



Focus of Community Pharmacy:

Access. Trust. Wellness.

**Testimony for the
Joint Legislative Budget Hearing on Health/Medicaid**

January 23, 2024

9:30AM

Hearing Room, LOB

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Senate Finance Committee Chair Krueger, Assembly Ways & Means Chair Weinstein, Senate and Assembly Health Chairs Rivera and Paulin and other members of these Committees, the Community Pharmacy Association of New York State (CPANYS) would like to thank you for your strong past support of local, community pharmacies in New York and for the opportunity to testify today related to the State Fiscal Year (SFY) 2024-25 State Budget.

CPANYS represents community pharmacies of all types and sizes, and in every county across the State. Together, we are focused on protecting patient access to pharmacy care and strengthening the role that pharmacists can play as part of the health care team to improve patient health outcomes while reducing costs.

Below please find an outline of our budget and related priorities for SFY 2024-25 by section in the Executive Budget.

Health/ Mental Hygiene Article VII Budget Bill (S8307/A8807), Part I

(1) OPPOSITION to Proposal to Require Pharmacies in Medicaid to Submit Annual Cost Reports

Included within the SFY 2025 Executive Budget in a section entitled, *Pharmacy Enhancements and Integration and Specialty Drug Management*, is a proposal to require all pharmacies enrolled in Medicaid to submit annual cost reports related to the costs incurred during procurement and dispensing of prescription drugs. The reports would be subject to audit and timely filing would be a condition of participation in Medicaid.

We have serious concerns with this proposal, are opposed and ask the Legislature to reject it in your one-house budgets and the final state budget. This would be a massive undertaking for community pharmacies to report on each and every drug dispensed in a given year (tens of thousands or more). Pharmacies like so many others in the health care sector are facing significant workforce challenges and would not have the staff and resources needed to comply with this proposal. Our priority is devoting staff and resources to patient care.

Furthermore, this would be a major undertaking for the state Medicaid program to collect, process and analyze cost reports from five thousand or more pharmacies for tens or even hundreds of thousands of drugs dispensed by each, an administrative cost that would be borne by taxpayers. It is reminiscent of an effort undertaken by the State Health Department beginning in 2011 which resulted in a biased and inaccurate pharmacy reimbursement proposal called NYS Average Actual Acquisition Cost (AAC) which created winners and losers and severely threatened the viability of pharmacies. The NYS Legislature had to reject the proposal and buyback hundreds of millions in projected savings from the proposed deep cuts. We respectfully ask the Legislature to make sure this does not get repeated by rejecting this proposal.

We see this proposal as completely unnecessary. On April 1, 2023, New York successfully removed managed care plans and their pharmacy benefit managers (PBMs) from the management of pharmacy benefits in Medicaid which substantially streamlined the program and greatly enhanced patient experience in how the nearly 8 million people enrolled in Medicaid receive their needed medications. Patients now have expanded access to covered medications, they have their choice of pharmacy no longer limited by PBM networks, and resources which were going to health plans and PBMs have been redirected to actual care.

In making this change, the State is now directly administering pharmacy benefits under Medicaid Fee for Service which has greatly increased transparency in this process. New York reimburses Medicaid enrolled pharmacies for dispensed drugs utilizing a federal Center for Medicare and Medicaid Services (CMS) benchmark known as NADAC or National Average Drug Acquisition Cost, which is based on cost reporting from pharmacies through a national survey administered by CMS. Importantly, NADAC pricing is calculated using actual invoices from thousands of pharmacies across the country and is updated weekly by CMS.

Currently, 46 states including New York use NADAC for Medicaid pricing and approximately 95% of covered outpatient drugs have NADAC values. (American Economic Association – Survey of Retail Outpatient Drug Prices Sept 2021). For any drugs that lack a NADAC value, New York uses a nationally recognized benchmark (WAC or wholesale acquisition cost). All covered outpatient prescription drugs currently have a WAC value. Most concerning to pharmacies caring for Medicaid patients, New York continues to utilize the flawed WAC-3.3% methodology for the most expensive drugs with no NADAC value which is most often well below cost.

Similarly, pharmacies are paid a professional dispensing fee based on a cost-based analysis undertaken by the state and its consultants. There is no reason that New York would need to require annual pharmacy cost reports for all drugs given these available, CMS-approved, pharmacy cost-based reimbursement resources that are used by New York and other states. With that being said, New York has chosen not to acknowledge existing surveys and data that shows a significant difference between community pharmacy and specialty pharmacy cost of dispensing. The current \$10.18 dispensing fee does not even cover the specialty pharmacy's cost of extensive cold chain packaging and delivery to the patient.

