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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, PHEF-
FER, 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 7 of section 273 of the public health law, as
2 amended by section 7 of part C of chapter 58 of the laws of 2008, is
3 amended to read as follows:
4 7. No prior authorization under the preferred drug program shall be
5 required when a prescriber prescribes a drug on the preferred drug list,
6 OR WHEN MEDICAL ASSISTANCE PAYMENT IS MADE, UNDER PARAGRAPH (G) OF
7 SUBDIVISION TWO OF SECTION THREE HUNDRED SIXTY-FIVE-A OF THE SOCIAL
8 SERVICES LAW SOLELY FOR THE CO-PAYMENT FOR PRESCRIPTIONS PROVIDED UNDER
9 PART D OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT; provided,
10 however, that the commissioner may identify [such] a drug for which
11 prior authorization is required pursuant to the provisions of the clin-
12 ical drug review program established under section two hundred seventy-
13 four of this article.
14 S 2. Subparagraph (ii) of paragraph (f) of subdivision 6 of section
15 367-a of the social services law, as amended by section 42 of part C of
16 chapter 58 of the laws of 2005, is amended to read as follows:
17 (ii) In the year commencing April first, two thousand five and for
18 each year thereafter, no recipient shall be required to pay more than a
19 total of two hundred dollars in co-payments, INCLUDING THOSE required by
20 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

1 PART D OF TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT (REFERRED TO IN
2 THIS SECTION AS "MEDICARE PART D"), THOSE CO-PAYMENTS REQUIRED BY MEDI-
3 CARE PART D. NOR shall reductions in payments as a result of such
4 co-payments exceed two hundred dollars for any recipient. THE COMMIS-
5 SIONER OF HEALTH SHALL CREATE A SYSTEM TO INCORPORATE CO-PAYMENTS BILLED
6 TO A RECIPIENT UNDER MEDICARE PART D TOWARDS THE RECIPIENT'S TOTAL ANNU-
7 AL CO-PAYMENTS UNDER MEDICAL ASSISTANCE. AS PART OF THIS SYSTEM, PHAR-
8 MACISTS SHALL RECORD ALL CO-PAYMENTS DUE UNDER MEDICARE PART D FROM SUCH
9 RECIPIENTS WITH THE MEDICAL ASSISTANCE PROGRAM, THROUGH THE MEDICAL
10 ASSISTANCE ELECTRONIC BILLING SYSTEM. THE COMMISSIONER OF HEALTH SHALL
11 INCLUDE THE CO-PAYMENTS BILLED UNDER MEDICARE PART D ALONG WITH THE
12 CO-PAYMENTS REQUIRED UNDER THIS SUBDIVISION IN DETERMINING WHEN THE
13 RECIPIENT'S TOTAL ANNUAL CO-PAYMENTS HAVE REACHED TWO HUNDRED DOLLARS.

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

17 (g) sickroom supplies, eyeglasses, prosthetic appliances and dental
18 prosthetic appliances furnished in accordance with the regulations of
19 the department, provided that the commissioner of health is authorized
20 to implement a preferred diabetic supply program wherein the department
21 of health will receive enhanced rebates from preferred manufacturers of
22 glucometers and test strips, and may subject non-preferred manufactur-
23 ers' glucometers and test strips to prior authorization under section
24 two hundred seventy-three of the public health law; drugs provided on an
25 in-patient basis, those drugs contained on the list established by regu-
26 lation of the commissioner of health pursuant to subdivision four of
27 this section, AND, FOR RECIPIENTS ELIGIBLE FOR COVERAGE UNDER PART D OF
28 TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT (REFERRED TO IN THIS
29 SECTION AS "MEDICARE PART D"), PAYMENT OF THE CO-PAYMENT FOR DRUGS
30 PROVIDED BY A MEDICARE PART D PLAN, AFTER THE INDIVIDUAL HAS REACHED THE
31 ANNUAL CAP ON CO-PAYMENTS AS DEFINED IN SUBPARAGRAPH (II) OF PARAGRAPH
32 (F) OF SUBDIVISION SIX OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THIS
33 TITLE, and those drugs which may not be dispensed without a prescription
34 as required by section sixty-eight hundred ten of the education law and
35 which the commissioner of health shall determine to be reimbursable
36 based upon such factors as the availability of such drugs or alterna-
37 tives at low cost if purchased by a medicaid recipient, or the essential
38 nature of such drugs as described by such commissioner in regulations,
39 provided, however, that such drugs, exclusive of long-term maintenance
40 drugs, shall be dispensed in quantities no greater than a thirty day
41 supply or one hundred doses, whichever is greater; provided further that
42 the commissioner of health is authorized to require prior authorization
43 for any refill of a prescription when less than seventy-five percent of
44 the previously dispensed amount per fill should have been used were the
45 product used as normally indicated; medical assistance shall not include
46 any drug provided on other than an in-patient basis for which a recipi-
47 ent is charged or a claim is made in the case of a prescription drug, in
48 excess of the maximum reimbursable amounts to be established by depart-
49 ment regulations in accordance with standards established by the secre-
50 tary of the United States department of health and human services, or,
51 in the case of a drug not requiring a prescription, in excess of the
52 maximum reimbursable amount established by the commissioner of health
53 pursuant to paragraph (a) of subdivision four of this section;

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

1 made by section one of this act shall not affect the repeal of such
2 section and shall be deemed repealed therewith; and provided, further,
3 that the amendments to subparagraph (ii) of paragraph (f) of subdivision
4 6 of section 367-a of the social services law made by section two of
5 this act shall not affect the repeal of such paragraph and shall be
6 deemed repealed therewith.