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

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I N S E N A T E

May 28, 2010

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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. Paragraphs (b), (c) and (e) of subdivision 9 of section 367-a of the social services law, paragraph (b) as amended and paragraph (e) as added by section 3 of part C of chapter 58 of the laws of 2004, subparagraph (i) of paragraph (b) as amended by section 10 and subparagraph (ii) of paragraph (b) as amended by section 4 of part C of chapter 58 of the laws of 2008, subparagraph (iii) of paragraph (b) as added by section 29 of part E of chapter 63 of the laws of 2005 and paragraph (c) as amended by chapter 19 of the laws of 1998, are amended and a new paragraph (j) is added to read as follows:

(b) for drugs dispensed by pharmacies:

(i) [if the drug dispensed is a multiple source prescription drug for which an upper limit has been set by the federal centers for medicare and medicaid services, the lower of: (A) an amount equal to the specific upper limit set by such federal agency for the multiple source prescription drug; (B) the estimated acquisition cost of such drug to pharmacies which, for purposes of this subparagraph, shall mean 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; (C) the maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision; or (D) the dispensing pharmacy's usual and customary price charged to the general public, and

(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

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

LBD14703-06-0

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] TWELVE and twenty-five one hundredths percent OR 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; 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] AND TWENTY-FIVE ONE-HUNDREDTHS PERCENT OR 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; OR FOR A CHAIN PHARMACY, AS DEFINED IN PARAGRAPH (J) OF THIS SUBDIVISION, ACQUISITION COST MEANS THE AVERAGE WHOLESALE PRICE OF A PRESCRIPTION DRUG BASED ON THE PACKAGE SIZE DISPENSED FROM LESS SIXTEEN AND TWENTY-FIVE ONE HUNDREDTHS PERCENT THEREOF OR THE WHOLESALE ACQUISITION COSTS OF THE PRESCRIPTION DRUG BASED ON THE PACKAGE SIZE DISPENSED FROM PLUS FIVE TENTHS OF ONE 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] OR THE SPECIFIC UPPER LIMIT SET BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, WHICHEVER IS HIGHER. IF THE DISPENSING PHARMACY'S USUAL AND CUSTOMARY PRICE CHARGED TO THE GENERAL PUBLIC IS LOWER THAN EITHER OF THESE, PAYMENT SHALL BE MADE AT THE USUAL AND CUSTOMARY PRICE.

[(iii)] (II) notwithstanding [subparagraphs (i) and (ii)] SUBPARAGRAPH (I) of this paragraph and paragraphs (d) and (e) of this subdivision, if the drug dispensed is a drug that has been purchased from a manufacturer by a covered entity pursuant to section 340B of the federal public health service act (42 USCA S 256b), the actual amount paid by such covered entity pursuant to such section, plus the reasonable administrative costs, as determined by the commissioner, incurred by the covered entity or by an authorized contract pharmacy in connection with the purchase and dispensing of such drug and the tracking of such transactions. For purposes of this subparagraph, a "covered entity" is an entity that meets the requirements of paragraph four of subsection (a) of such section, that elects to participate in the program established by such section, and that causes claims for payment for drugs covered by this subparagraph to be submitted to the medical assistance program, either directly or through an authorized contract pharmacy. No medical assistance payments may be made to a covered entity or to an authorized contract pharmacy of a covered entity for drugs that are eligible for

purchase under the section 340B program and are dispensed on an outpatient basis to patients of the covered entity, other than under the provisions of this subparagraph. Pharmacies submitting claims for reimbursement of drugs purchased pursuant to section 340B of the public health service act shall notify the department that the claim is eligible for purchase under the 340B program, consistent with claiming instructions issued by the department to identify such claims.

(c) [Notwithstanding subparagraph (i) of paragraph (b) of this subdivision, if] IF a qualified prescriber certifies "brand medically necessary" or "brand necessary" in his or her own handwriting directly on the face of a prescription for a multiple source drug for which a specific upper limit of reimbursement has been established by the federal agency, in addition to writing "d a w" in the box provided for such purpose on the prescription form, payment under this title for such drug must be made under the provisions of subparagraph [(ii)] (I) of such paragraph.

(e) For a multiple source generic drug for which no specific upper payment limit has been established by the federal centers for medicare and medicaid services, the commissioner of health may establish a maximum acquisition cost for such drug which shall be effective until such time as a specific federal upper payment limit has been established for such drug. The department shall use a similar methodology in establishing such an interim price as that utilized by the centers for medicare and Medicaid services in establishing the federal upper payment limit AND MAKE AVAILABLE UPON REQUEST BOTH THE METHODOLOGY AND THE COST BASIS UTILIZED FOR ANY INDIVIDUAL MULTIPLE SOURCE GENERIC DRUG SO AS TO VERIFY THAT THE PRODUCT IS AVAILABLE IN PHARMACIES LOCATED IN THE STATE. For this purpose, the department is authorized to enter into a contract with an entity to provide technical and administrative support to the commissioner of health.

(J) FOR PURPOSES OF THIS SECTION, A CHAIN PHARMACY IS DEFINED AS FIVE OR MORE PHARMACIES UNDER THE SAME CORPORATE ENTITY.

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] TWELVE and twenty-five one hundredths percent OR WHOLESALE ACQUISITION COST PLUS FOUR AND SIXTY-EIGHT HUNDREDTHS PERCENT, plus a dispensing fee as defined in paragraph (c) of this subdivision, or FOR A CHAIN PHARMACY AS DEFINED IN PARAGRAPH (J) OF SUBDIVISION NINE OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THE SOCIAL SERVICES LAW, AVERAGE WHOLESALE PRICE DISCOUNTED BY SIXTEEN AND TWENTY-FIVE ONE HUNDREDTHS PERCENT OR WHOLESALE ACQUISITION COST PLUS FIVE TENTHS OF ONE 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 OR 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 to subdivision 9 of section 367-a of the social services law made by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.