



## News in relation to home delivery of medicinal products

*On the approval of the draft law on pharmacy in Madrid and the CNMC ruling of 9 March in the Telefarmacia App case*

Last April, the Government of the Autonomous Community of Madrid approved the draft law on Pharmaceutical Management and Care, which introduces important new developments in the case of home-based pharmaceutical care. At the same time, there have been some developments in the attempts of Telefarmacia App, a digital platform offering the collection of medicinal products (including prescription ones) from pharmacies and delivery to the patient's home, to defend its business model.

### New regulation on home delivery of medicines

The draft law on pharmacy in Madrid regulates the home delivery of medicinal products in Article 13, titled "act of dispensing". This home care is limited to situations of health vulnerability (care of dependent users, with loss of functional autonomy, etc.), and cannot be carried out until the regulatory development of the procedure to be followed and control systems has taken place. However, the draft finally includes a very important conceptual distinction between the act of "dispensing" and the act of "delivery".

On the one hand, it is clarified that the presence of a pharmacist is a prerequisite for carrying out the act of dispensing. At the same time, it is recognised that dispensing may be performed by pharmacy staff (not necessarily the pharmacist) at the patient's home, without distinction between prescription or over-the-counter medicines. Thus, it is legally recognised that dispensing and delivery are not the same act, nor do they necessarily have to be carried out in the same establishment (pharmacy office).

This distinction was already pointed out by the Supreme Court in its Judgment of 2 November 2021. The Supreme Court stated that dispensing, understood as patient counselling, and the delivery of the medicinal products are two elements traditionally carried out in a single act, but that "could be dissociated".

### Greater legal certainty for home-delivery platforms of medicinal products

This legislative development may be good news for home delivery service platforms, as it provides more legal certainty about the limits of what is allowed and the dispensing reservation of dispensing medicines.

On the other hand, the CNMC has recently issued a resolution addressing the complaint filed by Telefarmacia App against AEMPS (Spanish Agency of Medicinal products and Medical Devices), COFM (Official College of Pharmacists of Madrid) and CGOF (General Council of Official Colleges of Pharmacists). The complaint alleged an infringement of competition law rules due to the interruption and discouragement of the Telefarmacia App platform. The CNMC decided to conclude the case by closing it, but it remains vigilant as regulations develop, it may remain intervene in cases of boycotts or similar cases against projects in this field.