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:

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

(j) "Pharmacy acquisition cost rate" means the cost paid by a participating pharmacy to acquire generic, brand name drugs, or biologic products, or drugs produced through genetic technology or biopharmaceutical processes pursuant to cost invoices from the pharmacy.

(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:

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

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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 a participating pharmacy at minimum at the national average drug acquisition cost (NADAC) rate or at the pharmacy acquisition cost rate if 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 generic, brand name medications, biologic products, or drugs produced through genetic technology or biopharmaceutical processes as required by a manufacturer, a federal or state regulatory agency, or accrediting body that require unique handling, distribution or administration, in-depth patient teaching, coordination of care, or frequent or special monitoring to ensure successful use, special packaging, shipping 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, participating pharmacies shall be paid a professional dispensing fee for these costs to ensure a participating pharmacy is not paid less than its cost to acquire and dispense medications. A pharmacy benefit manager shall not pay a participating pharmacy below its pharmacy acquisition cost but may require demonstration of such cost through the provision of pharmacy invoices. Provided, however, this paragraph shall not apply to prescriptions, prescription drugs, or payments for prescription drugs, distributed, or paid for in whole or in part, by a trust fund established or maintained under the Labor Management Relations Act (29 U.S. Code § 186), pursuant to coverage required by the terms of a collective bargaining agreement between an employer and a labor organization or certified employee organization; or pursuant to a health plan, welfare fund, pharmaceutical plan, or other form of medical or prescription coverage established, adopted, utilized, funded, or agreed upon by an employer and a labor organization or certified employee organization pursuant to a collective bargaining agreement; or, where the plan, coverage, fund, or program has been collectively bargained and pertains to a sponsored multi-employer plan, including but not limited to, plans developed under article five-G of the general municipal law, articles forty-four and forty-seven of the insurance law, or any plans created pursuant to the Internal Revenue Code, Employee Retirement Income Security Act or any applicable federal statute that provides such benefits to employee and retiree groups.

§ 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, and drugs produced through genetic

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

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

(d) To the extent permitted under federal law, a pharmacy benefit manager shall pay a participating pharmacy at minimum at the national average drug acquisition cost (NADAC) rate, as defined in subdivision one of section two hundred eighty-a of the public health law, or at the pharmacy acquisition cost rate, as defined in subdivision one of section two hundred eighty-a of the public health law, if 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 generic, brand name medications, biologic products, or drugs produced through genetic technology or biopharmaceutical processes as required by a manufacturer, a federal or state regulatory agency, or accrediting body that require unique handling, distribution or administration, in-depth patient teaching, coordination of care, or frequent or special monitoring to ensure successful use, special packaging, shipping 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, participating pharmacies shall be paid a professional dispensing fee for these costs to ensure a participating pharmacy is not paid less than its cost to acquire and dispense medications. A pharmacy benefit manager shall not pay a participating pharmacy below its pharmacy acquisition cost but may require demonstration of such cost through the provision of pharmacy invoices. 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, biologic product, and drugs produced through genetic technology or biopharmaceutical processes drug pricing. The appeals process shall be considered within the existing appeals process under section two hundred eighty-a of the public health law. Provided, however, this paragraph shall not apply to prescriptions, prescription drugs, or payments for prescription drugs, distributed, or paid for in whole or in part, by a trust fund established or maintained under the Labor Management Relations Act (29 U.S. Code § 186), pursuant to coverage required by the terms of a collective bargaining agreement between an employer and a labor organization or certified employee organization; or pursuant to a health plan, welfare fund, pharmaceutical plan, or other form of medical or prescription coverage established, adopted, utilized, funded, or agreed upon by an employer and a labor organization or certified employee organization pursuant to a collective bargaining agreement; or, where the plan, coverage, fund, or program has been collectively bargained and pertains to a sponsored multi-employer plan, including but not limited to, plans developed under article five-G of the general municipal law, articles forty-four and forty-seven of this chapter, or any plans created pursuant to the Internal Revenue Code, Employee Retirement Income Security Act or any applicable federal statute that provides such benefits to employee and retiree groups.

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