

ILLINOIS REGISTER

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED REPEALER

- 1) Heading of the Part: Illinois Cares Rx Program
- 2) Code Citation: 89 Ill. Adm. Code 119
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
119.10	Repeal
119.20	Repeal
119.30	Repeal
119.40	Repeal
119.50	Repeal
119.60	Repeal
119.70	Repeal
119.80	Repeal
119.90	Repeal
119.100	Repeal
119.110	Repeal
119.120	Repeal
119.130	Repeal
- 4) Statutory Authority: Implementing and authorized by PA 97-0869
- 5) Complete Description of the Subjects and Issues Involved: Effective July 1, 2012, Save Medicaid Access and Resources Together (SMART) Act mandates the elimination of the Illinois Cares Rx Program.
- 6) Will this proposed repealer replace emergency amendments currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed repealer contain incorporations by reference? No
- 9) Are there any proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This proposed repealer does not affect units of local government.
- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, Third Floor
Springfield, Illinois 62763-0002

(217) 782-1233

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on Which this Rulemaking Was Summarized: This proposed repealer was not anticipated by the Department when the most recent regulatory agendas were published.

The full text of the Proposed Repealer is identical to the text of the Emergency Repealer that appears in this issue of the *Illinois Register* on page _____:

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119.110	Repeal
119.120	Repeal
119.130	Repeal
- 4) Statutory Authority: Implementing and authorized by PA 97-0689
- 5) Effective Date of Amendment: July 1, 2012
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule expires, as authorized by the SMART Act, on June 30, 2013.
- 7) Date Filed with the Index Department: June 29, 2012
- 8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Public Act 97-0689, Save Medicaid Access and Resources Together (SMART) Act, gives any agency in charge with implementing a provision or initiative in SMART, the ability to adopt rules through emergency rulemaking in order to provide for the expeditious and timely implementation of SMART. The adoption of this emergency rulemaking is deemed to be necessary for the public interest, safety, and welfare. Pursuant to Public Act 97-0689, the 150-day limitation of the effective period of emergency rules does not apply and the effective period of rules necessary to implement

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SMART may continue through June 30, 2013. These emergency rules are necessary to implement the provisions and initiatives of SMART.

- 10) A Complete Description of the Subjects and Issues Involved: Effective July 1, 2012, SMART mandates the elimination of the Illinois Cares Rx Program.
- 11) Are there any proposed amendments to this Part pending? No
- 12) Statement of Statewide Policy Objectives: This emergency amendment neither creates nor expands any State mandate affecting units of local government.
- 13) Information and questions regarding this amendment shall be directed to:

Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Ave E., 3rd Floor
Springfield IL 62763-0002

217/782-1233

The full text of the Emergency Repealer begins on the next page:

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SUBCHAPTER d: MEDICAL PROGRAMS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 119

ILLINOIS CARES RX PROGRAM (REPEALED)

Section

119.10	Definitions
<u>EMERGENCY</u>	
119.20	Eligibility
<u>EMERGENCY</u>	
119.30	Low Income Subsidy
<u>EMERGENCY</u>	
119.40	Automatic Enrollment of Program Beneficiaries
<u>EMERGENCY</u>	
119.50	Assignment and Coordination of Benefits
<u>EMERGENCY</u>	
119.60	Covered Services
<u>EMERGENCY</u>	
119.70	Prior Authorization and Preferred Drug List (PDL)
<u>EMERGENCY</u>	
119.80	Illinois Cares Rx Basic Covered Prescription Drugs
<u>EMERGENCY</u>	
119.90	Co-Payments and Cost Sharing
<u>EMERGENCY</u>	
119.100	Pharmacy Payment
<u>EMERGENCY</u>	
119.110	Inspection and Disclosure of Records
<u>EMERGENCY</u>	
119.120	Establishment of Liens
<u>EMERGENCY</u>	
119.130	Penalties
<u>EMERGENCY</u>	
119.140	Penalties (Repealed)

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AUTHORITY: Implementing the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act [320 ILCS 25] and implementing and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Executive Order 2004-3.

