

STATE OF NEW YORK

1766

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

Introduced by Sens. GOLDEN, ADDABBO, LANZA, O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

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-
22 macies and mail order pharmacies, shall receive a disclosure of the
23 reimbursement hierarchy, the current benchmark prices for the indices
24 included in the hierarchy, and monthly updates to the benchmark prices

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

LBD05109-01-7

1 for each of the hierarchical indices. Any change to the hierarchical
2 benchmark structure shall not be made unless notice of such change has
3 been provided to all participating network pharmacies at least thirty
4 days in advance of such change.

5 (2) "Mail order pharmacy" shall mean a pharmacy whose primary business
6 is to receive prescriptions by mail, telefax or through electronic
7 submissions and to dispense medication to patients through the use of
8 the United States mail or other common or contract carrier services and
9 provides any consultation with patients electronically rather than face-
10 to-face.

11 (3) "Standard terms and conditions" shall mean the contractual terms
12 and conditions applicable to all network non-mail order retail pharma-
13 cies, provided, however that for mail order prescriptions that are
14 subject to the federal drug administration risk evaluation and miti-
15 gation strategies program, the insurance policy may impose an additional
16 term and condition requiring documentation stating that the pharmacy is
17 authorized to dispense such mail order prescription before a non-mail
18 order retail pharmacy may be reimbursed for dispensing such mail order
19 prescription drug.

20 (B) Every policy that provides coverage for prescription fertility
21 drugs and requires or permits prescription drugs to be purchased through
22 a network participating mail order or other non-retail pharmacy shall
23 provide the same coverage for prescription fertility drugs and shall not
24 limit the supply that may be dispensed to a thirty-day supply when such
25 drugs are purchased from a network participating non-mail order retail
26 pharmacy provided that the network participating non-mail order retail
27 pharmacy agrees [~~in advance through a contractual network agreement,~~ to
28 the same reimbursement amount[, ~~as well as the same applicable terms and~~
29 ~~conditions,~~ and standard terms and conditions that the insurer has
30 established for [a] network participating [~~mail order or other non-re-~~
31 ~~tail pharmacy~~ non-mail order retail pharmacies. In such case, the
32 policy shall not impose any fee, co-payment, co-insurance, deductible or
33 other condition, including requiring monthly refills of a prescription
34 that was written for and may be filled for more than a thirty-day
35 supply, on any insured who elects to purchase prescription fertility
36 drugs through a network participating non-mail order retail pharmacy
37 that it does not impose on any insured who purchases prescription
38 fertility drugs through a network participating mail order or other
39 non-retail pharmacy.

40 (C) Any policy that provides coverage for prescription fertility drugs
41 shall require mail order pharmacies to replace dispensed prescription
42 fertility drugs that have spoiled or damaged, provided that, the policy
43 may require that the spoiled or damaged prescription fertility drug be
44 returned to the mail order pharmacy with the cost to be borne by such
45 pharmacy, and provided further that such spoiled or damaged prescription
46 fertility drug shall be replaced in an amount that is not less than a
47 one month supply before receipt of the returned spoiled or damaged
48 prescription fertility drug. If the spoiled or damaged prescription
49 fertility drug is not returned, the policy may require the insured to
50 reimburse the policy for the cost of the prescription fertility drug
51 and, notwithstanding the foregoing, when an insured who was previously
52 required to reimburse the insurance policy for a dispensed prescription
53 fertility drug that was spoiled or damaged, the policy may refuse to
54 replace such prescription fertility drug for such insured until such
55 insured has returned the spoiled or damaged prescription fertility drug.
56 Replacement of a prescription fertility drug pursuant to this subpara-

graph 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, 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 drugs from a network participating non-

1 mail order retail pharmacy which is not also imposed on insureds elect-
2 ing to purchase drugs from a network participating mail order or other
3 non-retail pharmacy.

