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HOUSE BILL 132

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW, THE NONPROFIT HEALTH CARE PLAN LAW AND THE PHARMACY BENEFITS MANAGER REGULATION ACT TO PROVIDE COVERED PERSONS WITH PARITY OF ACCESS AND PAYMENT BETWEEN PARTICIPATING MAIL-ORDER PHARMACIES AND PARTICIPATING COMMUNITY PHARMACIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health

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1 Care Purchasing Act, that offers a prescription drug benefit
2 shall permit:

3 (1) any pharmacy or pharmacist licensed in the
4 state to participate as a participating community pharmacy or
5 participating mail-order pharmacy if that pharmacy agrees to
6 accept the terms and conditions that the group health coverage
7 establishes; and

8 (2) an enrollee to fill a covered prescription
9 at the enrollee's option at any participating community
10 pharmacy; provided that the participating community pharmacy
11 accepts reimbursement at a rate equal to that of a
12 participating mail-order pharmacy.

13 B. A group health plan shall not impose a
14 copayment, coinsurance or other condition on an enrollee who
15 elects to fill a covered prescription from any participating
16 community pharmacy that is not also imposed on an enrollee who
17 elects to fill a covered prescription at a participating mail-
18 order pharmacy.

19 C. A group health plan shall not require an
20 enrollee, as a condition of payment or reimbursement, to
21 purchase pharmacy services, including prescription drugs,
22 exclusively through a mail-order pharmacy.

23 D. Any provision in a group health plan, including
24 any form of self-insurance, offered, issued or renewed under
25 the Health Care Purchasing Act, that is contrary to any

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1 provision of this section is void to the extent of that
2 conflict.

3 E. As used in this section:

4 (1) "covered prescription" means a drug for
5 which a group health plan has agreed to make reimbursement
6 under the terms of the group health plan;

7 (2) "participating community pharmacy" means
8 an entity physically located in the state that operates in the
9 regular course of business as a retail pharmacy, irrespective
10 of the cost or type of prescription drugs it dispenses and
11 that:

12 (a) has agreed to accept a group health
13 plan's contracted payment rate, and, pursuant to this
14 agreement, an enrollee may fill a prescription and pay a
15 copayment or coinsurance that is more advantageous to the
16 enrollee than the copayment or coinsurance for a prescription
17 sought from a retail pharmacy that has not agreed to the group
18 health plan's contracted payment rate; and

19 (b) in the two years preceding the date
20 the pharmacy has otherwise become eligible to become a
21 participating community pharmacy, has not been convicted of
22 fraud, waste or abuse, or entered into a settlement pursuant to
23 allegations of fraud, waste or abuse, in matters related to or
24 arising out of a health coverage program established pursuant
25 to Title 18, 19 or 21 of the federal Social Security Act; and

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1 (3) "participating mail-order pharmacy" means,
2 irrespective of the cost or type of prescription drugs it
3 dispenses, a retail pharmacy:

4 (a) that is registered, headquartered or
5 has its base of operations physically located in the state;

6 (b) for which the majority of the
7 pharmacy's business consists of dispensing a prescription drug
8 under a prescription drug order and having the drug delivered
9 to a patient by the United States mail, a common carrier or a
10 delivery service. Mail-order pharmacies include pharmacies
11 that do business via the internet or other electronic media;

12 (c) that has agreed to accept a group
13 health plan's contracted payment rate, and, pursuant to this
14 agreement, an enrollee may fill a prescription and pay a
15 copayment or coinsurance that is more advantageous to the
16 enrollee than the copayment or coinsurance for a prescription
17 sought from a retail pharmacy that has not agreed to the group
18 health plan's contracted payment rate; and

19 (d) that in the two years preceding the
20 date the pharmacy has otherwise become eligible to become a
21 participating mail-order pharmacy, has not been convicted of
22 fraud, waste or abuse, or entered into a settlement pursuant to
23 allegations of fraud, waste or abuse, in matters related to or
24 arising out of a health coverage program established pursuant
25 to Title 18, 19 or 21 of the federal Social Security Act."

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1 SECTION 2. A new section of Chapter 59A, Article 22 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
4 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

5 A. An individual or group health insurance policy,
6 health care plan or certificate of insurance that is delivered,
7 issued for delivery or renewed in the state and that provides a
8 prescription drug benefit shall permit:

9 (1) any pharmacy or pharmacist licensed in the
10 state to participate as a participating community pharmacy or
11 participating mail-order pharmacy if that pharmacy agrees to
12 accept the terms and conditions that the health insurance
13 policy, health care plan or certificate of insurance
14 establishes; and

15 (2) an insured to fill a covered prescription
16 at the insured's option at any participating community
17 pharmacy; provided that the participating community pharmacy
18 accepts reimbursement at a rate equal to that of a
19 participating mail-order pharmacy.

