

# STATE OF NEW YORK

5136

2023-2024 Regular Sessions

## IN SENATE

February 23, 2023

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

AN ACT to amend the social services law and the public health law, in relation to pharmacy services provided by managed care providers and to repeal sections 1 and 1-a of part FFF of chapter 56 of the laws of 2020 relating to directing the department of health to remove the pharmacy benefit from the managed care benefit package and to provide the pharmacy benefit under the fee for service program, in relation thereto

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

1 Section 1. Sections 1 and 1-a of part FFF of chapter 56 of the laws of  
2 2020 relating to directing the department of health to remove the phar-  
3 macy benefit from the managed care benefit package and to provide the  
4 pharmacy benefit under the fee for service program, are REPEALED.

5 § 2. Subdivision 4 of section 364-j of the social services law is  
6 amended by adding four new paragraphs (x), (y), (z) and (aa) to read as  
7 follows:

8 (x) Notwithstanding any provision of law to the contrary, managed care  
9 providers under the medical assistance program and any pharmacy benefit  
10 managers acting on their behalf, as defined in section two hundred  
11 eighty-a of the public health law, shall be required to reimburse retail  
12 pharmacies for each outpatient drug, at the National Average Drug Acqui-  
13 sition Cost (NADAC), or if NADAC pricing is unavailable for a drug,  
14 reimbursement shall be pursuant to the current benchmarks under fee-for-  
15 service, plus a tiered professional dispensing fee based on prescription  
16 claims volume to be determined by the commissioner. In determining a  
17 professional dispensing fee, the commissioner shall issue a survey that  
18 collects claims volumes from enrolled pharmacies, and other such infor-  
19 mation as the commissioner may deem necessary to weigh regional vari-  
20 ances and other factors significantly impacting markets from the previ-

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

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1 ous twelve-month period, to determine the appropriate dispensing fee  
2 reimbursement. The dispensing fee determined by the commissioner shall  
3 be in an amount of at least eight dollars and fifty cents.

4 (y) (i) Notwithstanding any provision of law to the contrary, a  
5 managed care provider or pharmacy benefit manager acting on its behalf,  
6 shall not deny any retail pharmacy the opportunity to participate in  
7 another provider's pharmacy network under the medical assistance  
8 program, provided that:

9 (A) such retail pharmacy agrees to the same reimbursement amount;

10 (B) is able to fill and dispense commonly dispensed prescriptions and  
11 over-the-counter medications in a manner consistent with medical assist-  
12 ance program guidance and statute for those patients and population the  
13 pharmacy serves enrolled in the medical assistance program;

14 (ii) Nothing in this paragraph shall require a managed care provider  
15 or pharmacy benefit manager to contract with a retail pharmacy or phar-  
16 macies that fail to meet universally accepted professional standards of  
17 pharmacy practice. Further, nothing in this paragraph shall be construed  
18 as limiting the ability of managed care providers or pharmacy benefit  
19 managers to remove pharmacies from their network, or to decline to  
20 contract with pharmacies in cases of fraud, waste, abuse, or as other-  
21 wise authorized by law.

22 (z) (i) A managed care provider or pharmacy benefit manager acting on  
23 its behalf shall be required to reimburse 340B covered entity providers,  
24 whether directly or through arrangements with their contractual pharma-  
25 cies, for outpatient drugs dispensed under section 340B of the federal  
26 public health service act (42 USCA § 256b), at NADAC, or if NADAC pric-  
27 ing is unavailable for a drug, reimbursement shall be pursuant to the  
28 current benchmarks under fee-for-service, plus a professional dispensing  
29 fee as determined by the commissioner pursuant to paragraph (x) of this  
30 subdivision.

31 (ii) Notwithstanding any provision of law to the contrary, rates of  
32 payment between covered entities under section 340B of the public health  
33 service act and contract pharmacies that obtain and dispense 340B drugs  
34 on behalf of the covered entity, shall comprise a fee schedule, based on  
35 fair market value principles and shall not be a percentage of either the  
36 claim's total reimbursement or net margin. The commissioner shall evalu-  
37 ate the adequacy of such fee schedule no less than every two years.

38 (aa) Notwithstanding any provision of law to the contrary, in order to  
39 align managed care provider drug formularies to reduce complexity for  
40 beneficiaries of medical assistance, and to maximize available federal  
41 statutory drug rebates for the state, managed care providers and any  
42 pharmacy benefit managers acting on their behalf, shall be required to  
43 use the fee-for-service preferred drug list when developing a formulary  
44 or preferred drug list of outpatients drugs for beneficiaries of medical  
45 assistance. In the interests of the creation of a high quality uniform  
46 formulary, and notwithstanding any provision of law to the contrary: the  
47 commissioner shall convene a committee comprised of the pharmacy direc-  
48 tors of the state's currently participating managed care providers to  
49 advise in the creation and stewardship of any such formulary or  
50 preferred drug list.

51 § 3. Section 280-a of the public health law is amended by adding a new  
52 subdivision 6 to read as follows:

53 6. Medical assistance delivery option. Notwithstanding any provision  
54 of law to the contrary, no pharmacy benefit manager shall limit the  
55 option for an individual exercising their benefits under the state's  
56 medical assistance program receiving prescription or over-the-counter

1 medications to receive such medications from their local, non-mail order  
2 pharmacy of choice via delivery including in-person delivery, United  
3 States postal service or other mail or courier service. No restrictions,  
4 prohibitions, or prior authorization requirements shall be based on the  
5 individual's choice in delivery type or distance from a pharmacy.

6 § 4. This act shall take effect immediately; provided, however, that  
7 sections two and three of this act shall be deemed to have been in full  
8 force and effect on and after April 1, 2023.