

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1277

Committee Substitute Reported Without Prejudice 4/29/99

Short Title: Pharmacy Choice/Competition.

(Public)

Sponsors:

Referred to:

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, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSURANCE TO MONITOR THE EFFECTS OF THIS ACT ON COVERED INDIVIDUALS.

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 otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and pharmacy services. This section does not apply to any federal program, clinical trial program, hospital, or other health care facility licensed

1 pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing
2 prescription drugs to its patients.

3 (b) The purposes of this section are:

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

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

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

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

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

15 (c) As used in this section:

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

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

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

35 a. Accident.

36 b. Credit.

37 c. Disability income.

38 d. Long-term or nursing home care.

39 e. Medicare supplement.

40 f. Specified disease.

41 g. Dental or vision.

42 h. Coverage issued as a supplement to liability insurance.

43 i. Workers' compensation.

- 1 j. Medical payments under automobile or homeowners.
2 k. Insurance under which benefits are payable with or without
3 regard to fault and that are statutorily required to be contained in
4 any liability policy or equivalent self-insurance.
5 l. Hospital income or indemnity.
6 (4) 'Insurer' means an insurance company subject to this Chapter, a hospital
7 or medical service corporation organized under Article 65 of this
8 Chapter, a health maintenance organization organized under Article 67
9 of this Chapter, and a multiple employer welfare arrangement subject to
10 Article 49 of this Chapter.
11 (5) 'Pharmacy' means a pharmacy that is required to be registered with the
12 North Carolina Board of Pharmacy.
13 (6) 'Pharmacy provider contract' means a contract or agreement between a
14 pharmacy and an insurer or a third-party administrator under which the
15 pharmacy agrees to redeem prescription card benefits provided by a
16 health benefit plan or insurer or provided or administered by a third-
17 party administrator.
18 (7) 'Prescription card benefit' means a benefit for prescription drugs or
19 pharmacy services provided by a health benefit plan, an insurer, or
20 provided or administered by a third-party administrator. A prescription
21 card benefit is characterized by all of the following:
22 a. The prescription card benefit is evidenced by a benefit
23 identification number which may be contained or presented on a
24 prescription card.
25 b. The prescription card benefit is redeemed and processed by the
26 pharmacy at the time the prescription is filled through electronic
27 transmission to the insurer or third-party administrator.
28 c. The insurer or third-party administrator requires the beneficiary
29 or person redeeming the prescription card benefit to pay the
30 pharmacy a co-payment predetermined by the insurer or third-
31 party administrator.
32 d. The insurer or third-party administrator pays a portion of the cost
33 for the prescription to the pharmacy.
34 (8) 'Redeem' means the process by which a person who has a prescription
35 card benefit applies through a pharmacy to use the prescription card
36 benefit on the cost of a prescription being filled by the pharmacy. This
37 process includes an application for use of the prescription card benefit
38 by the pharmacy to the insurer or third-party administrator, with the
39 application usually being made by electronic transmission through
40 computers, and with electronic transmission response from the insurer
41 or third-party administrator verifying the prescription card benefit, the
42 amount to be reimbursed to the pharmacy for the prescription

1 transaction, and the amount, if any, of a co-payment to be paid by the
2 beneficiary.

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

6 a. Directly or indirectly solicits, effects, or provides coverage.

7 b. Underwrites.

8 c. Collects charges or premiums.

9 d. Adjusts or settles claims.

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

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

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

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

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

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

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

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

40 (l) The pharmacy may charge the person redeeming the prescription card benefit
41 for services that are in addition to the filling of the prescription, including, but not limited
42 to, delivery services, unless the pharmacy has agreed otherwise by the terms of a
43 pharmacy provider contract.

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

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

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

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

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

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

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

37 Section 4. There is appropriated from the General Fund to the Department of
38 Insurance the sum of fifty thousand dollars (\$50,000) for the 1999-2000 fiscal year.
39 These funds shall be used by the Department to monitor the effects of this act on persons
40 whose health insurance coverage provides prescription card benefits.

41 Section 5. This act is effective when it becomes law.