

# STATE OF NEW YORK

5854--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, 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 (i) "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 (ii) "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~~

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

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1 ~~terms and conditions,~~] that the insurer has established for the network  
2 participating mail order or other non-retail pharmacy. In such a case,  
3 the policy shall not impose a co-payment fee or other condition on any  
4 insured who elects to purchase prescription drugs from a network partic-  
5 ipating non-mail order retail pharmacy which is not also imposed on  
6 insureds electing to purchase drugs from a network participating mail  
7 order or other non-retail pharmacy; provided, however, that the  
8 provisions of this subparagraph shall not supersede the terms of a  
9 collective bargaining agreement or apply to a policy that is a result of  
10 a collective bargaining agreement between an employer and a recognized  
11 or certified employee organization.

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

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

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

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

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

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

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

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

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

7 (2) Any contract issued by a medical expense indemnity corporation, a  
8 hospital service corporation or a health services corporation that  
9 provides coverage for prescription drugs shall permit each covered  
10 person to fill any covered prescription that may be obtained at a  
11 network participating mail order or other non-retail pharmacy, at the  
12 covered person's option, at a network participating non-mail order  
13 retail pharmacy provided that the network participating non-mail order  
14 retail pharmacy agrees [~~in advance, through a contractual network agree-~~  
15 ~~ment,~~] to the same reimbursement amount[~~, as well as the same applicable~~  
16 ~~terms and conditions,~~] that the corporation has established for the  
17 network participating mail order or other non-retail pharmacy. In such  
18 a case, the contract shall not impose a copayment fee or other condition  
19 on any covered person who elects to purchase drugs from a network  
20 participating non-mail order retail pharmacy which is not also imposed  
21 on covered persons electing to purchase drugs from a network participat-  
22 ing mail order or other non-retail pharmacy; provided, however, that the  
23 provisions of this section shall not supersede the terms of a collective  
24 bargaining agreement or apply to a contract that is the result of a  
25 collective bargaining agreement between an employer and a recognized or  
26 certified employee organization.

27 § 4. This act shall take effect immediately.