



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: MARCH 12, 2021

Re: S.3566 (Breslin) – An act to amend the insurance law, in relation to the purchase of prescription drugs.

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This legislation, S.3566, 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.

This proposal seeks to undo legislation approved in 2011 that 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 new proposal 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 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 of patient services and monitoring as 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.

Notably, S.4463-A would exempt collective bargaining agreements, giving labor unions special treatment from having to abide by the requirements of this bill. Setting two different standards is unfair to employers, particularly small businesses, and begs the question “If it’s not good policy for the unions, why subject private employers and individuals who purchase insurance from the marketplace to it?” Bad policy is bad policy.

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 Yorkers by exempting retail pharmacies from providing the same level of care as provided by mail order pharmacies, but yet paid at the “same price.”

For all these reasons, HPA opposes S.3566.

The New York Health Plan Association represents 28 managed care health plans that provide comprehensive health care services to nearly 8 million New Yorkers.