consideration that the  
13 pharmacy benefit manager receives from the manufacturer  
14 for dispense as written prescriptions once a generic or  
15 biologically similar product becomes available.

16 (c) In order to place a particular prescription drug on a  
17 maximum allowable cost list, the pharmacy benefit manager  
18 must, at a minimum, ensure that:

19 (1) if the drug is a generically equivalent drug, it  
20 is listed as therapeutically equivalent and  
21 pharmaceutically equivalent "A" or "B" rated in the United  
22 States Food and Drug Administration's most recent version  
23 of the "Orange Book" or have an NR or NA rating by  
24 Medi-Span, Gold Standard, or a similar rating by a  
25 nationally recognized reference;

26 (2) the drug is available for purchase by each

1 pharmacy in the State from national or regional  
2 wholesalers operating in Illinois; and

3 (3) the drug is not obsolete.

4 (d) A pharmacy benefit manager is prohibited from limiting  
5 a pharmacist's ability to disclose whether the cost-sharing  
6 obligation exceeds the retail price for a covered prescription  
7 drug, and the availability of a more affordable alternative  
8 drug, if one is available in accordance with Section 42 of the  
9 Pharmacy Practice Act.

10 (e) A health insurer or pharmacy benefit manager shall not  
11 require an insured to make a payment for a prescription drug at  
12 the point of sale in an amount that exceeds the lesser of:

13 (1) the applicable cost-sharing amount; or

14 (2) the retail price of the drug in the absence of  
15 prescription drug coverage.

16 (f) A contract between a pharmacy benefit manager or  
17 third-party payer and a 340B covered entity shall not contain  
18 any provision that:

19 (1) reimburses a 340B covered entity for drugs  
20 purchased at a 340B drug discount program at a rate lower  
21 than that paid for the same drug to pharmacies similar in  
22 prescription volume that are not 340B covered entities;

23 (2) imposes any fee, chargeback, or rate adjustment  
24 that is not imposed on a pharmacy that is not a 340B  
25 covered entity;

26 (3) imposes any fee, chargeback, or rate adjustment



1 that exceeds the fee, chargeback, or rate adjustment  
2 imposed on a pharmacy that is not a 340B covered entity;

3 (4) prevents or interferes with an individual's choice  
4 to receive a prescription drug from a 340B covered entity,  
5 including the administration of the drug, whether in  
6 person or via delivery, mail, or shipment;

7 (5) excludes a 340B covered entity from a pharmacy  
8 network based on the 340B covered entity's participation  
9 in the 340B drug discount program, or on a basis that  
10 differs from that applied to pharmacies that are not 340B  
11 covered entities;

12 (6) requires a 340B covered entity to use a billing  
13 modifier to indicate that the drug claim is for a drug  
14 purchased under the 340B drug discount program;

15 (7) prevents a 340B covered entity from using a drug  
16 purchased under the 340B drug discount program; or

17 (8) any other provision that discriminates against a  
18 340B covered entity.

19 (g) A violation of this Section by a pharmacy benefit  
20 manager constitutes an unfair or deceptive act or practice in  
21 the business of insurance under Section 424.

22 (h) A provision that violates subsection (f) in a contract  
23 between a pharmacy benefit manager or a third-party payer and  
24 a 340B covered entity that is entered into, amended, or  
25 renewed after July 1, 2022 shall be void and unenforceable.

26 (i) ~~(f)~~ This Section applies to contracts entered into or

1 renewed on or after July 1, 2020.

2 (j) ~~(g)~~ This Section applies to any group or individual  
3 policy of accident and health insurance or managed care plan  
4 that provides coverage for prescription drugs and that is  
5 amended, delivered, issued, or renewed on or after July 1,  
6 2020.

7 (Source: P.A. 101-452, eff. 1-1-20.)

8 Section 10. The Illinois Public Aid Code is amended by  
9 changing Sections 5-5.12 and 5-36 as follows:

10 (305 ILCS 5/5-5.12) (from Ch. 23, par. 5-5.12)

11 Sec. 5-5.12. Pharmacy payments.

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

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

1 reimbursement for the acquisition cost, by rule, at a  
2 percentage of the current average wholesale acquisition cost.

3 (c) (Blank).

