

**104TH GENERAL ASSEMBLY****State of Illinois****2025 and 2026****SB0066**

Introduced 1/13/2025, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.1030 new

Creates the Health Care Availability and Access Board Act. Establishes the Health Care Availability and Access Board to protect State residents, State and local governments, commercial health plans, health care providers, pharmacies licensed in the State, and other stakeholders within the health care system from the high costs of prescription drug products. Contains provisions concerning Board membership and terms; staff for the Board; Board meetings; circumstances under which Board members must recuse themselves; and other matters. Provides that the Board shall perform the following actions in open session: (i) deliberations on whether to subject a prescription drug product to a cost review; and (ii) any vote on whether to impose an upper payment limit on purchases, payments, and payor reimbursements of prescription drug products in the State. Permits the Board to adopt rules to implement the Act and to enter into a contract with a qualified, independent third party for any service necessary to carry out the powers and duties of the Board. Creates the Health Care Availability and Access Stakeholder Council to provide stakeholder input to assist the Board in making decisions as required by the Act. Contains provisions concerning Council membership, member terms, and other matters. Provides that the Board shall adopt the federal Medicare Maximum Fair Price as the upper payment limit for a prescription drug product intended for use by individuals in the State. Prohibits the Board from creating an upper payment limit that is different from the Medicare Maximum Fair Price for the prescription drug product that has a Medicare Maximum Fair Price. Requires the Board to implement an upper payment limit that is the same as the Medicare Maximum Fair Price no sooner than the Medicare implementation date. Provides that Medicare Part C and D plans are not required to reimburse at the upper payment limit. Provides that the Attorney General may enforce the Act and may pursue any available remedy under State law when enforcing the Act. Effective 180 days after becoming law.

LRB104 07474 BAB 17516 b

1 AN ACT concerning 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 Health
5 Care Availability and Access Board Act.

6 Section 5. Definitions. In this Act:

7 "Biologic" means a drug that is produced or distributed in
8 accordance with a biologics license application approved under
9 42 U.S.C. 262(k)(3).

10 "Biosimilar" means a drug that is produced or distributed
11 in accordance with a biologics license application approved
12 under 42 U.S.C. 262(k)(3).

13 "Board" means the Health Care Availability and Access
14 Board.

15 "Brand name drug" means a drug that is produced or
16 distributed in accordance with an original new drug
17 application approved under 21 U.S.C. 355(c). "Brand name drug"
18 does not include an authorized generic drug as defined by 42
19 CFR 447.502.

20 "Council" means the Health Care Availability and Access
21 Stakeholder Council.

22 "Generic drug" means:

23 (1) a retail drug that is marketed or distributed in

1 accordance with an abbreviated new drug application,
2 approved under 21 U.S.C. 355(j);

3 (2) an authorized generic drug as defined by 42 CFR
4 447.502; or

5 (3) a drug that entered the market before 1962 that
6 was not originally marketed under a new drug application.

7 "Manufacturer" means an entity that:

8 (1) owns the patent to a prescription drug product; or

9 (2) enters into a lease with another manufacturer to
10 market and distribute a prescription drug product under
11 the entity's own name;

12 (3) is the labeled entity of the generic product at
13 the point of manufacture; and

14 (4) sets or changes the wholesale acquisition cost of
15 the prescription drug product it manufactures or markets.

16 "Prescription drug product" means a brand name drug, a
17 generic drug, a biologic, or a biosimilar.

18 Section 10. Health Care Availability and Access Board.

19 (a) There is established a Health Care Availability and
20 Access Board. The purpose of the Board is to protect State
21 residents, State and local governments, commercial health
22 plans, health care providers, pharmacies licensed in the
23 State, and other stakeholders within the health care system
24 from the high costs of prescription drug products. The Board
25 is a public body and is an instrumentality of the State. The

1 Board is an independent unit of State government. The exercise
2 by the Board of its authority under this Act is an essential
3 function.

4 (b) (1) The 5 members of the Board and 3 alternate members
5 shall be appointed by the Governor with the advice and consent
6 of the Senate.

7 (2) The Board membership must include individuals with
8 demonstrated expertise in health care economics,
9 pharmaceutical markets, and clinical medicine. A member or an
10 alternate member may not be an employee of, a Board member of,
11 or a consultant to a manufacturer or trade association for
12 manufacturers.

13 (3) Any conflict of interest, including whether the
14 individual has an association, including a financial or
15 personal association, that has the potential to bias or has
16 the appearance of biasing an individual's decision in matters
17 related to the Board or the conduct of the Board's activities,
18 shall be considered and disclosed when appointing members and
19 alternate members to the Board.

