

# STATE OF NEW YORK

5882--B

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 -- again reported from said committee with amendments, 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

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

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1 prescription, except with the approval of the prescriber or as explicit-  
2 ly required or permitted by law, including regulations of the department  
3 of financial services or the department of health. The superintendent  
4 and commissioner, in coordination with each other, are authorized to  
5 promulgate regulations to determine when substitution of prescription  
6 drugs may be required or permitted.

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

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

47 A pharmacy benefit manager shall, with respect to contracts between a  
48 pharmacy benefit manager and a pharmacy or, alternatively, a pharmacy  
49 benefit manager and a pharmacy's contracting agent, such as a pharmacy  
50 services administrative organization, include a reasonable process to  
51 appeal, investigate and resolve disputes regarding multi-source generic,  
52 brand name, and biologic product, and drugs produced through genetic  
53 technology or biopharmaceutical processes drug pricing. The appeals  
54 process shall include the following provisions:

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

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

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