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I N   S E N A T E

May 10, 2016

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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:

1     Section 1. Paragraphs 13-a and 28 of subsection (i) of section 3216 of  
2     the insurance law, paragraph 13-a as amended by chapter 10 of the laws  
3     of 2012, paragraph 28 as amended by chapter 11 of the laws of 2012, are  
4     amended to read as follows:  
5     (13-a) (A) DEFINITIONS. FOR THE PURPOSES OF THIS PARAGRAPH:  
6     (1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED  
7     UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR  
8     BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE  
9     COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY  
10    THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIM-  
11    BURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL  
12    PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY  
13    OR A NON-MAIL RETAIL ORDER PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE  
14    SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR  
15    PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN  
16    THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO  
17    PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF  
18    THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR  
19    PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE  
20    PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY  
21    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

1 REPLACE SUCH PRESCRIPTION FERTILITY DRUG FOR SUCH INSURED UNTIL SUCH  
2 INSURED HAS RETURNED THE SPOILED OR DAMAGED PRESCRIPTION FERTILITY DRUG.  
3 REPLACEMENT OF A PRESCRIPTION FERTILITY DRUG PURSUANT TO THIS SUBPARA-  
4 GRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES DURING A  
5 CONTRACT YEAR.

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

7 (1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED  
8 UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR  
9 BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE  
10 COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY  
11 THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIM-  
12 BURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL  
13 PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY  
14 OR A NON-MAIL ORDER RETAIL PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE  
15 SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR  
16 PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN  
17 THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO  
18 PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF  
19 THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR  
20 PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE  
21 PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY  
22 INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHAR-  
23 MACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE  
24 REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES  
25 INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES  
26 FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL  
27 BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS  
28 BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER  
29 RETAIL PHARMACIES AND MAIL ORDER PHARMACIES, AT LEAST THIRTY DAYS IN  
30 ADVANCE OF SUCH CHANGE.

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

37 (3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS  
38 AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMA-  
39 CIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE  
40 SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITI-  
41 GATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL  
42 TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS  
43 AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL  
44 ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER  
45 PRESCRIPTION DRUG.

46 (B) Any policy that provides coverage for prescription drugs shall  
47 permit each insured to fill any covered prescription that may be  
48 obtained at a network participating mail order or other non-retail phar-  
49 macy, at the insured's option, at a network participating non-mail order  
50 retail pharmacy provided that the network participating non-mail order  
51 retail pharmacy agrees [in advance, through a contractual network agree-  
52 ment,] to the same reimbursement amount[, as well as the same applicable  
53 terms and conditions,] AND STANDARD TERMS AND CONDITIONS that the insur-  
54 er has established for the network participating [mail order or other  
55 non-retail pharmacy] NON-MAIL ORDER RETAIL PHARMACIES. In such a case,  
56 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 (1) 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 (1) "SAME REIMBURSEMENT AMOUNT" SHALL MEAN THAT ANY COVERAGE DESCRIBED  
2 UNDER SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL USE THE SAME SINGULAR  
3 BENCHMARK INDEX, WHICH MAY BE AVERAGE WHOLESALE PRICE, MAXIMUM ALLOWABLE  
4 COST, FEDERAL UPPER LIMIT, OR ANOTHER SIMILAR BENCHMARK INDEX USED BY  
5 THE INSURANCE INDUSTRY, AND NATIONAL PRESCRIPTION DRUG CODES TO REIM-  
6 BURSE ALL PHARMACIES PARTICIPATING IN THE INSURANCE NETWORK FOR ALL  
7 PRESCRIPTIONS REGARDLESS OF WHETHER A PHARMACY IS A MAIL ORDER PHARMACY  
8 OR A NON-MAIL ORDER RETAIL PHARMACY, PROVIDED, HOWEVER, THAT WHEN THE  
9 SELECTED BENCHMARK INDEX DOES NOT INCLUDE ONE OR MORE PARTICULAR  
10 PRESCRIPTION DRUGS, A HIERARCHY OF BENCHMARK INDICES SHALL BE USED IN  
11 THEIR HIERARCHICAL ORDER AND SUCH SECONDARY INDEX SHALL BE USED TO  
12 PROVIDE PRICING FOR ONLY THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX. IF  
13 THE TWO SELECTED BENCHMARKS DO NOT INCLUDE ONE OR MORE PARTICULAR  
14 PRESCRIPTION DRUGS, A THIRD BENCHMARK INDEX SHALL BE USED TO PROVIDE  
15 PRICING ONLY FOR THOSE DRUGS NOT INCLUDED IN THE MAIN INDEX OR SECONDARY  
16 INDEX. ALL PARTICIPATING NETWORK PHARMACIES, NON-MAIL ORDER RETAIL PHAR-  
17 MACIES AND MAIL ORDER PHARMACIES, SHALL RECEIVE A DISCLOSURE OF THE  
18 REIMBURSEMENT HIERARCHY, THE CURRENT BENCHMARK PRICES FOR THE INDICES  
19 INCLUDED IN THE HIERARCHY, AND MONTHLY UPDATES TO THE BENCHMARK PRICES  
20 FOR EACH OF THE HIERARCHICAL INDICES. ANY CHANGE TO THE HIERARCHICAL  
21 BENCHMARK STRUCTURE SHALL NOT BE MADE UNLESS NOTICE OF SUCH CHANGE HAS  
22 BEEN PROVIDED TO ALL PARTICIPATING NETWORK PHARMACIES, AT LEAST THIRTY  
23 DAYS IN ADVANCE OF SUCH CHANGE.

