

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 758

Short Title: Prescription Drug Pricing/Access.

(Public)

Sponsors: Senators Blackmon, Sherron, Webster, and Foxx.

Referred to: Commerce

April 19, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PROHIBIT DISCRIMINATION IN PRESCRIPTION DRUG PRICING,
2 TO PROHIBIT COST SHIFTING BY MANUFACTURERS AND SELLERS OF
3 PHARMACEUTICAL DRUGS, AND TO PROVIDE CONSUMERS THE
4 FREEDOM OF CHOOSING THE PHARMACY AT WHICH TO REDEEM A
5 PRESCRIPTION DRUG BENEFIT.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 75 of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 4.**

11 **"Prescription Drug Pricing by Manufacturers and Sellers of Drugs.**

12 **"§ 75-100. Purpose.**

13 The purposes of this Article are:

- 14 (1) To promote the compelling interests of the consumers of North Carolina
15 who purchase pharmaceutical drugs and services.
16 (2) To prohibit discrimination and cost shifting in the pricing and sale of
17 prescription drugs by manufacturers or sellers of drugs.
18 (3) To promote fair competition in the pricing of pharmaceutical products
19 and services, including prescription drugs.

20 **"§ 75-101. Definitions.**

1 As used in this Article:

- 2 (1) 'Buying group' means an entity or association of persons or entities that
3 acts as an agent for its members in negotiating or facilitating prices in
4 sales transactions of drugs between manufacturers and the members of
5 the buying group.
- 6 (2) 'Charitable health care provider' means any health care provider
7 exempted from federal taxation by section 501(c)(3) of the Internal
8 Revenue Code that provides health care services to the public, the
9 majority of which services are provided free or at a reduced fee based
10 on the patient's ability to pay.
- 11 (3) 'Drug' or 'pharmaceutical product' means any substance subject to
12 section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21
13 U.S.C. §§ 301-392, as amended.
- 14 (4) 'Manufacturer' means any entity that manufactures drugs for sale to
15 purchasers, by direct sales, by sales to a wholesaler or to a buying
16 group, or by indirect sales through a wholesaler, distributor, a buying
17 group, or a pharmacy benefit manager.
- 18 (5) 'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of
19 the General Statutes to be registered with the North Carolina Board of
20 Pharmacy.
- 21 (6) 'Pharmacy benefit manager' is an entity that administers a health benefit
22 plan, during the course of which administration it may negotiate prices
23 with manufacturers or sellers for the purchase of drugs ultimately sold
24 and dispensed through the provisions of the health benefit plan
25 administered.
- 26 (7) 'Purchaser' means any entity doing business in this State that purchases
27 drugs from a manufacturer or seller, and that sells, dispenses, delivers,
28 or causes to be sold, dispensed, or delivered, drugs directly to
29 consumers in this State. A wholesaler is a 'purchaser' when it purchases
30 drugs for resale to entities doing business in this State that sell,
31 dispense, deliver, or cause to be sold, dispensed, or delivered, drugs
32 directly to consumers in this State. 'Purchaser' does not include:
- 33 a. The United States Department of Veterans Affairs; the United
34 States Department of Defense; entities covered under section
35 256b(a)(4) of the Public Health Service Act, as amended, or any
36 other federal, State, or local government program that directly
37 procures pharmaceuticals; and
- 38 b. Charitable health care providers.
- 39 (8) 'Seller' means any entity that sells drugs to purchasers. 'Entity' includes,
40 but is not limited to, manufacturers of drugs; wholesalers and
41 distributors of drugs; and buying groups, the primary purpose of which
42 is the purchase of drugs or negotiation of the purchase of drugs for sale,
43 dispensing, or delivery by the members of the buying group.

1 (9) 'Wholesaler' means any entity other than a manufacturer that sells drugs
2 to purchasers. 'Wholesaler' includes buying groups, the primary
3 purpose of which is the purchase of drugs or negotiation of the purchase
4 price of drugs for sale, resale dispensing, or delivery by the members of
5 the buying group.

6 **"§ 75-102. Scope of Article.**

7 This Article applies to all transactions involving the sale by manufacturers or sellers
8 of drugs to purchasers doing business in this State, including, but not limited to,
9 wholesalers and buying groups when the transactions cover drugs that are purchased for
10 the sale, dispensing, and delivery to consumers in this State.

11 **"§ 75-103. Drug pricing.**

12 (a) A manufacturer or seller shall sell drugs, during the same time period, to all
13 purchasers on the same terms and conditions, whether the sale is a direct transaction
14 between a manufacturer and a purchaser or one in which a manufacturer sells to a
15 purchaser through an agreement or contractual arrangement negotiated or implemented
16 by a buying group or pharmacy benefit manager or implemented by one or more
17 wholesalers. Rebates, discounts, or similar transactions or mechanisms not otherwise
18 allowed by law shall be considered in determining the terms and conditions of a sale.

