

# STATE OF NEW YORK

5854

2021-2022 Regular Sessions

## IN ASSEMBLY

March 1, 2021

Introduced by M. of A. JOYNER, COOK, AUBRY, LAVINE, RODRIGUEZ, SIMON,  
STECK, GALEF -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the purchase of  
prescription drugs

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

1 Section 1. Paragraph 28 of subsection (i) of section 3216 of the  
2 insurance law, as amended by chapter 11 of the laws of 2012, is amended  
3 to read as follows:

4 (28) (A) Definitions. For the purpose of this paragraph:

5 (1) "Same reimbursement amount" shall mean that any coverage described  
6 under subparagraph (B) of this paragraph shall provide the same bench-  
7 mark index, including the same average wholesale price, maximum allow-  
8 able cost and national prescription drug codes to reimburse all pharma-  
9 cies participating in the insurance network regardless of whether a  
10 pharmacy is a mail order pharmacy or a non-mail order pharmacy.

11 (2) "Mail order pharmacy" means a pharmacy whose primary business is  
12 to receive prescriptions by mail, telefax or through electronic  
13 submissions and to dispense medication to patients through the use of  
14 the United States mail or other common or contract carrier services and  
15 provides any consultation with patients electronically rather than face-  
16 to-face.

17 (B) Any policy that provides coverage for prescription drugs shall  
18 permit each insured to fill any covered prescription that may be  
19 obtained at a network participating mail order or other non-retail phar-  
20 macy, at the insured's option, at a network participating non-mail order  
21 retail pharmacy provided that the network participating non-mail order  
22 retail pharmacy agrees [~~in advance, through a contractual network agree-~~  
23 ~~ment,~~] to the same reimbursement amount[, ~~as well as the same applicable~~  
24 ~~terms and conditions,~~] that the insurer has established for the network  
25 participating mail order or other non-retail pharmacy. In such a case,

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

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1 the policy shall not impose a co-payment fee or other condition on any  
2 insured who elects to purchase prescription drugs from a network partic-  
3 ipating non-mail order retail pharmacy which is not also imposed on  
4 insureds electing to purchase drugs from a network participating mail  
5 order or other non-retail pharmacy.

6 § 2. Paragraph 18 of subsection (l) of section 3221 of the insurance  
7 law, as amended by chapter 11 of the laws of 2012, is amended to read as  
8 follows:

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

10 (1) "Same reimbursement amount" shall mean that any coverage described  
11 under subparagraph (B) of this paragraph shall provide the same bench-  
12 mark index, including the same average wholesale price, maximum allow-  
13 able cost and national prescription drug codes to reimburse all pharma-  
14 cies participating in the insurance network regardless of whether a  
15 pharmacy is a mail order pharmacy or a non-mail order pharmacy.

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

22 (B) Any insurer delivering a group or blanket policy or issuing a  
23 group or blanket policy for delivery in this state that provides cover-  
24 age for prescription drugs shall permit each insured to fill any covered  
25 prescription that may be obtained at a network participating mail order  
26 or other non-retail pharmacy, at the insured's option, at a network  
27 participating non-mail order retail pharmacy provided that the network  
28 participating non-mail order retail pharmacy agrees [~~in advance, through~~  
29 ~~a contractual network agreement,~~] to the same reimbursement amount[~~, as~~  
30 ~~well as the same applicable terms and conditions,~~] that the insurer has  
31 established for the network participating mail order or other non-retail  
32 pharmacy. In such a case, the policy shall not impose a co-payment fee  
33 or other condition on any insured who elects to purchase drugs from a  
34 network participating non-mail order retail pharmacy which is not also  
35 imposed on insureds electing to purchase drugs from a network partic-  
36 ipating mail order or other non-retail pharmacy; provided, however, that  
37 the provisions of this section shall not supersede the terms of a  
38 collective bargaining agreement or apply to a policy that is the result  
39 of a collective bargaining agreement between an employer and a recog-  
40 nized or certified employee organization.

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

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

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

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

(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,~~] that the corporation has established for the network participating mail order or other non-retail pharmacy. In such a case, the contract shall not impose a copayment fee or other condition 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.

§ 4. This act shall take effect immediately.