S T A T E O F N E W Y O R K

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I N S E N A T E

May 10, 2016

Introduced by Sens. GOLDEN, ADDABBO, AKSHAR, BOYLE, COMRIE, CROCI, ESPAILLAT, FUNKE, HAMILTON, KRUEGER, LANZA, LARKIN, MARTINS, O'MARA, PANEPINTO, PARKER, RITCHIE, ROBACH, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to reimbursements to mail order pharmacies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs 13-a and 28 of subsection (i) of section 3216 of the insurance law, paragraph 13-a as amended by chapter 10 of the laws of 2012, paragraph 28 as amended by chapter 11 of the laws of 2012, are amended to read as follows:

(13-a) (A) DEFINITIONS. FOR THE PURPOSES OF THIS PARAGRAPH:

(1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL RETAIL ORDER PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHAR-

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

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MACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(2) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMACIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(B) Every policy that provides coverage for prescription fertility drugs and requires or permits prescription drugs to be purchased through a network participating mail order or other non-retail pharmacy shall provide the same coverage for prescription fertility drugs AND SHALL NOT LIMIT THE SUPPLY THAT MAY BE DISPENSED TO A THIRTY-DAY SUPPLY when such drugs are purchased from a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees [in advance through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the insurer has established for [a] network participating [mail order or other non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such case, the policy shall not impose any fee, co-payment, co-insurance, deductible or other condition, INCLUDING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any insured who elects to purchase prescription fertility drugs through a network participating non-mail order retail pharmacy that it does not impose on any insured who purchases prescription fertility drugs through a network participating mail order or other non-retail pharmacy.

(C) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION FERTILITY DRUGS SHALL REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION FERTILITY DRUGS THAT HAVE SPOILED OR DAMAGED, PROVIDED THAT, THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A ONE MONTH SUPPLY BEFORE RECEIPT OF THE RETURNED SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. IF THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION FERTILITY DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE INSURANCE POLICY FOR A DISPENSED PRESCRIPTION FERTILITY DRUG THAT WAS SPOILED OR DAMAGED, THE POLICY MAY REFUSE TO

REPLACE SUCH PRESCRIPTION FERTILITY DRUG FOR SUCH INSURED UNTIL SUCH INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. REPLACEMENT OF A PRESCRIPTION FERTILITY DRUG PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

(28) (A) DEFINITIONS. FOR THE PURPOSES OF THIS PARAGRAPH:

(1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL ORDER RETAIL PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(2) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMACIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(B) Any policy that provides coverage for prescription drugs shall permit each insured to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, at a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees [in advance, through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the insurer has established for the network participating [mail order or other non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such a case, the policy shall not impose a co-payment fee or other condition, INCLUD-

ING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any insured who elects to purchase prescription drugs from a network participating non-mail order retail pharmacy which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy.

(C) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION DRUGS THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT, THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A ONE MONTH SUPPLY BEFORE RECEIPT OF THE SPOILED OR DAMAGED PRESCRIPTION DRUG. IF SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE POLICY FOR A DISPENSED SPOILED OR DAMAGED PRESCRIPTION DRUG, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION DRUG FOR SUCH INSURED UNTIL SUCH INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION DRUG. REPLACEMENT OF A PRESCRIPTION DRUG PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

S 2. Subparagraph (D) of paragraph 6 of subsection (k) of section 3221 of the insurance law, as amended by chapter 10 of the laws of 2012, is amended to read as follows:

(D) (I) DEFINITIONS. FOR THE PURPOSE OF THIS PARAGRAPH:

(1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER ITEM (II) OF THIS SUBPARAGRAPH SHALL USE THE SAME SINGULAR BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL RETAIL ORDER PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(2) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMACIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(II) Every policy that provides coverage for prescription fertility drugs and requires or permits prescription drugs to be purchased through a network participating mail order or other non-retail pharmacy shall provide the same coverage for prescription fertility drugs AND SHALL NOT LIMIT THE SUPPLY THAT MAY BE DISPENSED TO A THIRTY-DAY SUPPLY when such drugs are purchased from a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees [in advance through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the insurer has established for [a] network participating [mail order or other non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such case, the policy shall not impose any fee, co-payment, co-insurance, deductible or other condition, INCLUDING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any covered person who elects to purchase prescription fertility drugs through a network participating non-mail order retail pharmacy that it does not impose on any covered person who purchases prescription fertility drugs through a network participating mail order or other non-retail pharmacy; provided, however, that the provisions of this section shall not supersede the terms of a collective bargaining agreement or apply to a policy that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

(III) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION FERTILITY DRUGS SHALL, IN ADDITION TO THE STANDARD TERMS AND CONDITIONS, REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION FERTILITY DRUGS THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT, THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A ONE MONTH SUPPLY BEFORE RECEIPT OF THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. IF SUCH SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION FERTILITY DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE POLICY FOR A DISPENSED PRESCRIPTION FERTILITY DRUG THAT WAS SPOILED OR DAMAGED, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION FERTILITY DRUG FOR SUCH INSURED UNTIL SUCH INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. REPLACEMENT OF A PRESCRIPTION FERTILITY DRUG PURSUANT TO THIS CLAUSE SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

S 3. Paragraph 18 of subsection (l) of section 3221 of the insurance law, as amended by chapter 11 of the laws of 2012, is amended to read as follows:

(18) (A) DEFINITIONS. FOR THE PURPOSE OF THIS PARAGRAPH:

(1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL ORDER RETAIL PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(2) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMACIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(B) Any insurer delivering a group or blanket policy or issuing a group or blanket policy for delivery in this state that provides coverage for prescription drugs shall permit each insured to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, at a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy [agrees in advance, through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the insurer has established for the network participating [mail order or other non-retail pharmacy] FOR NON-MAIL ORDER RETAIL PHARMACIES. In such a case, the policy shall not impose a co-payment fee or other condition, INCLUDING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any insured who elects to purchase drugs from a network participating non-mail order retail pharmacy which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy; provided, however, that

the provisions of this section shall not supersede the terms of a collective bargaining agreement or apply to a policy that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

(C) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION DRUGS THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A ONE MONTH SUPPLY BEFORE RECEIPT OF THE SPOILED OR DAMAGED PRESCRIPTION DRUG. IF THE DAMAGED OR SPOILED PRESCRIPTION DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE POLICY FOR A DISPENSED PRESCRIPTION DRUG THAT WAS SPOILED OR DAMAGED, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION DRUG FOR SUCH INSURED UNTIL SUCH INSURED RETURNED THE SPOILED OR DAMAGED PRESCRIPTION DRUG. REPLACEMENT OF A PRESCRIPTION DRUG PURSUANT TO THIS SUBPARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

S 4. Paragraph 4 of subsection (s) of section 4303 of the insurance law, as amended by chapter 10 of the laws of 2012, is amended to read as follows:

(4) (A) DEFINITION. FOR THE PURPOSE OF THIS PARAGRAPH:

(I) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER SUBPARAGRAPH (B) OF THIS SUBSECTION SHALL USE THE SAME SINGULAR BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL RETAIL ORDER PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(II) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(III) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMA-

CIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(B) Every contract issued by a medical expense indemnity corporation, a hospital service corporation or a health services corporation that provides coverage for prescription fertility drugs and requires or permits prescription drugs to be purchased through a network participating mail order or other non-retail pharmacy shall provide the same coverage for prescription fertility drugs AND SHALL NOT LIMIT THE SUPPLY THAT MAY BE DISPENSED TO A THIRTY-DAY SUPPLY when such drugs are purchased from a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees [in advance, through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the corporation has established for the network participating [mail order or other non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such case, the contract shall not impose any fee, co-payment, co-insurance, deductible or other condition, INCLUDING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any covered person who does not elect to purchase prescription fertility drugs through a network participating mail order or other non-retail pharmacy; provided, however, that the provisions of this section shall not supersede the terms of a collective bargaining agreement or apply to a contract that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