The move to fully administer New York's pharmacy benefit under Medicaid Fee for Service has been incredibly smooth and positive for patients- a testament to the work of the state's pharmacists and other pharmacy staff who have been a strong partner to the state in making this important change which has also benefited the state by saving

millions of dollars. The State Health Department has made a number of public statements since the 4/1/23 transition validating this. Below are some examples.

“The state says the new process creates transparency in reimbursements to pharmacies, leverages the state’s purchasing power to negotiate with drug manufacturers, and streamlines administration for practitioners.”ⁱ

“With this transition, our Medicaid program will now pay all pharmacies directly rather than relying on corporate middlemen...This will create both transparency and efficiency that will work to the benefit of our members and ensure access to patient-centered, high quality health care.”ⁱⁱ

“The department’s ‘proactive’ monitoring and systems have resulted in a ‘smooth and successful’ transition... The state maintained the changes would save New York millions.”ⁱⁱⁱ

“[With NYRx transition NYS has] secured lower prices, lower costs and rebates are increased... our assumptions bear out....Pharmacies have seen predictability and understand what they are reimbursed with transparency...”^{iv}

For the above reasons, we respectfully ask that the Legislature reject this proposal in your one-house budget bills and the final State budget.

(2) OPPOSITION to Proposal to Reduce Medicaid Coverage of Over the Counter (OTC) Medications

The Executive budget also includes a proposal which would grant the NYS Department of Health the authority to modify the list of over-the-counter medication that are covered under Medicaid. Currently, New York Medicaid Fee-for-Service covers the list of outpatient prescription and over-the-counter drugs consistent with CMS coverage guidelines.

Both prescription and over-the-counter medications are essential to help patients treat illnesses and diseases and maintain good health. Given that those enrolled in Medicaid have lesser incomes which qualify them for Medicaid we are concerned that scaling back coverage of OTCs as proposed could mean the difference between a patient being able to access needed medications and not. Without coverage they will be forced to choose between paying for the costs of the OTCs they need and other bills. Ultimately, if a patient’s disease or condition is not managed or treated, in most cases it will only worsen and result in higher costs later. Access to many medications is preventative. We are concerned about the unintended consequences of this proposal on patient care.

For these reasons, we urge the Legislature reject this proposal in your one-house budget bills and in the final state budget.

Health/ Mental Hygiene Article VII Budget Bill (S8307/A8807), Part P

(3) SUPPORT for Proposal to Make Pharmacist COVID 19 and Flu Testing permanent with recommendation to broaden the list of CLIA-waived tests that pharmacists may administer

During the COVID-19 pandemic, pharmacists were authorized to serve as Limited-Service Laboratory (LSL) directors to order and administer influenza and COVID-19 tests. This was critical to the state's response to the pandemic and provided broad access for New Yorkers to essential testing. Given the success, this provision was later codified in NY law with a sunset date. Given the highly positive experience patients have had with being able to easily access these important tests by highly qualified pharmacists, we support the budget proposal to make this permanent.

Furthermore, we would encourage the Legislature and Governor to broaden list of tests pharmacist can order and administer. We are very supportive of legislation ([S3467A, Rivera/A6627B, McDonald](#)) that would add tests for respiratory syncytial virus (RSV), Group A Streptococcal, HbA1c, Hepatitis C and HIV. Doing so, will make such tests more accessible to patients and ultimately lead to more expedient diagnoses so patients may commence treatment regimens more quickly.

We urge the Legislature's support for this proposal and recommend that it be expanded similar to S3467A/A6627B to break down access barriers to essential testing especially for those in underserved communities.

Health/ Mental Hygiene Article VII Budget Bill (S8307/A8807), Part T

(4) SUPPORT for Proposal to Authorize Pharmacists to Dispense Pre-Exposure Prophylaxis (PrEP)

We are supportive of this proposal to authorize pharmacists to dispense PrEP to patients when indicated to prevent HIV infection. The authorization would be pursuant a standing order with the State Health Commissioner or other physician, or nurse practitioner and the proposal includes training, communication and patient screening and counseling requirements.

Making PrEP easier and more accessible through a patient's pharmacist can meaningfully reduce the number of new HIV infections in our State. We support the enactment of this proposal.