SOURCE: Adopted at 29 Ill. Reg. 4069, effective February 25, 2005; emergency repealed at 36 Ill. Reg. ____, effective July 1, 2012, for a maximum of 365 days.

Section 119.10 Definitions

The following definitions apply for purposes of this Part:

"Act" means the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act [320 ILCS 25].

"AIDS Drug Assistance Program" or "ADAP" means the program administered by the Illinois Department of Public Health (DPH) that provides pharmaceutical assistance for AIDS/HIV drugs for eligible Illinois citizens.

"AIDS Drug Assistance Program formulary" or "ADAP formulary" means the formulary developed and published by DPH for ADAP.

"Applicant" means any person in a household who has requested pharmaceutical assistance benefits on an application filed by an applicant.

"Beneficiary" means a person whose application for pharmaceutical assistance benefits under the Act has been approved by the Department on Aging.

"Brand name drug" means those drugs as defined in 89 Ill. Adm. Code 140.440(g)(3) when dispensed to an individual not enrolled in Medicare Part D. When dispensed to an individual enrolled in Medicare Part D, brand name drugs means those legend drugs defined as brand name drugs by the individual's Medicare Prescription Drug Plan (PDP).

"Coordinating Prescription Drug Plan" means a Medicare Part D Prescription Drug Plan that has signed a coordination agreement with the Department and to which the Department pays a per member/per month (PM/PM) payment for each Illinois Cares Rx beneficiary enrolled in that plan.

"Department" means the Illinois Department of Healthcare and Family Services.

"Director" means the Director of the Illinois Department of Healthcare and Family Services.

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"Disabled person" means a person who is unable to engage in any substantial gainful activity by reason of medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. [320 ILCS 25/3.14]

"Disease" means a chronic and possibly recurrent illness of long duration, as distinguished from an acute illness that is of short duration with recovery due to limited medical treatment (such as in the case of colds, flu, pneumonia, bronchitis, or other similar illnesses).

"Domiciled" means having a fixed habitation at a permanent residence in Illinois at the time of filing the application and during the coverage year.

"Electronic application" means the electronic document set forth in 86 Ill. Adm. Code 530.305(a).

"FPL" means the federal poverty income guideline as determined annually by the United States Department of Health and Human Services.

"Generic drug" means those legend drugs as defined in 89 Ill. Adm. Code 140.440(g)(2) when dispensed to individuals not enrolled in Medicare Part D. When dispensed to individuals enrolled in Medicare Part D, generic drugs means those legend drugs defined as generic drugs by the individual's Medicare Prescription Drug Plan (PDP).

"Household" means an applicant or an applicant and his or her spouse living together in the same residence. [320 ILCS 25/3.05]

"Household income" means the combined income of the members of a household for a year. [320 ILCS 25/3.06]

"Illinois Cares Rx Plus" means the provision of benefits to individuals in eligibility group 2, 3 or 4, as defined in 320 ILCS 25/4(g).

"Illinois Cares Rx Basic" means the provision of benefits to individuals in eligibility group 1, as defined in 320 ILCS 25/4(g).

"Illinois Cares Rx Basic Covered Prescription Drug" means any drug included in the categories listed in Section 119.80 and prescribed as set forth in Section 119.80.

"Illinois Cares Rx Rebate" means an Illinois Cares Rx benefit in the form of a monthly monetary payment made to an individual enrolled in a third-party plan that provides a

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pharmacy benefit or a PDP that is not a Coordinating Medicare PDP. The payment is made in lieu of the covered services described in Section 119.60.

"Income" means adjusted gross income, properly reportable for federal income tax purposes under the provisions of the Internal Revenue Code, modified as defined in 320 ILCS 25/3.07.

"Non-Preferred Drug" means those drugs that are 3rd tier or higher on an individual's Medicare Part D Prescription Drug Plan's (PDPs) formulary or are listed as non-preferred on the Department's Preferred Drug List.

