

STATE OF NEW YORK

5882--A

2025-2026 Regular Sessions

IN ASSEMBLY

February 24, 2025

Introduced by M. of A. McDONALD, WOERNER, BOLOGNA, DAIS, GRIFFIN, HEVE-SI, STIRPE, LEE, KAY, BRABENEC, BUTTENSCHON, SHIMSKY, GLICK, McMAHON, MANKTELOW, ANGELINO, K. BROWN, BLANKENBUSH, ROMERO, OTIS, PAULIN, DINOWITZ, SOLAGES, SAYEGH, GALLAHAN, JONES, SIMONE, ALVAREZ, RAJKUMAR, REYES, BURDICK, LASHER, LUPARDO, BARRETT, RA, ROSENTHAL, SIMON, McDONOUGH, BENEDETTO, ZACCARO, DeSTEFANO, BLUMENCRANZ -- Multi-Sponsored by -- M. of A. LEVENBERG -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the insurance law, in relation to payments by pharmacy benefit managers to participating 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) to read as follows:

3 (j) "Pharmacy acquisition cost rate" means the cost paid by a partic-
4 ipating pharmacy to acquire generic, brand name drugs, or biologic
5 products, or drugs produced through genetic technology or biopharmaceu-
6 tical processes pursuant to cost invoices from the pharmacy.

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

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

14 3. Prescriptions. (a) A pharmacy benefit manager may not substitute or
15 cause the substituting of one prescription drug for another in dispens-
16 ing a prescription, or alter or cause the altering of the terms of a
17 prescription, except with the approval of the prescriber or as explicit-
18 ly required or permitted by law, including regulations of the department

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

LBD01972-06-5

1 of financial services or the department of health. The superintendent
2 and commissioner, in coordination with each other, are authorized to
3 promulgate regulations to determine when substitution of prescription
4 drugs may be required or permitted. Provided, however, this paragraph
5 shall not apply to prescriptions or prescription drugs distributed, or
6 paid for in whole or in part, by a trust fund established or maintained
7 under the Labor Management Relations Act (29 U.S. Code § 186), pursuant
8 to coverage required by the terms of a collective bargaining agreement
9 between an employer and a labor organization or certified employee
10 organization; or pursuant to a health plan, welfare fund, pharmaceutical
11 plan, or other form of medical or prescription coverage established,
12 adopted, utilized, funded, or agreed upon by an employer and a labor
13 organization or certified employee organization pursuant to a collective
14 bargaining agreement; or, where the plan, coverage, fund, or program has
15 been collectively bargained and pertains to a sponsored multi-employer
16 plan, including but not limited to, plans developed under article five-G
17 of the general municipal law, articles forty-four and forty-seven of the
18 insurance law, or any plans created pursuant to the Internal Revenue
19 Code, Employee Retirement Income Security Act or any applicable federal
20 statute that provides such benefits to employee and retiree groups.

21 (b) To the extent permitted under federal law, a pharmacy benefit
22 manager shall pay a participating pharmacy at minimum at the national
23 average drug acquisition cost (NADAC) rate or at the pharmacy acquisi-
24 tion cost rate if there is not a NADAC rate, plus a professional
25 dispensing fee that is at minimum the professional dispensing fee paid
26 under the state medical assistance program. For generic, brand name
27 medications, biologic products, or drugs produced through genetic tech-
28 nology or biopharmaceutical processes as required by a manufacturer, a
29 federal or state regulatory agency, or accrediting body that require
30 unique handling, distribution or administration, in-depth patient teach-
31 ing, coordination of care, or frequent or special monitoring to ensure
32 successful use, special packaging, shipping or other costs to be
33 incurred by the pharmacy for the dispensing process that is greater than
34 the professional dispensing fee paid by the state medical assistance
35 program, participating pharmacies shall be paid a professional dispens-
36 ing fee for these costs to ensure a participating pharmacy is not paid
37 less than its cost to acquire and dispense medications. A pharmacy
38 benefit manager shall not pay a participating pharmacy below its pharma-
39 cy acquisition cost but may require demonstration of such cost through
40 the provision of pharmacy invoices. Provided, however, this paragraph
41 shall not apply to prescriptions, prescription drugs, or payments for
42 prescription drugs, distributed, or paid for in whole or in part, by a
43 trust fund established or maintained under the Labor Management
44 Relations Act (29 U.S. Code § 186), pursuant to coverage required by the
45 terms of a collective bargaining agreement between an employer and a
46 labor organization or certified employee organization; or pursuant to a
47 health plan, welfare fund, pharmaceutical plan, or other form of medical
48 or prescription coverage established, adopted, utilized, funded, or
49 agreed upon by an employer and a labor organization or certified employ-
50 ee organization pursuant to a collective bargaining agreement; or, where
51 the plan, coverage, fund, or program has been collectively bargained and
52 pertains to a sponsored multi-employer plan, including but not limited
53 to, plans developed under article five-G of the general municipal law,
54 articles forty-four and forty-seven of the insurance law, or any plans
55 created pursuant to the Internal Revenue Code, Employee Retirement

