STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. JOYNER, COLTON, ORTIZ, COOK, GLICK, D'URSO, GOTTFRIED -- Multi-Sponsored by -- M. of A. THIELE, WRIGHT -- read once and referred 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:

Section 1. Paragraphs 13-a and 28 of subsection (i) of section 3216 of the insurance law, paragraph 13-a as amended by chapter 10 of the laws of 2012, paragraph 28 as amended by chapter 11 of the laws of 2012, are amended to read as follows:

(13-a) **(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 provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(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 participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer has established different standard terms and conditions for mail order pharmacies and non-mail order retail pharmacies, the term "standard terms and conditions" shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail

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

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order retail pharmacies, and provided further that any such standard terms and conditions that require:

(i) consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

(ii) specific storage size for prescription drugs requiring special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

(iii) specific storage space for prescription drugs that do not require special handling shall be based on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(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~~] 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, in addition to the standard terms and conditions, require mail order pharmacies to replace dispensed prescription fertility drugs for which the mail or carrier service has proof of delivery that have not been received by the insured, or are spoiled or damaged, provided that in the case of a prescription fertility drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting the theft and in the case of a damaged or spoiled prescription fertility drug, the policy may require that the 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 unreceived, spoiled or damaged prescription fertility drug shall be replaced before receipt of the police report or the returned, spoiled or damaged prescription fertility drug, as the case may be. If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription fertility drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace

such prescription fertility drug for such insured until such insured has provided the plan with the required police report or returned the spoiled or damaged prescription fertility drug. Replacement of a prescription fertility drug pursuant to this subparagraph 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 provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(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 participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer has established different standard terms and conditions for mail order pharmacies and non-mail order retail pharmacies, the term "standard terms and conditions" shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail order retail pharmacies, and provided further that any such standard terms and conditions that require:

(i) consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

(ii) specific storage size for prescription drugs requiring special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

(iii) specific storage space for prescription drugs that do not require special handling shall base such requirements on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(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~~] 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-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, in addition to the standard terms and conditions, require mail order pharmacies to replace dispensed prescription drugs for which the mail or carrier service has proof of delivery that have not been received by the insured, or are spoiled or damaged, provided that in the case of a prescription drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting the theft and in the case of a damaged or spoiled prescription drug, the policy may require that the damaged prescription drug be returned to the mail order pharmacy with the cost to be borne by such pharmacy, and provided further that such unreceived, spoiled or damaged prescription drug shall be replaced before receipt of the police report or the spoiled or damaged prescription drug, as the case may be. If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace such prescription drug for such insured until such insured has provided the plan with the required police report or retuned 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.

§ 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 provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(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 participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer has established different standard terms and conditions for mail order pharmacies and non-mail order retail pharmacies, the term standard terms and conditions shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail order retail pharmacies, and provided further that any such standard terms and conditions that require:

a. Consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's

regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

b. Specific storage size for prescription drugs requiring special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

c. Specific storage space for prescription drugs that do not require special handling shall be based on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(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~~] 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 for which the mail or carrier service has proof of delivery that have not been received by the insured, or are spoiled or damaged, provided that in the case of a prescription fertility drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting the theft and in the case of a damaged or spoiled prescription fertility drug, the policy may require that the 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 unreceived, spoiled or damaged prescription fertility drug shall be replaced before receipt of the police report or the returned spoiled or damaged prescription fertility drug, as the case may be. If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription fertility drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace

such prescription fertility drug for such insured until such insured has provided the plan with the required police report or 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.

§ 3. Paragraph 18 of subsection (l) 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) "Same reimbursement amount" shall mean that any coverage described under subparagraph (B) of this paragraph shall provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(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 participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer has established different standard terms and conditions for mail order pharmacies and non-mail order retail pharmacies, the term standard terms and conditions shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail order retail pharmacies, and provided further that any such standard terms and conditions that require:

(i) Consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

(ii) Specific storage size for prescription drugs requiring special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

(iii) Specific storage space for prescription drugs that do not require special handling shall base such requirements on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(B) Any insurer delivering a group or blanket policy or issuing a group or blanket policy for delivery in this state 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~~] 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 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; 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.

(C) Any policy that provides coverage for prescription drugs shall, in addition to the standard terms and conditions, require mail order pharmacies to replace dispensed prescription drugs for which the mail or carrier service has proof of delivery that have not been received by the insured, or are spoiled or damaged, provided that in the case of a prescription drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting the theft and in the case of a damaged or spoiled prescription drug, the policy may require that the damaged prescription drug be returned to the mail order pharmacy with the cost to be borne by such pharmacy, and provided further that such unreceived, spoiled or damaged prescription drug shall be replaced before receipt of the police report or the spoiled or damaged prescription drug, as the case may be. If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace such prescription drug for such insured until such insured has provided the plan with the required police report or 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.