"Over-the-counter items" means those pharmaceutical items that may be purchased off the shelf by the general public.

"Pharmaceutical product" means a brand name drug, a generic drug, or an over-the-counter item.

"Prescription Drug Plan" or "PDP" means a Medicare Part D Prescription Drug Plan.

"Program" means the Illinois Cares Rx Pharmaceutical Assistance Program provided for under the Act.

"Projected income" means household income expected to be received for a coverage year.

Section 119.20 Eligibility

- a) Illinois Cares Rx Eligibility Qualifications
To be eligible for Illinois Cares Rx pharmaceutical benefits, an individual must meet all of the following requirements:
 - 1) Be:
 - A) 65 years of age or older; or
 - B) a disabled person.
 - 2) Be domiciled in Illinois at the time of filing an application, and during the coverage period.
 - 3) Be enrolled in a Coordinating Medicare Part D PDP if eligible for Medicare Part D.

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- 4) Apply for all available subsidies under Medicare Part D. The Department may deem individuals to be compliant with this requirement in cases where the Department's data clearly indicates the individual would not be eligible for any low income subsidy.
 - 5) Have a maximum household income at or below 200% of the Federal Poverty Level (FPL).
- b) **Illinois Cares Rx Plus Eligibility Qualifications**
To be eligible for Illinois Cares Rx Plus pharmaceutical benefits as described in Section 119.60(a), an individual must meet all of the eligibility requirements described in subsection (a) and meet the following requirements:
- 1) Be Medicare-eligible; or
 - 2) Meet the following requirements:
 - A) Be a U.S. citizen or qualify as an eligible non-citizen pursuant to 89 Ill. Adm. Code 120.310; and
 - B) Be 65 years of age or older.
- c) **Proof of Eligibility Qualifications**
An applicant must submit proof of his or her eligibility qualifications as described in subsections (a) and (b).
- 1) Examples of proof of date of birth include:
 - A) a baptismal record; or
 - B) a birth certificate; or
 - C) a driver's license; or
 - D) an identification card from the Secretary of State's office; or
 - E) an insurance policy; or
 - F) naturalization papers.

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- 2) Examples of proof of disability include:
 - A) proof that an applicant is eligible to receive disability benefits under the federal Social Security Act of 1935 (see 42 USC 423); or
 - B) issuance of an Illinois Disabled Person Identification Card stating that an applicant is under a Class 2 disability, as defined in Section 4A of the Illinois Identification Card Act [15 ILCS 335/4A]; or
 - C) status of an applicant as a disabled person determined by a physician designated by the Department on Aging using the same standards as used by the Social Security Administration with the costs of any required examination paid by the applicant (see 42 USC 423); or
 - D) receipt by an applicant of Railroad (see 45 USC 231), Civil Service, or Veterans' total disability benefits (see 38 USC 101). (See 320 ILCS 25/3.14.)
 - 3) Applicants age 64 and older who are ineligible for Medicare must submit proof of citizenship as set forth in section 6036 of the federal Deficit Reduction Act of 2005. This requirement becomes inapplicable if federal funding for these individuals becomes unavailable.
- d) Income
- Income shall be based on income for the full calendar year prior to the year the applicant filed an application for pharmaceutical benefits, unless the applicant requests consideration of projected income as described in subsections (d)(1)(A), (B), (C), (D) and (E).
- 1) Projected Income
 - A) An applicant may request that projected income for the coverage year be used as current income in determining eligibility at the time an application is filed if projected income for the coverage year will be lower than current income for the coverage year. The application must include an itemized listing of current income for the coverage year and projected income for the coverage year, together with documentation for the lost sources of income used in calculating projected income. The Department on Aging will

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allow such a request and use projected income as current income in processing the application if its use will enable an applicant to qualify for this program.