20 B. An insurer shall not impose a copayment,
21 coinsurance or other condition on an insured who elects to fill
22 a covered prescription from any participating community
23 pharmacy that is not also imposed on an insured who elects to
24 fill a covered prescription at any participating mail-order
25 pharmacy.

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1 C. An insurer shall not require an insured, as a
2 condition of payment or reimbursement, to purchase pharmacy
3 services, including prescription drugs, exclusively through a
4 mail-order pharmacy.

5 D. A health insurance policy, health care plan or
6 certificate of insurance that is delivered, issued for delivery
7 or renewed in the state and that contains a provision contrary
8 to any provision of this section is void to the extent of that
9 conflict.

10 E. The provisions of this section apply to health
11 insurance policies, health care plans and certificates of
12 insurance delivered or issued for delivery on or after January
13 1, 2024.

14 F. As used in this section:

15 (1) "covered prescription" means a drug for
16 which a health insurance policy, health care plan or
17 certificate of insurance has agreed to make reimbursement under
18 the terms of the health insurance policy, health care plan or
19 certificate of insurance;

20 (2) "participating community pharmacy" means
21 an entity physically located in the state that operates in the
22 regular course of business as a retail pharmacy, irrespective
23 of the cost or type of prescription drugs it dispenses and
24 that:

25 (a) has agreed to accept an insurer's

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1 contracted payment rate, and, pursuant to this agreement, an
2 insured may fill a prescription and pay a copayment or
3 coinsurance that is more advantageous to the insured than the
4 copayment or coinsurance for a prescription sought from a
5 retail pharmacy that has not agreed to the carrier's contracted
6 payment rate; and

7 (b) in the two years preceding the date
8 the pharmacy has otherwise become eligible to become a
9 participating community pharmacy, has not been convicted of
10 fraud, waste or abuse, or entered into a settlement pursuant to
11 allegations of fraud, waste or abuse, in matters related to or
12 arising out of a health coverage program established pursuant
13 to Title 18, 19 or 21 of the federal Social Security Act; and

14 (3) "participating mail-order pharmacy" means,
15 irrespective of the cost or type of prescription drugs it
16 dispenses, a retail pharmacy:

17 (a) that is registered, headquartered or
18 has its base of operations physically located in the state;

19 (b) for which the majority of the
20 pharmacy's business consists of dispensing a prescription drug
21 under a prescription drug order and having the drug delivered
22 to a patient by the United States mail, a common carrier or a
23 delivery service. Mail-order pharmacies include pharmacies
24 that do business via the internet or other electronic media;

25 (c) that has agreed to accept an

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1 insurer's contracted payment rate, and, pursuant to this
2 agreement, an insured may fill a prescription and pay a
3 copayment or coinsurance that is more advantageous to the
4 insured than the copayment or coinsurance for a prescription
5 sought from a retail pharmacy that has not agreed to the
6 insurer's contracted payment rate; and

7 (d) that in the two years preceding the
8 date the pharmacy has otherwise become eligible to become a
9 participating mail-order pharmacy, has not been convicted of
10 fraud, waste or abuse, or entered into a settlement pursuant to
11 allegations of fraud, waste or abuse, in matters related to or
12 arising out of a health coverage program established pursuant
13 to Title 18, 19 or 21 of the federal Social Security Act."

14 SECTION 3. A new section of Chapter 59A, Article 23 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
17 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

18 A. An individual or group health insurance policy,
19 health care plan or certificate of insurance that is delivered,
20 issued for delivery or renewed in the state and that provides a
21 prescription drug benefit shall permit:

22 (1) any pharmacy or pharmacist licensed in the
23 state to participate as a participating community pharmacy or
24 participating mail-order pharmacy if that pharmacy agrees to
25 accept the terms and conditions that the health insurance

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1 policy, health care plan or certificate of insurance
2 establishes; and

3 (2) an insured to fill a covered prescription
4 at the insured's option at any participating community
5 pharmacy; provided that the participating community pharmacy
6 accepts reimbursement at a rate equal to that of a
7 participating mail-order pharmacy.

8 B. An insurer shall not impose a copayment,
9 coinsurance or other condition on an insured who elects to fill
10 a covered prescription from any participating community
11 pharmacy that is not also imposed on an insured who elects to
12 fill a covered prescription at any participating mail-order
13 pharmacy.

