

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 866*

Short Title: Prescription Drugs/Competition.

(Public)

Sponsors: Senators Rand; Ballance, Carpenter, Forrester, Foxx, Hartsell, Ledbetter, Martin of Pitt, and Shaw of Cumberland.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE
PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL
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:

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

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

(b) The purposes of this section are:

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

(2) To prohibit anticompetitive restrictions in pharmacy provider contracts between a pharmacy and a health benefit plan, insurer or third-party 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 drug 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. G.S. 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 drug 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 from establishing its charge or price for prescription drugs and pharmaceutical
8 services, or both, or its hours of operation.

9 (e) Subject to the provisions of this section, a benefit for prescription drugs or
10 pharmaceutical services or both may be redeemed by the beneficiary at any pharmacy of
11 the beneficiary's choice.

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

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

21 (h) A health benefit plan, insurer, or third-party administrator shall not restrict or
22 prohibit, directly or indirectly, a pharmacy from charging the beneficiary for services
23 rendered by the pharmacy that are in addition to charges for the drug, for dispensing the
24 drug, or for patient counseling. Any provision of a pharmacy provider contract that
25 restricts a pharmacy from charging and collecting for the additional service or services is
26 unenforceable to the extent of the conflict.

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

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

40 (2) Directly or indirectly influencing, or attempting to influence, a
41 beneficiary's choice of pharmacy through communications to the
42 beneficiary where an opinion or judgment is expressed as to what a

1 pharmacy's charge or price should be, or as to what a beneficiary's co-
2 payment difference should be; or

3 (3) By agreement or otherwise, recommending, requiring, coercing or
4 inducing a beneficiary to redeem a benefit at a particular pharmacy,
5 group of pharmacies, or other entity.

6 (j) The health benefit plan or the insurer shall inform all beneficiaries under the
7 plan that benefits may be redeemed at any pharmacy which the beneficiary chooses. This
8 information shall be communicated through reasonable means on a timely basis and at
9 regular intervals. This information shall also be included in the written summary or
10 description of the health benefit plan or insurance, as well as other written
11 communications furnished to beneficiaries where benefits are mentioned. If the health
12 benefit plan, insurer, or third-party administrator furnishes to a beneficiary the names of
13 pharmacies where benefits may be redeemed, then all pharmacies in the county or area of
14 the State where the beneficiary resides must be included.

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 (l) Penalties:

18 (1) The Commissioner of Insurance shall not approve any health benefit
19 plan or policy providing prescription drug 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, the Commissioner shall issue and serve upon the person or
4 entity a statement of the charges in that respect and a notice of hearing
5 to be held at the time and place fixed in the notice, which shall not be
6 less than 10 days after the date of service of the notice. If, after hearing,
7 the Commissioner finds that the person or entity is in violation of this
8 section, the Commissioner shall reduce the finding to writing and issue
9 and serve upon the person or entity an order requiring the person or
10 entity to cease and desist from engaging in the violation. A person or
11 entity required to cease and desist pursuant to this section may obtain a
12 review of the cease and desist order in accordance with the procedures
13 set forth in G.S. 58-63-35.

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

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

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

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

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