- B) An applicant whose application has been denied for exceeding maximum household income eligibility qualifications may file a Schedule P requesting use of projected income for the coverage year as current income for the coverage year in re-determining eligibility if projected income for the coverage year will be lower than current income for the coverage year. The Schedule must include an itemized listing of current income for the coverage year and projected income for the coverage year, together with documentation for the lost sources of income used in calculating projected income. The Department on Aging will allow such a request and use projected income as current income in processing the application if its use will enable an applicant to qualify for this program.
- C) A beneficiary whose application has been approved for Illinois Cares Rx Basic may file a Schedule P requesting use of projected income for the coverage year as current income for the coverage year in redetermining the eligibility for Illinois Cares Rx Plus if projected income for the coverage year will be lower than current income for the coverage year. The Schedule must include an itemized listing of current income for the coverage year and projected income for the coverage year, together with documentation for the lost sources of income used in calculating projected income. The Department on Aging will allow such a request and use projected income as current income in processing the application if its use will enable a beneficiary to qualify for Illinois Cares Rx Plus.
- D) Amended applications for pharmaceutical assistance benefits must be filed on the appropriate paper forms approved by the Department on Aging prior to the expiration of the coverage year for the coverage year at issue.
- E) A beneficiary may not use projected income for two consecutive years, except in the case of hardship such as death, change in marital status or retirement.

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- 2) **Countable Income**
The earned and unearned income of the applicant and his or her spouse (if the spouse resides with the applicant) shall be counted when determining eligibility.
- 3) **Assets shall not be considered.**
- 4) **Illinois Cares Rx Plus participants shall be exempt from the requirements of 89 Ill. Adm. Code 102.210, Estate Claims, with regard to expenditures made for Illinois Cares Rx benefits.**
- e) **An individual who is eligible for medical assistance with a spenddown may participate in Illinois Cares Rx, if that individual meets all of the eligibility requirements for participation in the program.**
- f) **An individual who receives benefits from any of the Medicare Savings programs, the Qualified Medicare Beneficiary (QMB) program, the Specified Low Income Medicare Beneficiary (SLIB) program, or the Qualified Individual (QI) program may participate in Illinois Cares Rx, if that individual meets all of the eligibility requirements for participation in the program.**
- g) **Application Process**
 - 1) **An application for pharmaceutical assistance benefits under the Act must be filed on the appropriate paper or electronic forms approved by the Department on Aging.**
 - 2) **Individuals shall apply by completing and submitting an application as specified by the Illinois Department on Aging.**
 - 3) **Spouses who live together in the same residence may apply on the same application as long as the application contains both signatures.**
 - 4) **After eligibility is determined by the Illinois Department on Aging, notice of the outcome shall be sent to the applicant.**
 - 5) **An individual enrolled in Illinois Cares Rx shall receive coverage under his or her own name and unique Recipient Identification Number.**
- h) **Enrollment Periods**

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- 1) Enrollment shall be effective the first of the month no later than the second month after the date when the applicant was determined to be eligible for the program.
 - 2) The initial coverage period shall continue from the effective date of the enrollment through the end of the calendar year following the year in which the beneficiary filed the application for Illinois Cares Rx benefits.
 - 3) Individuals must reapply annually.
 - 4) Subsequent uninterrupted periods of enrollment shall be for 12 months and shall be coincident with the calendar year.
- i) **Authorization of Illinois Cares Rx**
Once an individual has been determined eligible for Illinois Cares Rx, an Illinois Cares Rx identification card shall be sent to the individual.
- j) **Illinois Cares Rx coverage shall terminate:**
- 1) at the end of a participant's coverage period unless the participant reapplies timely and is found to continue to be eligible;
 - 2) when a participant no longer resides in Illinois;
 - 3) when a participant becomes an inmate of a public institution;
 - 4) upon a participant's death;
 - 5) upon discovery that the initial determination of the participant's eligibility was incorrect; or
 - 6) when a participant fails to apply for any low income subsidy available under Medicare Part D, except in cases where the Department has deemed the individual to be compliant based on the Department's data.
- k) **Appeal Rights**
Any applicant or beneficiary aggrieved by action of the Department on Aging under the Act, whether in the denial of an application or amended application may request in writing that the Department on Aging reconsider its action, setting out

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the facts on which the request is based. The Department on Aging will consider the request and either affirm or modify its action.

