§ 369-bb. Drug utilization review board. 1. A twenty-three-member drug utilization review board is hereby created in the department. The board is responsible for the establishment and implementation of medical standards and criteria for the retrospective and prospective DUR program.

2. The members of the DUR board shall be appointed by the commissioner and shall serve a three-year term. Members may be reappointed upon the completion of other terms. The membership shall be comprised of the following:

(a) Six persons licensed and actively engaged in the practice of medicine in the state, with expertise in the areas of mental health, HIV/AIDS, geriatrics, pediatrics or internal medicine and who may be selected based on input from professional associations and/or advocacy groups in New York state.

(b) Six persons licensed and actively practicing in pharmacy in the state who may be selected based on input from professional associations and/or advocacy groups in New York state.

(c) Two persons with expertise in drug utilization review who are health care professionals licensed under Title VIII of the education law at least one of whom is a pharmacologist.

(d) Three persons that are consumers or consumer representatives of organizations with a regional or statewide constituency and who have been involved in activities related to health care consumer advocacy, including issues affecting Medicaid or EPIC recipients.

(e) One person licensed and actively practicing as a nurse practitioner or midwife.

(f) Two persons who are health care economists.

(g) One person who is an actuary.

(h) One person representing the department of financial services.

(i) The commissioner shall designate a person from the department to serve as chairperson of the board.

3. The appointed members to the board, or its agents shall have no sanctions against them by medicare or medicaid.

4. The appointments to this board shall be made so that the length of

the terms are staggered. In making the appointments, the commissioner shall consider geographic balance in the representation on the board.

5. (a) The functions, powers and duties of the former pharmacy and therapeutics committee as established in article two-A of the public health law shall now be considered a function of the drug utilization review board, including but not limited to:

(i) conducting an executive session for the purpose of receiving and evaluating drug pricing information related to supplemental rebates, or receiving and evaluating trade secrets, or other information which, if disclosed, would cause substantial injury to the competitive position of the manufacturer; and

(ii) evaluating and providing recommendations to the commissioner of health on other issues relating to pharmacy services under Medicaid or EPIC, including, but not limited to: therapeutic comparisons; enhanced use of generic drug products; enhanced targeting of physician prescribing patterns; and

(iii) collaborating with managed care organizations to address drug utilization concerns and to implement consistent management strategies across the fee-for-service and managed care pharmacy benefits.

(b) Any business or other matter undertaken or commenced by the pharmacy and therapeutics committee pertaining to or connected with the functions, powers, obligations and duties are hereby transferred and assigned to the drug utilization review board and pending on the effective date of this subdivision, may be conducted and completed by the drug utilization review board in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the pharmacy and therapeutics committee. All books, papers, and property of the pharmacy and therapeutics committee shall continue to be maintained by the drug utilization review board.

(c) All rules, regulations, acts, orders, determinations, and decisions of the pharmacy and therapeutics committee pertaining to the functions and powers herein transferred and assigned, in force at the time of such transfer and assumption, shall continue in full force and effect as rules, regulations, acts, orders, determinations and decisions of the drug utilization review board until duly modified or abrogated by the commissioner of health.

6. Members of the DUR utilization review board and all its employees and agents shall be deemed to be an "employee" for purposes of section seventeen of the public officers law.

7. The department shall provide administrative support to the DUR board.

8. The duties of the DUR board are as follows:

(a) The development and application of the predetermined criteria and standards to be used in retrospective and prospective DUR that ensure that such criteria and standards are based on the compendia and that they are developed with professional input in a consensus fashion with provisions for timely revisions and assessments as necessary. Further, that the DUR standards shall reflect the appropriate practices of physicians in order to monitor:

(i) Therapeutic appropriateness;

(ii) Overutilization or underutilization;

(iii) Therapeutic duplication;

(iv) Drug-disease contraindications;

(v) Drug-drug interactions;

(vi) Incorrect drug dosage or duration of drug treatment; and

(vii) Clinical abuse/misuse.