1 Income Security Act or any applicable federal statute that provides such
2 benefits to employee and retiree groups.

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

6 A pharmacy benefit manager shall, with respect to contracts between a
7 pharmacy benefit manager and a pharmacy or, alternatively, a pharmacy
8 benefit manager and a pharmacy's contracting agent, such as a pharmacy
9 services administrative organization, include a reasonable process to
10 appeal, investigate and resolve disputes regarding multi-source generic,
11 brand name, and biologic product, and drugs produced through genetic
12 technology or biopharmaceutical processes drug pricing. The appeals
13 process shall include the following provisions:

14 § 4. Section 2911 of the insurance law is amended by adding a new
15 subsection (d) to read as follows:

16 (d) To the extent permitted under federal law, a pharmacy benefit
17 manager shall pay a participating pharmacy at minimum at the national
18 average drug acquisition cost (NADAC) rate, as defined in subdivision
19 one of section two hundred eighty-a of the public health law, or at the
20 pharmacy acquisition cost rate, as defined in subdivision one of section
21 two hundred eighty-a of the public health law, if there is not a NADAC
22 rate, plus a professional dispensing fee that is at minimum the profes-
23 sional dispensing fee paid under the state medical assistance program.
24 For generic, brand name medications, biologic products, or drugs
25 produced through genetic technology or biopharmaceutical processes as
26 required by a manufacturer, a federal or state regulatory agency, or
27 accrediting body that require unique handling, distribution or adminis-
28 tration, in-depth patient teaching, coordination of care, or frequent or
29 special monitoring to ensure successful use, special packaging, shipping
30 or other costs to be incurred by the pharmacy for the dispensing process
31 that is greater than the professional dispensing fee paid by the state
32 medical assistance program, participating pharmacies shall be paid a
33 professional dispensing fee for these costs to ensure a participating
34 pharmacy is not paid less than its cost to acquire and dispense medica-
35 tions. A pharmacy benefit manager shall not pay a participating pharmacy
36 below its pharmacy acquisition cost but may require demonstration of
37 such cost through the provision of pharmacy invoices. A pharmacy benefit
38 manager shall, with respect to contracts between a pharmacy benefit
39 manager and a pharmacy or, alternatively, a pharmacy benefit manager and
40 a pharmacy's contracting agent, such as a pharmacy services administra-
41 tive organization, include a reasonable process to appeal, investigate
42 and resolve disputes regarding multi-source generic, brand name, biolog-
43 ic product, and drugs produced through genetic technology or biopharma-
44 ceutical processes drug pricing. The appeals process shall be considered
45 within the existing appeals process under section two hundred eighty-a
46 of the public health law. Provided, however, this paragraph shall not
47 apply to prescriptions, prescription drugs, or payments for prescription
48 drugs, distributed, or paid for in whole or in part, by a trust fund
49 established or maintained under the Labor Management Relations Act (29
50 U.S. Code § 186), pursuant to coverage required by the terms of a
51 collective bargaining agreement between an employer and a labor organ-
52 ization or certified employee organization; or pursuant to a health
53 plan, welfare fund, pharmaceutical plan, or other form of medical or
54 prescription coverage established, adopted, utilized, funded, or agreed
55 upon by an employer and a labor organization or certified employee
56 organization pursuant to a collective bargaining agreement; or, where

1 the plan, coverage, fund, or program has been collectively bargained and
2 pertains to a sponsored multi-employer plan, including but not limited
3 to, plans developed under article five-G of the general municipal law,
4 articles forty-four and forty-seven of the insurance law, or any plans
5 created pursuant to the Internal Revenue Code, Employee Retirement
6 Income Security Act or any applicable federal statute that provides such
7 benefits to employee and retiree groups.

8 § 5. This act shall take effect January 1, 2026 and shall apply to all
9 policies and contracts issued, renewed, modified, altered or amended on
10 and after such date.