

# STATE OF NEW YORK

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5882--C

2025-2026 Regular Sessions

## IN ASSEMBLY

February 24, 2025

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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, SIMONE, ALVAREZ, RAJKUMAR, REYES, BURDICK, LASHER, LUPARDO, BARRETT, RA, ROSENTHAL, SIMON, McDONOUGH, BENEDETTO, ZACCARO, DeSTEFANO, BLUMENCRANZ, MILLER, SEMPOLINSKI, CHLUDZINSKI, PALMESANO, LEMONDES, BEEPHAN, MAHER, LAVINE, WEPRIN, PHEFFER AMATO, SIMPSON, HUNTER, FITZPATRICK, BURROUGHS, NOVAKHOV, SLATER, STERN, STECK, BAILEY, DE LOS SANTOS, CLARK, SHRESTHA, WIEDER, MAGNARELLI, SEAWRIGHT, CONRAD, JACOBSON, EACHUS, GRAY, CRUZ, WILLIAMS, SCHIAVONI, BENDETT, JENSEN, LUNSFORD, KELLES, BRONSON, TAPIA, DAVILA, MEEKS, GONZALEZ-ROJAS, BORES, RIVERA, MIKULIN, SANTABARBARA, KASSAY, HYNDMAN, GALLAGHER, ROZIC, BRAUNSTEIN, BURKE, P. CARROLL, LUCAS, PEOPLES-STOKES, YEGER, TAYLOR, FORREST, R. CARROLL, CUNNINGHAM, DILAN, FALL, HAWLEY, HOOKS, JACKSON, KIM, MORINELLO, O'PHARROW, SEPTIMO, WALKER, WRIGHT, ZINERMAN -- 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 -- reference changed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- 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:

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

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

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

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

12 3. Prescriptions. (a) A pharmacy benefit manager may not substitute or  
13 cause the substituting of one prescription drug for another in dispens-  
14 ing a prescription, or alter or cause the altering of the terms of a  
15 prescription, except with the approval of the prescriber or as explicit-  
16 ly required or permitted by law, including regulations of the department  
17 of financial services or the department of health. The superintendent  
18 and commissioner, in coordination with each other, are authorized to  
19 promulgate regulations to determine when substitution of prescription  
20 drugs may be required or permitted.

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

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

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 this chapter, 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, 2027 and shall apply to all  
9 policies and contracts issued, renewed, modified, altered or amended on  
10 and after such date.