4 (d) The Department shall review utilization of narcotic  
5 medications in the medical assistance program and impose  
6 utilization controls that protect against abuse.

7 (e) When making determinations as to which drugs shall be  
8 on a prior approval list, the Department shall include as part  
9 of the analysis for this determination, the degree to which a  
10 drug may affect individuals in different ways based on factors  
11 including the gender of the person taking the medication.

12 (f) The Department shall cooperate with the Department of  
13 Public Health and the Department of Human Services Division of  
14 Mental Health in identifying psychotropic medications that,  
15 when given in a particular form, manner, duration, or  
16 frequency (including "as needed") in a dosage, or in  
17 conjunction with other psychotropic medications to a nursing  
18 home resident or to a resident of a facility licensed under the  
19 ID/DD Community Care Act or the MC/DD Act, may constitute a  
20 chemical restraint or an "unnecessary drug" as defined by the  
21 Nursing Home Care Act or Titles XVIII and XIX of the Social  
22 Security Act and the implementing rules and regulations. The  
23 Department shall require prior approval for any such  
24 medication prescribed for a nursing home resident or to a  
25 resident of a facility licensed under the ID/DD Community Care  
26 Act or the MC/DD Act, that appears to be a chemical restraint

1 or an unnecessary drug. The Department shall consult with the  
2 Department of Human Services Division of Mental Health in  
3 developing a protocol and criteria for deciding whether to  
4 grant such prior approval.

5 (g) The Department may by rule provide for reimbursement  
6 of the dispensing of a 90-day supply of a generic or brand  
7 name, non-narcotic maintenance medication in circumstances  
8 where it is cost effective.

9 (g-5) On and after July 1, 2012, the Department may  
10 require the dispensing of drugs to nursing home residents be  
11 in a 7-day supply or other amount less than a 31-day supply.  
12 The Department shall pay only one dispensing fee per 31-day  
13 supply.

14 (h) Effective July 1, 2011, the Department shall  
15 discontinue coverage of select over-the-counter drugs,  
16 including analgesics and cough and cold and allergy  
17 medications.

18 (h-5) On and after July 1, 2012, the Department shall  
19 impose utilization controls, including, but not limited to,  
20 prior approval on specialty drugs, oncolytic drugs, drugs for  
21 the treatment of HIV or AIDS, immunosuppressant drugs, and  
22 biological products in order to maximize savings on these  
23 drugs. The Department may adjust payment methodologies for  
24 non-pharmacy billed drugs in order to incentivize the  
25 selection of lower-cost drugs. For drugs for the treatment of  
26 AIDS, the Department shall take into consideration the

1 potential for non-adherence by certain populations, and shall  
2 develop protocols with organizations or providers primarily  
3 serving those with HIV/AIDS, as long as such measures intend  
4 to maintain cost neutrality with other utilization management  
5 controls such as prior approval. For hemophilia, the  
6 Department shall develop a program of utilization review and  
7 control which may include, in the discretion of the  
8 Department, prior approvals. The Department may impose special  
9 standards on providers that dispense blood factors which shall  
10 include, in the discretion of the Department, staff training  
11 and education; patient outreach and education; case  
12 management; in-home patient assessments; assay management;  
13 maintenance of stock; emergency dispensing timeframes; data  
14 collection and reporting; dispensing of supplies related to  
15 blood factor infusions; cold chain management and packaging  
16 practices; care coordination; product recalls; and emergency  
17 clinical consultation. The Department may require patients to  
18 receive a comprehensive examination annually at an appropriate  
19 provider in order to be eligible to continue to receive blood  
20 factor.

21 (i) On and after July 1, 2012, the Department shall reduce  
22 any rate of reimbursement for services or other payments or  
23 alter any methodologies authorized by this Code to reduce any  
24 rate of reimbursement for services or other payments in  
25 accordance with Section 5-5e.

