

STATE OF NEW YORK

5939--C

Cal. No. 305

2025-2026 Regular Sessions

IN SENATE

March 4, 2025

Introduced by Sens. SKOUFIS, ADDABBO, BYNOE, COONEY, FAHY, FERNANDEZ, GALLIVAN, GRIFFO, HINCHEY, JACKSON, LIU, MARTINS, MAYER, RHOADS, RIVERA, C. RYAN, SALAZAR, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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1 3. Prescriptions. (a) A pharmacy benefit manager may not substitute or
2 cause the substituting of one prescription drug for another in dispens-
3 ing a prescription, or alter or cause the altering of the terms of a
4 prescription, except with the approval of the prescriber or as explicit-
5 ly required or permitted by law, including regulations of the department
6 of financial services or the department of health. The superintendent
7 and commissioner, in coordination with each other, are authorized to
8 promulgate regulations to determine when substitution of prescription
9 drugs may be required or permitted.

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

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

50 A pharmacy benefit manager shall, with respect to contracts between a
51 pharmacy benefit manager and a pharmacy or, alternatively, a pharmacy
52 benefit manager and a pharmacy's contracting agent, such as a pharmacy
53 services administrative organization, include a reasonable process to
54 appeal, investigate and resolve disputes regarding multi-source generic,
55 brand name, and biologic product, and drugs produced through genetic

1 technology or biopharmaceutical processes drug pricing. The appeals
2 process shall include the following provisions:

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

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

53 § 5. This act shall take effect January 1, 2027 and shall apply to all
54 policies and contracts issued, renewed, modified, altered or amended on
55 and after such date.