

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 866\*  
Commerce Committee Substitute Adopted 4/29/97

Short Title: Prescription Drugs/Competition.

(Public)

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Sponsors:

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Referred to:

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April 15, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE  
3 PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL  
4 SERVICES.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 58-51-37A. Prescription drugs and pharmaceutical services benefits.**

9 (a) This section applies only to health benefit plans that provide benefits for  
10 prescription drugs and pharmaceutical services.

11 (b) The purposes of this section are:

12 (1) To promote competition among and continued availability of retail  
13 pharmacies that redeem benefits for prescription drugs and  
14 pharmaceutical services provided to consumers by a health benefit plan  
15 or insurance certificate.

16 (2) To prohibit anticompetitive restrictions in pharmacy provider contracts  
17 between a pharmacy and a health benefit plan, insurer, or third-party  
18 administrator.

- 1           (3)    To enable a pharmacy to establish without restriction its prices for both  
2           prescription drugs and pharmaceutical services, as well as to control its  
3           hours of operation.
- 4           (4)    To further ensure that consumers may redeem prescription drugs and  
5           pharmaceutical services benefits allowed by a health benefit plan or an  
6           insurer at the pharmacy of the beneficiary's choice.
- 7           (5)    To continue to enable a health benefit plan, insurer, or third-party  
8           administrator to establish prescription drug and pharmaceutical services  
9           benefits it provides to its beneficiaries or insureds, so long as in so  
10          doing it does not interfere with the right of the pharmacy to establish its  
11          own price or charge for the drug or service.
- 12       (c)    As used in this section:
- 13           (1)    'Benefit' or 'benefits' means a benefit for either prescription drugs or  
14           pharmaceutical services, or both, provided by a health benefit plan or an  
15           insurer.
- 16           (2)    'Drug' or 'prescription drug' means any substance subject to the Federal  
17           Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as amended.
- 18           (3)    'Health benefit plan' means an accident and health insurance policy or  
19           certificate; a nonprofit service corporation contract; a health  
20           maintenance organization subscriber contract; a plan provided by a  
21           multiple employer welfare arrangement; coverage provided by an  
22           employer under G.S. 97-93; or a plan provided by another benefit  
23           arrangement, to the extent permitted by the Employee Retirement  
24           Income Security Act of 1974, as amended, or by any waiver of or other  
25           exception to the act provided under federal law or regulation. 'Health  
26           benefit plan' does not mean accident only insurance, or credit insurance,  
27           or disability income insurance.
- 28           (4)    'Insurer' means any entity that provides or offers a health benefit plan,  
29           including, but not limited to, an entity subject to Article 49, Article 65,  
30           or Article 67 of this Chapter.
- 31           (5)    'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of  
32           the General Statutes to be registered with the North Carolina Board of  
33           Pharmacy. Unless otherwise expressly provided in this section, the term  
34           'pharmacy' also means a pharmacy that redeems benefits under a health  
35           benefit plan, insurer, or third-party administrator through a pharmacy  
36           provider contract or otherwise.
- 37           (6)    'Pharmacy provider contract' means a contract or agreement between a  
38           pharmacy and a health benefit plan, an insurer, or a third-party  
39           administrator under which the pharmacy agrees to redeem prescription  
40           drugs and pharmaceutical services benefits provided by a health benefit  
41           plan or insurer to the subscribers or beneficiaries of the plan or health  
42           insurance certificate.

1           (7) 'Third-party administrator' means a person who directly or indirectly  
2           solicits or effects coverage of, underwrites, collects charges or  
3           premiums, or adjusts or settles claims in connection with a health  
4           benefit plan.

5           (d) Notwithstanding G.S. 58-51-37, a health benefit plan, insurer, third-party  
6           administrator, or other entity shall not, directly or indirectly, restrict or prohibit a  
7           pharmacy that is not a party to a pharmacy provider contract from establishing its charge  
8           or price for prescription drugs and pharmaceutical services, or both, or its hours of  
9           operation.

10          (e) Subject to the provisions of this section, a benefit for prescription drugs or  
11          pharmaceutical services or both may be redeemed by the beneficiary at any pharmacy of  
12          the beneficiary's choice. The health benefit plan, insurer, third-party administrator, or  
13          other person or entity providing benefits shall redeem benefits for prescription drugs or  
14          pharmaceutical services provided by a pharmacy that is not a party to a pharmacy  
15          provider contract at the same rate and in the same manner as it redeems the benefits for  
16          the drugs or services provided by a pharmacy under a pharmacy provider contract.

17          (f) A health benefit plan, insurer, third-party administrator, or other person or  
18          entity providing benefits may not, directly or indirectly, restrict or financially coerce the  
19          beneficiary's choice of pharmacy.

20          (g) Notwithstanding G.S. 58-51-37, if the charge or price established by the  
21          pharmacy for a prescription drug or pharmaceutical service, or both, is greater than the  
22          benefit allowed by the health benefit plan or insurer for the drug or service, then the  
23          beneficiary is responsible for paying the pharmacy the difference between the benefit and  
24          the charge or price of the pharmacy for the prescription drug or pharmaceutical service,  
25          or both.

26          (h) A health benefit plan, insurer, or third-party administrator shall not restrict or  
27          prohibit, directly or indirectly, a pharmacy that is not a party to a pharmacy provider  
28          contract from charging the beneficiary for services rendered by the pharmacy that are in  
29          addition to charges for the drug, for dispensing the drug, or for patient counseling.

