

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1277  
Committee Substitute Reported Without Prejudice 4/29/99  
Committee Substitute #2 Favorable 7/7/99

Short Title: Pharmacy Choice/Competition.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE  
3 PURCHASE OF PRESCRIPTION DRUGS AND PHARMACY SERVICES, AND  
4 TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSURANCE TO  
5 MONITOR THE EFFECTS OF THIS ACT ON COVERED INDIVIDUALS.

6 The General Assembly of North Carolina enacts:

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

9 "**§ 58-51-36. Prescription drugs and pharmacy services benefits.**

10 (a) This section applies to health benefit plans and insurers that provide  
11 prescription card benefits for prescription drugs and pharmacy services and to third-party  
12 administrators.

13 (b) This section does not apply to the following:

14 (1) Medicaid prescription drugs and pharmacy services benefits.

15 (2) Medicare prescription drugs and pharmacy services benefits.

16 (3) An entity that has its own facility, employs or contracts with physicians,  
17 pharmacists, nurses, and other health care personnel, and that dispenses  
18 prescription drugs from its own pharmacy to its employees and to

1 beneficiaries of its health benefit plan, except that this section shall  
2 apply to an entity otherwise excluded that contracts with an outside  
3 pharmacy or group of pharmacies to provide prescription drugs and  
4 pharmacy services.

5 (4) Any federal program, clinical trial program, hospital, or other health  
6 care facility licensed pursuant to Chapter 131E or Chapter 122C of the  
7 General Statutes, when dispensing prescription drugs to its patients.

8 (5) The Teachers' and State Employees' Comprehensive Major Medical  
9 Plan.

10 (c) The purposes of this section are:

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

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

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

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

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

22 (d) As used in this section:

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

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

33 (3) 'Health benefit plan' means an accident and health insurance policy or  
34 certificate; a hospital or medical service corporation contract; a health  
35 maintenance organization subscriber contract; a plan provided by a  
36 multiple employer welfare arrangement; or a plan provided by another  
37 benefit arrangement, to the extent permitted by the Employee  
38 Retirement Income Security Act of 1974, as amended, or by any waiver  
39 of or other exception to that Act provided under federal law or  
40 regulation. 'Health benefit plan' does not mean the Teachers' and State  
41 Employees' Comprehensive Major Medical Plan, nor any prepaid plan  
42 under the Teachers' and State Employees' Comprehensive Major  
43 Medical Plan. 'Health benefit plan' also does not mean any plan

1 implemented or administered through the Department of Health and  
2 Human Services or its representatives. 'Health benefit plan' does not  
3 mean any of the following kinds of insurance:

- 4 a. Accident.  
5 b. Credit.  
6 c. Disability income.  
7 d. Long-term or nursing home care.  
8 e. Medicare supplement.  
9 f. Specified disease.  
10 g. Dental or vision.  
11 h. Coverage issued as a supplement to liability insurance.  
12 i. Workers' compensation.  
13 j. Medical payments under automobile or homeowners.  
14 k. Insurance under which benefits are payable with or without  
15 regard to fault and that are statutorily required to be contained in  
16 any liability policy or equivalent self-insurance.  
17 l. Hospital income or indemnity.

18 (4) 'Insurer' means an insurance company subject to this Chapter, a hospital  
19 or medical service corporation organized under Article 65 of this  
20 Chapter, a health maintenance organization organized under Article 67  
21 of this Chapter, and a multiple employer welfare arrangement subject to  
22 Article 49 of this Chapter.

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

25 (6) 'Pharmacy provider contract' means a contract or agreement between a  
26 pharmacy and an insurer or a third-party administrator under which the  
27 pharmacy agrees to redeem prescription card benefits provided by a  
28 health benefit plan or insurer or provided or administered by a third-  
29 party administrator.

30 (7) 'Prescription card benefit' means a benefit for prescription drugs and  
31 related pharmacy services provided by a health benefit plan, an insurer,  
32 or provided or administered by a third-party administrator. A  
33 prescription card benefit is characterized by all of the following:

- 34 a. The prescription card benefit is evidenced by a benefit  
35 identification number which may be contained or presented on a  
36 prescription card.  
37 b. The prescription card benefit is redeemed and processed by the  
38 pharmacy at the time the prescription is filled through electronic  
39 transmission to the insurer or third-party administrator.  
40 c. The insurer or third-party administrator requires the beneficiary  
41 or person redeeming the prescription card benefit to pay the  
42 pharmacy a co-payment predetermined by the insurer or third-  
43 party administrator.

