

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:

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:

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

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

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

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