

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1277

Short Title: Pharmacy Choice/Competition.

(Public)

Sponsors: Representatives Cole; Adams, Alexander, Allen, Arnold, Baddour, Baker, Barefoot, Blue, Bonner, Boyd-McIntyre, Bridgeman, Buchanan, Cansler, Capps, Church, Crawford, Culp, Davis, Decker, Dedmon, Easterling, Edwards, Fox, Gardner, Gillespie, Goodwin, Hackney, Hardaway, Hiatt, Hill, Howard, Hunter, Hurley, Jarrell, Jeffus, Justus, Kiser, McCombs, McCrary, Melton, Mitchell, Morris, Mosley, Nye, Oldham, Owens, Preston, Ramsey, Rayfield, Russell, Saunders, Setzer, Sexton, Sherrill, Smith, Sutton, Tallent, Teague, Thompson, Tolson, Wainwright, Walend, Warner, Warren, G. Wilson, Wright, and Yongue.

Referred to: Small Business.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE
PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-36. Prescription drugs and pharmacy services benefits.

(a) This section applies to health benefit plans and insurers that provide prescription card benefits for prescription drugs and pharmacy services and to third-party administrators. This section does not apply to an entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and to beneficiaries of its health benefit plan, except that this section shall apply to an entity

1 otherwise excluded that contracts with an outside pharmacy or group of pharmacies to
2 provide prescription drugs and pharmacy services. This section does not apply to any
3 federal program, clinical trial program, hospital, or other health care facility licensed
4 pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing
5 prescription drugs to its patients.

6 (b) The purposes of this section are:

7 (1) To allow persons who have prescription drug and pharmacy service
8 benefits under a health benefit plan to redeem prescription drug benefits
9 at the pharmacies of their choice.

10 (2) To allow a pharmacy the option of filling its customers' prescriptions
11 and redeeming prescription card benefits for prescriptions, without the
12 necessity of a pharmacy provider contract.

13 (3) To allow a pharmacy to establish its own charge or price for
14 prescription drugs and pharmacy services.

15 (4) To promote competition among retail pharmacies that redeem
16 prescription card benefits for prescription drugs and pharmacy services.

17 (5) To prohibit anticompetitive restrictions in pharmacy provider contracts.

18 (c) As used in this section:

19 (1) 'Co-payment' means a type of cost-sharing with respect to paying for a
20 prescription whereby the insured or beneficiary pays a specified, usually
21 predetermined amount per prescription, based on the nature of the
22 prescription, usually whether brand or generic, and with the insurer or
23 health benefit plan paying the remainder of the charge. The co-payment
24 is incurred at the time the prescription is filled by the pharmacy and the
25 prescription card benefit is applied to the transaction. The co-payment
26 may be a fixed or variable amount.

27 (2) 'Drug' or 'prescription drug' means any substance subject to the Federal
28 Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as amended.

29 (3) 'Health benefit plan' means an accident and health insurance policy or
30 certificate; a hospital or medical service corporation contract; a health
31 maintenance organization subscriber contract; a plan provided by a
32 multiple employer welfare arrangement; or a plan provided by another
33 benefit arrangement, to the extent permitted by the Employee
34 Retirement Income Security Act of 1974, as amended, or by any waiver
35 of or other exception to that Act provided under federal law or
36 regulation. 'Health benefit plan' does not mean any of the following
37 kinds of insurance:

38 a. Accident.

39 b. Credit.

40 c. Disability income.

41 d. Long-term or nursing home care.

42 e. Medicare supplement.

43 f. Specified disease.

- 1 g. Dental or vision.
2 h. Coverage issued as a supplement to liability insurance.
3 i. Workers' compensation.
4 j. Medical payments under automobile or homeowners.
5 k. Insurance under which benefits are payable with or without
6 regard to fault and that are statutorily required to be contained in
7 any liability policy or equivalent self-insurance.
8 l. Hospital income or indemnity.

9 (4) 'Insurer' means an insurance company subject to this Chapter, a hospital
10 or medical service corporation organized under Article 65 of this
11 Chapter, a health maintenance organization organized under Article 67
12 of this Chapter, and a multiple employer welfare arrangement subject to
13 Article 49 of this Chapter.

14 (5) 'Pharmacy' means a pharmacy that is required to be registered with the
15 North Carolina Board of Pharmacy.

16 (6) 'Pharmacy provider contract' means a contract or agreement between a
17 pharmacy and an insurer or a third-party administrator under which the
18 pharmacy agrees to redeem prescription card benefits provided by a
19 health benefit plan or insurer or provided or administered by a third-
20 party administrator.

21 (7) 'Prescription card benefit' means a benefit for prescription drugs or
22 pharmacy services provided by a health benefit plan, an insurer, or
23 provided or administered by a third-party administrator. A prescription
24 card benefit is characterized by all of the following:

- 25 a. The prescription card benefit is evidenced by a benefit
26 identification number which may be contained or presented on a
27 prescription card.
28 b. The prescription card benefit is redeemed and processed by the
29 pharmacy at the time the prescription is filled through electronic
30 transmission to the insurer or third-party administrator.
31 c. The insurer or third-party administrator requires the beneficiary
32 or person redeeming the prescription card benefit to pay the
33 pharmacy a co-payment predetermined by the insurer or third-
34 party administrator.
35 d. The insurer or third-party administrator pays a portion of the cost
36 for the prescription to the pharmacy.

