

STATE OF NEW YORK

5401

2021-2022 Regular Sessions

IN SENATE

March 4, 2021

Introduced by Sen. REICHLIN-MELNICK -- read twice and ordered printed,
and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to the pricing of
single source brand-name maintenance medication for which there is no
National Average Drug Acquisition Cost pricing

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

1 Section 1. Paragraph (b) of subdivision 9 of section 367-a of the
2 social services law, as amended by section 3 of part C of chapter 58 of
3 the laws of 2004, subparagraphs (i) and (ii) as amended by section 7 of
4 part D of chapter 57 of the laws of 2017 and subparagraph (iii) as added
5 by section 29 of part E of chapter 63 of the laws of 2005, is amended to
6 read as follows:

7 (b) for drugs dispensed by pharmacies:

8 (i) (A) if the drug dispensed is a generic prescription drug, the
9 lower of: (1) an amount equal to the national average drug acquisition
10 cost set by the federal centers for medicare and medicaid services for
11 the drug, if any, or if such amount is not available, the wholesale
12 acquisition cost of the drug based on the package size dispensed from,
13 as reported by the prescription drug pricing service used by the depart-
14 ment, less seventeen and one-half percent thereof; (2) the federal upper
15 limit, if any, established by the federal centers for medicare and medi-
16 caid services; (3) the state maximum acquisition cost, if any, estab-
17 lished pursuant to paragraph (e) of this subdivision; or (4) the
18 dispensing pharmacy's usual and customary price charged to the general
19 public; (B) if the drug dispensed is available without a prescription as
20 required by section sixty-eight hundred ten of the education law but is
21 reimbursed as an item of medical assistance pursuant to paragraph (a) of
22 subdivision four of section three hundred sixty-five-a of this title,
23 the lower of (1) an amount equal to the national average drug acquisi-
24 tion cost set by the federal centers for medicare and medicaid services

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

LBD09781-01-1

1 for the drug, if any, or if such amount is not available, the wholesale
2 acquisition cost of the drug based on the package size dispensed from,
3 as reported by the prescription drug pricing service used by the depart-
4 ment, (2) the federal upper limit, if any, established by the federal
5 centers for medicare and medicaid services; (3) the state maximum acqui-
6 sition cost if any, established pursuant to paragraph (e) of this subdi-
7 vision; or (4) the dispensing pharmacy's usual and customary price
8 charged to the general public;

9 (ii) if the drug dispensed is a brand-name prescription drug, the
10 lower of:

11 (A) an amount equal to the national average drug acquisition cost set
12 by the federal centers for medicare and medicaid services for the drug,
13 if any, or if such amount is not available, the wholesale acquisition
14 cost of the drug based on the package size dispensed from, as reported
15 by the prescription drug pricing service used by the department, less
16 three and three-tenths percent thereof; or (B) the dispensing pharmacy's
17 usual and customary price charged to the general public; ~~and~~

18 (iii) notwithstanding subparagraphs (i) and (ii) of this paragraph and
19 paragraphs (d) and (e) of this subdivision, if the drug dispensed is a
20 drug that has been purchased from a manufacturer by a covered entity
21 pursuant to section 340B of the federal public health service act (42
22 USCA § 256b), the actual amount paid by such covered entity pursuant to
23 such section, plus the reasonable administrative costs, as determined by
24 the commissioner, incurred by the covered entity or by an authorized
25 contract pharmacy in connection with the purchase and dispensing of such
26 drug and the tracking of such transactions. For purposes of this subpar-
27 agraph, a "covered entity" is an entity that meets the requirements of
28 paragraph four of subsection (a) of such section, that elects to partic-
29 ipate in the program established by such section, and that causes claims
30 for payment for drugs covered by this subparagraph to be submitted to
31 the medical assistance program, either directly or through an authorized
32 contract pharmacy. No medical assistance payments may be made to a
33 covered entity or to an authorized contract pharmacy of a covered entity
34 for drugs that are eligible for purchase under the section 340B program
35 and are dispensed on an outpatient basis to patients of the covered
36 entity, other than under the provisions of this subparagraph. Pharmacies
37 submitting claims for reimbursement of drugs purchased pursuant to
38 section 340B of the public health service act shall notify the depart-
39 ment that the claim is eligible for purchase under the 340B program,
40 consistent with claiming instructions issued by the department to iden-
41 tify such claims; and

42 (iv) if the drug is a single source brand-name maintenance medication
43 for which there is no National Average Drug Acquisition Cost pricing, it
44 shall be wholesale acquisition cost.

45 § 2. Paragraph (b) of subdivision 9 of section 367-a of the social
46 services law, as added by chapter 170 of the laws of 1994, is amended to
47 read as follows:

48 (b) for drugs dispensed by pharmacies:

49 (i) if the drug dispensed is a multiple source prescription drug for
50 which an upper limit has been set by the federal health care financing
51 administration, an amount equal to the specific upper limit set by such
52 federal agency for the multiple source prescription drug~~, and~~;

53 (ii) if the drug dispensed is a multiple source prescription drug or a
54 brand-name prescription drug for which no specific upper limit has been
55 set by such federal agency, the lower of the estimated acquisition cost
56 of such drug to pharmacies, or the dispensing pharmacy's usual and

1 customary price charged to the general public. Estimated acquisition
2 cost means the average wholesale price of a prescription drug based upon
3 the package size dispensed from, as reported by the prescription drug
4 pricing service used by the department, less ten percent thereof, and
5 updated monthly by the department; and

6 (iii) if the drug is a single source brand-name maintenance medication
7 for which there is no National Average Drug Acquisition Cost pricing, it
8 shall be wholesale acquisition cost.

9 § 3. This act shall take effect on the ninetieth day after it shall
10 have become a law; provided that the amendments to paragraph (b) of
11 subdivision 9 of section 367-a of the social services law made by
12 section one of this act shall be subject to the expiration and rever-
13 sion of such subdivision pursuant to section 4 of chapter 19 of the laws
14 of 1998, as amended, when upon such date the provisions of section two
15 of this act shall take effect. Effective immediately the addition,
16 amendment and/or repeal of any rule or regulation necessary for the
17 implementation of this act on its effective date are authorized to be
18 made and completed on or before such date.