20 (c) The term of a member or an alternate member is 5 years,
21 except that the terms of the initial members and alternate
22 members shall be staggered as required by the terms provided
23 for members in Section 55. Board members shall be appointed
24 within 90 days after the effective date of this Act. The Board
25 may begin its work regardless of a delay in appointments to the
26 Health Care Availability and Access Stakeholder Council

1 created under Section 20.

2 (d) The Chair shall hire an executive director, general
3 counsel, and staff for the Board. Staff of the Board shall
4 receive a salary as provided in the budget of the Board. A
5 member of the Board: (i) may receive compensation as a member
6 of the Board; and (ii) is entitled to reimbursement for
7 expenses.

8 (e) A majority of the members of the Board shall
9 constitute a quorum for the purposes of conducting the
10 business of the Board.

11 (f) Subject to the requirements of this subsection, the
12 Board shall meet in open session at least 4 times per year to
13 review prescription drug product information. Information
14 concerning the location, date, and time of the meeting must be
15 made publicly available in accordance with the Open Meetings
16 Act. The Chair may cancel or postpone a meeting if there is no
17 business to conduct.

18 The Board shall perform the following actions in open
19 session: (i) deliberations on whether to subject a
20 prescription drug product to a cost review under subsection
21 (f) of Section 25; and (ii) any vote on whether to impose an
22 upper payment limit on purchases, payments, and payor
23 reimbursements of prescription drug products in the State. The
24 Board may otherwise meet in closed session to discuss
25 proprietary data and information.

26 The Board shall provide public notice of each Board

1 meeting at least 3 weeks in advance of the meeting. Materials
2 for each Board meeting shall be made available to the public at
3 least 3 weeks in advance of the meeting. The Board shall
4 provide an opportunity for public comment at each open meeting
5 of the Board. The Board shall provide the public with the
6 opportunity to provide written comments on pending decisions
7 of the Board. The Board may allow expert testimony at Board
8 meetings, including when the Board meets in closed session.

9 (g) (1) Members of the Board shall recuse themselves from
10 decisions related to a prescription drug product if the
11 member, or an immediate family member of the member, has
12 received or could receive any of the following:

13 (A) a direct financial benefit of any amount deriving
14 from the result or finding of a study or determination by
15 or for the Board; or

16 (B) a financial benefit from any person who owns,
17 manufactures, or provides prescription drug products,
18 services, or items to be studied by the Board that in the
19 aggregate exceeds \$5,000 per year.

20 As used in this paragraph, "financial benefit" includes
21 honoraria, fees, stock, the value of the member's or immediate
22 family member's stock holdings, and any direct financial
23 benefit deriving from the finding of a review conducted under
24 this Act.

25 (2) A disclosure of interests under this Section shall
26 include the type, nature, and magnitude of the interests of

1 the member or his or her immediate family member involved.

2 (3) A conflict of interest shall be disclosed in advance
3 of the first open meeting after the conflict is identified or
4 within 5 days after the conflict is identified. A conflict of
5 interest shall be disclosed by:

6 (A) the Board when hiring Board staff;

7 (B) the appointing authority when appointing members
8 and alternate members to the Board and members to the
9 Council; and

10 (C) the Board when a member of the Board is recused in
11 any final decision resulting from a review of a
12 prescription drug product.

13 (4) A conflict of interest disclosed under this Section
14 shall be posted on the website of the Board unless the Chair of
15 the Board recuses the member from any final decision resulting
16 from a review of a prescription drug product.

17 (5) Members and alternate members of the Board, Board
18 staff, and third-party contractors may not accept any gift or
19 donation of services or property that indicates a potential
20 conflict of interest or has the appearance of biasing the work
21 of the Board.

22 Section 15. Powers and duties of the Board. In addition to
23 the powers set forth elsewhere in this Act, the Board may:

24 (1) adopt rules for the implementation of this Act;
25 and

1 (2) enter into a contract with a qualified,
2 independent third party for any service necessary to carry
3 out the powers and duties of the Board.

4 Unless permission is granted by the Board, a third party
5 hired by the Board may not release, publish, or otherwise use
6 any information to which the third party has access under its
7 contract.

8 Section 20. Health Care Availability and Access
9 Stakeholder Council.

10 (a) The Health Care Availability and Access Stakeholder
11 Council is created. The purpose of the Council is to provide
12 stakeholder input to assist the Board in making decisions as
13 required under this Act. The Council consists of 15 members
14 appointed within 90 days after the effective date of this Act
15 as follows:

16 (1) 3 members appointed by the Speaker of the House of
17 Representatives;

18 (2) 2 members appointed by the Minority Leader of the
19 House of Representatives;

20 (3) 3 members appointed by the President of the
21 Senate;

22 (4) 2 members appointed by the Minority Leader of the
23 Senate; and

24 (5) 5 members appointed by the Governor.

