

# STATE OF NEW YORK

7297

2021-2022 Regular Sessions

## IN ASSEMBLY

May 4, 2021

Introduced by M. of A. ENGLEBRIGHT, CAHILL, 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:

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

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

15 § 2. Subparagraph (i) of paragraph (b) of subdivision 9 of section  
16 367-a of the social services law, as amended by section 7 of part D of  
17 chapter 57 of the laws of 2017, is amended to read as follows:

18 (i) (A) if the drug dispensed is a generic prescription drug, the  
19 lower of: (1) an amount equal to the national average drug acquisition  
20 cost set by the federal centers for medicare and medicaid services for  
21 the drug, if any, or if such amount if not available, the wholesale  
22 acquisition cost of the drug based on the package size dispensed from,  
23 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.

LBD11146-01-1

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

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