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:

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

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

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

3. "Income" shall mean "household gross income" as defined in the real property tax circuit breaker credit program, pursuant to subparagraph (C) of paragraph one of subsection (e) of section six hundred six of the tax law, but only shall include the income of program applicants and spouses and shall exclude the income of other members of the household**, but shall not include any increase in income derived from social security income or pension benefits that increase over the previous year due solely to a cost of living adjustment provided by the program administrators**.

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

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

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

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

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

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

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

5. The panel shall:

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

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

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

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

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

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

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

7. There shall be an advisory committee to the panel comprised of twelve persons. Four members shall be appointed by the governor, three members shall be appointed by the temporary president of the senate, one 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,

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 one, is more than twenty thousand and less than or equal to seventy-five 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 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 more than twenty-six thousand dollars and less than or equal to one hundred thousand dollars. After the initial determination of eligibility, each eligible individual must be redetermined eligible at least every twenty-four months.

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

(e) As a condition of eligibility for benefits under this title, if a program participant's income indicates that the participant could be eligible for an income-related subsidy under section 1860D-14 of the federal social security act by either applying for such subsidy or by enrolling in a medicare savings program as a qualified medicare beneficiary (QMB), a specified low-income medicare beneficiary (SLMB), or a qualifying individual (QI), a program participant is required to provide, and to authorize the [~~elderly~~] expanded pharmaceutical insurance coverage program to obtain, any information or documentation required to establish the participant's eligibility for such subsidy, and to authorize the [~~elderly~~] expanded pharmaceutical insurance coverage program to apply on behalf of the participant for the subsidy or the medicare savings program. [~~The elderly~~] Upon receipt of an enrollment application, or at any time after enrollment when the program has information that indicates an enrollee is eligible for a subsidy under section 1860D-14 of the federal social security act or in a medicare savings program, the expanded pharmaceutical insurance coverage program shall make a reasonable effort to notify the program participant of his or her need to provide any of the above required information. After a reasonable effort has been made to contact the participant, a partic-

ipant shall be notified in writing that he or she has sixty days to provide such required information. If such information is not provided within the sixty day period, the participant's coverage may be terminated. **A program participant who is eligible to enroll in the medicare savings program shall be assisted to do so, and their expanded pharmaceutical insurance coverage program enrollment shall be in place throughout the medicare savings program application process.**

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

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

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

§ 7. This act shall take effect immediately.