

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

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 11, 2009

Introduced by M. of A. GUNTHER, SAYWARD, CHRISTENSEN, REILLY, SPANO, DUPREY, BURLING, BACALLES, KOLB, SCOZZAFAVA, RAIA, MOLINARO, CALHOUN -- 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:

1 Section 1. Subparagraph 1 of paragraph (b) of subdivision 1 of section
2 250 of the elder law, as amended by section 1 of part A of chapter 58 of
3 the laws of 2008, is amended and a new subparagraph 1-a is added to read
4 as follows:
5 (1) Average wholesale price discounted by sixteen and twenty-five one
6 hundredths percent, plus a dispensing fee as defined in paragraph (c) of
7 this subdivision, [or]
8 (1-A) AVERAGE WHOLESALE PRICE DISCOUNTED BY FOURTEEN PERCENT FOR A
9 SMALL PHARMACY, PLUS A DISPENSING FEE AS DEFINED IN PARAGRAPH (C) OF
10 THIS SUBDIVISION. FOR THE PURPOSES OF THIS SUBPARAGRAPH, A "SMALL PHAR-
11 MACY" SHALL MEAN A PHARMACY, APPROVED BY THE COMMISSIONER OF HEALTH,
12 WHICH IS DETERMINED BY THE COMMISSIONER OF HEALTH TO DISPENSE ON AVERAGE
13 UNDER TWO HUNDRED SCRIPTS A DAY, OR
14 S 2. Subparagraph (ii) of paragraph (b) of subdivision 9 of section
15 367-a of the social services law, as amended by section 4 of part C of
16 chapter 58 of the laws of 2008, is amended and a new paragraph (i) is
17 added to read as follows:
18 (ii) if the drug dispensed is a multiple source prescription drug or a
19 brand-name prescription drug for which no specific upper limit has been
20 set by such federal agency, the lower of the estimated acquisition cost
21 of such drug to pharmacies, or the dispensing pharmacy's usual and
22 customary price charged to the general public. For sole and multiple

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

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1 source brand name drugs, estimated acquisition cost means the average
2 wholesale price of a prescription drug based upon the package size
3 dispensed from, as reported by the prescription drug pricing service
4 used by the department, less sixteen and twenty-five one hundredths
5 percent thereof, and updated monthly by the department; FOR A SMALL
6 PHARMACY, AS DEFINED IN PARAGRAPH (I) OF THIS SUBDIVISION, ACQUISITION
7 COSTS MEANS THE AVERAGE WHOLESALE PRICE OF A PRESCRIPTION DRUG BASED
8 UPON THE PACKAGE SIZE DISPENSED FROM, AS REPORTED BY THE PRESCRIPTION
9 DRUG PRICING SERVICE USED BY THE DEPARTMENT, LESS FOURTEEN PERCENT THERE-
10 EOF, AND UPDATED MONTHLY BY THE DEPARTMENT; or, for a specialized HIV
11 pharmacy, as defined in paragraph (f) of this subdivision, acquisition
12 cost means the average wholesale price of a prescription drug based upon
13 the package size dispensed from, as reported by the prescription drug
14 pricing service used by the department, less twelve percent thereof, and
15 updated monthly by the department. For multiple source generic drugs,
16 estimated acquisition cost means the lower of the average wholesale
17 price of a prescription drug based on the package size dispensed from,
18 as reported by the prescription drug pricing service used by the depart-
19 ment, less twenty-five percent thereof, or the maximum acquisition cost,
20 if any, established pursuant to paragraph (e) of this subdivision; or,
21 for a specialized HIV pharmacy, as defined in paragraph (f) of this
22 subdivision, acquisition cost means the lower of the average wholesale
23 price of a prescription drug based on the package size dispensed from,
24 as reported by the prescription drug pricing service used by the depart-
25 ment, less twelve percent thereof, or the maximum acquisition cost, if
26 any, established pursuant to paragraph (e) of this subdivision.

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

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