

STATE OF NEW YORK

5939--A

2025-2026 Regular Sessions

IN SENATE

March 4, 2025

Introduced by Sens. SKOUFIS, ADDABBO, FAHY, FERNANDEZ, GALLIVAN, GRIFFO, HINCHEY, MARTINS, MAYER, RIVERA, C. RYAN, SCARCELLA-SPANTON, STAVISKY -- read twice and ordered printed, and when printed to be committed 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 biopharmaceuti-
6 cal 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
19 of financial services or the department of health. The superintendent
20 and commissioner, in coordination with each other, are authorized to
21 promulgate regulations to determine when substitution of prescription
22 drugs may be required or permitted. Provided, however, this paragraph

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

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

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

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

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

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

11 (d) To the extent permitted under federal law, a pharmacy benefit
12 manager shall pay a participating pharmacy at minimum at the national
13 average drug acquisition cost (NADAC) rate, as defined in subdivision
14 one of section two hundred eighty-a of the public health law, or at the
15 pharmacy acquisition cost rate, as defined in subdivision one of section
16 two hundred eighty-a of the public health law, if there is not a NADAC
17 rate, plus a professional dispensing fee that is at minimum the profes-
18 sional dispensing fee paid under the state medical assistance program.
19 For generic, brand name medications, biologic products, or drugs
20 produced through genetic technology or biopharmaceutical processes as
21 required by a manufacturer, a federal or state regulatory agency, or
22 accrediting body that require unique handling, distribution or adminis-
23 tration, in-depth patient teaching, coordination of care, or frequent or
24 special monitoring to ensure successful use, special packaging, shipping
25 or other costs to be incurred by the pharmacy for the dispensing process
26 that is greater than the professional dispensing fee paid by the state
27 medical assistance program, participating pharmacies shall be paid a
28 professional dispensing fee for these costs to ensure a participating
29 pharmacy is not paid less than its cost to acquire and dispense medica-
30 tions. A pharmacy benefit manager shall not pay a participating pharmacy
31 below its pharmacy acquisition cost but may require demonstration of
32 such cost through the provision of pharmacy invoices. A pharmacy benefit
33 manager shall, with respect to contracts between a pharmacy benefit
34 manager and a pharmacy or, alternatively, a pharmacy benefit manager and
35 a pharmacy's contracting agent, such as a pharmacy services administra-
36 tive organization, include a reasonable process to appeal, investigate
37 and resolve disputes regarding multi-source generic, brand name, biolog-
38 ic product, and drugs produced through genetic technology or biopharma-
39 ceutical processes drug pricing. The appeals process shall be considered
40 within the existing appeals process under section two hundred eighty-a
41 of the public health law. Provided, however, this paragraph shall not
42 apply to prescriptions, prescription drugs, or payments for prescription
43 drugs, distributed, or paid for in whole or in part, by a trust fund
44 established or maintained under the Labor Management Relations Act (29
45 U.S. Code § 186), pursuant to coverage required by the terms of a
46 collective bargaining agreement between an employer and a labor organ-
47 ization or certified employee organization; or pursuant to a health
48 plan, welfare fund, pharmaceutical plan, or other form of medical or
49 prescription coverage established, adopted, utilized, funded, or agreed
50 upon by an employer and a labor organization or certified employee
51 organization pursuant to a collective bargaining agreement; or, where
52 the plan, coverage, fund, or program has been collectively bargained and
53 pertains to a sponsored multi-employer plan, including but not limited
54 to, plans developed under article five-G of the general municipal law,
55 articles forty-four and forty-seven of the insurance law, or any plans
56 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 § 5. This act shall take effect January 1, 2026 and shall apply to all
4 policies and contracts issued, renewed, modified, altered or amended on
5 and after such date.