(b) The development, selection, application, and assessment of interventions or remedial strategies for physicians, pharmacists, and recipients that are educational and not punitive in nature to improve the quality of care including:

(i) Information disseminated to physicians and pharmacists to ensure that physicians and pharmacists are aware of the board's duties and powers;

(ii) Written, oral, or electronic reminders of patient-specific or drug-specific information that are designed to ensure recipient, physician, and pharmacist confidentiality, and suggested changes in the prescribing or dispensing practices designed to improve the quality of care;

(iii) Use of face-to-face discussions between experts in drug therapy and the prescriber or pharmacist who has been targeted for educational

intervention;

(iv) Intensified reviews or monitoring of selected prescribers or pharmacists;

(v) The creation of an educational program using data provided through DUR to provide for active and ongoing educational outreach programs to improve prescribing and dispensing practices as provided in this subdivision. (This may be done directly or through contract with other entities);

(vi) The timely evaluation of interventions to determine if the interventions have improved the quality of care; and

(vii) The review of case profiles prior to the conducting of an intervention.

(c) The publication of an annual report which shall be subject to the department's comment prior to its issuance to the federal department of health and human services by December first of each year. The annual report also shall be submitted to the governor and the legislature before December first of each year. The report shall include the following information:

(i) A description of the activities of the board, including the nature and scope of the prospective and retrospective drug use review programs;

(ii) A summary of the interventions used;

(iii) An assessment of the impact of these educational interventions in quality of care;

(iv) An estimate of the cost savings generated as a result of such program; and

(v) Recommendations for program improvement.

(d) The development of a working agreement for the DUR board with related boards or agencies, including, but not limited to: the board of pharmacy, the board of medicine, the SURS staff, and staff of the department of health and the office of mental health, in order to clarify the areas of responsibility for each where such areas may overlap.

(e) The establishment of a process where physicians or pharmacists will have the opportunity to submit responses to the DUR educational letters.

(f) The publication and dissemination of educational information to physicians and pharmacists on the DUR board and the DUR program to

include information on:

(i) Identifying and reducing the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and recipients;

(ii) Potential or actual severe/adverse reactions to drugs;

(iii) Therapeutic appropriateness;

(iv) Overutilization or underutilization;

(v) Appropriate use of generics;

(vi) Therapeutic duplication;

(vii) Drug-disease contraindications;

(viii) Drug-drug interactions;

(ix) Incorrect drug dosage/duration of drug treatments;

(x) Drug allergy interactions; and

(xi) Clinical abuse/misuse.

(g) The evaluation of specific drugs submitted to the board for review pursuant to section two hundred eighty of the public health law, and the formulation of recommended target supplemental rebates, in accordance with the standards established in such section.

(h) The adoption and implementation of procedures designed to ensure the confidentiality of any information collected, stored, retrieved, assessed or analyzed by the DUR board, staff to the board, or contractors to the DUR program, that identifies individual physicians, pharmacists, or recipients. The board may have access to identifying information for purposes of carrying out intervention activities, but such identifying information may not be released to anyone other than a member of the DUR board or the department and its agents.

(i) The improper release of identifying information in violation of this article may subject that person to criminal or civil penalties.

(j) The board may release cumulative non-identifying information for purposes of legitimate research.

9. The relationship of the DUR board to the department is as follows:

(a) The department shall monitor the DUR board's compliance to federal and state statute and regulation.

(b) The DUR board shall serve at the discretion of the commissioner.

(c) The department shall have authority on all fiscal matters relating to the DUR program.

(d) The department shall have authority on all administrative matters relating to the administration of the medical assistance program within the DUR program.

(e) The DUR board shall have responsibility for all medical matters relating to the DUR program.

(f) The DUR board may utilize medical consultants and review committees as necessary, subject to department approval.