19 (b) A manufacturer or seller may offer a price reduction or price discount so long
20 as:

21 (1) The price reduction or discount is made available to all purchasers,
22 including wholesalers functioning as purchasers, and

23 (2) The price reduction or discount is permissible under the State and
24 federal antitrust laws, including, but not limited to, the Robinson-
25 Patman Act, 15 U.S.C. § 13 et seq.

26 (c) No manufacturer or seller shall provide price reductions or price discounts to
27 any purchaser based solely on the class of trade to which the purchaser belongs.

28 (d) This section applies to the sale, dispensing, or delivery of drugs to purchasers,
29 which drugs are sold, dispensed, or delivered to a purchaser or a purchaser's facility,
30 regardless of where the facility is located.

31 (e) Before January 1 of each year, a manufacturer or seller selling drugs to the
32 State, its agencies, or its institutions shall submit to the Secretary of the Department of
33 Human Resources an affidavit stating that it will not engage in conduct prohibited by this
34 section.

35 (f) A violation of this Article creates a civil cause of action for damages or
36 injunctive relief in favor of any person, wholesaler, entity, or pharmacy aggrieved by the
37 violation.

38 (g) The Attorney General may investigate any allegations of a violation of this
39 Article made by a purchaser or an association or group of purchasers. If an investigation
40 discloses a violation, the Attorney General may seek an injunction, and he may seek
41 damages caused by a violation.

42 (h) The provisions of this Article shall not affect, and are supplementary to, any
43 rights and remedies otherwise provided by law.

1 **"§ 75-104. Purchase of drugs by State or political subdivisions.**

2 The State or any of its political subdivisions shall not purchase any drugs from a seller
3 or manufacturer that engages in price discrimination prohibited by G.S. 75-103, including
4 a transaction in which a manufacturer or seller sells to the State through a contractual
5 arrangement implemented by one or more wholesalers."

6 Sec. 2. Article 51 of Chapter 58 of the General Statutes is amended by adding
7 a new section to read:

8 **"§ 58-51-38. Consumer access to pharmacy of choice.**

9 (a) The purposes of this section are:

10 (1) To promote the compelling interests of the consumers of North Carolina
11 who purchase pharmaceutical drugs and services.

12 (2) To enable residents of this State access to pharmaceutical drugs and
13 services at affordable prices.

14 (3) To prohibit restrictions upon a consumer's ability to utilize a drug or
15 prescription benefit under a health benefit plan or insurance policy at the
16 pharmacy of his or her choice, provided he or she pays any difference
17 between the plan benefit and the cost of the drugs.

18 (4) To promote fair competition in the selling and dispensing of
19 pharmaceutical products and services, including prescription drugs.

20 (b) As used in this section:

21 (1) 'Drug' or 'pharmaceutical product' means any substance subject to
22 section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21
23 U.S.C. §§ 301-392, as amended.

24 (2) 'Health benefit plan' has the same meaning as in G.S. 58-50-110(11),
25 and also means any plan offered by insurers licensed pursuant to Article
26 51 of Chapter 58 of the General Statutes; any plan offered by hospital,
27 medical, and dental service corporations licensed pursuant to Article 65
28 of Chapter 58 of the General Statutes; any plan offered by preferred
29 provider arrangements registered pursuant to G.S. 58-50-50 and G.S.
30 58-50-55; any plan provided by multiple employer welfare
31 arrangements licensed pursuant to Article 49 of Chapter 58 of the
32 General Statutes; and any other employee benefit plan, including, but
33 not limited to State, county, and municipal health benefit plans in which
34 insurance risk is transferred to another party through prepaid, capitated
35 arrangements or other risk-sharing or risk-transferring agreements.

36 (3) 'Insurer' means any entity that provides or offers a health benefit plan.

37 (4) 'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of
38 the General Statutes to be registered with the North Carolina Board of
39 Pharmacy.

40 (c) A health benefit plan may provide a benefit for pharmaceutical services,
41 including drugs. If the health benefit plan provides a pharmaceutical services benefit, the
42 terms of one health benefit plan shall not violate the provisions of this section in the
43 utilization of the benefit or the attempt to establish the level of the reimbursement benefit.

1 (d) A health benefit plan that provides a pharmaceutical services benefit shall
2 inform beneficiaries of the plan that any benefit for pharmaceutical services and drugs
3 may be redeemed at any pharmacy without a reduction or offset of the reimbursement
4 under the plan.