4 (C) Any policy that provides coverage for prescription drugs shall
5 require mail order pharmacies to replace dispensed prescription drugs
6 that have been spoiled or damaged, provided that, the policy may require
7 that the spoiled or damaged prescription drug be returned to the mail
8 order pharmacy with the cost to be borne by such pharmacy, and provided
9 further that such spoiled or damaged prescription drug shall be replaced
10 in an amount that is not less than a one month supply before receipt of
11 the spoiled or damaged prescription drug. If such spoiled or damaged
12 prescription drug is not returned, the policy may require the insured to
13 reimburse the policy for the cost of the prescription drug and, notwith-
14 standing the foregoing, when an insured who was previously required to
15 reimburse the policy for a dispensed spoiled or damaged prescription
16 drug, the policy may refuse to replace such prescription drug for such
17 insured until such insured has returned the spoiled or damaged
18 prescription drug. Replacement of a prescription drug pursuant to this
19 subparagraph shall not be limited to a specific number of occurrences
20 during a contract year.

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

24 (D) (i) Definitions. For the purpose of this paragraph:

25 (1) "Same reimbursement amount" shall mean that any coverage described
26 under item (ii) of this subparagraph shall use the same singular bench-
27 mark index, which may be average wholesale price, maximum allowable
28 cost, federal upper limit, or another similar benchmark index used by
29 the insurance industry, and national prescription drug codes to reim-
30 burse all pharmacies participating in the insurance network for all
31 prescriptions regardless of whether a pharmacy is a mail order pharmacy
32 or a non-mail retail order pharmacy, provided, however, that when the
33 selected benchmark index does not include one or more particular
34 prescription drugs, a hierarchy of benchmark indices shall be used in
35 their hierarchical order and such secondary index shall be used to
36 provide pricing for only those drugs not included in the main index. If
37 the two selected benchmarks do not include one or more particular
38 prescription drugs, a third benchmark index shall be used to provide
39 pricing only for those drugs not included in the main index or secondary
40 index. All participating network pharmacies, non-mail order retail phar-
41 macies and mail order pharmacies, shall receive a disclosure of the
42 reimbursement hierarchy, the current benchmark prices for the indices
43 included in the hierarchy, and monthly updates to the benchmark prices
44 for each of the hierarchical indices. Any change to the hierarchical
45 benchmark structure shall not be made unless notice of such change has
46 been provided to all participating network pharmacies, at least thirty
47 days in advance of such change.

48 (2) "Mail order pharmacy" shall mean a pharmacy whose primary business
49 is to receive prescriptions by mail, telefax or through electronic
50 submissions and to dispense medication to patients through the use of
51 the United States mail or other common or contract carrier services and
52 provides any consultation with patients electronically rather than face-
53 to-face.

54 (3) "Standard terms and conditions" shall mean the contractual terms
55 and conditions applicable to all network non-mail order retail pharma-
56 cies, provided, however that for mail order prescriptions that are

1 subject to the federal drug administration risk evaluation and miti-
2 gation strategies program, the insurance policy may impose an additional
3 term and condition requiring documentation stating that the pharmacy is
4 authorized to dispense such mail order prescription before a non-mail
5 order retail pharmacy may be reimbursed for dispensing such mail order
6 prescription drug.

7 (ii) Every policy that provides coverage for prescription fertility
8 drugs and requires or permits prescription drugs to be purchased through
9 a network participating mail order or other non-retail pharmacy shall
10 provide the same coverage for prescription fertility drugs and shall not
11 limit the supply that may be dispensed to a thirty-day supply when such
12 drugs are purchased from a network participating non-mail order retail
13 pharmacy provided that the network participating non-mail order retail
14 pharmacy agrees [~~in advance through a contractual network agreement,~~] to
15 the same reimbursement amount[~~, as well as the same applicable terms and~~
16 ~~conditions,~~] and standard terms and conditions that the insurer has
17 established for [~~a~~] network participating [~~mail order or other non-re-~~
18 ~~tail pharmacy~~] non-mail order retail pharmacies. In such case, the poli-
19 cy shall not impose any fee, co-payment, co-insurance, deductible or
20 other condition, including requiring monthly refills of a prescription
21 that was written for and may be filled for more than a thirty-day
22 supply, on any covered person who elects to purchase prescription
23 fertility drugs through a network participating non-mail order retail
24 pharmacy that it does not impose on any covered person who purchases
25 prescription fertility drugs through a network participating mail order
26 or other non-retail pharmacy; provided, however, that the provisions of
27 this section shall not supersede the terms of a collective bargaining
28 agreement or apply to a policy that is the result of a collective
29 bargaining agreement between an employer and a recognized or certified
30 employee organization.