25 (b) The members of the Council shall have knowledge in one

1 or more of the following:

- 2 (1) the pharmaceutical business model;
- 3 (2) supply chain business models;
- 4 (3) the practice of medicine or clinical training;
- 5 (4) consumer or patient perspectives;
- 6 (5) clinical and health services research; or
- 7 (6) the State's health care marketplace.

8 (c) From among the membership of the Council, the Board
9 Chair shall appoint one member to be Council Chair.

10 (d) The term of a member is 3 years, except that the
11 initial members of the Council shall serve staggered terms as
12 required by the terms provided for members in Section 55.

13 (e) A member of the Council may not receive compensation
14 as a member of the Council, but is entitled to reimbursement
15 for travel expenses.

16 Section 25. Drug cost affordability review.

17 (a) The Board shall limit its review of prescription drug
18 products to those that are:

19 (1) brand name drugs or biologics that, as adjusted
20 annually for inflation in accordance with the Consumer
21 Price Index, have:

22 (A) a wholesale acquisition cost of \$60,000 or
23 more per year or course of treatment if less than a
24 year; or

25 (B) a wholesale acquisition cost increase of

1 \$3,000 or more in any 12-month period;

2 (2) biosimilar drugs that have a wholesale acquisition
3 cost that is not at least 20% lower than the referenced
4 brand biologic at the time the biosimilars are launched,
5 and that have been suggested for review by the members of
6 public, medical professionals, and other stakeholders;

7 (3) generic drugs that, as adjusted annually for
8 inflation in accordance with the Consumer Price Index,
9 have a wholesale acquisition cost of at least \$100 for a
10 30-day supply or course of treatment less than 30 days and
11 which increased by 200% or more during the immediately
12 preceding 12-month period, as determined by the difference
13 between the resulting wholesale acquisition cost and the
14 average of the wholesale acquisition cost reported over
15 the immediately preceding 12 months; and

16 (4) other prescription drug products that may create
17 affordability challenges for the State health care system
18 or patients, including, but not limited to, drugs to
19 address public health emergencies.

20 The Board is not required to identify every prescription
21 drug that meets the criteria of this subsection.

22 (b) The Board shall solicit public input on prescription
23 drugs thought to be creating affordability challenges that
24 meet the parameters of paragraphs (1) through (4) of
25 subsection (a). The Board shall determine whether to conduct a
26 full affordability review for the proposed prescription drugs

1 after compiling preliminary information about the cost of the
2 product, patient cost sharing for the product, health plan
3 spending on the product, stakeholder input, and other
4 information decided by the Board.

5 (c) If the Board conducts a review of the cost and
6 affordability of a prescription drug product, the review shall
7 determine whether use of the prescription drug product that is
8 fully consistent with the labeling approved by the United
9 States Food and Drug Administration or standard medical
10 practice has led or will lead to affordability challenges for
11 the State health care system or high out-of-pocket costs for
12 patients.

13 (d) The information to conduct an affordability review may
14 include, but is not limited to, any document and research
15 related to the manufacturer's selection of the introductory
16 price or price increase of the prescription drug product,
17 patient assistance program or programs specific to the
18 product, estimated or actual manufacturer product price
19 concessions in the market, net product cost to State payers,
20 and other information as determined by the Board.

21 (e) Failure of a manufacturer to provide the Board with
22 the information for an affordability review does not affect
23 the authority of the Board to conduct such a review.

24 (f) If the Board finds that the spending on a prescription
25 drug product reviewed under this Section has led or will lead
26 to an affordability challenge, the Board shall establish an

1 upper payment limit considering exceptional administrative
2 costs related to the distribution of the drug in the State.

3 (g) The upper payment limit applies to all purchases and
4 payor reimbursements of the prescription drug product intended
5 for use by individuals in the State, in person, by mail, or by
6 other means.

7 (h) Any information submitted to the Board in accordance
8 with this Section shall be subject to public inspection only
9 to the extent allowed under the Freedom of Information Act.

10 (i) This Section may not be construed to prevent a
11 manufacturer from marketing a prescription drug product
12 approved by the United States Food and Drug Administration
13 while the product is under review by the Board.

14 Section 30. Protections and other Board considerations.

15 (a) The Board shall examine how an upper payment limit
16 would affect a covered entity, as that term is defined in
17 Section 340B of the federal Public Health Service Act.

18 (b) In determining whether a drug creates an affordability
19 challenge or determining an upper payment limit amount, the
20 Board may not use cost-effectiveness analyses that include the
21 cost-per-quality adjusted life year or a similar measure to
22 identify subpopulations for which a treatment would be less
23 cost-effective due to severity of illness, age, or preexisting
24 disability. In addition, for any treatment that extends life,
25 if the Board uses cost-effectiveness results, the Board must

1 use results that weigh the value of all additional lifetime
2 gained equally for all patients no matter their severity of
3 illness, age, or preexisting disability.