- 1           d.       The insurer or third-party administrator pays a portion of the cost  
2               for the prescription to the pharmacy.
- 3       (8)       'Redeem' means the process by which a person who has a prescription  
4               card benefit applies through a pharmacy to use the prescription card  
5               benefit on the cost of a prescription being filled by the pharmacy. This  
6               process includes an application for use of the prescription card benefit  
7               by the pharmacy to the insurer or third-party administrator, with the  
8               application usually being made by electronic transmission through  
9               computers, and with electronic transmission response from the insurer  
10              or third-party administrator verifying the prescription card benefit, the  
11              amount to be reimbursed to the pharmacy for the prescription  
12              transaction, and the amount, if any, of a co-payment to be paid by the  
13              beneficiary.
- 14       (9)       'Third-party administrator' means a person who does any of the  
15               following in connection with a health benefit plan or a prescription card  
16               benefit:
- 17           a.       Directly or indirectly solicits, effects, or provides coverage.  
18           b.       Underwrites.  
19           c.       Collects charges or premiums.  
20           d.       Adjusts or settles claims.
- 21       (e)       A person who has a prescription card benefit may redeem the prescription card  
22               benefit at any pharmacy in this State willing to redeem the prescription card benefit.
- 23       (f)       A pharmacy may redeem a person's prescription card benefit irrespective of  
24               whether the pharmacy has entered into a pharmacy provider contract with the entity  
25               providing or administering the prescription card benefit. When a pharmacy redeems a  
26               prescription card benefit, the insurer or third-party administrator shall provide to the  
27               pharmacy as part of the information transmitted the renewal date of the person's  
28               prescription card benefits.
- 29       (g)       An insurer or third-party administrator may not restrict or coerce a  
30               beneficiary's choice of pharmacy at which to redeem the prescription card benefit.
- 31       (h)       Nothing in this section prevents a pharmacy from entering into a pharmacy  
32               provider contract.
- 33       (i)       In redeeming prescription card benefits, a pharmacy may establish its own  
34               price or charge for the prescription, not to exceed the published average wholesale price  
35               plus five percent (5%), unless the pharmacy has agreed otherwise by the terms of a  
36               pharmacy provider contract.
- 37       (j)       The pharmacy may charge the person redeeming the prescription card benefit  
38               for services that are in addition to the filling of the prescription, including, but not limited  
39               to, delivery services, unless the pharmacy has agreed otherwise by the terms of a  
40               pharmacy provider contract.
- 41       (k)       If the price or charge for the prescription and pharmacy services established by  
42               the pharmacy is greater than the sum of the co-payment and the prescription card benefit,  
43               the person redeeming the prescription card benefit shall be responsible for paying the

1 pharmacy the difference between the prescription card benefit and the price or charge for  
2 the prescription and services.

3 (l) At the earliest practical time, before filling the prescription and if the  
4 information is available, the pharmacy shall inform the person redeeming the prescription  
5 card benefit of any difference between the sum of the prescription card benefit and the  
6 co-payment and the price charged by the pharmacy. The pharmacy must also post a  
7 notice that is clearly visible and informs customers that the pharmacy's price or charge  
8 for the prescription and pharmacy services may exceed the co-payment.

9 (m) If a person redeems a prescription card benefit at a pharmacy that is not a party  
10 to a pharmacy provider contract with an insurer or third-party administrator, then the  
11 insurer or third-party administrator shall redeem the prescription card benefit and  
12 reimburse the pharmacy in the same manner, to the same extent, and at the same rate as it  
13 would have had the prescription card benefit been redeemed pursuant to a pharmacy  
14 provider contract.

15 (n) An insurer or third-party administrator that provides a prescription card benefit  
16 shall inform health benefit plan policyholders that the prescription card benefit may be  
17 redeemed at the pharmacy of the policyholder's choice. The information shall be  
18 communicated to the policyholder through reasonable means, on a timely basis, and at  
19 regular intervals. If the information provided states that the cost to the policyholder may  
20 be higher based on a pharmacy's price for the prescription and services, then the  
21 information shall also provide in the same manner and format that the cost to the  
22 policyholder may be lower based on the pharmacy's price for the prescription and  
23 services. The information required by this section shall be included in a written summary  
24 or description of the health benefit plan, plan summaries, and explanation of benefits as  
25 well as other written communications furnished to policyholders where prescription  
26 benefits are mentioned.

27 (o) An insurer or third-party administrator may communicate with its  
28 policyholders the names and locations of pharmacies that have agreed by pharmacy  
29 provider contracts to fill prescriptions without any charge to the policyholder other than  
30 the co-payment required by the insurer or third-party administrator. If the  
31 communication is made, however, it must also state in the same communication and in  
32 the same format that the prescription card benefit may be redeemed at any pharmacy in  
33 the State willing to redeem it.

34 (p) Any provision of a pharmacy provider contract that is in conflict with this  
35 section is void to the extent of the conflict.

36 (q) An insurer or third-party administrator that violates this section shall be subject  
37 to G.S. 58-2-70. However, if pursuant to G.S. 58-2-70(d), monetary civil penalties are  
38 directed by the Commissioner, for the purposes of this section, these penalties shall not  
39 be less than one thousand dollars (\$1,000) per day, nor more than ten thousand dollars  
40 (\$10,000) per day.

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

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

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

9           Section 4. Of the funds appropriated to the Department of Insurance for the  
10 1999-2000 fiscal year, the sum of five thousand dollars (\$5,000) shall be used by the  
11 Department to monitor the effects of this act on persons whose health insurance coverage  
12 provides prescription card benefits.

13           Section 5. This act is effective when it becomes law and expires September  
14 30, 2003.