

STATE OF NEW YORK

4786--A

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

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

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

31 (d) While prescription benefit plans have not foreclosed the possibil-
32 ity for a local network retail pharmacy to dispense specialty medica-
33 tions, many of these plans will not allow a local network retail pharma-
34 cy to dispense such prescriptions unless the pharmacy agrees to
35 additional contractual terms and conditions. Many specialty medications
36 do not require any additional or special services for proper dispensing;
37 they have been deemed to be specialty prescriptions because they are
38 expensive. While these additional terms and conditions make sense when
39 there is no possibility for face-to-face interactions between a pharma-
40 cist and the patient, they present an undue burden to local retail phar-
41 macies seeking to dispense specialty medications.

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

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

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-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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