31 (iii) Any policy that provides coverage for prescription fertility
32 drugs shall, in addition to the standard terms and conditions, require
33 mail order pharmacies to replace dispensed prescription fertility drugs
34 that have been spoiled or damaged, provided that, the policy may require
35 that the spoiled or damaged prescription fertility drug be returned to
36 the mail order pharmacy with the cost to be borne by such pharmacy, and
37 provided further that such spoiled or damaged prescription fertility
38 drug shall be replaced in an amount that is not less than a one month
39 supply before receipt of the spoiled or damaged prescription fertility
40 drug. If such spoiled or damaged prescription fertility drug is not
41 returned, the policy may require the insured to reimburse the policy for
42 the cost of the prescription fertility drug and, notwithstanding the
43 foregoing, when an insured who was previously required to reimburse the
44 policy for a dispensed prescription fertility drug that was spoiled or
45 damaged, the policy may refuse to replace such prescription fertility
46 drug for such insured until such insured has returned the spoiled or
47 damaged prescription fertility drug. Replacement of a prescription
48 fertility drug pursuant to this clause shall not be limited to a specif-
49 ic number of occurrences during a contract year.

50 § 3. Paragraph 18 of subsection (1) of section 3221 of the insurance
51 law, as amended by chapter 11 of the laws of 2012, is amended to read as
52 follows:

53 (18) (A) Definitions. For the purpose of this paragraph:

54 (1) "Same reimbursement amount" shall mean that any coverage described
55 under subparagraph (B) of this paragraph shall use the same singular
56 benchmark index, which may be average wholesale price, maximum allowable

1 cost, federal upper limit, or another similar benchmark index used by
2 the insurance industry, and national prescription drug codes to reim-
3 burse 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 order retail 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 (2) "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 face-
26 to-face.

27 (3) "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 (B) Any insurer delivering a group or blanket policy or issuing a
37 group or blanket policy for delivery in this state that provides cover-
38 age for prescription drugs shall permit each insured to fill any covered
39 prescription that may be obtained at a network participating mail order
40 or other non-retail pharmacy, at the insured's option, at a network
41 participating non-mail order retail pharmacy provided that the network
42 participating non-mail order retail pharmacy ~~[agrees in advance, through~~
43 ~~a contractual network agreement,]~~ to the same reimbursement amount~~[, as~~
44 ~~well as the same applicable terms and conditions,]~~ and standard terms
45 and conditions that the insurer has established for the network partic-
46 ipating ~~[mail order or other non-retail pharmacy]~~ for non-mail order
47 retail pharmacies. In such a case, the policy shall not impose a
48 co-payment fee or other condition, including requiring monthly refills
49 of a prescription that was written for and may be filled for more than a
50 thirty-day supply, on any insured who elects to purchase drugs from a
51 network participating non-mail order retail pharmacy which is not also
52 imposed on insureds electing to purchase drugs from a network partic-
53 ipating mail order or other non-retail pharmacy; provided, however, that
54 the provisions of this section shall not supersede the terms of a
55 collective bargaining agreement or apply to a policy that is the result

1 of a collective bargaining agreement between an employer and a recog-
2 nized or certified employee organization.

3 (C) 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 one month supply before receipt of
10 the spoiled or damaged prescription drug. If the damaged or spoiled
11 prescription drug is not returned, the policy may require the insured to
12 reimburse the policy for the cost of the prescription drug and, notwith-
13 standing the foregoing, when an insured who was previously required to
14 reimburse the policy for a dispensed prescription drug that was spoiled
15 or damaged, the policy may refuse to replace such prescription drug for
16 such insured until such insured returned the spoiled or damaged
17 prescription drug. Replacement of a prescription drug pursuant to this
18 subparagraph shall not be limited to a specific number of occurrences
19 during a contract year.

