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

September 22, 2009

Introduced by M. of A. DESTITO, COLTON, PHEFFER, CYMBROWITZ, SCHIMMINGER, WEISENBERG, HEASTIE, PRETLOW, REILLY, STIRPE, PERALTA, RUSSELL, DelMONTE, CRESPO, BENEDETTO, MARKEY, MAISEL, HOYT, ABBATE, PERRY, MILLMAN, LUPARDO, PAULIN, SCHROEDER, SAYWARD, DUPREY, CALHOUN, GUNTHER, ESPAILLAT, KAVANAGH, SPANO, HYER-SPENCER, ROSENTHAL, CHRISTENSEN, FIELDS, SKARTADOS, ENGLEBRIGHT, JAFFEE, DINOWITZ, ZEBROWSKI, BOYLAND, CASTRO, POWELL, ALESSI -- Multi-Sponsored by -- M. of A. BACALLES, BARRA, BURLING, CONTE, FITZPATRICK, GABRYSZAK, GALEF, GIBSON, GIGLIO, HAYES, HEVESI, KOLB, KOON, LATIMER, McENENY, J. MILLER, NOLAN, O'MARA, PEOPLES-STOKES, QUINN, RAIA, SWEENEY, THIELE, TITONE -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law and the elder law, in relation to prescription drug pricing for pharmacy reimbursement

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

Section 1. 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 to read as follows:

(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] *THE WHOLESALE ACQUISITION COST OF A PRESCRIPTION DRUG BASED*

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

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UPON THE PACKAGE SIZE DISPENSED FROM, AS REPORTED BY THE PRESCRIPTION DRUG PRICING SERVICE USED BY THE DEPARTMENT, PLUS FOUR AND SIXTY-EIGHT HUNDREDTHS 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] THE WHOLESALE ACQUISITION COST OF A PRESCRIPTION DRUG BASED UPON THE PACKAGE SIZE DISPENSED FROM, AS REPORTED BY THE PRESCRIPTION DRUG PRICING SERVICE USED BY THE DEPARTMENT, PLUS FOUR AND SIXTY-EIGHT HUNDREDTHS 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.

S 2. 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 to read as follows:

(1) [Average wholesale price discounted by sixteen and twenty-five one hundredths percent] WHOLESALE ACQUISITION COST PLUS FOUR AND SIXTY-EIGHT HUNDREDTHS PERCENT, plus a dispensing fee as defined in paragraph (c) of this subdivision, or

S 3. Subdivision 2 of section 250 of the elder law is amended to read as follows:

2. For purposes of determining the amount of reimbursement which shall be paid to a participating provider pharmacy, the panel shall determine or cause to be determined, through a statistically valid survey, the quantities of each covered drug that participating provider pharmacies buy most frequently. Using the result of this survey, the contractor shall update every thirty days the list of [average wholesale prices] WHOLESALE ACQUISITION COSTS upon which such reimbursement is determined using nationally recognized and most recently revised sources. Such price revisions shall be made available to all participating provider pharmacies. The pharmacist shall be reimbursed based on the price in effect at the time the covered drug is dispensed.

S 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 26, 2009; provided, however, that the amendments made to subparagraph (ii) of paragraph (b) of subdivision 9 of section 367-a of the social services law by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.