26 (j) On and after July 1, 2012, the Department shall impose

1 limitations on prescription drugs such that the Department  
2 shall not provide reimbursement for more than 4 prescriptions,  
3 including 3 brand name prescriptions, for distinct drugs in a  
4 30-day period, unless prior approval is received for all  
5 prescriptions in excess of the 4-prescription limit. Drugs in  
6 the following therapeutic classes shall not be subject to  
7 prior approval as a result of the 4-prescription limit:  
8 immunosuppressant drugs, oncolytic drugs, anti-retroviral  
9 drugs, and, on or after July 1, 2014, antipsychotic drugs. On  
10 or after July 1, 2014, the Department may exempt children with  
11 complex medical needs enrolled in a care coordination entity  
12 contracted with the Department to solely coordinate care for  
13 such children, if the Department determines that the entity  
14 has a comprehensive drug reconciliation program.

15 (k) No medication therapy management program implemented  
16 by the Department shall be contrary to the provisions of the  
17 Pharmacy Practice Act.

18 (l) Any provider enrolled with the Department that bills  
19 the Department for outpatient drugs and is eligible to enroll  
20 in the federal Drug Pricing Program under Section 340B of the  
21 federal Public Health Service Act shall enroll in that  
22 program. No entity participating in the federal Drug Pricing  
23 Program under Section 340B of the federal Public Health  
24 Service Act may exclude fee-for-service Medicaid from their  
25 participation in that program, however, ~~although the~~  
26 ~~Department may exclude~~ entities defined in Section

1 1905(1)(2)(B) of the Social Security Act are excluded from  
2 this requirement. This subsection does not apply to outpatient  
3 drugs billed to Medicaid managed care organizations.

4 (m) No later than January 1, 2023, the Department shall  
5 implement a mechanism for entities participating in the  
6 federal Drug Pricing Program under Section 340B of the federal  
7 Public Health Service Act and their contracted pharmacies to  
8 submit quarterly retrospective utilization files containing  
9 the minimum fields necessary to accurately identify the drugs  
10 to the Department or its contractor for processing Medicaid  
11 drug rebate requests reflecting 340B drug dispensing to  
12 Medicaid beneficiaries or Medicaid managed care organization  
13 enrollees. The Department or its contractor shall use the  
14 utilization files to remove 340B claims from the Department's  
15 Medicaid drug rebate requests. The Department shall not  
16 require the entities or their contracted pharmacies to use any  
17 other method or billing code to identify 340B drugs billed to  
18 Medicaid or Medicaid managed care organizations.

19 (Source: P.A. 102-558, eff. 8-20-21.)

20 (305 ILCS 5/5-36)

21 Sec. 5-36. Pharmacy benefits.

22 (a)(1) The Department may enter into a contract with a  
23 third party on a fee-for-service reimbursement model for the  
24 purpose of administering pharmacy benefits as provided in this  
25 Section for members not enrolled in a Medicaid managed care

1 organization; however, these services shall be approved by the  
2 Department. The Department shall ensure coordination of care  
3 between the third-party administrator and managed care  
4 organizations as a consideration in any contracts established  
5 in accordance with this Section. Any managed care techniques,  
6 principles, or administration of benefits utilized in  
7 accordance with this subsection shall comply with State law.

8 (2) The following shall apply to contracts between  
9 entities contracting relating to the Department's third-party  
10 administrators and pharmacies:

11 (A) the Department shall approve any contract between  
12 a third-party administrator and a pharmacy;

13 (B) the Department's third-party administrator shall  
14 not change the terms of a contract between a third-party  
15 administrator and a pharmacy without written approval by  
16 the Department; and

17 (C) the Department's third-party administrator shall  
18 not create, modify, implement, or indirectly establish any  
19 fee on a pharmacy, pharmacist, or a recipient of medical  
20 assistance without written approval by the Department.

21 (b) The provisions of this Section shall not apply to  
22 outpatient pharmacy services provided by a health care  
23 facility registered as a covered entity pursuant to 42 U.S.C.  
24 256b or any pharmacy owned by or contracted with the covered  
25 entity. A Medicaid managed care organization shall, either  
26 directly or through a pharmacy benefit manager, administer and



1 reimburse outpatient pharmacy claims submitted by a health  
2 care facility registered as a covered entity pursuant to 42  
3 U.S.C. 256b, its owned pharmacies, and contracted pharmacies  
4 in accordance with the contractual agreements the Medicaid  
5 managed care organization or its pharmacy benefit manager has  
6 with such facilities and pharmacies and in accordance with  
7 subsection (h-5).

