



General Assembly

January Session, 2005

**Committee Bill No. 607**

LCO No. 4164

\*04164SB00607HS\_\*

Referred to Committee on Human Services

Introduced by:  
(HS)

**AN ACT CONCERNING THE USE OF PREFERRED DRUG LISTS AND  
PRIOR AUTHORIZATION PROCEDURES BY THE DEPARTMENT OF  
SOCIAL SERVICES OR ANY ENTITY THAT ADMINISTERS A  
MEDICAID MANAGED CARE HEALTH PLAN.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 17b-274 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) The Division of Criminal Justice shall periodically investigate  
4 pharmacies to ensure that the state is not billed for a brand name drug  
5 product when a less expensive generic substitute drug product is  
6 dispensed to a Medicaid recipient. The Commissioner of Social  
7 Services shall cooperate and provide information as requested by such  
8 division.

9 (b) A licensed medical practitioner may specify in writing or by a  
10 telephonic or electronic communication that there shall be no  
11 substitution for the specified brand name drug product in any  
12 prescription for a Medicaid, state-administered general assistance [,] or  
13 ConnPACE recipient, provided (1) the practitioner specifies the basis  
14 on which the brand name drug product and dosage form is medically

15 necessary in comparison to a chemically equivalent generic drug  
16 product substitution, and (2) the phrase "brand medically necessary"  
17 shall be in the practitioner's handwriting on the prescription form or, if  
18 the prohibition was communicated by telephonic communication, in  
19 the pharmacist's handwriting on such form, and shall not be  
20 preprinted or stamped or initialed on such form. If the practitioner  
21 specifies by telephonic communication that there shall be no  
22 substitution for the specified brand name drug product in any  
23 prescription for a Medicaid, state-administered general assistance [L] or  
24 ConnPACE recipient, written certification in the practitioner's  
25 handwriting bearing the phrase "brand medically necessary" shall be  
26 sent to the dispensing pharmacy within ten days. A pharmacist shall  
27 dispense a generically equivalent drug product for any drug listed in  
28 accordance with the Code of Federal Regulations Title 42 Part 447.332  
29 for a drug prescribed for a Medicaid, state-administered general  
30 assistance [L] or ConnPACE recipient unless the phrase "brand  
31 medically necessary" is ordered in accordance with this subsection and  
32 such pharmacist has received approval to dispense the brand name  
33 drug product in accordance with subsection (c) of this section.

34 (c) The Commissioner of Social Services shall implement a  
35 procedure by which a pharmacist shall obtain approval from an  
36 independent pharmacy consultant acting on behalf of the Department  
37 of Social Services, under an administrative services only contract,  
38 whenever the pharmacist dispenses a brand name drug product to a  
39 Medicaid, state-administered general assistance [L] or ConnPACE  
40 recipient and a chemically equivalent generic drug product  
41 substitution is available, provided such procedure shall not require  
42 approval for other than initial prescriptions for such drug product.  
43 Such requests for approval may be communicated to the independent  
44 pharmacy consultant through telephonic communication, by means of  
45 a facsimile transmission or through electronic mail. In cases where the  
46 brand name drug is less costly than the chemically equivalent generic  
47 drug when factoring in manufacturers' rebates, the pharmacist shall  
48 dispense the brand name drug. If such approval is not granted or

49 denied within two hours of receipt by the commissioner of the request  
50 for approval, it shall be deemed granted and the pharmacist shall not  
51 need such approval to refill such prescription. Notwithstanding any  
52 provision of this section, a pharmacist shall not dispense any initial  
53 maintenance drug prescription for which there is a chemically  
54 equivalent generic substitution that is for less than fifteen days without  
55 the department's granting of prior authorization, provided prior  
56 authorization shall not otherwise be required for atypical antipsychotic  
57 drugs if the individual is currently taking such drug at the time the  
58 pharmacist receives the prescription. The pharmacist may appeal a  
59 denial of reimbursement to the department based on the failure of  
60 such pharmacist to substitute a generic drug product in accordance  
61 with this section.

