STATE OF NEW YORK

9570

IN SENATE

May 16, 2024

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

AN ACT to amend the public health law, in relation to payments by pharmacy benefit managers to in-network pharmacies

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

Section 1. Subdivision 1 of section 280-a of the public health law is amended by adding two new paragraphs (j) and (k) read as follows:

(j) "Pharmacy acquisition cost rate" means the cost paid by an in-network pharmacy to acquire generic, brand name drugs or biologic products pursuant to cost invoices from a manufacturer or a wholesaler.

(k) "National average drug acquisition cost" means the monthly survey of retail pharmacies conducted by the federal Centers for Medicare and Medicaid Services (CMS) to determine average acquisition cost for Medicaid covered outpatient drugs.

§ 2. Subdivision 3 of section 280-a of the public health law, as amended by chapter 128 of the laws of 2022, is amended to read as follows:

3. Prescriptions. **(a)** A pharmacy benefit manager may not substitute or cause the substituting of one prescription drug for another in dispensing a prescription, or alter or cause the altering of the terms of a prescription, except with the approval of the prescriber or as explicitly required or permitted by law, including regulations of the department of financial services or the department of health. The superintendent and commissioner, in coordination with each other, are authorized to promulgate regulations to determine when substitution of prescription drugs may be required or permitted.

(b) To the extent permitted under federal law, a pharmacy benefit manager shall pay an in-network pharmacy at minimum at the national average drug acquisition cost (NADAC) rate or at the pharmacy acquisition cost rate if greater or there is not a NADAC rate, plus a professional dispensing fee that is at minimum the professional dispensing fee paid under the state medical assistance program. For brand name medications and biologic products that require special packaging, ship-

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

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ping or other costs to be incurred by the pharmacy for the dispensing process that is greater than the professional dispensing fee paid by the state medical assistance program, in-network pharmacies shall be paid a professional dispensing fee for these costs to ensure an in-network pharmacy is not paid less than its cost to acquire and dispense medications.

§ 3. The opening paragraph of subdivision 4 of section 280-a of the public health law, as added by chapter 828 of the laws of 2021, is amended to read as follows:

A pharmacy benefit manager shall, with respect to contracts between a pharmacy benefit manager and a pharmacy or, alternatively, a pharmacy benefit manager and a pharmacy's contracting agent, such as a pharmacy services administrative organization, include a reasonable process to appeal, investigate and resolve disputes regarding multi-source generic**, brand name and biologic product** drug pricing. The appeals process shall include the following provisions:

§ 4. This act shall take effect immediately.