14 C. An insurer shall not require an insured, as a
15 condition of payment or reimbursement, to purchase pharmacy
16 services, including prescription drugs, exclusively through a
17 mail-order pharmacy.

18 D. A health insurance policy, health care plan or
19 certificate of insurance that is delivered, issued for delivery
20 or renewed in the state and that contains a provision contrary
21 to any provision of this section is void to the extent of that
22 conflict.

23 E. The provisions of this section apply to health
24 insurance policies, health care plans and certificates of
25 insurance delivered or issued for delivery on or after January

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1 1, 2024.

2 F. As used in this section:

3 (1) "covered prescription" means a drug for
4 which a health insurance policy, health care plan or
5 certificate of insurance has agreed to make reimbursement under
6 the terms of the health insurance policy, health care plan or
7 certificate of insurance;

8 (2) "participating community pharmacy" means
9 an entity physically located in the state that operates in the
10 regular course of business as a retail pharmacy, irrespective
11 of the cost or type of prescription drugs it dispenses and
12 that:

13 (a) has agreed to accept an insurer's
14 contracted payment rate, and, pursuant to this agreement, an
15 insured may fill a prescription and pay a copayment or
16 coinsurance that is more advantageous to the insured than the
17 copayment or coinsurance for a prescription sought from a
18 retail pharmacy that has not agreed to the carrier's contracted
19 payment rate; and

20 (b) in the two years preceding the date
21 the pharmacy has otherwise become eligible to become a
22 participating community pharmacy, has not been convicted of
23 fraud, waste or abuse, or entered into a settlement pursuant to
24 allegations of fraud, waste or abuse, in matters related to or
25 arising out of a health coverage program established pursuant

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1 to Title 18, 19 or 21 of the federal Social Security Act; and

2 (3) "participating mail-order pharmacy" means,
3 irrespective of the cost or type of prescription drugs it
4 dispenses, a retail pharmacy:

5 (a) that is registered, headquartered or
6 has its base of operations physically located in the state;

7 (b) for which the majority of the
8 pharmacy's business consists of dispensing a prescription drug
9 under a prescription drug order and having the drug delivered
10 to a patient by the United States mail, a common carrier or a
11 delivery service. Mail-order pharmacies include pharmacies
12 that do business via the internet or other electronic media;

13 (c) that has agreed to accept an
14 insurer's contracted payment rate, and, pursuant to this
15 agreement, an insured may fill a prescription and pay a
16 copayment or coinsurance that is more advantageous to the
17 insured than the copayment or coinsurance for a prescription
18 sought from a retail pharmacy that has not agreed to the
19 insurer's contracted payment rate; and

20 (d) that in the two years preceding the
21 date the pharmacy has otherwise become eligible to become a
22 participating mail-order pharmacy, has not been convicted of
23 fraud, waste or abuse, or entered into a settlement pursuant to
24 allegations of fraud, waste or abuse, in matters related to or
25 arising out of a health coverage program established pursuant

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1 to Title 18, 19 or 21 of the federal Social Security Act."

2 SECTION 4. A new section of the Health Maintenance
3 Organization Law is enacted to read:

4 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
5 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

6 A. A health maintenance organization contract that
7 is delivered, issued for delivery or renewed in the state and
8 that provides a prescription drug benefit shall permit:

9 (1) any pharmacy or pharmacist licensed in the
10 state to participate as a participating community pharmacy or
11 participating mail-order pharmacy if that pharmacy agrees to
12 accept the terms and conditions that the contract establishes;
13 and

14 (2) an enrollee to fill a covered prescription
15 at the enrollee's option at any participating community
16 pharmacy; provided that the participating community pharmacy
17 accepts reimbursement at a rate equal to that of a
18 participating mail-order pharmacy.

19 B. A carrier shall not impose a copayment,
20 coinsurance or other condition on an enrollee who elects to
21 fill a covered prescription from any participating community
22 pharmacy that is not also imposed on an enrollee who elects to
23 fill a covered prescription at any participating mail-order
24 pharmacy.

25 C. A carrier shall not require an enrollee, as a

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1 condition of payment or reimbursement, to purchase pharmacy
2 services, including prescription drugs, exclusively through a
3 mail-order pharmacy.

4 D. A health maintenance organization contract that
5 is delivered, issued for delivery or renewed in the state and
6 that contains a provision contrary to any provision of this
7 section is void to the extent of that conflict.

8 E. The provisions of this section apply to health
9 maintenance organization contracts delivered or issued for
10 delivery on or after January 1, 2024.

