

STATE OF NEW YORK

3005

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to improving and expanding the pharmaceutical insurance coverage program for certain medicare enrollees

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

1 Section 1. Section 240 of the elder law is amended to read as follows:

2 § 240. Short title. This title shall be known and may be cited as the
3 "program for [~~elderly~~] expanded pharmaceutical insurance coverage".

4 § 2. Subdivisions 3 and 8 of section 241 of the elder law, subdivision
5 8 as added by section 2 of part A of chapter 59 of the laws of 2011 and
6 as renumbered by section 3 of part T of chapter 56 of the laws of 2012,
7 are amended to read as follows:

8 3. "Income" shall mean "household gross income" as defined in the real
9 property tax circuit breaker credit program, pursuant to subparagraph
10 (C) of paragraph one of subsection (e) of section six hundred six of the
11 tax law, but only shall include the income of program applicants and
12 spouses and shall exclude the income of other members of the household,
13 but shall not include any increase in income derived from social securi-
14 ty income or pension benefits that increase over the previous year due
15 solely to a cost of living adjustment provided by the program adminis-
16 trators.

17 8. "Medicare part D excluded drug classes" shall mean any drugs or
18 classes of drugs, or their medical uses, which are described in section
19 1927(d)(2) or 1927(d)(3) of the federal social security act, with the
20 exception of smoking cessation agents and medical marijuana dispensed in
21 the state of New York.

22 § 3. The elder law is amended by adding a new section 242-a to read as
23 follows:

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

LBD01416-01-3

1 § 242-a. Expanded pharmaceutical insurance coverage panel. 1. There
2 is hereby established within the executive department, a panel to be
3 known as the "expanded pharmaceutical insurance coverage panel". For the
4 purposes of this section, the term "the panel" shall mean the expanded
5 pharmaceutical insurance coverage panel.

6 2. The panel shall consist of the commissioners of the departments of
7 education and health, the superintendent of the department of financial
8 services, and the directors of the office for the aging and the division
9 of the budget. Each panel member may designate an officer of his or her
10 respective department, office, or division to represent and exercise all
11 the powers of such panel member at any meeting of the panel from which
12 such panel member may be absent.

13 3. The director of the office for the aging and the commissioner of
14 health shall serve as co-chairs of the panel.

15 4. The panel shall meet at such times as may be requested by the
16 co-chairs, provided that the panel shall meet at least two times a year.

17 5. The panel shall:

18 (a) subject to the approval of the director of the budget, promulgate
19 program regulations pursuant to section two hundred forty-six of this
20 title;

21 (b) determine the annual schedule of cost-sharing responsibilities of
22 eligible program participants pursuant to sections two hundred forty-
23 seven and two hundred forty-eight of this title;

24 (c) enter into contracts pursuant to section two hundred forty-three
25 of this title;

26 (d) recommend and implement alternative program improvements for the
27 efficient and effective operation of the program in accordance with the
28 provisions of this title with the advice of the advisory committee as
29 defined in subdivision seven of this section;

30 (e) develop and implement, in cooperation with area offices for the
31 aging, an outreach program to inform eligible applicants of benefits
32 they may be entitled to pursuant to this title, and to make available
33 information concerning the program for expanded pharmaceutical insurance
34 coverage and benefits to which they may be entitled through a
35 prescription drug coverage program funded by the federal government; and

36 (f) prepare an annual report and submit such report to the governor,
37 the temporary president of the senate, and the speaker of the assembly
38 no later than the first day of January of each year. The panel shall
39 include in such report, at a minimum, annual statistical information
40 regarding the number of persons enrolled in the program by marital
41 status and income level and age, an estimate of the per cent of eligible
42 New York residents that are enrolled, the total number of enrollees that
43 receive an income-related subsidy under section 1860D-14 of the federal
44 social security act, and the number that so qualify through their
45 enrollment in the Medicare Savings Program, the numbers of participating
46 provider pharmacies, recipients and payments by county, a summary of the
47 administrative cost containment initiatives completed during the year,
48 projections of program costs for the following two years, and an evalu-
49 ation of the performance of the program contractor or contractors and of
50 the cost effectiveness of all outreach efforts.

