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

576

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, JACOBS, PAULIN, N. RIVERA, CAHILL, PERRY, ARROYO, HEASTIE, JAFFEE -- Multi-Sponsored by -- M. of A. BING, BRENNAN, COLTON, DESTITO, DINOWITZ, GLICK, GUNTHER, KELLNER, LIFTON, V. LOPEZ, LUPARDO, McENENY, MILLMAN, PHEFFER, SWEENEY, TITUS, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the social services law, in relation to medicaid payment for co-payments due under Medicare Part D

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

Section 1. Subdivision 7 of section 273 of the public health law, as amended by section 7 of part C of chapter 58 of the laws of 2008, is amended to read as follows:

7. No prior authorization under the preferred drug program shall be required when a prescriber prescribes a drug on the preferred drug list, OR WHEN MEDICAL ASSISTANCE PAYMENT IS MADE, UNDER PARAGRAPH (G) OF SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-FIVE-A OF THE SOCIAL SERVICES LAW SOLELY FOR THE CO-PAYMENT FOR PRESCRIPTIONS PROVIDED UNDER PART D OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT; provided, however, that the commissioner may identify [such] a drug for which prior authorization is required pursuant to the provisions of the clinical drug review program established under section two hundred seventy-four of this article.

S 2. Subparagraph (ii) of paragraph (f) of subdivision 6 of section 367-a of the social services law, as amended by section 42 of part C of chapter 58 of the laws of 2005, is amended to read as follows:

(ii) In the year commencing April first, two thousand five and for each year thereafter, no recipient shall be required to pay more than a total of two hundred dollars in co-payments, INCLUDING THOSE required by this subdivision[, nor] AND, FOR RECIPIENTS ELIGIBLE FOR COVERAGE UNDER

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

LBD02349-01-1

PART D OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT (REFERRED TO IN THIS SECTION AS "MEDICARE PART D"), THOSE CO-PAYMENTS REQUIRED BY MEDICARE PART D. NOR shall reductions in payments as a result of such co-payments exceed two hundred dollars for any recipient. THE COMMISSIONER OF HEALTH SHALL CREATE A SYSTEM TO INCORPORATE CO-PAYMENTS BILLED TO A RECIPIENT UNDER MEDICARE PART D TOWARDS THE RECIPIENT'S TOTAL ANNUAL CO-PAYMENTS UNDER MEDICAL ASSISTANCE. AS PART OF THIS SYSTEM, PHARMACISTS SHALL RECORD ALL CO-PAYMENTS DUE UNDER MEDICARE PART D FROM SUCH RECIPIENTS WITH THE MEDICAL ASSISTANCE PROGRAM, THROUGH THE MEDICAL ASSISTANCE ELECTRONIC BILLING SYSTEM. THE COMMISSIONER OF HEALTH SHALL INCLUDE THE CO-PAYMENTS BILLED UNDER MEDICARE PART D ALONG WITH THE CO-PAYMENTS REQUIRED UNDER THIS SUBDIVISION IN DETERMINING WHEN THE RECIPIENT'S TOTAL ANNUAL CO-PAYMENTS HAVE REACHED TWO HUNDRED DOLLARS.

S 3. Paragraph (g) of subdivision 2 of section 365-a of the social services law, as amended by section 1 of part F of chapter 497 of the laws of 2008, is amended to read as follows:

(g) sickroom supplies, eyeglasses, prosthetic appliances and dental prosthetic appliances furnished in accordance with the regulations of the department, provided that the commissioner of health is authorized to implement a preferred diabetic supply program wherein the department of health will receive enhanced rebates from preferred manufacturers of glucometers and test strips, and may subject non-preferred manufacturers' glucometers and test strips to prior authorization under section two hundred seventy-three of the public health law; drugs provided on an in-patient basis, those drugs contained on the list established by regulation of the commissioner of health pursuant to subdivision four of this section, AND, FOR RECIPIENTS ELIGIBLE FOR COVERAGE UNDER PART D OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT (REFERRED TO IN THIS SECTION AS "MEDICARE PART D"), PAYMENT OF THE CO-PAYMENT FOR DRUGS PROVIDED BY A MEDICARE PART D PLAN, AFTER THE INDIVIDUAL HAS REACHED THE ANNUAL CAP ON CO-PAYMENTS AS DEFINED IN SUBPARAGRAPH (II) OF PARAGRAPH (F) OF SUBDIVISION SIX OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THIS TITLE, and those drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law and which the commissioner of health shall determine to be reimbursable based upon such factors as the availability of such drugs or alternatives at low cost if purchased by a medicaid recipient, or the essential nature of such drugs as described by such commissioner in regulations, provided, however, that such drugs, exclusive of long-term maintenance drugs, shall be dispensed in quantities no greater than a thirty day supply or one hundred doses, whichever is greater; provided further that the commissioner of health is authorized to require prior authorization for any refill of a prescription when less than seventy-five percent of the previously dispensed amount per fill should have been used were the product used as normally indicated; medical assistance shall not include any drug provided on other than an in-patient basis for which a recipient is charged or a claim is made in the case of a prescription drug, in excess of the maximum reimbursable amounts to be established by department regulations in accordance with standards established by the secretary of the United States department of health and human services, or, in the case of a drug not requiring a prescription, in excess of the maximum reimbursable amount established by the commissioner of health pursuant to paragraph (a) of subdivision four of this section;

S 4. This act shall take effect on the first of April next succeeding the date on which it shall have become a law; provided, however, that the amendments to subdivision 7 of section 273 of the public health law

made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith; and provided, further, that the amendments to subparagraph (ii) of paragraph (f) of subdivision 6 of section 367-a of the social services law made by section two of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.