

# 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

1 members shall be appointed by the speaker of the assembly and one member  
2 shall be appointed by the minority leader of the assembly. The commit-  
3 tee members shall be representatives of consumers, pharmacists, pharma-  
4 ceutical drug manufacturers and pharmaceutical wholesalers. No less than  
5 sixty percent of the committee membership shall represent consumers.  
6 Committee members shall receive no compensation for their services but  
7 shall be allowed their actual and necessary expenses incurred in the  
8 performance of their duties.

9 § 4. Subdivisions 1 and 2 of section 242 of the elder law, subdivision  
10 1 as amended by section 4 of part T of chapter 56 of the laws of 2012,  
11 and subdivision 2 as amended by section 12 of part A of chapter 60 of  
12 the laws of 2014, are amended to read as follows:

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

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

32 (b) any married resident who is enrolled in medicare and is at least  
33 sixty-five years of age in the year two thousand twenty-two, during the  
34 year two thousand twenty-three is at least sixty years of age, during  
35 the year two thousand twenty-four is at least fifty-five years of age,  
36 during the year two thousand twenty-five is at least fifty years of age,  
37 during the year two thousand twenty-six is at least forty-five years of  
38 age, during the year two thousand twenty-seven is at least forty years  
39 of age, during the year two thousand twenty-eight is at least thirty-  
40 five years of age, during the year two thousand twenty-nine is at least  
41 thirty years of age, during the year two thousand thirty is at least  
42 twenty-five years of age, or during the year two thousand thirty-one is  
43 at least eighteen years of age; and whose income for the calendar year  
44 immediately preceding the effective date of the annual coverage period  
45 when combined with the income in the same calendar year of such married  
46 person's spouse beginning on or after January first, two thousand one,  
47 is less than or equal to twenty-six thousand dollars. After the initial  
48 determination of eligibility, each eligible individual must be redeter-  
49 mined eligible at least every twenty-four months.

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

52 (a) any unmarried resident who is enrolled in medicare and at least  
53 sixty-five years of age in the year two thousand twenty-two, during the  
54 year two thousand twenty-three is at least sixty years of age, during  
55 the year two thousand twenty-four is at least fifty-five years of age,  
56 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.