30          (i) A health benefit plan, insurer, or third-party administrator shall not do any act  
31          which promotes or recommends, directly or indirectly, one pharmacy, group of  
32          pharmacies, or other entity over any other pharmacy, group of pharmacies, or other  
33          entity, as a source for redeeming benefits to beneficiaries under a health benefit plan,  
34          when the purpose of the act is to influence a beneficiary's choice of pharmacy or when  
35          the health benefit plan, insurer, or third-party administrator has a financial interest in the  
36          choice of pharmacy or in the redeemed benefit transaction. Acts prohibited under this  
37          subsection include, but are not limited to:

38               (1) Reimbursing one pharmacy, group of pharmacies, or other entity for  
39               benefits at a reimbursement rate different from that allowed to another  
40               pharmacy, or group of pharmacies, or other entity under the plan for the  
41               identical prescription drugs or pharmaceutical services, or both, covered  
42               by the benefit; or

1           (2) Directly or indirectly influencing, or attempting to influence, a  
2 beneficiary's choice of pharmacy through communications to the  
3 beneficiary where an opinion or judgment is expressed as to what a  
4 pharmacy's charge or price should be, or as to what a beneficiary's co-  
5 payment difference should be; or

6           (3) By agreement or otherwise, requiring or coercing a beneficiary to  
7 redeem a benefit at a particular pharmacy, group of pharmacies, or other  
8 entity.

9           (j) The health benefit plan or the insurer shall inform all beneficiaries under the  
10 plan that benefits may be redeemed at any pharmacy which the beneficiary chooses. This  
11 information shall be communicated through reasonable means on a timely basis and at  
12 regular intervals. This information shall also be included in the written summary or  
13 description of the health benefit plan or insurance, as well as other written  
14 communications furnished to beneficiaries where benefits are mentioned.

15           (k) A pharmacy eligible to redeem benefits under a health benefit plan may  
16 announce and advertise that eligibility in a commercially reasonable manner.

17           (1) Penalties:

18           (1) The Commissioner of Insurance shall not approve any health benefit  
19 plan or policy providing prescription drugs or pharmaceutical services  
20 benefits that does not conform to the provisions of this section.

21           (2) Any provision of a health benefit plan that is executed, delivered, or  
22 renewed or otherwise contracted for in this State that is in conflict with  
23 any provision of this section shall be void, to the extent of the conflict.

24           (3) Any provision of a pharmacy provider contract between a health benefit  
25 plan, or insurer, or third-party administrator, or other person subject to  
26 the provisions of this section and a pharmacy, or pharmacist licensed  
27 under Article 4A of Chapter 90 of the General Statutes, that is in  
28 conflict with this section is void to the extent of the conflict.

29           (4) A violation of this section creates a civil cause of action for damages or  
30 injunctive relief in favor of any person, pharmacy, or other entity  
31 aggrieved by the violation.

32           (5) The Commissioner of Insurance shall investigate and sanction any  
33 person, health benefit plan, insurer, third-party administrator, or other  
34 person that violates the provisions of this section, pursuant to Chapter  
35 58 and other applicable law.

36           (6) A health benefit plan or insurer, or third-party administrator, or other  
37 person that violates this section shall be subject to the provisions of G.S.  
38 58-2-70 concerning civil penalties, restitution, and summary suspension  
39 of license or certificate; provided, however, if pursuant to G.S. 58-2-  
40 70(d), monetary civil penalties are directed by the Commissioner, for  
41 the purposes of this section, these penalties shall not be less than one  
42 thousand dollars (\$1,000) per day, nor more than ten thousand dollars  
43 (\$10,000) per day.

1           (7) If the Commissioner has reason to believe that a health benefit plan,  
2 insurer, third-party administrator, or other person or entity has failed to  
3 comply with this section, the Commissioner shall issue and serve upon  
4 the person or entity a statement of the charges in that respect and a  
5 notice of hearing to be held at the time and place fixed in the notice,  
6 which shall not be less than 10 days after the date of service of the  
7 notice. If, after hearing, the Commissioner finds that the person or  
8 entity is in violation of this section, the Commissioner shall reduce the  
9 finding to writing and issue and serve upon the person or entity an order  
10 requiring the person or entity to cease and desist from engaging in the  
11 violation. A person or entity required to cease and desist pursuant to  
12 this section may obtain a review of the cease and desist order in  
13 accordance with the procedures set forth in G.S. 58-63-35. A person or  
14 entity found to be in violation of this section shall be subject to civil  
15 monetary penalties for violations committed on and after the date the  
16 person or entity received the statement of charges and notice of hearing  
17 from the Commissioner.

18           (8) The Commissioner of Insurance shall have the authority granted by this  
19 Chapter to enforce violations of this section, including additional  
20 authority provided in this section.

21           (9) The Attorney General shall bring such actions as are necessary to  
22 enforce or prevent violations of this section, either through  
23 representation of the Commissioner of Insurance or otherwise."

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

27           Section 3. This act applies to every health benefit plan as defined in Section 1  
28 of this act that is delivered, issued for delivery, or renewed on or after October 1, 1997.  
29 For purposes of this act, renewal of a health benefit plan is presumed to occur on each  
30 anniversary of the date on which coverage was first effective on the person or persons  
31 covered by the health benefit plan.

32           Section 4. This act becomes effective October 1, 1997.