Further, during the COVID-19 pandemic and through the end of this year the federal PREP Act is in place which has allowed licensed pharmacists to issue treatment to patients following a positive COVID-19 test. Rather than expiring, New York should codify this and expand it to include other straightforward respiratory treatments following a positive test for Influenza or Group A Step. Legislation ([S7839, Rivera/](#)

[A8596, McDonald](#)) was recently introduced to authorize such treatment and we urge the adoption of this measure this year.

(5) SUPPORT Proposal to Expand Pharmacist Vaccine Administration to Include Mpox and Recommend Authorization of Registered Technicians to Give Immunizations in NY Law

Since 2008, licensed and vaccine certified pharmacists have been administering vaccinations. Pharmacists currently are authorized to administer the list of CDC-recommended vaccines for adults and influenza vaccine for children aged two and older. Given the outbreaks of Mpox that we have seen in areas of the State, we are supportive of expanding pharmacist vaccination authority to include the vaccine to prevent Mpox.

We have also seen the Executive budget proposal to allow unlicensed personnel like medical assistants as well as Emergency Medical Technicians (EMTs) to give vaccines. Under the Federal PREP Act, unlicensed personnel working as pharmacy technicians have been authorized to administer vaccines under the supervision of licensed pharmacists. This has played a major role in the state's ability to roll out new vaccines against COVID-19 quickly and to pharmacies' ability to expand vaccination in our communities. We urge that budget proposals to expand vaccination authority to medical assistants and EMTs also include the pharmacy technicians working in community pharmacies who will lose their ability to administer vaccines when the Federal PREP Act expires if New York does not codify it, as other states have.

SFY 2024-25 Executive Budget Medicaid Scorecard

(6) NEED to Include NYS OMIG Audit Reform in Budget

For over a decade, our Association has been actively engaged in an effort to seek reforms to the Office of the Medicaid Inspector General (OMIG) auditing processes, in partnership with providers and associations across the healthcare sector and continuum. OMIG's practices are threatening the financial viability of providers and programs serving those enrolled in Medicaid. These practices are not targeting fraud, waste and abuse, but rather clerical, technical or administrative errors by providers which are unintentional and correctible. Rather than allow providers to correct errors and make improvements to prevent repeat errors, OMIG take punitive action utilizing extrapolation and taking a clerical error which may relate to a claim of a couple hundred dollars and demand a provider recoupment of hundreds or thousands or millions of dollars. This is untenable and unsustainable.

We commend the Legislature for hearing these concerns and passing legislation in 2022 to address these practices and inject fairness, transparency and guard rails into OMIG audits. However, Governor Hochul vetoed this bill. In her veto message the Governor directed OMIG to *"engage the healthcare provider community and Medicaid stakeholders to solicit input on the concerns... perform a comprehensive review of the agency's program integrity process and identify areas for improvement... commit to*

conducting program integrity activities in a responsible manner that includes consideration of financial impacts on providers and assured continuity of care for Medicaid recipients.”

We are unaware of any reforms being enacted since this veto and based on feedback from members and other providers, unfair auditing activities are only intensifying.

In the Medicaid Scorecard for SFY 2024-25 we see the Executive has increased OMIG’s “Audit Target” by \$100 million. Now more than ever, we must ensure that OMIG is focusing on actual fraud, waste and abuse and not clerical errors by honest providers who are providing essential services for New Yorkers. The OMIG Audit Reform legislation passed by the Legislature in 2022 has been amended to address the concerns raised. We respectfully urge the inclusion of the 2024 legislation ([S5329B, Harckham/A6813A, Paulin](#)) in your one-house budget bills and in the final state budget to protect access to critical healthcare services for those enrolled in Medicaid.

Thank you for your consideration of our comments regarding the SFY 2024-25 budget. The shared goal of our members is to ensure patient access to high quality pharmacy care throughout the State. Please continue to see our Association and members as a resource on any pharmacy or health-related topic where we can be of assistance.

ⁱ New York Medicaid Shifts to New Pharmacy Benefits Program, Healthcare Innovation, 4/5/23

ⁱⁱ New York Medicaid Shifts to New Pharmacy Benefits Program, Healthcare Innovation, 4/5/23

ⁱⁱⁱ Six months into 340B carve-out, providers say state has ‘delivered’ on reinvestments but remain cautious, Crains Health Pulse 10/23/23

^{iv} Capitol Pressroom Interview with NYSDOH, 10/25/23