62 (d) In all cases where a Medicaid, state-administered general  
63 assistance or ConnPACE recipient presents to a pharmacist a  
64 prescription for a drug requiring prior approval, but for which prior  
65 approval has not been obtained by such recipient, the Department of  
66 Social Services or any entity that administers a Medicaid managed care  
67 health plan shall:

68 (1) Ensure the immediate electronic authorization of up to a  
69 fifteen-day supply of the originally prescribed drug and require that  
70 the initial response to a pharmacist requesting authorization for the  
71 drug include confirmation of the availability of payment for  
72 dispensing such a temporary supply;

73 (2) Provide notification to the prescriber, no later than twenty-four  
74 hours after receipt of the prescription, by facsimile transmission or  
75 electronic mail, (A) that prior approval is required for the prescribed  
76 drug, (B) the specified process for obtaining prior approval, together  
77 with forms that may be transmitted electronically to obtain prior  
78 approval, (C) that a temporary supply of the prescribed drug, not to  
79 exceed fifteen days, was issued in the absence of prior approval, and  
80 (D) that identifies any alternative drugs contained on the preferred

81 drug lists, believed to be equally effective; and

82 (3) Mail written notification to the Medicaid, state-administered  
83 general assistance or ConnPACE recipient, no later than twenty-four  
84 hours after receipt of the prescription, that (A) prior approval is  
85 required for the prescribed drug, (B) a temporary supply of the  
86 prescribed drug was issued in the absence of prior approval, (C)  
87 identifies any alternative drugs contained on the preferred drug lists,  
88 believed to be equally effective, and (D) advises the recipient of the  
89 right to request a hearing, utilizing the Medicaid fair hearing process  
90 administered by the department pursuant to chapter 54.

91 (e) The Department of Social Services, an independent pharmacy  
92 consultant acting on behalf of the department, or any entity that  
93 administers a Medicaid managed care health plan shall provide  
94 written notice of the right to a hearing to a Medicaid, state-  
95 administered general assistance or ConnPACE recipient whenever the  
96 department, an independent pharmacy consultant acting on behalf of  
97 the department, or any entity that administers a Medicaid managed  
98 care health plan: (1) Authorizes less than the full amount or duration  
99 of the drug originally prescribed, (2) denies or terminates payment for  
100 a prescribed drug, (3) provides only a temporary supply of a  
101 prescribed drug, or (4) denies a request for prior approval of a  
102 prescribed drug. The hearing shall be conducted in accordance with  
103 the Medicaid fair hearing process and shall be administered by the  
104 department pursuant to chapter 54. The hearing shall be held not later  
105 than ten days after the date on which a request for such hearing is  
106 received, and any recipient requesting such hearing shall continue to  
107 receive the originally prescribed drug during the pendency of any such  
108 hearing.

109 (f) The department and each entity that administers a Medicaid  
110 managed care health plan shall, with respect to any Medicaid, state-  
111 administered general assistance or ConnPACE recipient who is  
112 utilizing a drug newly subjected to prior approval requirements shall,

113 prior to the implementation of such a prior approval requirement,  
114 provide a thirty-day advance written notification to such recipient and  
115 the prescriber of: (1) The impending prior approval requirement for  
116 the drug, (2) the process for obtaining such prior approval, and (3) the  
117 identity and availability of any alternative drugs believed to be equally  
118 effective for the recipient. The department and each entity that  
119 administers a Medicaid managed care health plan shall, not less than  
120 ten days prior to suspending payment for a drug being utilized  
121 without prior approval, provide separate written notice of the  
122 termination of payment for such drug to a Medicaid, state-  
123 administered general assistance or ConnPACE recipient.

124 [(d)] (g) A licensed medical practitioner shall disclose to the  
125 Department of Social Services or such consultant, upon request, the  
126 basis on which the brand name drug product and dosage form is  
127 medically necessary in comparison to a chemically equivalent generic  
128 drug product substitution. The Commissioner of Social Services shall  
129 establish a procedure by which such a practitioner may appeal a  
130 determination that a chemically equivalent generic drug product  
131 substitution is required for a Medicaid, state-administered general  
132 assistance [,] or ConnPACE recipient.

133 (h) The protections set forth in subsections (c) to (f), inclusive, of this  
134 section for Medicaid, state-administered general assistance and  
135 ConnPACE recipients shall apply equally to prior approval  
136 requirements for brand name drugs and to prior approval required  
137 due to use of preferred drug lists. The provisions of subsections (c) to  
138 (f), inclusive, of this section shall apply to any entity that administers a  
139 Medicaid managed care health plan and to fee-for-service plans  
140 administered by the department directly or for which the department  
141 has entered into a contractual arrangement for the administration of  
142 such fee-for-service plan.

143 Sec. 2. Section 17b-274d of the general statutes is repealed and the  
144 following is substituted in lieu thereof (*Effective July 1, 2005*):

145 (a) Pursuant to 42 USC 1396r-8, there is established a Medicaid  
146 Pharmaceutical and Therapeutics Committee within the Department of  
147 Social Services.

