

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 885
Judiciary II Committee Substitute Adopted 5/10/93

Short Title: Health Ins. – Pharmacy of Choice.

(Public)

Sponsors:

Referred to:

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT CONSUMERS HAVE THE RIGHT TO SELECT THE
PHARMACY OF THEIR CHOICE.

The General Assembly of North Carolina enacts:

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

"§ 58-51-58. Pharmacy of choice.

(a) This section shall apply to all health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of North Carolina. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any 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 enrollees of its health benefit plan; provided, however, this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services. This section shall not apply to any federal program, clinical trial program, or hospital licensed pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing prescription drugs to its patients.

(b) As used in this section:

(1) 'Copayment' means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service with their insurer paying the remainder of the charge. The copayment is

- 1 incurred at the time the service is used. The copayment may be a fixed
2 or variable amount.
- 3 (2) 'Contract provider' means a pharmacy granted the right to provide
4 prescription drugs and pharmacy services according to the terms of the
5 insurer.
- 6 (3) 'Health benefit plan' is as that term is defined in G.S. 58-50-110(11).
- 7 (4) 'Insurer' means any entity that provides or offers a health benefit plan.
- 8 (4) 'Pharmacy' means a pharmacy registered with the North Carolina
9 Board of Pharmacy.
- 10 (c) The terms of a health benefit plan shall not:
- 11 (1) Prohibit or limit a resident of this State, who is eligible for
12 reimbursement for pharmacy services as a participant or beneficiary of
13 a health benefit plan, from selecting a pharmacy of his or her choice
14 when the pharmacy has agreed to participate in the health benefit plan
15 according to the terms offered by the insurer;
- 16 (2) Deny a pharmacy the opportunity to participate as a contract provider
17 under a health benefit plan if the pharmacy agrees to provide pharmacy
18 services that meet the terms and requirements, including terms of
19 reimbursement, of the insurer under a health benefit plan;
- 20 (3) Impose upon a beneficiary of pharmacy services under a health benefit
21 plan any copayment, fee, or condition that is not equally imposed upon
22 all beneficiaries in the same benefit category, class, or copayment level
23 under the health benefit plan;
- 24 (4) Impose a monetary disincentive or penalty under a health benefit plan
25 that would affect a beneficiary's choice of pharmacy. Monetary
26 disincentives or penalties include, without limitation, higher
27 copayment, a reduction in reimbursement for services, or promotion of
28 one pharmacy over another;
- 29 (5) Reduce allowable reimbursement for pharmacy services to a
30 beneficiary under a health benefit plan because the beneficiary selects
31 a pharmacy of his or her choice, so long as that pharmacy has enrolled
32 with the health benefit plan under the terms offered to all pharmacies
33 in the plan coverage area; or
- 34 (6) Require a beneficiary, as a condition of payment or reimbursement, to
35 purchase pharmacy services, including prescription drugs, exclusively
36 through a mail-order pharmacy.
- 37 (d) A pharmacy, by or through a pharmacist acting on its behalf as its employee,
38 agent, or owner, may not waive, discount, rebate, or distort a copayment of any insurer,
39 policy, or plan, or a beneficiary's coinsurance portion of a prescription drug coverage or
40 reimbursement. A violation of this subsection shall be a violation of the Pharmacy
41 Practice Act subjecting the pharmacist as a licensee to disciplinary authority of the
42 North Carolina Board of Pharmacy pursuant to G.S. 90-85.38.
- 43 (e) At least 60 days before the effective date of any health benefit plan providing
44 reimbursement to North Carolina residents for prescription drugs, which restricts

1 pharmacy participation, the entity providing the health benefit plan shall notify, in
2 writing, all pharmacies within the geographical coverage area of the health benefit plan,
3 and offer to the pharmacies the opportunity to participate in the health benefit plan. All
4 pharmacies in the geographical coverage area of the plan shall be eligible to participate
5 under identical reimbursement terms for providing pharmacy services, including
6 prescription drugs. The entity providing the health benefit plan shall notify the
7 beneficiaries of the plan in writing at regular intervals, but at least every six months, of
8 the names and locations of pharmacies that are participating in the plan as providers of
9 pharmacy services and prescription drugs.

10 (f) If rebates or marketing incentives are allowed to pharmacies or other
11 dispensing entities providing services or benefits under a health benefit plan, these
12 rebates or marketing incentives shall be offered on an equal basis to all pharmacies and
13 other dispensing entities providing services or benefits under a health benefit plan when
14 pharmacy services, including prescription drugs, are purchased in the same volume and
15 under the same terms of payment.

16 (g) Any entity or insurer providing a health benefit plan is subject to G.S. 58-2-
17 70. A violation of this section shall subject the entity providing a health benefit plan to
18 the sanctions of revocation, suspension, or refusal to renew license in the discretion of
19 the Commissioner pursuant to G.S. 58-3-100.

20 (h) A violation of this section creates a civil cause of action for damages or
21 injunctive relief in favor of any person or pharmacy aggrieved by the violation.

22 (i) The Commissioner shall not approve any health benefit plan providing
23 pharmaceutical services which does not conform to this section.

24 (j) Any provision in a health benefit plan which is executed, delivered, or
25 renewed, or otherwise contracted for in this State that is contrary to any provision of this
26 section shall, to the extent of the conflict, be void.

27 (k) It shall be a violation of this section for any insurer or any person to provide
28 any health benefit plan providing for pharmaceutical services to residents of this State
29 that does not conform to the provisions of this section."

30 Sec. 2. This act becomes effective October 1, 1993.