

# 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:

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

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

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

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

13 3. Prescriptions. (a) A pharmacy benefit manager may not substitute or  
14 cause the substituting of one prescription drug for another in dispens-  
15 ing a prescription, or alter or cause the altering of the terms of a  
16 prescription, except with the approval of the prescriber or as explicit-  
17 ly required or permitted by law, including regulations of the department  
18 of financial services or the department of health. The superintendent  
19 and commissioner, in coordination with each other, are authorized to  
20 promulgate regulations to determine when substitution of prescription  
21 drugs may be required or permitted.

22 (b) To the extent permitted under federal law, a pharmacy benefit  
23 manager shall pay an in-network pharmacy at minimum at the national  
24 average drug acquisition cost (NADAC) rate or at the pharmacy acquisi-  
25 tion cost rate if greater or there is not a NADAC rate, plus a profes-  
26 sional dispensing fee that is at minimum the professional dispensing  
27 fee paid under the state medical assistance program. For brand name  
28 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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1 ping or other costs to be incurred by the pharmacy for the dispensing  
2 process that is greater than the professional dispensing fee paid by the  
3 state medical assistance program, in-network pharmacies shall be paid a  
4 professional dispensing fee for these costs to ensure an in-network  
5 pharmacy is not paid less than its cost to acquire and dispense medica-  
6 tions.

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

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

17 § 4. This act shall take effect immediately.