Section 119.30 Low Income Subsidy

- a) To be eligible for Illinois Cares Rx, Medicare-eligible enrollees must apply for all available subsidies under Medicare Part D. The Department may deem individuals to be compliant with this requirement in cases where the Department's data clearly indicate the individual would not be eligible for any low-income subsidy (LIS) as described in 89 Ill. Adm. Code 127.
- b) Eligibility of individuals who do not apply for LIS, except in cases where Department data clearly indicate the individual would not be eligible for any LIS, may be terminated at the end of the month following the month in which written notice of termination was given to the individual.
- c) If the beneficiary provides proof of application for LIS prior to the scheduled termination date, eligibility will not be terminated.

Section 119.40 Automatic Enrollment of Program Beneficiaries

The Department may auto-enroll beneficiaries with a Coordinating Medicare Part D Prescription Drug Plan authorized under Section 1860D-1 of the Social Security Act. The Department shall enroll the eligible beneficiaries into a Coordinating Medicare Part D PDP in order to coordinate the members' Medicare prescription drug benefit coverage with coverage under the program.

Section 119.50 Assignment and Coordination of Benefits

- a) Acceptance of benefits under Illinois Cares Rx constitutes assignment of benefits from any private plan of assistance, including any insurance plan, public assistance program, or third party for covered prescription drugs under this program.
- b) The Department shall charge or collect payments from any private plan of assistance, including any insurance plan, public assistance program, or third party for any claims assigned by a beneficiary.

Section 119.60 Covered Services

- a) Illinois Cares Rx Plus

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- 1) For an individual enrolled in a Coordinating Medicare Part D Plan coverage under the Illinois Cares Rx Plus Program shall consist of:
 - A) Payment to the individual's Coordinating Medicare Part D PDP for premium and deductible and cost sharing expenses, except for applicable cost sharing and co-payments set forth in Section 119.90 for pharmaceutical products covered by the individual's Medicare Part D PDP.
 - B) Payment to a pharmacy for pharmaceutical products excluded by Medicare Part D but covered by the Medical Assistance Program operated pursuant to Article V of the Public Aid Code, subject to applicable cost sharing and co-payments set forth in Section 119.90.
- 2) For an individual not eligible for Medicare Part D, covered services under the Illinois Cares Rx Plus Program shall consist of payment to a pharmacy for pharmaceutical products that are covered by the Medical Assistance Program operated pursuant to Article V of the Public Aid Code, subject to applicable cost sharing and co-payments set forth in Section 119.90.
- 3) For a Medicare-eligible individual who is enrolled in a non-coordinating Medicare Part D PDP, payment of the monthly Part D premium for basic coverage.
 - b) Illinois Cares Rx Basic
Except for those products prescribed as described in Section 119.80(k), covered services under the Illinois Cares Rx Basic Program shall consist of payment to a pharmacy for pharmaceutical products that are prescribed as described in Section 119.80, subject to applicable cost sharing and co-payments set forth in Section 119.90.
 - c) If a coordinating Medicare Part D PDP has an approved actuarially equivalent benefit design pursuant to section 1860D-2(a)(3)(B) of the Social Security Act, the Department may adjust the threshold at which a beneficiary begins paying 20 percent cost sharing if necessary for the PDP to coordinate administration of the Illinois Cares Rx benefit with the Medicare Part D benefit. The threshold may not be lower than \$1,750.

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Section 119.70 Prior Authorization and Preferred Drug List (PDL)

- a) For Medicare-eligible individuals enrolled in a coordinating Medicare Part D PDP, the Department may enforce the PDP's Preferred Drug List by requiring tiered copays of \$15 for each dispensing of a non-preferred drug.
- b) For individuals not enrolled in Medicare, the Department may utilize a Preferred Drug List (PDL) enforced through the prior approval process and other utilization controls including, but not limited to, maximum quantity, daily dose and refill-too-soon.