5 (e) A health benefit plan shall not promote one pharmacy or group of pharmacies
6 or one source over any other pharmacy, pharmacies, or sources for pharmaceutical
7 benefits to be redeemed under a health benefit plan.

8 (f) The beneficiary of a health benefit plan providing a pharmaceutical services
9 benefit may utilize or redeem the pharmaceutical services benefit, without direct or
10 indirect restriction or financial coercion by the health benefit plan, its administrator, the
11 beneficiary's employer, or any other person or entity having a financial stake in the plan.

12 (g) The pharmacy shall, without restriction by any person, plan, or entity, establish
13 its charge or price for selling and dispensing pharmaceutical products and services,
14 including drugs. There shall be no restriction or coercion, direct or indirect, not
15 otherwise permitted by law on the establishment of the pharmacy's selling price.

16 (h) If the price for the pharmaceutical services or prescription drug is higher than
17 the prescription benefit under a health benefit plan, the beneficiary shall be responsible
18 for paying or arranging to pay the pharmacy for this difference at the time of the purchase
19 of the pharmaceutical service or drug.

20 (i) If for any reason reliable information regarding a health benefit plan
21 beneficiary's deductible or copay is not available at the time of the purchase transaction,
22 the beneficiary shall be responsible for paying or making arrangements to pay for the
23 services or drugs at the time of the transaction.

24 (j) An entity that provides a health benefit plan shall not directly or indirectly
25 influence or attempt to influence the price established by the pharmacy for
26 pharmaceutical services, including drugs.

27 (k) Penalties. –

28 (1) Any health benefit plan that violates this section shall be subject to an
29 administrative fine imposed by the Commissioner of Insurance pursuant
30 to Chapter 150B of the General Statutes of no less than one thousand
31 dollars (\$1,000) per violation and no more than fifty thousand dollars
32 (\$50,000). This penalty is in addition to sanctions of revocation,
33 suspension, or refusal to renew license pursuant to G.S. 58-3-100.

34 (2) A violation of this section creates a civil cause of action for damages or
35 injunctive relief in favor of any person, wholesaler, entity, or pharmacy
36 aggrieved by the violation.

37 (3) The Attorney General shall bring actions to enforce the provisions of
38 this section and to prevent further violations.

39 (4) The Commissioner of Insurance shall not approve any health benefit
40 plan providing pharmaceutical services benefits that does not conform
41 to this section.

- 1 (5) Any provision in the health benefit plan that is executed, delivered, or
2 renewed, or otherwise contracted for in this State that is contrary to any
3 provision of this section shall, to the extent of the conflict, be void.
- 4 (6) It is a violation of this section for any insurer or any person to provide
5 any health benefit plan providing for pharmaceutical services and drugs
6 to residents of this State that does not conform to the provisions of this
7 section.
- 8 (7) The provisions of any pharmacy provider contract between a person
9 subject to the provisions of this section and a pharmacist licensed under
10 Article 4A of Chapter 90 of the General Statutes that are not in
11 compliance with the provisions of this section shall be null and void.
- 12 (8) The Commissioner of Insurance shall investigate the failure of a health
13 benefit plan or an entity that provides a health benefit plan to comply
14 with the provisions of this section. Upon good cause shown, the
15 Commissioner shall issue a cease and desist order instructing the plan or
16 person responsible for the health benefit plan to bring the plan into
17 compliance. The Commissioner of Insurance shall impose an
18 administrative fine of ten thousand dollars (\$10,000) per day for failure
19 to bring the benefit plan into compliance. If a licensed insurer, health
20 maintenance organization, or hospital, medical, or dental service
21 corporation is the subject of a cease and desist order and continues to be
22 in noncompliance with this section, the continued noncompliance shall
23 result in the suspension or revocation of its licensure pursuant to G.S.
24 58-2-70."

25 Sec. 3. If any provision of this act or the application of this act to any person
26 or circumstance is held invalid, the other provisions or applications of this act shall be
27 given effect without the invalid provisions or applications.

28 Sec. 4. Existing health benefit plans that are subject to the provisions of G.S.
29 58-51-38, as enacted in Section 2 of this act, shall be brought into compliance with the
30 provisions of G.S. 58-51-38 by December 31, 1995. On January 1, 1996, the
31 Commissioner of Insurance shall revoke the approval of any health benefit plan that the
32 Commissioner of Insurance had previously approved that does not comply with the
33 provisions of G.S. 58-51-38. No health benefit plan shall be marketed, sold, or
34 contracted for after January 1, 1996, that includes a benefit plan that does not comply
35 with the provisions of G.S. 58-51-38.

36 Sec. 5. This act becomes effective October 1, 1995.