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

23 (4) (A) Definition. For the purpose of this paragraph:

24 (i) "Same reimbursement amount" shall mean that any coverage described
25 under subparagraph (B) of this subsection shall use the same singular
26 benchmark index, which may be average wholesale price, maximum allowable
27 cost, federal upper limit, or another similar benchmark index used by
28 the insurance industry, and national prescription drug codes to reim-
29 burse all pharmacies participating in the insurance network for all
30 prescriptions regardless of whether a pharmacy is a mail order pharmacy
31 or a non-mail retail order pharmacy, provided, however, that when the
32 selected benchmark index does not include one or more particular
33 prescription drugs, a hierarchy of benchmark indices shall be used in
34 their hierarchical order and such secondary index shall be used to
35 provide pricing for only those drugs not included in the main index. If
36 the two selected benchmarks do not include one or more particular
37 prescription drugs, a third benchmark index shall be used to provide
38 pricing only for those drugs not included in the main index or secondary
39 index. All participating network pharmacies, non-mail order retail phar-
40 macies and mail order pharmacies, shall receive a disclosure of the
41 reimbursement hierarchy, the current benchmark prices for the indices
42 included in the hierarchy, and monthly updates to the benchmark prices
43 for each of the hierarchical indices. Any change to the hierarchical
44 benchmark structure shall not be made unless notice of such change has
45 been provided to all participating network pharmacies, at least thirty
46 days in advance of such change.

47 (ii) "Mail order pharmacy" shall mean a pharmacy whose primary busi-
48 ness is to receive prescriptions by mail, telefax or through electronic
49 submissions and to dispense medication to patients through the use of
50 the United States mail or other common or contract carrier services and
51 provides any consultation with patients electronically rather than face-
52 to-face.

53 (iii) "Standard terms and conditions" shall mean the contractual terms
54 and conditions applicable to all network non-mail order retail pharma-
55 cies, provided, however that for mail order prescriptions that are
56 subject to the federal drug administration risk evaluation and miti-

1 gation strategies program, the insurance policy may impose an additional
2 term and condition requiring documentation stating that the pharmacy is
3 authorized to dispense such mail order prescription before a non-mail
4 order retail pharmacy may be reimbursed for dispensing such mail order
5 prescription drug.

6 (B) Every contract issued by a medical expense indemnity corporation,
7 a hospital service corporation or a health services corporation that
8 provides coverage for prescription fertility drugs and requires or
9 permits prescription drugs to be purchased through a network participat-
10 ing mail order or other non-retail pharmacy shall provide the same
11 coverage for prescription fertility drugs and shall not limit the supply
12 that may be dispensed to a thirty-day supply when such drugs are
13 purchased from a network participating non-mail order retail pharmacy
14 provided that the network participating non-mail order retail pharmacy
15 agrees [~~in advance, through a contractual network agreement,~~] to the
16 same reimbursement amount[~~, as well as the same applicable terms and~~
17 ~~conditions,~~] and standard terms and conditions that the corporation has
18 established for the network participating [~~mail order or other non-re-~~
19 ~~tail pharmacy~~] non-mail order retail pharmacies. In such case, the
20 contract shall not impose any fee, co-payment, co-insurance, deductible
21 or other condition, including requiring monthly refills of a
22 prescription that was written for and may be filled for more than a
23 thirty-day supply, on any covered person who does not elect to purchase
24 prescription fertility drugs through a network participating mail order
25 or other non-retail pharmacy; provided, however, that the provisions of
26 this section shall not supersede the terms of a collective bargaining
27 agreement or apply to a contract that is the result of a collective
28 bargaining agreement between an employer and a recognized or certified
29 employee organization.

30 (3) Any policy that provides coverage for prescription fertility drugs
31 shall require mail order pharmacies to replace dispensed prescription
32 fertility drugs that have been spoiled or damaged, provided that the
33 policy may require that the spoiled or damaged prescription fertility
34 drug be returned to the mail order pharmacy with the cost to be borne by
35 such pharmacy, and provided further that such spoiled or damaged
36 prescription fertility drug shall be replaced in an amount that is not
37 less than a thirty day supply before receipt of the spoiled or damaged
38 prescription fertility drug. If such spoiled or damaged prescription
39 fertility drug is not returned, the policy may require the insured to
40 reimburse the policy for the cost of the prescription fertility drug
41 and, notwithstanding the foregoing, when an insured who was previously
42 required to reimburse the policy for a dispensed prescription fertility
43 drug that was damaged or spoiled, the policy may refuse to replace such
44 prescription fertility drug for such insured until such insured has
45 returned the spoiled or damaged prescription fertility drug. Replacement
46 of a prescription fertility drug pursuant to this paragraph shall not be
47 limited to a specific number of occurrences during a contract year.

