STATE OF NEW YORK

4852

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. ENGLEBRIGHT, CAHILL, JAFFEE, L. ROSENTHAL, DINOWITZ, BENEDETTO, PERRY, GUNTHER, COLTON, GALEF -- Multi-Sponsored by -- M. of A. ABBATE, COOK, PEOPLES-STOKES -- read once and referred to the Committee on Health

AN ACT to amend the elder law and the social services law, in relation to payments for multiple source prescription drugs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph 2 of paragraph (a) of subdivision 1 of section 250 of the elder law, as amended by section 18 of part T of chapter 56 of the laws of 2012, is amended to read as follows:

(2) The upper limit, if any, set by the centers for medicare and medicaid services for such multiple source drug **and the department of health together with the pharmacy advisory committee shall determine the impact of such upper limit payments for drugs implemented under the Deficit Reduction Act of 2005 and shall report to the director of the division of the budget, secretary of the senate finance committee and secretary of the assembly ways and means committee on such impact and shall adjust pharmacy dispensing fees for multiple source prescription drugs to compensate for any reduction as a result of the upper limits implemented under the Deficit Reduction Act of 2005 at such time that the new upper limits are implemented**, or

§ 2. Subparagraph (i) of paragraph (b) of subdivision 9 of section 367-a of the social services law, as amended by section 7 of part D of chapter 57 of the laws of 2017, is amended to read as follows:

(i) (A) if the drug dispensed is a generic prescription drug, the lower of: (1) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount if not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the depart-

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

LBD09045-01-9

ment, less seventeen and one-half percent thereof; (2) the federal upper limit, if any, established by the federal centers for medicare and medicaid services; (3) the state maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision; [~~or~~] (4) the dispensing pharmacy's usual and customary price charged to the general public**; or (5) the average acquisition cost if available, and the department of health together with the pharmacy advisory committee shall determine the impact of such upper limit payments for drugs implemented under the Deficit Reduction Act of 2005 and shall report to the director of the division of the budget, secretary of the senate finance committee and secretary of the assembly ways and means committee on such impact and shall adjust pharmacy dispensing fees for multiple source prescription drugs to compensate for any reduction as a result of the upper limits implemented under the Deficit Reduction Act of 2005 at such time that the new upper limits are implemented**; (B) if the drug dispensed is available without a prescription as required by section sixty-eight hundred ten of the education law but is reimbursed as an item of medical assistance pursuant to paragraph (a) of subdivision four of section three hundred sixty-five-a of this title, the lower of (1) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount is not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, (2) the federal upper limit, if any, established by the federal centers for medicare and medicaid services; (3) the state maximum acquisition cost if any, established pursuant to paragraph (e) of this subdivision; or (4) the dispensing pharmacy's usual and customary price charged to the general public;

§ 3. This act shall take effect immediately provided, however, that the amendments to subdivision 9 of section 367-a of the social services law, made by section two of this act, shall not affect the expiration and reversion of such subdivision pursuant to section 4 of chapter 19 of the laws of 1998, as amended, and shall be deemed to expire therewith.