11 F. As used in this section:

12 (1) "covered prescription" means a drug for
13 which a health maintenance organization contract has agreed to
14 make reimbursement under the terms of the health maintenance
15 organization contract;

16 (2) "participating community pharmacy" means
17 an entity physically located in the state that operates in the
18 regular course of business as a retail pharmacy, irrespective
19 of the cost or type of prescription drugs it dispenses and
20 that:

21 (a) has agreed to accept a carrier's
22 contracted payment rate, and, pursuant to this agreement, an
23 enrollee may fill a prescription and pay a copayment or
24 coinsurance that is more advantageous to the enrollee than the
25 copayment or coinsurance for a prescription sought from a

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1 retail pharmacy that has not agreed to the carrier's contracted
2 payment rate; and

3 (b) in the two years preceding the date
4 the pharmacy has otherwise become eligible to become a
5 participating community pharmacy, has not been convicted of
6 fraud, waste or abuse, or entered into a settlement pursuant to
7 allegations of fraud, waste or abuse, in matters related to or
8 arising out of a health coverage program established pursuant
9 to Title 18, 19 or 21 of the federal Social Security Act; and

10 (3) "participating mail-order pharmacy" means,
11 irrespective of the cost or type of prescription drugs it
12 dispenses, a retail pharmacy:

13 (a) that is registered, headquartered or
14 has its base of operations physically located in the state;

15 (b) for which the majority of the
16 pharmacy's business consists of dispensing a prescription drug
17 under a prescription drug order and having the drug delivered
18 to a patient by the United States mail, a common carrier or a
19 delivery service. Mail-order pharmacies include pharmacies
20 that do business via the internet or other electronic media;

21 (c) that has agreed to accept a
22 carrier's contracted payment rate, and, pursuant to this
23 agreement, an enrollee may fill a prescription and pay a
24 copayment or coinsurance that is more advantageous to the
25 enrollee than the copayment or coinsurance for a prescription

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1 sought from a retail pharmacy that has not agreed to the
2 carrier's contracted payment rate; and

3 (d) that in the two years preceding the
4 date the pharmacy has otherwise become eligible to become a
5 participating mail-order pharmacy, has not been convicted of
6 fraud, waste or abuse, or entered into a settlement pursuant to
7 allegations of fraud, waste or abuse, in matters related to or
8 arising out of a health coverage program established pursuant
9 to Title 18, 19 or 21 of the federal Social Security Act."

10 SECTION 5. A new section of the Nonprofit Health Care
11 Plan Law is enacted to read:

12 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
13 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

14 A. A health care plan that is delivered, issued for
15 delivery or renewed in the state and that provides a
16 prescription drug benefit shall permit:

17 (1) any pharmacy or pharmacist licensed in the
18 state to participate as a participating community pharmacy or
19 participating mail-order pharmacy if that pharmacy agrees to
20 accept the terms and conditions that the contract establishes;
21 and

22 (2) a subscriber to fill a covered
23 prescription at the subscriber's option at any participating
24 community pharmacy; provided that the participating community
25 pharmacy accepts reimbursement at a rate equal to that of a

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1 participating mail-order pharmacy.

2 B. A health care plan shall not impose a copayment,
3 coinsurance or other condition on a subscriber who elects to
4 fill a covered prescription from any participating community
5 pharmacy that is not also imposed on a subscriber who elects to
6 fill a covered prescription at any participating mail-order
7 pharmacy.

8 C. A health care plan shall not require a
9 subscriber, as a condition of payment or reimbursement, to
10 purchase pharmacy services, including prescription drugs,
11 exclusively through a mail-order pharmacy.

12 D. A health care plan that is delivered, issued for
13 delivery or renewed in the state and that contains a provision
14 contrary to any provision of this section is void to the extent
15 of that conflict.

16 E. The provisions of this section apply to health
17 care plans delivered or issued for delivery on or after January
18 1, 2024.

19 F. As used in this section:

20 (1) "covered prescription" means a drug for
21 which a health care plan has agreed to make reimbursement under
22 the terms of the health care plan;

23 (2) "participating community pharmacy" means
24 an entity physically located in the state that operates in the
25 regular course of business as a retail pharmacy, irrespective

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1 of the cost or type of prescription drugs it dispenses and
2 that:

3 (a) has agreed to accept a health care
4 plan's contracted payment rate, and, pursuant to this
5 agreement, a subscriber may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 subscriber than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the health
9 care plan's contracted payment rate; and