37 (8) 'Redeem' means the process by which a person who has a prescription
38 card benefit applies through a pharmacy to use the prescription card
39 benefit on the cost of a prescription being filled by the pharmacy. This
40 process includes an application for use of the prescription card benefit
41 by the pharmacy to the insurer or third-party administrator, with the
42 application usually being made by electronic transmission through
43 computers, and with electronic transmission response from the insurer

1 or third-party administrator verifying the prescription card benefit, the
2 amount to be reimbursed to the pharmacy for the prescription
3 transaction, and the amount, if any, of a co-payment to be paid by the
4 beneficiary.

5 (9) 'Third-party administrator' means a person who does any of the
6 following in connection with a health benefit plan or a prescription card
7 benefit:

- 8 a. Directly or indirectly solicits, effects, or provides coverage.
9 b. Underwrites.
10 c. Collects charges or premiums.
11 d. Adjusts or settles claims.

12 (d) A person who has a prescription card benefit may redeem the prescription card
13 benefit at any pharmacy in this State willing to redeem the prescription card benefit.

14 (e) A pharmacy may redeem a person's prescription card benefit irrespective of
15 whether the pharmacy has entered into a pharmacy provider contract with the entity
16 providing or administering the prescription card benefit. When a pharmacy redeems a
17 prescription card benefit, the insurer or third-party administrator shall provide to the
18 pharmacy as part of the information transmitted the renewal date of the person's
19 prescription card benefits.

20 (f) An insurer or third-party administrator may not restrict or coerce a
21 beneficiary's choice of pharmacy at which to redeem the prescription card benefit.

22 (g) Nothing in this section prevents a pharmacy from entering into a pharmacy
23 provider contract.

24 (h) In redeeming prescription card benefits, a pharmacy may establish its own
25 price or charge for the prescription and pharmacy services, unless the pharmacy has
26 agreed otherwise by the terms of a pharmacy provider contract.

27 (i) If the price or charge for the prescription and pharmacy services established by
28 the pharmacy is greater than the prescription card benefit, the person redeeming the
29 prescription card benefit shall be responsible for paying the pharmacy the difference
30 between the prescription card benefit and the price or charge for the prescription and
31 services.

32 (j) If a person redeems a prescription card benefit at a pharmacy that is not a party
33 to a pharmacy provider contract with an insurer or third-party administrator, then the
34 insurer or third-party administrator shall redeem the prescription card benefit and
35 reimburse the pharmacy in the same manner, to the same extent, and at the same rate as it
36 would have had the prescription card benefit been redeemed pursuant to a pharmacy
37 provider contract.

38 (k) At the earliest practical time, before filling the prescription and if the
39 information is available, the pharmacy shall inform the person redeeming the prescription
40 card benefit of any difference between the sum of the prescription card benefit and the
41 co-payment and the price charged by the pharmacy.

42 (l) The pharmacy may charge the person redeeming the prescription card benefit
43 for services that are in addition to the filling of the prescription, including, but not limited

1 to, delivery services, unless the pharmacy has agreed otherwise by the terms of a
2 pharmacy provider contract.

3 (m) An insurer or third-party administrator that provides a prescription card benefit
4 shall inform health benefit plan policyholders that the prescription card benefit may be
5 redeemed at the pharmacy of the policyholder's choice. The information shall be
6 communicated to the policyholder through reasonable means, on a timely basis, and at
7 regular intervals, at least quarterly. If the information provided states that the cost to the
8 policyholder may be higher based on a pharmacy's price for the prescription and services,
9 then the information shall also provide in the same manner and format that the cost to the
10 policyholder may be lower based on the pharmacy's price for the prescription and
11 services. The information required by this section shall be included in a written summary
12 or description of the health benefit plan, plan summaries, and explanation of benefits as
13 well as other written communications furnished to policyholders where prescription
14 benefits are mentioned.

15 (n) An insurer or third-party administrator may communicate with its
16 policyholders the names and locations of pharmacies that have agreed by pharmacy
17 provider contracts to fill prescriptions without any charge to the policyholder other than
18 the co-payment required by the insurer or third-party administrator. If the
19 communication is made, however, it must also state in the same communication and in
20 the same format that the prescription card benefit may be redeemed at any pharmacy in
21 the State willing to redeem it.

22 (o) Any provision of a pharmacy provider contract that is in conflict with this
23 section is void to the extent of the conflict.

24 (p) An insurer or third-party administrator that violates this section shall be subject
25 to G.S. 58-2-70. However, if pursuant to G.S. 58-2-70(d), monetary civil penalties are
26 directed by the Commissioner, for the purposes of this section, these penalties shall not
27 be less than one thousand dollars (\$1,000) per day, nor more than ten thousand dollars
28 (\$10,000) per day.

29 (q) If anything in this section conflicts with G.S. 58-51-37, this section controls to
30 the extent of the conflict."

31 Section 2. If any provision of this act or the application of this act to any
32 person or circumstance is held invalid, the other provisions or applications of this act
33 shall be given effect without the invalid provisions or applications.

34 Section 3. This act applies to every health benefit plan and pharmacy provider
35 contract as defined in Section 1 of this act that is delivered, issued for delivery, or
36 renewed on or after October 1, 1999. For purposes of this act, renewal of a health benefit
37 plan is presumed to occur on each anniversary of the date on which coverage was first
38 effective on the person or persons covered by the health benefit plan.

39 Section 4. This act is effective when it becomes law.