



## Legislation Text

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### Res. No. 1529-A

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation to protect New York State’s safety net providers and Special Needs Plans by eliminating the Medicaid pharmacy carve-out.

By Council Members Levine, Louis, Chin, Lander, Rivera, Levin, Barron, Rose and Van Bramer

Whereas, Congress created the Medicaid rebate program in 1990; and

Whereas, Under the program, a manufacturer must pay rebates to state Medicaid programs for “covered outpatient drugs,” which lowers the cost of drugs for Medicaid programs; and

Whereas, In 1992, Congress extended the same kind of relief to safety net providers by enacting Section 340B of the Public Health Service Act (the 340B program); and

Whereas, The 340B program requires pharmaceutical manufacturers to provide front-end discounts on covered outpatient drugs purchased by specified providers, called “covered entities,” that serve the nation's most vulnerable populations; and

Whereas, According to congressional reports, the purpose of the 340B program is to enable covered entities “to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services”; and

Whereas, The 340B program protects safety net providers, including HIV/AIDS clinics that receive support under the federal Ryan White CARE Act, and community health centers and safety net hospitals that have been on the frontlines of fighting COVID-19; and

Whereas, COVID-19 has disproportionately impacted Black, Latinx, and other communities of color, as well as those who have lower incomes; and

Whereas, Ethnic and racial minorities and those who are lower income are also served by safety net providers; and

Whereas, According to New York State Department of Health (NYSDOH), there are 209 covered entities under the 340B program, totaling 2,191 sites across the state; and

Whereas, These providers rely on the savings from the 340B program to provide numerous services addressing social determinants of health and health inequities, including transportation assistance, sexually transmitted infection (STI) screenings, nurse triage and education services, care coordination and patient navigation for those who are chronically ill, free oncology services, and insurance assistance and enrollment services; and

Whereas, Providers also use these funds to operate food pantries and run mental health and wellness programs, including nutrition and diabetes education and harm reduction programs; and

Whereas, According to the Medicaid and CHIP Payment and Access Commission (MACPAC), states may offer Medicaid benefits on either a fee-for-service (FFS) basis, or through managed care plans, or both; and

Whereas, For those with managed care, which includes nearly everyone with Medicaid in New York State, the state pays a fee to a managed care plan for each person enrolled in such plan; and

Whereas, Managed care plans include Special Needs Plans (SNPs), such as HIV SNPs, which are managed care plans that cover the same services as other Medicaid managed care plans, as well as additional special services for people living with HIV/AIDS; and

Whereas, In April 2020, Governor Cuomo and the New York State Legislature passed a budget that included a plan to transition, or carve-out, the Medicaid managed care pharmacy benefit to FFS; and

Whereas, According to the NYSDOH, this proposal will carve-out the pharmacy benefit for 4.3 million managed care Medicaid members, moving the benefit back to FFS, by April 1, 2021, which will give the State “complete visibility into the underlying cost of prescription drugs and greater control to manage overall

prescription drug spending”; and

Whereas, The Medicaid pharmacy carve-out would harm 340B providers, including community health centers, HIV providers, sexual health clinics, many rural hospitals, and other safety net providers, because they would no longer be able to purchase prescription drugs at a significantly reduced price; and

Whereas, If New York State shifts Medicaid drug coverage as outlined in the budget, safety net providers will lose hundreds of millions of dollars they now use for patient care, and the State and the federal government will instead receive more rebates; and

Whereas, According to the Community Healthcare Association of New York State (CHCANYS), extensive harm will occur to community health centers as a result of the pharmacy carve-out, including health center closures, lay-offs of hundreds of staff, and loss of over \$100 million in client services; and

Whereas, The End AIDS NY Coalition surveyed 15 of its member organizations that operate HIV clinics, and these 15 organizations alone reported that they will lose \$56.1 million in annual revenue if the planned pharmacy carve-out is implemented; and

Whereas, According to a letter that hospital leaders sent to Governor Cuomo and NYSDOH Commissioner Zucker, about 100 hospitals serving low-income and indigent populations across the state will lose more than \$87 million next year as a result of this change, on top of the \$20 billion to \$25 billion in losses and new expenses incurred due to COVID-19; and

Whereas, A.1671/ S.2520, sponsored by Assembly Member Richard Gottfried and Senator Gustavo Rivera, would delay the carve-out for eligible 340B providers and HIV SNPs to April 1, 2024; and

Whereas, Delaying implementation of the carve-out would give providers and policymakers more time to consider ways to avoid or minimize the negative impact of such a change; and

Whereas, While a delay would be beneficial, advocates, including safety net providers and HIV SNPs, are calling for the carve-out to be eliminated altogether; and

Whereas, Although the state's Fiscal 2022 Executive Budget proposes the creation of the 340B

Reimbursement Fund, which is intended to offset the 340B revenue losses providers would face from the pharmacy benefit carve-out, this is not enough of a guarantee to protect our safety net providers and could cause undue hardship; and

Whereas, Given the disproportionate impact of COVID-19 on the most vulnerable communities and the providers that serve them, eliminating the carve-out would greatly benefit the New Yorkers who need it most; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation to protect New York State's safety net providers and Special Needs Plans by eliminating the Medicaid pharmacy carve-out

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