8 (b-5) Any pharmacy benefit manager that contracts with a  
9 Medicaid managed care organization to administer and reimburse  
10 pharmacy claims as provided in this Section must be registered  
11 with the Director of Insurance in accordance with Section  
12 513b2 of the Illinois Insurance Code.

13 (c) On at least an annual basis, the Director of the  
14 Department of Healthcare and Family Services shall submit a  
15 report beginning no later than one year after January 1, 2020  
16 (the effective date of Public Act 101-452) that provides an  
17 update on any contract, contract issues, formulary, dispensing  
18 fees, and maximum allowable cost concerns regarding a  
19 third-party administrator and managed care. The requirement  
20 for reporting to the General Assembly shall be satisfied by  
21 filing copies of the report with the Speaker, the Minority  
22 Leader, and the Clerk of the House of Representatives and with  
23 the President, the Minority Leader, and the Secretary of the  
24 Senate. The Department shall take care that no proprietary  
25 information is included in the report required under this  
26 Section.

1 (d) A pharmacy benefit manager shall notify the Department  
2 in writing of any activity, policy, or practice of the  
3 pharmacy benefit manager that directly or indirectly presents  
4 a conflict of interest that interferes with the discharge of  
5 the pharmacy benefit manager's duty to a managed care  
6 organization to exercise its contractual duties. "Conflict of  
7 interest" shall be defined by rule by the Department.

8 (e) A pharmacy benefit manager shall, upon request,  
9 disclose to the Department the following information:

10 (1) whether the pharmacy benefit manager has a  
11 contract, agreement, or other arrangement with a  
12 pharmaceutical manufacturer to exclusively dispense or  
13 provide a drug to a managed care organization's enrollees,  
14 and the aggregate amounts of consideration of economic  
15 benefits collected or received pursuant to that  
16 arrangement;

17 (2) the percentage of claims payments made by the  
18 pharmacy benefit manager to pharmacies owned, managed, or  
19 controlled by the pharmacy benefit manager or any of the  
20 pharmacy benefit manager's management companies, parent  
21 companies, subsidiary companies, or jointly held  
22 companies;

23 (3) the aggregate amount of the fees or assessments  
24 imposed on, or collected from, pharmacy providers; and

25 (4) the average annualized percentage of revenue  
26 collected by the pharmacy benefit manager as a result of

1 each contract it has executed with a managed care  
2 organization contracted by the Department to provide  
3 medical assistance benefits which is not paid by the  
4 pharmacy benefit manager to pharmacy providers and  
5 pharmaceutical manufacturers or labelers or in order to  
6 perform administrative functions pursuant to its contracts  
7 with managed care organizations.

8 (f) The information disclosed under subsection (e) shall  
9 include all retail, mail order, specialty, and compounded  
10 prescription products. All information made available to the  
11 Department under subsection (e) is confidential and not  
12 subject to disclosure under the Freedom of Information Act.  
13 All information made available to the Department under  
14 subsection (e) shall not be reported or distributed in any way  
15 that compromises its competitive, proprietary, or financial  
16 value. The information shall only be used by the Department to  
17 assess the contract, agreement, or other arrangements made  
18 between a pharmacy benefit manager and a pharmacy provider,  
19 pharmaceutical manufacturer or labeler, managed care  
20 organization, or other entity, as applicable.

21 (g) A pharmacy benefit manager shall disclose directly in  
22 writing to a pharmacy provider or pharmacy services  
23 administrative organization contracting with the pharmacy  
24 benefit manager of any material change to a contract provision  
25 that affects the terms of the reimbursement, the process for  
26 verifying benefits and eligibility, dispute resolution,

1 procedures for verifying drugs included on the formulary, and  
2 contract termination at least 30 days prior to the date of the  
3 change to the provision. The terms of this subsection shall be  
4 deemed met if the pharmacy benefit manager posts the  
5 information on a website, viewable by the public. A pharmacy  
6 service administration organization shall notify all contract  
7 pharmacies of any material change, as described in this  
8 subsection, within 2 days of notification. As used in this  
9 Section, "pharmacy services administrative organization" means  
10 an entity operating within the State that contracts with  
11 independent pharmacies to conduct business on their behalf  
12 with third-party payers. A pharmacy services administrative  
13 organization may provide administrative services to pharmacies  
14 and negotiate and enter into contracts with third-party payers  
15 or pharmacy benefit managers on behalf of pharmacies.