Section 119.80 Illinois Cares Rx Basic Covered Prescription Drugs

The Illinois Cares Rx Basic Program shall cover pharmaceutical products as described in this Section for the treatment of heart disease and its related conditions, diabetes, arthritis, cancer, Alzheimer's disease, Parkinson's disease, glaucoma, lung disease and smoking related illnesses, osteoporosis and multiple sclerosis.

- a) Drugs prescribed for treatment of heart disease and its related conditions that fall within the following categories qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) Antihypertensives
 - 2) Antiarrhythmics
 - 3) Antihyperlipidemics
 - 4) Cardiac Glycosides
 - 5) Calcium Channel Blockers
 - 6) Vasodilators
 - 7) Anti-Adrenergic/Sympatholytics
 - 8) Renin Angiotensin System Antagonists
 - 9) Diuretics
 - 10) Potassium Supplements

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- 11) Anticoagulants
 - 12) Vasopressor Used in Shock
 - 13) Potassium Removing Agents
 - 14) System Alkalinizers
- b) Drugs that fall within the following categories for the treatment of diabetes qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
- 1) Insulin
 - 2) Syringes and Needles
 - 3) Oral Hypoglycemics
 - 4) Posterior Pituitary Hormones
 - 5) Hyperglycemics
- c) Drugs that fall within the following categories and are prescribed for the treatment of arthritis qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
- 1) Adrenocortical Steroids
 - 2) Antimalarials
 - 3) Analgesics
 - 4) Antirheumatic Agents
 - 5) Immunomodulators
 - 6) Immunosuppressives
 - 7) NSAIDS

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- 8) Penicillamine

- d) Drugs that fall within the following categories and are prescribed for the treatment of cancer qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) Analgesics
 - 2) Anticonvulsants
 - 3) Antineoplastics
 - 4) Immunomodulators

- e) Drugs that fall within the following categories and are prescribed for the treatment of Alzheimer's disease qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) NMDA Receptor Antagonists
 - 2) Cholinesterase Inhibitors

- f) Drugs that fall within the following categories and are prescribed for the treatment of Parkinson's disease qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) Antiparkinson Agents, Anticholinergics
 - 2) Antiparkinson Agents, Other
 - 3) Pituitary Suppressive Agents

- g) Drugs that fall within the following categories and are prescribed for the treatment of glaucoma qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) Miotics/Other Intraocular Pressure Reducers
 - 2) Mydriatics

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- 3) Carbonic Anhydrase Inhibitors
- h) Drugs that fall within the following categories and are prescribed for the treatment of lung disease and smoking related illnesses qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:
 - 1) Bronchodilators
 - 2) Diluents
 - 3) Mucolytics
 - 4) Pancreatic Enzymes
 - 5) Smoking Cessation Products
 - 6) Corticosteroid Respiratory Inhalants and Combinations
 - 7) Antituberculosis Agents
 - 8) Mast Cell Stabilizers
 - 9) Leukotriene Receptor Antagonists
 - 10) Leukotriene Formation Inhibitors
 - 11) Monoclonal Antibodies
 - 12) Respiratory Enzymes
- i) Drugs that fall within the category of Bone Resorption Inhibitors and are prescribed for the treatment of osteoporosis qualify for inclusion in the Illinois Cares Rx Basic Pharmaceutical Assistance Program as covered prescription drugs.
- j) Multiple Sclerosis
 - 1) Drugs that fall within the following categories and are prescribed for the treatment of multiple sclerosis qualify for inclusion in the Illinois Cares

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Rx Basic Pharmaceutical Assistance Program as covered prescription drugs:

- A) Immunomodulators
 - B) Immunosuppressives
 - C) Adrenocortical Steroids
 - D) Urinary Tract Anti-Spasmodic/Anti-Incontinence Agents,
 - E) Antibiotics Used in the Treatment of Urinary Tract Infections
 - F) Antidepressants
 - G) Urinary Tract Anesthetic/Analgesic Agents
 - H) Stimulants
 - I) The following Skeletal Muscle Relaxants: baclofen, dantrolene, tizanidine
- 2) Coverage of Urinary Tract Anti-Spasmodic/Anti-Incontinence Agents, Antibiotics, Antidepressants, Urinary Tract Anesthetic/Analgesic Agents and Stimulants may be limited to generic agents when appropriate generic agents are available.
- k) An Illinois Cares Rx Basic covered prescription drug must be approved by the Food and Drug Administration of the federal Department of Health and Human Services for the treatment of a specific disease category.

Section 119.90 Co-Payments and Cost Sharing

Unless a federal low-income subsidy results in lesser co-payments and cost sharing, a beneficiary enrolled in Illinois Cares Rx shall be responsible for payment of co-payments and cost sharing as follows:

- a) Except for the cost-sharing described in subsection (c) of this Section, Medicare-eligible beneficiaries shall pay a co-payment equal to the greater of the co-payments required under Medicare Part D for "other low-income subsidy eligible

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individuals" pursuant to 42 CFR 423.782(b) (2005), or \$5 for each prescription of a Tier 1 drug, \$20 for each prescription of a Tier 3 drug, and \$15 for each prescription of a Tier 2 or 4 drug on the Medicare Part D plan's formulary. Beneficiaries shall pay \$5 for each prescription of a generic drug and \$15 for each prescription of a brand name drug when the drug is a Medicare Part D-excluded drug covered by the Department. Beneficiaries not eligible for Medicare shall pay a co-payment of \$5 for each prescription of a generic drug and \$15 for each prescription of a brand name drug when the drug is covered by the Department.

- b) Except for cost sharing described in subsection (c), 25 percent of the reimbursable amount of the prescription plus the applicable co-payment for each prescription dispensed after the Illinois Cares Rx benefit amount has reached \$1,750 for the calendar year or the beneficiary has reached the Medicare Part D Coverage Gap phase.
- c) Effective January 1, 2007, for individuals enrolled in Medicare Part D who have been identified to the Department as having a diagnosis of HIV or AIDS, the applicable co-payment for drugs that are listed on the ADAP formulary shall be equal to that required by Medicare Part D for "other low income subsidy eligibles" pursuant to 42 CFR 423.782(b). The co-payments described in this subsection are applicable throughout the Plan Year.
- d) For those enrolled in Medicare Part D, the Illinois Cares Rx benefit amount is the total payments made by the PDP to pharmacies on behalf of the beneficiary, whether paid as a part of the Medicare benefit or the Illinois Cares Rx benefit. For those not eligible for Medicare Part D, the Illinois Cares Rx benefit amount is the total payments made by the Department to pharmacies on behalf of the beneficiary.
- e) A beneficiary also must pay to an authorized pharmacy an ancillary charge for any covered prescription drug that is a brand name product if the pharmacy is reimbursed at the generic price as provided in Section 119.100(b)(2) and (3).

Section 119.100 Pharmacy Payment

- a) Direct payment to pharmacies by the Department is made only for pharmaceutical products for individuals not enrolled in Medicare Part D or for Medicare Part D excluded pharmaceutical products covered by the Department when dispensed to individuals enrolled in Medicare Part D.

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- b) Reimbursable Amount
- 1) Except as provided in subsections (b)(2), (3) and (4) of this Section, the reimbursable amount for a pharmaceutical product eligible for direct payment by the Department shall be:
- A) For legend (prescription) drugs, the Department shall pay the lower of:
- i) the pharmacy's prevailing charge to the general public; or
 - ii) the Department's maximum price plus a dispensing fee of \$2.25 for both generic and brand name drugs less applicable co-payments and cost sharing as set forth in Section 119.90.
- B) For generic drugs, the Department's maximum price is calculated as the lowest of:
- i) the average wholesale price minus 25 percent; or
 - ii) the Federal Upper Limit; or
 - iii) the State Upper Limit.
- C) For brand name drugs, the Department's maximum price is calculated as the average wholesale price minus 14 percent.
- D) For those over-the-counter drugs that are covered, the Department shall pay the lower of:
- i) the pharmacy's prevailing charge to the general public; or
 - ii) the average wholesale price plus 25 percent; or
 - iii) the State Upper Limit.
- 2) If a generic drug is available, based upon the Illinois Formulary for Drug Product Selection Program (77 Ill. Adm. Code 790), and the individual

