



# MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: APRIL 7, 2014

Re: S.3995-A (Maziarz)/A.5723-A (Heastie) – An act to amend the insurance law, in relation to the purchase of prescription drugs.

90 State Street • Suite 825  
Albany, NY 12207-1717  
518.462.2293  
Fax: 518.462.2150  
www.nyhpa.org

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This legislation, S.3995-A/A.5723-A, seeks to amend current law to limit pharmacy mail order options for health insurance purchasers. This proposal threatens patient safety, enriches community pharmacists at the expense of patients and will result in increased pharmaceutical costs. The New York Health Plan Association (HPA) opposes its passage.

Rapid growth in drug spending in recent years has encouraged health plans and other payers to adopt strategies to better harness economies of scale to help dampen rising pharmaceutical costs. Pharmacy benefits are optional in New York and the cost of a drug rider is critical for employers in determining whether to provide this coverage to their employees. Mail order pharmacy services are less expensive than retail pharmacy and help to provide small businesses and families with affordable prescription drug access. Additionally, mail order pharmacies provide education, assessment and monitoring related to prescriptions as well as 24/7 phone access and support for patients. This is critical to specialty pharmacy drugs that are high cost and highly complex in terms of dosage and monitored results. These increased services are not a requirement for and generally not provided in a retail pharmacy.

Despite cries to the contrary, community pharmacies continue to flourish in New York and nationwide. While the popularity of mail service has risen in recent years, it is not a threat to the independent retail market because the pharmaceutical “pie” continues to grow. Mail services have not put independent pharmacies at risk. Rather, they have shared in the overall growth of pharmacy expenditures.

The Federal Trade Commission (FTC) issued a letter regarding the originating legislation (S.3510-B/A.5502-B of 2011), which included the language “comparable price.” According to the FTC letter, that legislation would have harmed consumers because it would have reduced competition and raised prices. For this reason, Governor Cuomo, in his Approval Memorandum (No.14 for Chapter 597 of the Laws of 2011), negotiated a chapter amendment that required “that the retail pharmacy must agree in advance to accept the same reimbursement rate and applicable terms and conditions established for mail order pharmacies.” These important changes — requiring retail pharmacies to not only match prices but also ensure they would provide the additional services — support high quality standards designed to boost patient safety.

This new proposal seeks to undo the Governor's chapter amendment. It would repeal the very language the Governor sought to protect small businesses and families. It sacrifices patient safety by removing the requirement for retail pharmacies to meet the "terms and conditions" provisions followed by mail order pharmacies. Retail pharmacies should have to adhere to the same higher quality standards of mail order pharmacies including education for specialty drugs; clinical assessment such as dosage use and monitoring; and ongoing evaluation by a health professional to ensure adherence.

This legislation is protectionist legislation of the worse kind. It will engender higher costs for consumers and payers to subsidize community pharmacists who are experiencing increased sales and rising revenues. For New York, the cost of this legislation is too high.

For all these reasons, HPA opposes S.3995-A/A.5723-A.