(3) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION FERTILITY DRUGS SHALL REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION FERTILITY DRUGS THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A THIRTY DAY SUPPLY BEFORE RECEIPT OF THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. IF SUCH SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION FERTILITY DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE POLICY FOR A DISPENSED PRESCRIPTION FERTILITY DRUG THAT WAS DAMAGED OR SPOILED, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION FERTILITY DRUG FOR SUCH INSURED UNTIL SUCH INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG. REPLACEMENT OF A PRESCRIPTION FERTILITY DRUG PURSUANT TO THIS PARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

S 5. Subsection (kk) of section 4303 of the insurance law, as amended by chapter 11 of the laws of 2012 and as relettered by section 55 of part D of chapter 56 of the laws of 2013, is amended to read as follows:

(kk) (1) DEFINITIONS. FOR THE PURPOSE OF THIS SUBSECTION:

(A) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED UNDER PARAGRAPH TWO OF THIS SUBSECTION SHALL USE THE SAME BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE COST,

FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIMBURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY OR A NON-MAIL RETAIL ORDER PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, AT LEAST THIRTY DAYS IN ADVANCE OF SUCH CHANGE.

(B) "MAIL ORDER PHARMACY" SHALL MEAN A PHARMACY WHOSE PRIMARY BUSINESS IS TO RECEIVE PRESCRIPTIONS BY MAIL, TELEFAX OR THROUGH ELECTRONIC SUBMISSIONS AND TO DISPENSE MEDICATION TO PATIENTS THROUGH THE USE OF THE UNITED STATES MAIL OR OTHER COMMON OR CONTRACT CARRIER SERVICES AND PROVIDES ANY CONSULTATION WITH PATIENTS ELECTRONICALLY RATHER THAN FACE-TO-FACE.

(C) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMACIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITIGATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER PRESCRIPTION DRUG.

(2) Any contract issued by a medical expense indemnity corporation, a hospital service corporation or a health services corporation that provides coverage for prescription drugs shall permit each covered person to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the covered person's option, at a network participating non-mail order retail pharmacy provided that the network participating non-mail order retail pharmacy agrees [in advance, through a contractual network agreement,] to the same reimbursement amount[, as well as the same applicable terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the corporation has established for the network participating [mail order or other non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such a case, the contract shall not impose a copayment fee or other condition, INCLUDING REQUIRING MONTHLY REFILLS OF A PRESCRIPTION THAT WAS WRITTEN FOR AND MAY BE FILLED FOR MORE THAN A THIRTY-DAY SUPPLY, on any covered person who elects to purchase drugs from a network participating non-mail order retail pharmacy which is not also imposed on covered persons electing to purchase drugs from a network participating mail order or other non-retail pharmacy; provided, however, that the provisions of this section shall not supersede the terms of a collective bargaining agreement or apply to a contract that is the result of a collective

bargaining agreement between an employer and a recognized or certified employee organization.

(3) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION DRUGS THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT THE POLICY MAY REQUIRE THAT THE SPOILED OR DAMAGED PRESCRIPTION DRUG BE RETURNED TO THE MAIL ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG SHALL BE REPLACED IN AN AMOUNT THAT IS NOT LESS THAN A THIRTY DAY SUPPLY BEFORE RECEIPT OF THE SPOILED OR DAMAGED PRESCRIPTION DRUG. IF SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION DRUG AND, NOTWITHSTANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO REIMBURSE THE POLICY FOR A DISPENSED PRESCRIPTION DRUG THAT WAS SPOILED OR DAMAGED, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION DRUG FOR SUCH INSURED UNTIL SUCH INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION DRUG. REPLACEMENT OF A PRESCRIPTION DRUG PURSUANT TO THIS PARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A CONTRACT YEAR.

S 6. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S 7. This act shall take effect immediately.