148 (b) The Medicaid Pharmaceutical and Therapeutics Committee shall  
149 be comprised as specified in 42 USC 1396r-8 and shall consist of  
150 fourteen members appointed by the Governor. Five members shall be  
151 physicians licensed pursuant to chapter 370, including one general  
152 practitioner, one pediatrician, one geriatrician, one psychiatrist and  
153 one specialist in family planning, four members shall be pharmacists  
154 licensed pursuant to chapter 400j, two members shall be visiting  
155 nurses, one specializing in adult care and one specializing in  
156 psychiatric care, one member shall be a clinician designated by the  
157 Commissioner of Mental Health and Addiction Services, one member  
158 shall be a representative of pharmaceutical manufacturers and one  
159 member shall be a consumer representative. The committee may, on an  
160 ad hoc basis, seek the participation of other state agencies or other  
161 interested parties in its deliberations. The members shall serve for  
162 terms of two years from the date of their appointment. Members may  
163 be appointed to more than one term. The Commissioner of Social  
164 Services, or the commissioner's designee, shall convene the committee  
165 following the Governor's designation of appointments. The  
166 administrative staff of the Department of Social Services shall serve as  
167 staff for said committee and assist with all ministerial duties. The  
168 Governor shall ensure that the committee membership includes  
169 Medicaid participating physicians and pharmacists, with experience  
170 serving all segments of the Medicaid population.

171 (c) Committee members shall select a chairperson and vice-  
172 chairperson from the committee membership on an annual basis.

173 (d) The committee shall meet at least quarterly, and may meet at  
174 other times at the discretion of the chairperson and committee  
175 membership. The committee shall comply with all regulations adopted  
176 by the department, including notice of any meeting of the committee,

177 pursuant to the requirements of chapter 54.

178 (e) The Department of Social Services, in consultation with the  
179 Medicaid Pharmaceutical and Therapeutics Committee, shall adopt  
180 preferred drug lists for use in the Medicaid, state-administered general  
181 assistance and ConnPACE programs. The Department of Social  
182 Services, upon entering into a contract for the provision of prescription  
183 drug coverage to medical assistance recipients receiving services in a  
184 managed care setting as provided by section 17b-266a, shall in  
185 consultation with the Medicaid Pharmaceutical and Therapeutics  
186 Committee, expand the preferred drug list for use in the HUSKY Plan,  
187 Part A and Part B. To the extent feasible, the department shall review  
188 all drugs included on the preferred drug lists at least every twelve  
189 months, and may recommend additions to, and deletions from, the  
190 preferred drug lists, to ensure that the preferred drug lists provide for  
191 medically appropriate drug therapies for Medicaid, state-administered  
192 general assistance and ConnPACE patients. For the fiscal year ending  
193 June 30, 2004, such drug lists shall be limited to use in the Medicaid  
194 and ConnPACE programs and cover three classes of drugs, including  
195 proton pump inhibitors and two other classes of drugs determined by  
196 the Commissioner of Social Services. Not later than June 30, 2005, the  
197 Department of Social Services, in consultation with the Medicaid  
198 Pharmaceutical and Therapeutic Committee shall expand such drug  
199 lists to include other classes of drugs, except as provided in subsection  
200 (f) of this section, in order to achieve savings reflected in the amounts  
201 appropriated to the department, for the various components of the  
202 program, in the state budget act.

203 (f) Except for mental-health-related drugs and antiretroviral drugs,  
204 reimbursement for a drug not included on the preferred drug lists are  
205 subject to prior authorization.

206 (g) The Department of Social Services and any entity that  
207 administers a Medicaid managed care health plan shall publish and  
208 disseminate the current preferred drug lists, all of their prior

209 authorization request forms, and complete descriptions of their prior  
210 authorization processes to all Medicaid providers in the state. The  
211 Department of Social Services and any entity that administers a  
212 Medicaid managed care health plan shall publish and provide timely  
213 updates to information required to be published pursuant to this  
214 subsection on any website maintained by the department or such  
215 entity. The department shall also provide such information and timely  
216 updates to such information through the department's mailed bulletin  
217 system.