51 6. The panel members shall receive no compensation for their services
52 as panel members.

53 7. There shall be an advisory committee to the panel comprised of
54 twelve persons. Four members shall be appointed by the governor, three
55 members shall be appointed by the temporary president of the senate, one
56 member shall be appointed by the minority leader of the senate, three

members shall be appointed by the speaker of the assembly and one member shall be appointed by the minority leader of the assembly. The committee members shall be representatives of consumers, pharmacists, pharmaceutical drug manufacturers and pharmaceutical wholesalers. No less than sixty percent of the committee membership shall represent consumers. Committee members shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

§ 4. Subdivisions 1 and 2 of section 242 of the elder law, subdivision 1 as amended by section 4 of part T of chapter 56 of the laws of 2012, and subdivision 2 as amended by section 12 of part A of chapter 60 of the laws of 2014, are amended to read as follows:

1. Persons eligible for comprehensive coverage under section two hundred forty-seven of this title shall include:

(a) any unmarried resident who is enrolled in medicare and at least sixty-five years of age in the year two thousand twenty-two, during the year two thousand twenty-three is at least sixty years of age, during the year two thousand twenty-four is at least fifty-five years of age, during the year two thousand twenty-five is at least fifty years of age, during the year two thousand twenty-six is at least forty-five years of age, during the year two thousand twenty-seven is at least forty years of age, during the year two thousand twenty-eight is at least thirty-five years of age, during the year two thousand twenty-nine is at least thirty years of age, during the year two thousand thirty is at least twenty-five years of age, or during the year two thousand thirty-one is at least eighteen years of age; and whose income for the calendar year immediately preceding the effective date of the annual coverage period beginning on or after January first, two thousand five, is less than or equal to twenty thousand dollars. After the initial determination of eligibility, each eligible individual must be redetermined eligible at least every twenty-four months; and

(b) any married resident who is enrolled in medicare and is at least sixty-five years of age in the year two thousand twenty-two, during the year two thousand twenty-three is at least sixty years of age, during the year two thousand twenty-four is at least fifty-five years of age, during the year two thousand twenty-five is at least fifty years of age, during the year two thousand twenty-six is at least forty-five years of age, during the year two thousand twenty-seven is at least forty years of age, during the year two thousand twenty-eight is at least thirty-five years of age, during the year two thousand twenty-nine is at least thirty years of age, during the year two thousand thirty is at least twenty-five years of age, or during the year two thousand thirty-one is at least eighteen years of age; and whose income for the calendar year immediately preceding the effective date of the annual coverage period when combined with the income in the same calendar year of such married person's spouse beginning on or after January first, two thousand one, is less than or equal to twenty-six thousand dollars. After the initial determination of eligibility, each eligible individual must be redetermined eligible at least every twenty-four months.

2. Persons eligible for catastrophic coverage under section two hundred forty-eight of this title shall include:

(a) any unmarried resident who is enrolled in medicare and at least sixty-five years of age in the year two thousand twenty-two, during the year two thousand twenty-three is at least sixty years of age, during the year two thousand twenty-four is at least fifty-five years of age, during the year two thousand twenty-five is at least fifty years of age,

1 during the year two thousand twenty-six is at least forty-five years of
2 age, during the year two thousand twenty-seven is at least forty years
3 of age, during the year two thousand twenty-eight is at least thirty-
4 five years of age, during the year two thousand twenty-nine is at least
5 thirty years of age, during the year two thousand thirty is at least
6 twenty-five years of age, or during the year two thousand thirty-one is
7 at least eighteen years of age; and whose income for the calendar year
8 immediately preceding the effective date of the annual coverage period
9 beginning on or after January first, two thousand one, is more than
10 twenty thousand and less than or equal to seventy-five thousand dollars.
11 After the initial determination of eligibility, each eligible individual
12 must be redetermined eligible at least every twenty-four months; and

