



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: MAY 15, 2017

Re: S.3484 (Golden)/A.4786 (Joyner) – An act to amend the general business law, in relation to mail order pharmacies.

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

This legislation, S.3484/A.4786, seeks to limit pharmacy mail order options for **all** individuals who have health insurance outside the New York State Medicaid program. 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.

This proposal creates a new Article 40 of the General Business Law (GBL) to regulate the business practices around the delivery of mail order pharmacy benefits. The bill includes not just those New Yorkers who are governed by state law in the individual and small group markets, but also those New Yorkers who receive their health insurance benefit from federally-regulated entities such as union welfare funds, employer sponsored health insurance plans, and the New York State Health Insurance Plan (NYSHIP). Federal law normally exempts these entities from state law changes. Under this legislation, if Article 40 of the GBL is deemed to be violated, the New York Attorney General has enforcement powers, and may seek a civil penalty of not more than ten thousand dollars for each violation.

Legislation approved in 2011 was designed to level the playing field between mail order and retail pharmacies. When signing that law (Chapter 597 of the Laws of 2011), Governor Cuomo insisted on 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.” This was necessary because, as the Federal Trade Commission (FTC) noted in a letter regarding the originating legislation, the proposal included the language “comparable price,” which according to the FTC, would have reduced competition and raised prices, and thereby harmed consumers.

In addition to delivering economies of scale that help dampen rising pharmaceutical costs, mail order pharmacy services 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. The Governor’s chapter amendment included these important changes—requiring retail pharmacies to not only match prices but also ensure they would provide the additional services—to support high quality standards designed to boost patient safety.

This bill sacrifices patient safety by removing the requirement for retail pharmacies to contract in advance and meet the “terms and conditions” provisions followed by mail order pharmacies, and defines “same price” to reimburse retail pharmacies the same as mail order even if they do not provide the same level as patient services and monitoring of mail order pharmacies. Retail pharmacies should have to adhere to the same higher quality standards of mail order pharmacies especially education for specialty drugs; clinical assessment such as dosage use and monitoring; and ongoing evaluation by a health professional to ensure adherence.

Despite the assertions 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 and number of prescriptions.

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 while at the same time lowering the quality of care delivered to New Yorker’s by exempting retail pharmacies from providing the same level of care as provided by mail order pharmacies, but yet paid at the “same price.” It circumvents the very language the Governor sought to protect small businesses and families, and would also now impact union welfare funds, employer sponsored health insurance plans and NYSHIP. For New York, the cost of this legislation is too high.

For all these reasons, HPA opposes S.3484/A.4786.