



121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

May 12, 2017

RE: AN ACT to amend the general business law,
in relation to mail order pharmacies

S.3484 (Golden)

A.4786 (Joyner)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans strongly oppose enactment of this Bill, which would impose network restrictions on health insurance plans and pharmacy benefit managers (PBMs) that would limit the ability of employers to design cost-effective prescription drug benefits, harming consumers by raising the costs of prescriptions. Specifically, the Bill would prevent health insurers from requiring retail pharmacies to: (1) meet the same terms and conditions as mail order pharmacies, and (2) join a plan's provider network.

It is important to highlight that this Bill attempts to achieve the same goals of other similar bills introduced by the Sponsor (e.g. S.1743); however, this Bill amends the General Business Law, rather than the Insurance Law, to establish requirements for the administration of health insurance policies. All of the other "mail order" bills proposed by the Sponsor seek to amend the Insurance Law. In fact, this legislation, if enacted, would directly contradict existing statutory provisions contained in the Insurance Law, which would continue to require retail pharmacies to meet the same terms and conditions as mail order pharmacies. Thus, this Bill would prohibit health insurers from complying with provisions governing the administration of health insurance policies under the Insurance Law.

1. THIS BILL WOULD EXCEPT RETAIL PHARMACIES FROM NETWORK PARTICIPATION REQUIREMENTS

When first enacted the purpose of the "mail order" legislation was to provide consumers with added flexibility, and the basic agreement reached amongst stakeholders involved was that consumers should have the option to fill prescriptions at a retail pharmacy that otherwise met all of the same plan requirements as a mail order pharmacy—including price, terms and conditions, and network participation. Indeed, proponents of the Bill claimed that retail pharmacies had the ability to be more affordable than mail order counterparts, and could do so "playing by the same

rules”. Now, this Bill seeks to undue this carefully balanced compromise and essentially except retail pharmacies from having to join a network and abide by a plan’s contract terms, including price, quality, and access criteria. These are fundamental requirements that *every participating provider* must meet in order to contract with a health plan. This sort of preferential treatment is unprecedented in a managed care context, and sets a dangerous precedent for exempting other providers from health plan participation requirements—the ramifications of which extend far beyond this Bill.

2. THE LEGISLATURE SHOULD NOT REQUIRE THAT PLANS WAIVE TERMS AND CONDITIONS AND NETWORK REQUIREMENTS THAT PROVIDE SIGNIFICANT QUALITY AND VALUE FOR MEMBERS

Mail-order prescription drug programs allow participants to order sufficient supplies of the prescription drugs they need on a continuing basis to control conditions such as high blood pressure, arthritis, heart conditions and diabetes. Mail-order pharmacies dispense countless prescriptions each year with a high degree of accuracy and cost efficiency.

Mail order pharmacies can provide drugs at reduced prices because these pharmacies have significantly lower overhead and fulfillment costs than retail pharmacies. A report in Fortune magazine found that it costs major retail pharmacies between \$4.95 and \$5.89 to fill a prescription, whereas a mail-service pharmacy can fill and mail a prescription for as little as \$2.50. (Boyle, M., “Walgreen’s Drug Wars,” Fortune, June 1, 2005). According to a 2003 study by the U.S. Government Accountability Office (GAO), the average price for prescriptions through mail-service pharmacies was 27 percent below the average cash price consumers would pay at a retail pharmacy. Savings achieved by using mail-order pharmacies are an effective tool in limiting drug costs and essential in the ongoing struggle to keep health insurance affordable and available to consumers.

More significantly, mail-order pharmacies offer enhanced safeguards for consumer protections. Mail-order pharmacies use the technology of largely automated systems to ensure the accuracy of counting and dispensing medications, while their pharmacists focus largely on clinical issues such as drug interaction and counseling. A highly automated mail service pharmacy achieved dispensing accuracy rates 23 times better than those reported in a benchmark of retail community pharmacies, including a dramatic reduction in many serious errors common across retail pharmacy settings, as detailed in a 2004 Pricewaterhouse Coopers, “The Value of Pharmacy Benefit Management and National Cost Impact of Proposed PBM Legislation” study. In contrast, retail pharmacies had an average error rate of nearly one in 50 prescriptions filled. The mail-order error rate was zero in several of the most critical areas including dispensing the correct drug, dosage, and dosage form.

3. PROHIBITING INSURERS FROM IMPOSING TERMS AND CONDITIONS AND REQUIRING NETWORK PARTICIPATION WOULD DESTROY THE NETWORK CONCEPT AND RAISE INSURANCE RATES TO A PRE-MANAGED CARE LEVEL.

One of the main goals of an insurer is to reduce the cost of health insurance while at the same time increasing the quality of care for patients. This is achieved by a health plan's ability to contract with a limited number of providers at an agreed upon rate in exchange for the plan's directly reimbursing providers for care provided to its enrollees. This Bill would destroy this and serve as a disincentive for participation by both retail *and* mail order pharmacies, who would no longer need to participate in the insurer's network in order to be reimbursed for their services. As many pharmacists would choose not to participate so as to avoid the credentialing requirements of proving their qualifications, health insurers would lose their ability to ensure that only the best, most qualified pharmacists provided services to their members.

Ultimately, the loss of the efficiencies described above would force insurers to raise premiums, as they could no longer contract with providers for affordable and reasonable reimbursement rates.

For all the foregoing reasons, we strongly oppose the passage of this bill.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for the Blue Cross and Blue Shield Plans