13 (b) any married resident who is enrolled in medicare and at least
14 sixty-five years of age in the year two thousand twenty-two, during the
15 year two thousand twenty-three is at least sixty years of age, during
16 the year two thousand twenty-four is at least fifty-five years of age,
17 during the year two thousand twenty-five is at least fifty years of age,
18 during the year two thousand twenty-six is at least forty-five years of
19 age, during the year two thousand twenty-seven is at least forty years
20 of age, during the year two thousand twenty-eight is at least thirty-
21 five years of age, during the year two thousand twenty-nine is at least
22 thirty years of age, during the year two thousand thirty is at least
23 twenty-five years of age, or during the year two thousand thirty-one is
24 at least eighteen years of age; and whose income for the calendar year
25 immediately preceding the effective date of the annual coverage period
26 when combined with the income in the same calendar year of such married
27 person's spouse beginning on or after January first, two thousand one,
28 is more than twenty-six thousand dollars and less than or equal to one
29 hundred thousand dollars. After the initial determination of eligibil-
30 ity, each eligible individual must be redetermined eligible at least
31 every twenty-four months.

32 § 5. Paragraphs (e) and (f) of subdivision 3 of section 242 of the
33 elder law, paragraph (e) as amended by section 3-d of part A of chapter
34 59 of the laws of 2011, and paragraph (f) as amended by section 1 of
35 part T of chapter 56 of the laws of 2012, are amended to read as
36 follows:

37 (e) As a condition of eligibility for benefits under this title, if a
38 program participant's income indicates that the participant could be
39 eligible for an income-related subsidy under section 1860D-14 of the
40 federal social security act by either applying for such subsidy or by
41 enrolling in a medicare savings program as a qualified medicare benefi-
42 ciary (QMB), a specified low-income medicare beneficiary (SLMB), or a
43 qualifying individual (QI), a program participant is required to
44 provide, and to authorize the [~~elderly~~] expanded pharmaceutical insur-
45 ance coverage program to obtain, any information or documentation
46 required to establish the participant's eligibility for such subsidy,
47 and to authorize the [~~elderly~~] expanded pharmaceutical insurance cover-
48 age program to apply on behalf of the participant for the subsidy or the
49 medicare savings program. [~~The elderly~~] Upon receipt of an enrollment
50 application, or at any time after enrollment when the program has infor-
51 mation that indicates an enrollee is eligible for a subsidy under
52 section 1860D-14 of the federal social security act or in a medicare
53 savings program, the expanded pharmaceutical insurance coverage program
54 shall make a reasonable effort to notify the program participant of his
55 or her need to provide any of the above required information. After a
56 reasonable effort has been made to contact the participant, a partic-

1 ipant shall be notified in writing that he or she has sixty days to
2 provide such required information. If such information is not provided
3 within the sixty day period, the participant's coverage may be termi-
4 nated. A program participant who is eligible to enroll in the medicare
5 savings program shall be assisted to do so, and their expanded pharma-
6 ceutical insurance coverage program enrollment shall be in place
7 throughout the medicare savings program application process.

8 (f) As a condition of eligibility for benefits under this title, a
9 program participant is required to be enrolled in Medicare part D and to
10 maintain such enrollment. For unmarried participants with individual
11 annual income less than or equal to twenty-three thousand dollars and
12 married participants with joint annual income less than or equal to
13 twenty-nine thousand dollars, the [~~elderly~~] expanded pharmaceutical
14 insurance coverage program shall pay for the portion of the part D
15 monthly premium, and any late enrollment penalty that may have been
16 assessed, that is the responsibility of the participant. Such total
17 payment shall be limited to the low-income benchmark premium amount
18 established by the federal centers for medicare and medicaid services
19 and any other amount which such agency establishes under its de minimus
20 premium policy.

21 § 6. Subdivision 3 of section 250 of the elder law is amended by
22 adding a new paragraph (f) to read as follows:

23 (f) The expanded pharmaceutical insurance coverage program shall post
24 to its website the names of manufacturers that have a rebate program and
25 list the drugs that are covered by such rebate program in a manner that
26 provides enrollees with access to such information prior to the annual
27 medicare open enrollment period.

28 § 7. This act shall take effect immediately.