4 (c) An upper payment limit is effective no sooner than 6
5 months after it has been announced.

6 (d) State-regulated health plans shall inform the Board of
7 how any upper payment limit-related cost savings are directed
8 to the benefit of enrollees, with a priority on enrollee cost
9 sharing.

10 (e) The upper payment limit shall not be inclusive of the
11 pharmacy dispensing fee or provider administration fee.

12 (f) State licensed independent pharmacies may not be
13 reimbursed less than the upper payment limit.

14 (g) The Board shall adopt the Medicare Maximum Fair Price
15 as defined in 42 U.S.C. 1320f(c)(3) for a prescription drug as
16 the upper payment limit for that prescription drug product
17 intended for use by individuals in this State, per subsection
18 (g) of Section 25.

19 (h) The Board shall not create an upper payment limit that
20 is different from the Medicare Maximum Fair Price for the
21 prescription drug product that has a Medicare Maximum Fair
22 Price.

23 (i) The Board shall implement an upper payment limit that
24 is the same as the Medicare Maximum Fair Price no sooner than
25 the Medicare implementation date.

26 (j) Medicare Part C and D plans are not required to

1 reimburse at the upper payment limit.

2 Section 35. Remedies. The Attorney General may enforce
3 this Act. The Attorney General may pursue any available remedy
4 under State law when enforcing this Act.

5 Section 40. Appeal of Board decisions.

6 (a) A person aggrieved by a decision of the Board may
7 request an appeal of the decision within 30 days after the
8 finding of the Board.

9 (b) The Board shall hear the appeal and make a final
10 decision within 60 days after the appeal is requested.

11 (c) Any person aggrieved by a final decision of the Board
12 may petition for judicial review in accordance with the
13 provisions of the Administrative Review Law.

14 Section 45. Health Care Availability and Access Board
15 Fund. The Health Care Availability and Access Board Fund is
16 created as a special fund in the State treasury. The Board
17 shall be funded by an annual assessment on all manufacturers
18 whose products are sold in the State. All funds collected by
19 the Board from the assessments shall be deposited into the
20 Fund. The Fund shall be used only to provide funding for the
21 Board and for the purposes authorized under this Act,
22 including any costs expended by any State agency to implement
23 this Act. All interest earned on moneys in the Fund shall be

1 credited to the Fund. This Section may not be construed to
2 prohibit the Fund from receiving moneys from any other source
3 that does not create the appearance of a conflict of interest.
4 The Board shall be established using general funds, which
5 shall be repaid to the State with the assessments required
6 under this Section.

7 Section 50. Reports.

8 (a) On or before December 31 of each year, the Board shall
9 submit to the General Assembly a report that includes:

- 10 (1) price trends for prescription drug products;
- 11 (2) the number of prescription drug products that were
12 subject to Board review, including the results of the
13 review and the number and disposition of appeals and
14 judicial reviews of Board decisions; and
- 15 (3) any recommendations the Board may have on further
16 legislation needed to make prescription drug products more
17 affordable in this State.

18 (b) On or before June 1, 2025, the Health Care
19 Availability and Access Board shall submit a report to the
20 General Assembly about the operation of the generic drug
21 market in the United States that includes a review of
22 physician-administered drugs and considers:

- 23 (1) the prices of generic drugs on a year-over-year
24 basis;
- 25 (2) the degree to which generic drug prices affect

1 insurance premiums as reported by health insurers in this
2 State or other states that collect this information;

3 (3) recent and current trends in patient cost sharing
4 for generic drugs;

5 (4) the causes and prevalence of generic drug
6 shortages; and

7 (5) any other relevant study questions.

8 Section 55. Term expiration.

9 (a) The terms of the initial members and alternate members
10 of the Health Care Availability and Access Board shall expire
11 as follows:

12 (1) one member and one alternate member in 2029;

13 (2) 2 members and one alternate member in 2030; and

14 (3) 2 members, including the Chair of the Board, and
15 one alternate member in 2031.

16 (b) The terms of the initial members of the Health Care
17 Availability and Access Stakeholder Council shall expire as
18 follows:

19 (1) 5 members in 2029;

20 (2) 5 members in 2030; and

21 (3) 5 members in 2031.

22 Section 97. Severability. If any provision of this Act or
23 the application thereof to any person or circumstance is held
24 invalid for any reason in a court of competent jurisdiction,

1 the invalidity does not affect other provisions or any other
2 application of this Act that can be given effect without the
3 invalid provision or application, and for this purpose the
4 provisions of this Act are declared severable.

5 Section 900. The State Finance Act is amended by adding
6 Section 5.1030 as follows:

7 (30 ILCS 105/5.1030 new)

8 Sec. 5.1030. The Health Care Availability and Access Board
9 Fund.

10 Section 999. Effective date. This Act takes effect 180
11 days after becoming law.