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wants the brand name equivalent of the drug, the reimbursable amount shall be that of the generic drug.

- 3) If a brand name drug is dispensed when the reimbursable amount is that for the generic drug, the individual shall be responsible for paying the difference between the reimbursable amount (based upon the generic drug) and what would have been the reimbursable amount for the brand name drug, plus the applicable co-payment and cost sharing, as described in Section 119.90.
 - 4) Payment by the Department to a participating pharmacy for a pharmaceutical product dispensed to an individual eligible for Illinois Cares Rx shall be the difference of the reimbursable amount, as described in subsection (b) of this Section, less applicable co-payments, and cost sharing, as described in Section 119.90, and any amount paid or payable by Medicare or another third party as described at 89 Ill. Adm. Code 140.12(h)(2).
 - 5) The reimbursable amount to pharmacies for prescriptions processed by a Medicare Part D PDP shall be at the contracted rate between the pharmacy and the PDP.
- c) **Provider Participation**
In order to bill the Department directly for prescriptions dispensed to participants in the Illinois Cares Rx Program, pharmacies shall be enrolled in the Medical Assistance Program under Article V of the Public Aid Code.

Section 119.110 Inspection and Disclosure of Records

- a) In order to ensure compliance with the requirements of the Act and to prevent fraud, the Department, or its designee, shall have the right:
 - 1) to inspect the books and records of all authorized pharmacies (see 320 ILCS 25/6(d)(5)); and
 - 2) to require disclosure of information on individuals who receive health coverage, pharmaceutical benefits, or related services as policyholders, subscribers, or plan participants from entities subject to the Illinois Insurance Code [215 ILCS 5], Comprehensive Health Insurance Plan Act [215 ILCS 105], Dental Service Plan Act [225 ILCS 25], Children's

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Health Insurance Program Act [215 ILCS 106], Health Care Purchasing Group Act [215 ILCS 123], Health Maintenance Organization Act [215 ILCS 125] Limited Health Service Organization Act [215 ILCS 130], Voluntary Health Services Plans Act [215 ILCS 165], and Worker's Compensation Act [820 ILCS 305].

- b) Information received by the Department or its designee shall be confidential except for official purposes and as otherwise provided in the Act. (See 320 ILCS 25/4.1.)

Section 119.120 Establishment of Liens

The Director is entitled to establish a lien on any and all causes of action that accrue to a beneficiary as a result of injuries for which covered prescription drugs are directly or indirectly prescribed and for which payment was made under this program.

Section 119.130 Penalties

- a) Any person who takes any of the following actions is guilty of a Class 4 felony for the first offense and a Class 3 felony for each subsequent offense:
 - 1) on behalf of an authorized pharmacy, files a fraudulent claim for payment; or
 - 2) for compensation, prepares a claim for this program and knowingly enters false information on the claim for an applicant or a beneficiary; or
 - 3) fraudulently files multiple claims; or
 - 4) fraudulently states that a nondisabled person is disabled; or
 - 5) fraudulently procures a card; or
 - 6) fraudulently uses a card to obtain covered prescription drugs. (See 320 ILCS 25/9.)
- b) The Department, in cooperation with the Department on Aging, will recover from any beneficiary or authorized pharmacy any amount paid under this program on

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account of an erroneous or fraudulent claim, together with 6 percent interest per year.

- c) A prosecution for violation of the provisions of the Act may be undertaken at any time within three years after the commission of that violation. [320 ILCS 25/9]