STATE OF NEW YORK

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2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. JOYNER, ROZIC, McDONALD, CARROLL, LAVINE, TITONE, SIMANOWITZ, ZEBROWSKI, ROSENTHAL, MONTESANO, GALEF, COLTON, ORTIZ, COOK, GLICK, D'URSO, CROUCH, RAIA, GOTTFRIED, SKOUFIS, DICKENS, CRESPO, JAFFEE, HARRIS, WOERNER, BENEDETTO, GIGLIO, JEAN-PIERRE, PEOPLES-STOKES, BRABENEC, DE LA ROSA, JENNE, BLAKE, BARRETT -- Multi-Sponsored by -- M. of A. ABBATE, BLANKENBUSH, BRAUNSTEIN, ENGLEBRIGHT, HEVESI, HOOPER, McDONOUGH, NOLAN, SIMON, STEC, THIELE, WALSH, WRIGHT -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to mail order pharmacies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 40 to read as follows:

ARTICLE 40

MAIL ORDER PHARMACIES

Section 900. Legislative findings and declarations; purposes.
901. Definitions.
902. Prohibited conduct.
903. Action to recover damages by an enrollee.
904. Violations.
905. Enforcement by attorney general.
906. Applicability.

§ 900. Legislative findings and declarations; purposes. 1. The legislature finds and declares that:

(a) The number of Americans who are prescribed three or more medications is growing at an alarming rate, with approximately ten percent of the population taking five or more prescription medications. These Americans face many challenges when they are required to receive some of

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

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their prescriptions from a mail order pharmacy while receiving other prescriptions from a local retail pharmacy. These challenges include the discovery of potential adverse interactions among their prescription drugs, comprehensive counseling, the coordination and timing of the receipt of prescriptions, and the ability to keep information regarding their medical condition or conditions private.

(b) Americans with multiple prescriptions benefit from the services provided by a local retail pharmacy because such local source will not only be able to determine if there are any harmful or potentially harmful drug interactions but can also provide immediate face-to-face, confidential counseling to the patient regarding any and all of his or her prescribed drugs. For patients who are enrolled in a prescription benefit plan, ensuring that the plan's network includes local retail pharmacies has become of great importance. Mandating that certain prescriptions must be filled by a mail order pharmacy is not in the best interest of all prescription benefit plan enrollees and such prescription benefit plan enrollees should be given the choice regarding where a prescription will be filled.

(c) Many Americans wish to keep information regarding their prescriptions and health conditions private. Some Americans will choose to disclose information to their family, while others may choose not to disclose any information to any person. Many people know that medication used to treat chronic, complex or rare conditions is dispensed by mail order pharmacies, not local retail pharmacies. As part of their business model, mail order pharmacies engage the services of third-party common carriers to deliver prescriptions. This can lead to inadvertent disclosure of and conjecture regarding private information to such common carriers' employees, as well as the recipient's neighbors who may note the regular deliveries of prescription medications to the recipient, especially if the packages are left at the recipient's door.

(d) While prescription benefit plans have not foreclosed the possibility for a local network retail pharmacy to dispense specialty medications, many of these plans will not allow a local network retail pharmacy to dispense such prescriptions unless the pharmacy agrees to additional contractual terms and conditions. Many specialty medications do not require any additional or special services for proper dispensing; they have been deemed to be specialty prescriptions because they are expensive. While these additional terms and conditions make sense when there is no possibility for face-to-face interactions between a pharmacist and the patient, they present an undue burden to local retail pharmacies seeking to dispense specialty medications.

(e) Requiring prescription benefit plan enrollees to remit a higher co-payment or pay the full retail price for a prescription that is dispensed by a network retail pharmacy instead of a network mail order pharmacy is not in the best interest of such enrollees as it effectively forces an enrollee to use only mail order prescription pharmacies by making all alternatives cost prohibitive.

(f) Similarly, requiring local network retail pharmacies to accept a lower payment for dispensing specialty prescription drugs is not in the best interest of the prescription benefit plan's enrollees because it may become financially difficult for a network retail pharmacy to remain in the prescription benefit plan's network. The result of this practice is the complete elimination of or a reduction in the number of local network retail pharmacies available to prescription benefit plan enrollees.

2. The legislature declares that it is the express policy of this state to safeguard the public against inadvertent disclosure of medical conditions, unnecessary complexity in obtaining prescription medications and financial hardship, and to foster and encourage competition and fair dealing in the field of pharmaceutical services by prohibiting prescription benefit plans from requiring that certain prescriptions be filled by a network mail order pharmacy, harmful financial practices, and other unfair practices that have been conducted by some prescription benefit plans.

3. The legislature further finds that prescription benefit plans may have a significant impact upon the economy and well-being of this state and its local communities, and therefore the provisions of this article are necessary to promote the public welfare.