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

30 (3) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS  
31 AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMA-  
32 CIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE  
33 SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITI-  
34 GATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL  
35 TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS  
36 AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL  
37 ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER  
38 PRESCRIPTION DRUG.

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

1 the provisions of this section shall not supersede the terms of a  
2 collective bargaining agreement or apply to a policy that is the result  
3 of a collective bargaining agreement between an employer and a recog-  
4 nized or certified employee organization.

5 (C) ANY POLICY THAT PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL  
6 REQUIRE MAIL ORDER PHARMACIES TO REPLACE DISPENSED PRESCRIPTION DRUGS  
7 THAT HAVE BEEN SPOILED OR DAMAGED, PROVIDED THAT THE POLICY MAY REQUIRE  
8 THAT THE SPOILED OR DAMAGED PRESCRIPTION DRUG BE RETURNED TO THE MAIL  
9 ORDER PHARMACY WITH THE COST TO BE BORNE BY SUCH PHARMACY, AND PROVIDED  
10 FURTHER THAT SUCH SPOILED OR DAMAGED PRESCRIPTION DRUG SHALL BE REPLACED  
11 IN AN AMOUNT THAT IS NOT LESS THAN A ONE MONTH SUPPLY BEFORE RECEIPT OF  
12 THE SPOILED OR DAMAGED PRESCRIPTION DRUG. IF THE DAMAGED OR SPOILED  
13 PRESCRIPTION DRUG IS NOT RETURNED, THE POLICY MAY REQUIRE THE INSURED TO  
14 REIMBURSE THE POLICY FOR THE COST OF THE PRESCRIPTION DRUG AND, NOTWITH-  
15 STANDING THE FOREGOING, WHEN AN INSURED WHO WAS PREVIOUSLY REQUIRED TO  
16 REIMBURSE THE POLICY FOR A DISPENSED PRESCRIPTION DRUG THAT WAS SPOILED  
17 OR DAMAGED, THE POLICY MAY REFUSE TO REPLACE SUCH PRESCRIPTION DRUG FOR  
18 SUCH INSURED UNTIL SUCH INSURED RETURNED THE SPOILED OR DAMAGED  
19 PRESCRIPTION DRUG. REPLACEMENT OF A PRESCRIPTION DRUG PURSUANT TO THIS  
20 SUBPARAGRAPH SHALL NOT BE LIMITED TO A SPECIFIC NUMBER OF OCCURRENCES  
21 DURING A CONTRACT YEAR.

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

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

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

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

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

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

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

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

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

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

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



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

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

27 (C) "STANDARD TERMS AND CONDITIONS" SHALL MEAN THE CONTRACTUAL TERMS  
28 AND CONDITIONS APPLICABLE TO ALL NETWORK NON-MAIL ORDER RETAIL PHARMA-  
29 CIES, PROVIDED, HOWEVER THAT FOR MAIL ORDER PRESCRIPTIONS THAT ARE  
30 SUBJECT TO THE FEDERAL DRUG ADMINISTRATION RISK EVALUATION AND MITI-  
31 GATION STRATEGIES PROGRAM, THE INSURANCE POLICY MAY IMPOSE AN ADDITIONAL  
32 TERM AND CONDITION REQUIRING DOCUMENTATION STATING THAT THE PHARMACY IS  
33 AUTHORIZED TO DISPENSE SUCH MAIL ORDER PRESCRIPTION BEFORE A NON-MAIL  
34 ORDER RETAIL PHARMACY MAY BE REIMBURSED FOR DISPENSING SUCH MAIL ORDER  
35 PRESCRIPTION DRUG.

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

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

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

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

26 S 7. This act shall take effect immediately.