



**PHARMACISTS SOCIETY OF THE STATE OF NEW YORK**

**TESTIMONY**

**JOINT LEGISLATIVE BUDGET HEARING  
HEALTH AND MEDICAID**

**February 8, 2022**

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Honorable Finance Chair Senator Krueger, Honorable Ways & Means Chair Assembly Member Weinstein, Senator Rivera, Assemblyman Gottfried and distinguished members,

My name is Karl Williams, and I currently serve as President of the Pharmacists Society of the State of New York. PSSNY is a 140 year-old statewide organization with regional affiliates that represents the interests of more than 25,000 pharmacists who practice in a variety of settings. Most members practice in community pharmacies. Many are independent owners who have made numerous trips to Albany over the last couple of years pleading for your help.

I am pleased for this opportunity to express the gratitude of the Pharmacists Society for the work of the legislature, and the Governor, enacting reforms that will permit this most important public health infrastructure – community pharmacies – to remain viable. Regulation of PBMs, allowing patient choice, and vaccine access reform is a good start to mitigating the trend toward pharmacy deserts. There is much more needed to truly level the playing field.

Community pharmacists have been on the front lines of providing health care services during the pandemic. Administering tests for COVID, influenza, and RSV as well as life-preserving vaccines are very visible examples of care. We have been there every day. While insurance companies and their pharmacy benefit managers have reaped obscene profits, this comes on the backs of pharmacies, pharmacists, and pharmacy technicians who are stretched to the limit. Pharmacies, barely hanging on in normal times, will continue to close further limiting access to care in many communities. Also, the challenges to the workforce due to anti-professional staffing models in the large publicly-traded chain pharmacies are beyond the limit. Protection for professional decision-making, as provided for other professions (e.g., prohibition of the corporate practice of medicine), is necessary for the viability of professionals and patient protection.

The Executive Budget Proposal contains five pharmacy-related provisions. However, notably, and distressingly absent, is **A9165 (Gottfried)/S07909 (Skoufis)**, which requires Medicaid managed care plans to reimburse retail pharmacies in an amount equal to the fee-for-service rate. This bill's predecessor A7598 (Gottfried)/S6603 (Skoufis) passed both houses **UNANIMOUSLY** in 2021. Despite unanimous passage, Governor Kathy Hochul vetoed the bill on December 29, 2021. In her veto message, Governor Hochul wrote that this matter should be addressed in the budget. We are calling on the Legislature to answer Governor Hochul's call, and take this bill up in the budget.

**A9165 (Gottfried)/S07909 (Skoufis)** is correctly viewed as patient access reform. Setting a floor on compensation in Medicaid managed care will permit pharmacies to plan economically, and to be blunt, stay open. Additional provisions allow patients to receive care from trusted neighborhood professionals. One additional step is needed: PBM "clawbacks", weeks or months after dispensing occurs, must be prohibited in this law. Often called "generic effect rate" clauses included in a take-it-or-leave it contracts, these not only harm pharmacies economically, but also fraudulently inflate the cost to the Medicaid program for drugs. Nikki Bryant, RPh, in testimony to the state legislature stated "Government contracts

in this state, funded by my tax dollars, work to put me out of business". The same is true here in New York.

## **Executive Budget Proposal**

The Executive has proposed 4 Parts related to pharmacy in the Health and Mental Hygiene Article VII budget bill:

**Part C:** Scope of Practice Expansion

**Part G:** Transfer of Oversight for Licensed Healthcare Professionals

**Part I:** Medicaid rate Increase

**Part BB:** Elimination of Prescriber Prevails

**Part HH:** 30-day Supply Opioid Overdose Reversal Medication Mandate

### **Part C: Scope of Practice Expansion**

**The Society strongly supports Governor Hochul's proposal to expand licensed pharmacist's scope of practice to perform CLIA-waived tests.** The U.S. Clinical Laboratory Improvement Amendments of 1988 (CLIA) enabled greater access to simple, low-risk tests by allowing their use in facilities with a Certificate of Waiver. These tests are now reliably available to detect pregnancy, diagnose influenza, screen for substance abuse, or monitor patients with diabetes, among other uses. Convenient access to CLIA-waived tests can aid in diagnosis and speed time to treatment. Increased access to CLIA-waived tests thus has the potential to enhance patient care and access throughout the State of New York. This is a crucial infrastructure issue. The Governor enabled pharmacist testing under emergency powers, and this now supported by the PREP Act Declaration Amendments. Pharmacists are clearly competent to provide this care, and pharmacies built out capacity to address the public health emergency. Competence and capacity remain and should not be lost. We will stay ready, hereby, for the next COVID variant or other public health emergency.

### **Part G: Transfer of Oversight for Licensed Healthcare Professionals**

**The Society strongly supports Governor Hochul's proposal to transfer oversight of healthcare professional from the State Education Department to the State Department of Health.** Currently, pharmacists are subject to a bifurcated oversight structure, where we are licensed and regulated by the State Education Department, but the laws rules and regulations surrounding the practice of pharmacy and the actual medication that we dispense is regulated by the Department of Health. We believe it is in pharmacist's best interest to have a single entity regulating our profession.

### **Part I: Medicaid rate Increase**

**The Society supports the proposed Medicaid rate increase.** However, we must request that the increase be applied to both the dispensing fee, and the medication. Pharmacy is unique because we are paid for our service (a \$10.08 dispensing fee), and we are paid for the drugs we dispense.

The medication dispensed may cost hundreds or thousands of dollars. Suboxone for the treatment of opioid use disorder is a great example. It takes only one denied claim (this frequently happens with pharmacy benefit managers) to render a loss that cannot be made up over several transactions with the same medication. This creates a disincentive to stock that medication creating a potential gap in access to care for patients. Applying the increase to product and service will help spread inevitable losses.

### **Part BB: Elimination of Prescriber Prevails**

**The Society opposes the proposed elimination of prescriber prevails.** The Executive proposes to eliminate prescriber prevails, which is a feature of New York's Medicaid program that gives doctors the final say over which medications are dispensed to patients under the Managed Care Preferred Drug Program. Prescribers are well aware of the efficacy and availability of generic equivalent medications. However, in some cases, the prescriber may specify a name-brand medication for the treatment of a specific patient or condition. The State should not step in and interrupt that prescriber/patient relationship by overruling the prescriber. Therefore, we ask the Legislature to reject the Governor's proposal.

### **Part HH: 30-day Supply Opioid Overdose Reversal Medication Mandate**

**The Society opposes the proposed mandate to supply 30 days of opioid reversal agents.** We understand and support the policy goal to ensure New Yorkers have access to opioid overdose reversal medication. However, pharmacists should not have to bear the financial burden of stocking a 30-day supply of opioid reversal medication. This mandate creates a number of problems, including the sheer cost of supplying the medication. And, as medication expires, pharmacists will be forced to dispose of the expired supply, and restock their shelves at their own cost.

Pharmacies currently stock opioid reversal agents based on the demand from the communities they serve. Some pharmacies stock the medication, and others don't simply because there is no demand for the medication in their market. Therefore, in addition to the cost of the medication, there is the loss of shelf space that should be reserved for medications that are actually in demand. For these reasons, we request that the Legislature reject this section of the proposed budget.

### **Conclusion**

PSSNY pledges to continue to work with members of the legislature, state agencies, administration officials and other stakeholders to develop and provide progressive policies

that promote healthy communities in which local pharmacies thrive and pharmacists are rewarded for the important services they provide. Please help the pharmacists in the State of New York continue their commitment to patient care. Pharmacists are part of the solution to the problem of rising healthcare costs, as we are the most accessible healthcare providers capable of influencing outcomes.

Our members need relief to remain viable and we need **A9165 (Gottfried)/S07909 (Skoufis)** now.