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:

Section 1. 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from the managed care benefit package and to provide the pharmacy benefit under the fee for service program, are REPEALED.

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

(x) Notwithstanding any provision of law to the contrary, managed care providers under the medical assistance program and any pharmacy benefit managers acting on their behalf, as defined in section two hundred eighty-a of the public health law, shall be required to reimburse retail pharmacies for each outpatient drug, at the National Average Drug Acquisition Cost (NADAC), or if NADAC pricing is unavailable for a drug, reimbursement shall be pursuant to the current benchmarks under fee-for-service, plus a tiered professional dispensing fee based on prescription claims volume to be determined by the commissioner. In determining a professional dispensing fee, the commissioner shall issue a survey that collects claims volumes from enrolled pharmacies, and other such information as the commissioner may deem necessary to weigh regional variances 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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ous twelve-month period, to determine the appropriate dispensing fee reimbursement. The dispensing fee determined by the commissioner shall be in an amount of at least eight dollars and fifty cents.

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

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

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

(ii) Nothing in this paragraph shall require a managed care provider or pharmacy benefit manager to contract with a retail pharmacy or pharmacies that fail to meet universally accepted professional standards of pharmacy practice. Further, nothing in this paragraph shall be construed as limiting the ability of managed care providers or pharmacy benefit managers to remove pharmacies from their network, or to decline to contract with pharmacies in cases of fraud, waste, abuse, or as otherwise authorized by law.

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

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

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

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

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

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

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