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

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

(i) "Same reimbursement amount" shall mean that any coverage described under subparagraph (B) of this paragraph shall provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(ii) "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.

(iii) "Standard terms and conditions" shall mean the contractual terms and conditions applicable to all network participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer had established different standard terms and conditions for mail

order pharmacies and non-mail order retail pharmacies, the term standard terms and conditions shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail order retail pharmacies, and provided further that any such standard terms and conditions that require:

(I) Consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

(II) Specific storage space for prescription drugs require special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

(III) Specific storage space for prescription drugs that do not require special handling shall be based on on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(B) Every contract issued by a medical expense indemnity corporation, a hospital service corporation or a health services corporation 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 corporation has established for the network participating [~~mail order or other non-retail pharmacy~~] pharmacies. In such case, the contract 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 does not elect to purchase 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 contract that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

(C) 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 for which the mail or carrier service has proof of delivery that have been not received by the insured, or are spoiled or damaged, provided that in the case of a prescription fertility drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting the theft and in the case of a damaged or spoiled prescription fertility drug, the policy may require that the 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 unreceived, spoiled or damaged prescription fertility drug shall be replaced before receipt of the police report or the spoiled or damaged prescription fertility drug, as the case may be.

If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription fertility drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace such prescription fertility drug for such insured until such insured has provided the plan with the required police report or returned the spoiled or damaged prescription fertility drug. Replacement of a prescription fertility drug pursuant to this paragraph shall not be limited to a specific number of occurrences during a contract year.

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

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

(A) "Same reimbursement amount" shall mean that any coverage described under paragraph two of this subsection shall provide the same benchmark index, including the same average wholesale price, maximum allowable cost and national prescription drug codes to reimburse all pharmacies participating in the insurance network regardless of whether a pharmacy is a mail order pharmacy or a non-mail order pharmacy.

(B) "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.

(C) "Standard terms and conditions" shall mean the contractual terms and conditions applicable to all network participating pharmacies that were in effect on June first, two thousand fifteen; provided that if an insurer has established different standard terms and conditions for mail order pharmacies and non-mail order retail pharmacies, the term standard terms and conditions shall mean the standard terms and conditions that were in effect on June first, two thousand fifteen for non-mail order retail pharmacies, and provided further that any such standard terms and conditions that require:

(i) Consultation with a pharmacist shall not require such consultation be available at non-mail order pharmacies outside of such pharmacy's regular hours of operation and shall require mail order pharmacies to provide such consultation twenty-four hours a day, seven days a week;

(ii) Specific storage size for prescription drugs requiring special handling, such as refrigeration, shall be based on the contracting pharmacy's dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage; and

(iii) Specific storage space for prescription drugs that do not require special handling shall be based on the contracting pharmacy's physical size and dispensing experience and shall not require a pharmacy to increase its storage space when it has not been established that such pharmacy's prescription volume requires such increased storage.

(2) Any contract issued by a medical expense indemnity corporation, a hospital service corporation or a health services corporation that provides coverage for prescription drugs shall permit each covered person to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the

covered person'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 corporation has established for the network participating [~~mail order or other non-retail pharmacy~~] pharmacies. In such a case, the contract shall not impose a copayment 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 covered person who elects to purchase drugs from a network participating non-mail order retail pharmacy which is not also imposed on covered persons electing to purchase drugs from 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 contract that is the result of a collective bargaining agreement between an employer and a recognized or certified employee organization.

(3) Any policy that provides coverage for prescription drugs shall, in addition to the standard terms and conditions, require mail order pharmacies to replace dispensed prescription drugs for which the mail or carrier service has proof of delivery that have not been received by the insured, or are spoiled or damaged, provided that in the case of a prescription drug that has not been received by the insured, the policy may require that the insured provide proof of theft in the form of a filed police report reporting theft and in the case of a damaged or spoiled prescription drug, the policy may require that the damaged prescription drug be returned to the mail order pharmacy with the cost to be borne by such pharmacy, and provided further that such unreceived, spoiled or damaged prescription drug shall be replaced before receipt of the police report or the spoiled or damaged prescription drug, as the case may be. If such required police report is not provided or the damaged or spoiled 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 forgoing, when an insured who was previously required to reimburse the plan for a dispensed prescription drug that was not received by the insured, or was damaged or spoiled, the policy may refuse to replace such prescription drug for such insured until such insured has provided the plan with the required police report or returned the spoiled or damaged prescription drug. Replacement of a prescription drug pursuant to this paragraph shall not be limited to a specific number of occurrences during a contract year.

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

§ 7. This act shall take effect immediately.