4. The intent and purposes of this article are to provide prescription benefit plan enrollees with the ability to choose whether to fill a prescription at a local network retail pharmacy or a network mail order pharmacy without incurring additional costs for choosing to have their prescriptions filled by a local network retail pharmacy; to provide all network retail pharmacies with the ability to contract with prescription benefit plans to dispense prescriptions that have been deemed to be mail order prescriptions by the pharmacy benefit manager without being required to agree to additional contractual terms and conditions that are applicable to mail order pharmacies where there is no face-to-face interaction with prescription benefit plan enrollees, such as a twenty-four hour customer service hotline; and to ensure that local network retail pharmacies are not monetarily penalized for dispensing prescriptions that the pharmacy benefit manager has deemed to be specialty drug prescriptions requiring dispensing by a mail order pharmacy.

§ 901. Definitions. As used in this article:

1. "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 provide any consultation with patients electronically rather than face-to-face.

2. "Retail pharmacy" shall mean a pharmacy whose primary business is to receive prescriptions directly from patients or through electronic submissions and to dispense medication directly to patients and provide face-to-face consultation with patients. For purposes of this subdivision, the term "patient" shall include a person who is acting on behalf of a patient.

3. "Prescription benefit plan" shall mean any benefit plan other than a state public health plan, as defined in subdivision eleven of section two hundred seventy of the public health law, or an employee welfare benefit plan, as defined in subsection one of section one thousand two of the United States code, that provides prescription benefits, a governmental plan, as defined in subsection thirty-two of section one thousand two of the United States code, a church plan, as defined in subsection thirty-three of section one thousand two of the United States code, or a plan is maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation or disability insurance laws, that includes prescription drug benefits to enrollees and their dependents.

4. "Specialty prescription drug" shall mean a prescription drug that is used to treat a chronic, complex or rare condition, has been desig-

nated in the prescription benefit plan's formulary as a specialty prescription drug, and will only be covered by the prescription benefit plan if it is dispensed by a network mail order pharmacy or an authorized network retail pharmacy.

5. "Network" shall mean a mail order pharmacy or retail pharmacy that participates in a prescription benefit plan.

6. "Mail order prescription" shall mean any prescription drug, including, but not limited to specialty prescription drugs, that a prescription benefit plan requires be filled by a mail order pharmacy or an authorized network retail pharmacy in order for such dispensed prescription to be covered by such plan.

7. "Prescription benefit plan enrollee" or "enrollee" shall mean the person who is enrolled in the prescription benefit plan and his or her spouse and dependent children who are enrolled in the prescription benefit plan as dependents of such person.

8. "Authorized network retail pharmacy" shall mean a retail pharmacy that, when used by a member to fill a mail order prescription, such prescription will be covered by the member's prescription benefit plan as if such pharmacy was a mail order pharmacy.

§ 902. Prohibited conduct. 1. Notwithstanding any provision of law to the contrary, it shall be unlawful for a prescription benefit plan to require an enrollee or an enrollee's dependent to obtain any prescription drug from a network mail order pharmacy in order to receive coverage from such plan for such prescription.

2. Notwithstanding any provision of law to the contrary, it shall be unlawful for a prescription benefit plan to require that an enrollee or an enrollee's dependent remit a higher co-payment for a prescription when such prescription is dispensed by a network retail pharmacy.

3. Notwithstanding any provision of law to the contrary, it shall be unlawful for a prescription benefit plan to require a network retail pharmacy to agree to additional contractual terms and conditions that go beyond the industry standard and are not reasonable and relevant as a condition precedent to allowing such a retail pharmacy to dispense any prescription drug, including mail order prescription drugs, as a network provider.

4. Notwithstanding any provision of law to the contrary, it shall be unlawful for a mail order pharmacy to automatically refill a prescription benefit plan enrollee's prescription without obtaining permission for such automatic refills from such enrollee, or in the case of an enrollee's dependent child, the enrollee or child's parent; provided, however, any permission granted for automatic refills shall expire after six months and may be renewed thereafter for intervals not to exceed six months.

5. Notwithstanding any provision of law to the contrary, it shall be unlawful for any mail order pharmacy to retain an enrollee's payment information for future use without the consent of the enrollee. For purposes of this subdivision, payment information includes, but is not limited to, credit card information, debit card information, and bank account information.

§ 903. Action to recover damages by an enrollee. 1. Any person injured by a violation of this article may bring an action for the recovery of damages. Judgment may be entered in favor of such person in an amount not to exceed three times the actual damages or one hundred dollars, whichever is greater. The court may award reasonable attorney's fees to a prevailing plaintiff.

2. Nothing in this article shall be construed so as to nullify or impair any right or rights which a prescription benefit plan enrollee or such enrollee's dependent may have against a seller at common law, by statute, or otherwise.

§ 904. Violations. Any mail order pharmacy or prescription benefit plan, including its employees and agents, that violates any provision of this article, shall be liable for a civil fine of not more than twenty-five hundred dollars for each violation.

§ 905. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state to a court having jurisdiction to issue an injunction, and upon notice to the respondent of not fewer than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation.

§ 906. Applicability. This article shall not apply to any employee welfare benefit plan, as defined in subsection one of section one thousand two of the United States code, that provides prescription benefits, governmental plan, as defined in subsection thirty-two of section one thousand two of the United States code, church plan, as defined in subsection thirty-three of section one thousand two of the United States code, or a plan is maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation or disability insurance laws.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to contracts entered into, amended or renewed on and after such date.