218 (h) The committee shall ensure that the pharmaceutical  
219 manufacturers agreeing to provide a supplemental rebate pursuant to  
220 42 USC 1396r-8(c) have an opportunity to present evidence supporting  
221 inclusion of a product on the preferred drug lists unless a court of  
222 competent jurisdiction, in a final decision, determines that the  
223 Secretary of Health and Human Services does not have authority to  
224 allow such supplemental rebates, provided the inability to utilize  
225 supplemental rebates pursuant to this subsection shall not impair the  
226 committee's authority to maintain preferred drug lists. Upon timely  
227 notice, the department shall ensure that any drug that has been  
228 approved, or had any of its particular uses approved, by the United  
229 States Food and Drug Administration under a priority review  
230 classification, will be reviewed by the Medicaid Pharmaceutical and  
231 Therapeutics Committee at the next regularly scheduled meeting. To  
232 the extent feasible, upon notice by a pharmaceutical manufacturer, the  
233 department shall also schedule a product review for any new product  
234 at the next regularly scheduled meeting of the Medicaid  
235 Pharmaceutical and Therapeutics Committee.

236 (i) Factors considered by the department and the Medicaid  
237 Pharmaceutical and Therapeutics Committee in developing the  
238 preferred drug lists shall include, but not be limited to, clinical  
239 efficacy, safety and cost effectiveness of a product.

240 (j) The Medicaid Pharmaceutical and Therapeutics Committee may

241 also make recommendations to the department regarding the prior  
242 authorization of any prescribed drug covered by Medicaid in  
243 accordance with the plan developed and implemented pursuant to  
244 section 17b-491a.

245 (k) Medicaid, state-administered general assistance and ConnPACE  
246 recipients, and their prescribers, may appeal any [department]  
247 preferred drug list determinations by the department or any entity that  
248 administers a Medicaid managed health care plan utilizing the  
249 Medicaid fair hearing process administered by the Department of  
250 Social Services established pursuant to chapter 54.

251 (l) The Commissioner of Social Services may contract with a  
252 pharmacy benefits organization or a single entity qualified to negotiate  
253 with pharmaceutical manufacturers for supplemental rebates,  
254 available pursuant to 42 USC 1396r-8(c), for the purchase of drugs  
255 listed on the preferred drug lists established pursuant to subsection (e)  
256 of this section.

257 Sec. 3. (NEW) (*Effective July 1, 2005*) No later than October 1, 2005,  
258 the Department of Social Services shall enter into a contract with an  
259 outside organization for an independent study and survey, the results  
260 of which shall be presented to the joint standing committees of the  
261 General Assembly having cognizance of matters relating to public  
262 health, human services and appropriations and the budgets of state  
263 agencies, to detect any access problems incurred by Medicaid, state-  
264 administered general assistance or ConnPACE recipients, attributable  
265 to the use of preferred drug lists by the department or an entity that  
266 administers a Medicaid managed care health plan. The study and  
267 survey shall include, but not be limited to:

268 (1) The number of recipients under each program and under each  
269 entity that administers a Medicaid managed care health plan who,  
270 each month for an identified six-month period, present to a pharmacy  
271 a prescription for a drug not listed on a preferred drug list without  
272 first having obtained prior authorization, who are (A) authorized to

273 receive a temporary supply of the prescribed drug immediately, (B)  
 274 prescribed a different drug in the same therapeutic class not later than  
 275 fifteen days after the date of presenting the prescription, and (C) not  
 276 prescribed a drug in the same therapeutic class during such fifteen-day  
 277 period;

278 (2) The number of recipients under each program and under each  
 279 entity that administers a Medicaid managed care health plan, for an  
 280 identified six-month period, whose prescribers request prior  
 281 authorization for drugs not listed on a preferred drug list, whether  
 282 such requests for prior authorization are granted or denied; and of  
 283 those requests that are denied, the number of recipients who request  
 284 hearings to challenge the denial; whose hearings are then decided in  
 285 favor of the recipient, or for whom prior to the hearing decision, the  
 286 decision to deny the prescribed drug is reversed;

287 (3) A random survey of Medicaid, state-administered general  
 288 assistance and ConnPACE providers to ascertain whether they have  
 289 encountered any drug access problems attributable to preferred drug  
 290 lists or have limited their participation in any program due in whole,  
 291 or in part to such problems; and

292 (4) A random survey of Medicaid, state-administered general  
 293 assistance and ConnPACE recipients to ascertain whether they have  
 294 encountered any drug access problems attributable to preferred drug  
 295 lists, including any problems necessitating medical treatment as a  
 296 result of lack of access to a drug not listed on a preferred drug list.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2005</i>	17b-274
Sec. 2	<i>July 1, 2005</i>	17b-274d
Sec. 3	<i>July 1, 2005</i>	New section

**Statement of Purpose:**

To revise the governing statutes concerning the use of prior authorization procedures and preferred drug lists by the Department of Social Services or an entity that administers a Medicaid managed care health plan.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

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