

STATE OF NEW YORK

3005--A

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 -- recommitted to the Committee on Aging in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

LBD01416-02-4

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

§ 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-three, during the year two thousand twenty-four is at least sixty years of age, during the year two thousand twenty-five is at least fifty-five years of age, during the year two thousand twenty-six is at least fifty years of age, during the year two thousand twenty-seven is at least forty-five years of age, during the year two thousand twenty-eight is at least forty years of age, during the year two thousand twenty-nine is at least thirty-five years of age, during the year two thousand thirty is at least thirty years of age, during the year two thousand thirty-one is at least twenty-five years of age, or during the year two thousand thirty-two 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-three, during the year two thousand twenty-four is at least sixty years of age, during the year two thousand twenty-five is at least fifty-five years of age, during the year two thousand twenty-six is at least fifty years of age, during the year two thousand twenty-seven is at least forty-five years of age, during the year two thousand twenty-eight is at least forty years of age, during the year two thousand twenty-nine is at least thirty-five years of age, during the year two thousand thirty is at least thirty years of age, during the year two thousand thirty-one is at least twenty-five years of age, or during the year two thousand thirty-two 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-three, during the year two thousand twenty-four is at least sixty years of age, during

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

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

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

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

1 or her need to provide any of the above required information. After a
2 reasonable effort has been made to contact the participant, a partic-
3 ipant shall be notified in writing that he or she has sixty days to
4 provide such required information. If such information is not provided
5 within the sixty day period, the participant's coverage may be termi-
6 nated.

7 A program participant who is eligible to enroll in the medicare
8 savings program shall be assisted to do so, and their expanded pharma-
9 ceutical insurance coverage program enrollment shall be in place
10 throughout the medicare savings program application process.

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

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

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

§ 7. This act shall take effect immediately.