16 (h) A pharmacy benefit manager shall not include the  
17 following in a contract with a pharmacy provider:

18 (1) a provision prohibiting the provider from  
19 informing a patient of a less costly alternative to a  
20 prescribed medication; or

21 (2) a provision that prohibits the provider from  
22 dispensing a particular amount of a prescribed medication,  
23 if the pharmacy benefit manager allows that amount to be  
24 dispensed through a pharmacy owned or controlled by the  
25 pharmacy benefit manager, unless the prescription drug is  
26 subject to restricted distribution by the United States

1 Food and Drug Administration or requires special handling,  
2 provider coordination, or patient education that cannot be  
3 provided by a retail pharmacy.

4 (h-5) A Medicaid managed care organization or pharmacy  
5 benefit manager administering or managing benefits on behalf  
6 of a Medicaid managed organization shall not include in a  
7 contract with a 340B covered entity or with any pharmacy owned  
8 by or contracted with the 340B covered entity, a provision  
9 that:

10 (1) reimburses a 340B covered entity for drugs  
11 purchased at 340B drug discount program at a rate lower  
12 than that paid for the same drug to pharmacies similar in  
13 prescription volume that are not 340B covered entities;

14 (2) imposes any fee, chargeback, or rate adjustment  
15 that is not imposed on a pharmacy that is not a 340B  
16 covered entity;

17 (3) imposes any fee, chargeback, or rate adjustment  
18 that exceeds the fee, chargeback, or rate adjustment  
19 imposed on a pharmacy that is not a 340B covered entity;

20 (4) prevents or interferes with an individual's choice  
21 to receive a prescription drug from a 340B covered entity,  
22 including the administration of the drug, whether in  
23 person or via delivery, mail, or shipment;

24 (5) excludes a 340B covered entity from a pharmacy  
25 network based on the 340B covered entity's participation  
26 in the 340B drug discount program, or on a basis that

1 differs from that applied to pharmacies that are not 340B  
2 covered entities;

3 (6) requires a 340B covered entity to use a billing  
4 modifier to indicate that the drug claim is for a drug  
5 purchased under the 340B drug discount program;

6 (7) prevents a 340B covered entity from using a drug  
7 purchased under the 340B drug discount program; or

8 (8) any other provision that discriminates against a  
9 340B covered entity.

10 A violation of this subsection by a Medicaid managed care  
11 organization or its pharmacy benefit manager constitutes an  
12 unfair or deceptive act or practice in the business of  
13 insurance under Section 424 of the Illinois Insurance Code.

14 A provision that violates this subsection in any contract  
15 between a Medicaid managed care organization or its pharmacy  
16 benefit manager and a 340B covered entity entered into,  
17 amended, or renewed after July 1, 2022 shall be void and  
18 unenforceable.

19 In this subsection (h-5), "340B covered entity" means a  
20 covered entity described in Section 340B(a)(4) of the Public  
21 Health Service Act, 42 U.S.C. 256(a)(4).

22 (i) Nothing in this Section shall be construed to prohibit  
23 a pharmacy benefit manager from requiring the same  
24 reimbursement and terms and conditions for a pharmacy provider  
25 as for a pharmacy owned, controlled, or otherwise associated  
26 with the pharmacy benefit manager.

1           (j) A pharmacy benefit manager shall establish and  
2 implement a process for the resolution of disputes arising out  
3 of this Section, which shall be approved by the Department.

4           (k) The Department shall adopt rules establishing  
5 reasonable dispensing fees for fee-for-service payments in  
6 accordance with guidance or guidelines from the federal  
7 Centers for Medicare and Medicaid Services.

8           (Source: P.A. 101-452, eff. 1-1-20; 102-558, eff. 8-20-21.)

9           Section 99. Effective date. This Act takes effect July 1,  
10 2022.

1 INDEX

2 Statutes amended in order of appearance

3 215 ILCS 5/424 from Ch. 73, par. 1031

4 215 ILCS 5/513b1

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

6 305 ILCS 5/5-36