

# STATE OF NEW YORK

3484--A

2017-2018 Regular Sessions

## IN SENATE

January 23, 2017

Introduced by Sens. GOLDEN, FUNKE, ADDABBO, AKSHAR, ALCANTARA, BOYLE, BRESLIN, CARLUCCI, COMRIE, CROCI, GALLIVAN, GRIFFO, HAMILTON, HELMING, HOYLMAN, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, LAVALLE, LITTLE, MARCHIONE, MURPHY, O'MARA, ORTT, PARKER, RANZENHOFER, RITCHIE, ROBACH, SERINO, SQUADRON, STAVISKY, TEDISCO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed 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 their prescriptions from a mail order pharmacy while receiving other

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

LBD06513-07-7

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

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

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

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

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

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

55 2. The legislature declares that it is the express policy of this  
56 state to safeguard the public against inadvertent disclosure of medical

1 conditions, unnecessary complexity in obtaining prescription medications  
2 and financial hardship, and to foster and encourage competition and fair  
3 dealing in the field of pharmaceutical services by prohibiting  
4 prescription benefit plans from requiring that certain prescriptions be  
5 filled by a network mail order pharmacy, harmful financial practices,  
6 and other unfair practices that have been conducted by some prescription  
7 benefit plans.

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

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

28 § 901. Definitions. As used in this article:

29 1. "Mail order pharmacy" shall mean a pharmacy whose primary business  
30 is to receive prescriptions by mail, telefax or through electronic  
31 submissions and to dispense medication to patients through the use of  
32 the United States mail or other common or contract carrier services and  
33 provide any consultation with patients electronically rather than face-  
34 to-face.

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

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

53 4. "Specialty prescription drug" shall mean a prescription drug that  
54 is used to treat a chronic, complex or rare condition, has been desig-  
55 nated in the prescription benefit plan's formulary as a specialty  
56 prescription drug, and will only be covered by the prescription benefit

1 plan if it is dispensed by a network mail order pharmacy or an author-  
2 ized network retail pharmacy.

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

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

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

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

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

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

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

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

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

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

54 2. Nothing in this article shall be construed so as to nullify or  
55 impair any right or rights which a prescription benefit plan enrollee or

1 such enrollee's dependent may have against a seller at common law, by  
2 statute, or otherwise.

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

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

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

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