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

51 (kk) (1) Definitions. For the purpose of this subsection:

52 (A) "Same reimbursement amount" shall mean that any coverage described
53 under paragraph two of this subsection shall use the same benchmark
54 index, which may be average wholesale price, maximum allowable cost,
55 federal upper limit, or another similar benchmark index used by the
56 insurance industry, and national prescription drug codes to reimburse

1 all pharmacies participating in the insurance network for all
2 prescriptions regardless of whether a pharmacy is a mail order pharmacy
3 or a non-mail retail order pharmacy, provided, however, that when the
4 selected benchmark index does not include one or more particular
5 prescription drugs, a hierarchy of benchmark indices shall be used in
6 their hierarchical order and such secondary index shall be used to
7 provide pricing for only those drugs not included in the main index. If
8 the two selected benchmarks do not include one or more particular
9 prescription drugs, a third benchmark index shall be used to provide
10 pricing only for those drugs not included in the main index or secondary
11 index. All participating network pharmacies, non-mail order retail phar-
12 macies and mail order pharmacies, shall receive a disclosure of the
13 reimbursement hierarchy, the current benchmark prices for the indices
14 included in the hierarchy, and monthly updates to the benchmark prices
15 for each of the hierarchical indices. Any change to the hierarchical
16 benchmark structure shall not be made unless notice of such change has
17 been provided to all participating network pharmacies, at least thirty
18 days in advance of such change.

19 (B) "Mail order pharmacy" shall mean a pharmacy whose primary business
20 is to receive prescriptions by mail, telefax or through electronic
21 submissions and to dispense medication to patients through the use of
22 the United States mail or other common or contract carrier services and
23 provides any consultation with patients electronically rather than face-
24 to-face.

25 (C) "Standard terms and conditions" shall mean the contractual terms
26 and conditions applicable to all network non-mail order retail pharma-
27 cies, provided, however that for mail order prescriptions that are
28 subject to the federal drug administration risk evaluation and miti-
29 gation strategies program, the insurance policy may impose an additional
30 term and condition requiring documentation stating that the pharmacy is
31 authorized to dispense such mail order prescription before a non-mail
32 order retail pharmacy may be reimbursed for dispensing such mail order
33 prescription drug.

34 (2) Any contract issued by a medical expense indemnity corporation, a
35 hospital service corporation or a health services corporation that
36 provides coverage for prescription drugs shall permit each covered
37 person to fill any covered prescription that may be obtained at a
38 network participating mail order or other non-retail pharmacy, at the
39 covered person's option, at a network participating non-mail order
40 retail pharmacy provided that the network participating non-mail order
41 retail pharmacy agrees [~~in advance, through a contractual network agree-~~
42 ~~ment,~~ to the same reimbursement amount[~~, as well as the same applicable~~
43 ~~terms and conditions,~~ and standard terms and conditions
44 that the corpo-
45 ration has established for the network participating [~~mail order or~~
46 ~~other non-retail pharmacy~~ non-mail order retail pharmacies.
47 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,
51 on any covered
52 person who elects to purchase drugs from a network participating non-
53 mail order retail pharmacy which is not also imposed on covered persons
54 electing to purchase drugs from a network participating mail order or
55 other non-retail pharmacy; provided, however, that the provisions of
56 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.

1 (3) Any policy that provides coverage for prescription drugs shall
2 require mail order pharmacies to replace dispensed prescription drugs
3 that have been spoiled or damaged, provided that the policy may require
4 that the spoiled or damaged prescription drug be returned to the mail
5 order pharmacy with the cost to be borne by such pharmacy, and provided
6 further that such spoiled or damaged prescription drug shall be replaced
7 in an amount that is not less than a thirty day supply before receipt of
8 the spoiled or damaged prescription drug. If such spoiled or damaged
9 prescription drug is not returned, the policy may require the insured
10 to reimburse the policy for the cost of the prescription drug and,
11 notwithstanding the foregoing, when an insured who was previously
12 required to reimburse the policy for a dispensed prescription drug that
13 was spoiled or damaged, the policy may refuse to replace such
14 prescription drug for such insured until such insured has returned the
15 spoiled or damaged prescription drug. Replacement of a prescription drug
16 pursuant to this paragraph shall not be limited to a specific number of
17 occurrences during a contract year.

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

24 § 7. This act shall take effect immediately.