S T A T E O F N E W Y O R K

S. 2229 A. 5329

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 13, 2009

IN SENATE -- Introduced by Sens. LITTLE, ADDABBO, DIAZ, GOLDEN, GRIFFO, HANNON, LAVALLE, MORAHAN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

IN ASSEMBLY -- Introduced by M. of A. SAYWARD, SCOZZAFAVA, DUPREY, BURLING, BACALLES, GUNTHER, KOLB, CHRISTENSEN, RAIA, MOLINARO, CALHOUN, REILLY -- Multi-Sponsored by -- M. of A. CROUCH, EDDINGTON, McKEVITT, WEISENBERG -- read once and referred to the Committee on Aging

AN ACT to amend the elder law and the social services law, in relation to pharmaceutical reimbursement under the EPIC program and Medicaid for certain pharmacies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 1 of paragraph (b) of subdivision 1 of section 250 of the elder law, as amended by section 1 of part A of chapter 58 of the laws of 2008, is amended and a new subparagraph 1-a is added to read as follows:

(1) Average wholesale price discounted by sixteen and twenty-five one hundredths percent, plus a dispensing fee as defined in paragraph (c) of this subdivision, [or]

(1-A) AVERAGE WHOLESALE PRICE DISCOUNTED BY FOURTEEN PERCENT FOR A SMALL PHARMACY, PLUS A DISPENSING FEE AS DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS SUBPARAGRAPH, A "SMALL PHARMACY" SHALL MEAN A PHARMACY, APPROVED BY THE COMMISSIONER OF HEALTH, WHICH IS DETERMINED BY THE COMMISSIONER OF HEALTH TO DISPENSE ON AVERAGE UNDER TWO HUNDRED SCRIPTS A DAY, OR

S 2. Subparagraph (ii) of paragraph (b) of subdivision 9 of section 367-a of the social services law, as amended by section 4 of part C of chapter 58 of the laws of 2008, is amended and a new paragraph (i) is added to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(ii) if the drug dispensed is a multiple source prescription drug or a brand-name prescription drug for which no specific upper limit has been set by such federal agency, the lower of the estimated acquisition cost of such drug to pharmacies, or the dispensing pharmacy's usual and customary price charged to the general public. For sole and multiple source brand name drugs, estimated acquisition cost means the average wholesale price of a prescription drug based upon the package size dispensed from, as reported by the prescription drug pricing service used by the department, less sixteen and twenty-five one hundredths percent thereof, and updated monthly by the department; FOR A SMALL PHARMACY, AS DEFINED IN PARAGRAPH (I) OF THIS SUBDIVISION, ACQUISITION COSTS MEANS THE AVERAGE WHOLESALE PRICE OF A PRESCRIPTION DRUG BASED UPON THE PACKAGE SIZE DISPENSED FROM, AS REPORTED BY THE PRESCRIPTION DRUG PRICING SERVICE USED BY THE DEPARTMENT, LESS FOURTEEN PERCENT THEREOF, AND UPDATED MONTHLY BY THE DEPARTMENT; or, for a specialized HIV pharmacy, as defined in paragraph (f) of this subdivision, acquisition cost means the average wholesale price of a prescription drug based upon the package size dispensed from, as reported by the prescription drug pricing service used by the department, less twelve percent thereof, and updated monthly by the department. For multiple source generic drugs, estimated acquisition cost means the lower of the average wholesale price of a prescription drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, less twenty-five percent thereof, or the maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision; or, for a specialized HIV pharmacy, as defined in paragraph (f) of this subdivision, acquisition cost means the lower of the average wholesale price of a prescription drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, less twelve percent thereof, or the maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision.

(I) FOR PURPOSES OF THIS SECTION, A SMALL PHARMACY SHALL MEAN A PHARMACY WHICH IS INDEPENDENTLY OWNED, APPROVED BY THE COMMISSIONER OF HEALTH, AND WHICH IS DETERMINED BY THE COMMISSIONER OF HEALTH TO DISPENSE ON AVERAGE UNDER TWO HUNDRED SCRIPTS A DAY.

S 3. This act shall take effect immediately; provided, however, that the amendments to subdivision 9 of section 367-a of the social services law made by section two of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.