10 (b) in the two years preceding the date
11 the pharmacy has otherwise become eligible to become a
12 participating community pharmacy, has not been convicted of
13 fraud, waste or abuse, or entered into a settlement pursuant to
14 allegations of fraud, waste or abuse, in matters related to or
15 arising out of a health coverage program established pursuant
16 to Title 18, 19 or 21 of the federal Social Security Act; and

17 (3) "participating mail-order pharmacy" means,
18 irrespective of the cost or type of prescription drugs it
19 dispenses, a retail pharmacy:

20 (a) that is registered, headquartered or
21 has its base of operations physically located in the state;

22 (b) for which the majority of the
23 pharmacy's business consists of dispensing a prescription drug
24 under a prescription drug order and having the drug delivered
25 to a patient by the United States mail, a common carrier or a

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1 delivery service. Mail-order pharmacies include pharmacies
2 that do business via the internet or other electronic media;

3 (c) that has agreed to accept a health
4 care plan's contracted payment rate, and, pursuant to this
5 agreement, a subscriber may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 subscriber than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the health
9 care plan's contracted payment rate; and

10 (d) that in the two years preceding the
11 date the pharmacy has otherwise become eligible to become a
12 participating mail-order pharmacy, has not been convicted of
13 fraud, waste or abuse, or entered into a settlement pursuant to
14 allegations of fraud, waste or abuse, in matters related to or
15 arising out of a health coverage program established pursuant
16 to Title 18, 19 or 21 of the federal Social Security Act."

17 SECTION 6. A new section of the Pharmacy Benefits Manager
18 Regulation Act is enacted to read:

19 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
20 PHARMACIES--ACCESS PARITY.--

21 A. A pharmacy benefits manager or intermediary that
22 contracts with an employer, a managed care company, a nonprofit
23 hospital or a medical service organization, an insurance
24 company or a third-party payer for the provision of a
25 prescription drug benefit shall permit:

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1 (1) any pharmacy or pharmacist licensed in the
2 state to participate as a participating community pharmacy or
3 participating mail-order pharmacy if that pharmacy agrees to
4 accept the reasonable standard terms and conditions that the
5 contract establishes; and

6 (2) an enrollee to fill a covered prescription
7 at the enrollee's option at any participating community
8 pharmacy; provided that the participating community pharmacy
9 accepts reimbursement at a rate equal to that of a
10 participating contracted pharmacy.

11 B. A pharmacy benefits manager shall not impose a
12 copayment, coinsurance or other condition on an enrollee who
13 elects to fill a covered prescription from any participating
14 community pharmacy that is not also imposed on an enrollee who
15 elects to fill a covered prescription at any participating
16 mail-order pharmacy.

17 C. A pharmacy benefits manager shall not require an
18 enrollee, as a condition of payment or reimbursement, to
19 purchase pharmacy services, including prescription drugs,
20 through a mail-order pharmacy.

21 D. A pharmacy benefits manager contract that is
22 entered into with any employer, managed care company, nonprofit
23 hospital or medical service organization, insurance company or
24 third-party payer and that contains a provision contrary to any
25 provision of this section is void to the extent of that

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1 conflict.

2 E. As used in this section:

3 (1) "covered prescription" means a drug on the
4 formulary of the contracted pharmacy benefits manager for which
5 the pharmacy benefits manager has agreed to make reimbursement
6 under the terms of its contract;

7 (2) "participating community pharmacy" means
8 an entity licensed by the state that operates in the regular
9 course of business as a retail pharmacy, irrespective of the
10 cost or type of prescription drugs it dispenses, and that in
11 the two years preceding the date the pharmacy has otherwise
12 become eligible to become a participating community pharmacy,
13 has not been convicted of fraud, waste or abuse, or entered
14 into a settlement pursuant to allegations of fraud, waste or
15 abuse, in matters related to or arising out of a health
16 coverage program established pursuant to Title 18, 19 or 21 of
17 the federal Social Security Act; and

18 (3) "participating mail-order pharmacy" means,
19 irrespective of the cost or type of prescription drugs it
20 dispenses, a pharmacy:

21 (a) that is licensed by the state;

22 (b) for which the majority of the
23 pharmacy's business consists of dispensing a prescription drug
24 under a prescription drug order and having the drug delivered
25 to a patient by the United States mail, a common carrier or a

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1 delivery service. Mail-order pharmacies include pharmacies
2 that do business via the internet or other electronic media;
3 and

4 (c) that in the two years preceding the
5 date the pharmacy has otherwise become eligible to become a
6 participating mail-order pharmacy, has not been convicted of
7 fraud, waste or abuse in a matter related to or arising out of
8 a health coverage program established pursuant to Title 18, 19
9 or 21 of the federal Social Security Act."