

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH50212-LN-118 (3/27)

Short Title: Bulk Drug Purchasing. (Public)

Sponsors: Representatives Insko, Glazier, and Ross (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CENTRAL PURCHASING ENTITY TO PROVIDE FOR BULK PURCHASING OF PHARMACEUTICALS FOR STATE AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Effective January 1, 2004, Article 3 of Chapter 143 of the General Statutes is amended by designating G.S. 143-48 through 143-63.1 as Part 1 with the heading "Purchasing Through the Department of Administration".

SECTION 1.(b) Effective January 1, 2004, Article 3 of Chapter 143 of the General Statutes is amended by adding the following new Part to read:

"Part 2. Prescription Drug Bulk Purchasing Program.

§ 143-64A. Findings; intent.

(a) The General Assembly finds the following:

- (1) Several State agencies cover the cost of prescription drugs through programs administered by the agency.
- (2) By coordinating the purchasing of prescription drugs for individuals covered under State programs, the State can negotiate lower prices on drugs by purchasing in bulk.
- (3) The State should use its purchasing power to assist residents in obtaining prescription drugs at a reasonable cost.

(b) It is the intent of the General Assembly to do the following:

- (1) Initiate bulk purchasing of prescription drugs, provide pharmaceutical purchasing procedures and options for State agencies, and require manufacturers and wholesale distributors of pharmaceuticals in the State to report purchase prices of drugs.
- (2) Provide to business groups, health care service plans, hospitals, hospital associations, and individual consumers the opportunity to

1 participate in a State-administered prescription drug bulk purchasing
2 program.

3 **"§ 143-64B. Definitions.**

4 As used in this Part, unless the context clearly requires otherwise:

5 (1) 'Audit' means a systemic examination and collection of sufficient,
6 competent evidential matter needed for an auditor to attest to the
7 fairness of management's assertions in financial statements and to
8 evaluate whether management has sufficiently and effectively carried
9 out its responsibilities and complied with applicable laws and rules.

10 (2) 'Department' means the Department of Administration.

11 (3) 'Division' means the Prescription Drug Bulk Purchasing Division in
12 the Department of Administration.

13 (4) 'Formulary' means a listing of drug products that may be dispensed as
14 a result of purchasing covered under this Part.

15 (5) 'Pharmaceutical benefits manager' means an entity that procures
16 prescription drugs at a negotiated rate under a contract and that may
17 serve as a third-party prescription drug benefit administrator.

18 (6) 'Prescription drug purchasing agreement' means a written agreement to
19 pool prescription drug purchases in order to negotiate the best possible
20 prices and to delegate authority to the Division to make prescription
21 drug contracts for these purchases.

22 (7) 'Prescription drug', 'pharmaceutical', or 'drug' means a substance
23 recognized as a drug in the United States Pharmacopoeia, the National
24 Formulary, or the Homeopathic Pharmacopoeia of the United States,
25 or any supplement thereto, that is dispensed pursuant to a prescription
26 issued by an authorized health care practitioner for use in the
27 diagnosis, cure, mitigation, treatment, or prevention of disease in a
28 human, as well as a prescription drug delivery system, testing kit, and
29 related supplies.

30 (8) 'Program' means the Prescription Drug Bulk Purchasing Program
31 established under this Part.

32 **"§ 143-64C. Prescription Drug Bulk Purchasing Program established.**

33 (a) There is established the Prescription Drug Bulk Purchasing Program. The
34 Governor shall create a Prescription Drug Bulk Purchasing Division in the Department
35 of Administration for the bulk purchasing of pharmaceuticals for State agencies. Unless
36 the State agency is authorized to elect not to participate in the Program pursuant to
37 subsection (*) of G.S. *, the following State agencies shall participate in the Program.

38 (1) The Department of Correction.

39 (2) The Department of Crime Control and Public Safety.

40 (3) The Department of Health and Human Services.

41 (4) The Teachers' and State Employees' Comprehensive Major Medical
42 Plan.

43 (5) The University of North Carolina.

1 (b) Any State department, agency, institution, or program other than those listed
2 in subsection (a) of this section, and any political subdivision of the State, may elect to
3 participate in the Program.

4 (c) Any business group, hospital, hospital association, or other private entity may
5 elect to participate in the Program.

6 **"§ 143-64D. Prescription Drug Bulk Purchasing Division; duties.**

7 (a) The Division shall execute prescription drug purchasing agreements with all
8 State agencies listed in G.S. 143-65C(a). The Division shall develop procedures that
9 these State agencies shall follow in purchasing pharmaceuticals. An agency listed in
10 G.S. 143-65C(a) may elect not to participate in the Program, pursuant to this Part and
11 the procedures established by the Division, only if the agency is able to purchase the
12 pharmaceuticals for a lower price than available through the Division. An agency
13 electing not to participate shall report to the Division the price of any pharmaceutical
14 purchased and the name of the wholesaler, retailer, or manufacturer selling the
15 pharmaceuticals.

16 (b) At the option of any entity specified in G.S. 143-65C(b), the Division may
17 execute prescription drug purchasing agreements with the entity.

18 (c) At the option of any private entity, the Division may execute prescription
19 drug purchasing agreements with that entity, including a self-funded benefit plan and
20 business association, for combined purchasing of pharmacy benefits management
21 services or pharmaceutical products. No private entity may be compelled to participate
22 in the Program.

23 (d) The Division may renegotiate and amend any existing prescription drug
24 contracts to which the Division is a party for the purpose of managing rising drug costs.

25 **"§ 143-64E. Program contract with pharmaceutical benefits manager; drug**
26 **formulary.**

27 (a) The Division shall appoint and contract with a pharmaceutical benefits
28 manager for purposes of the Program. The pharmaceutical benefits manager shall do all
29 of the following:

30 (1) Negotiate price discounts on prescription drugs with prescription drug
31 suppliers.

32 (2) Purchase prescription drugs for participating State, local government,
33 and private entities.

34 (3) Establish a single drug formulary.

35 (b) The Governor shall provide for the development of a single drug formulary
36 for use in conjunction with the Program. Prescription drugs included in the formulary
37 shall demonstrate effective treatment of illness for each therapeutic class at the most
38 affordable price. The formulary may include generic or brand name drugs.

39 (c) Contracts proposed by the pharmacy benefits manager shall be executed by
40 the Division following approval by the Office of State Budget and Management
41 pursuant to G.S. 143-64*.

42 (d) The Division may negotiate and execute pharmaceutical benefits management
43 contracts for the purpose of managing rising prescription drug costs for the State and all
44 parties that have executed prescription drug purchasing agreements with the Division.

"§ 143-64F. Contracts reviewed by Office of State Budget and Management.

The Office of State Budget and Management shall review any proposed contract, or amendment to an existing contract, authorized by this Part before the contract is executed by the Division. If the Office of State Budget and Management makes the following findings, the Department shall approve the contract and authorize the Division to execute the contract:

- (1) The proposed contract meets the requirements of this Part and would assist in effectively managing the costs for the programs involved.
- (2) The proposed contract would not result in jeopardizing State funds or funds due the State.

"§ 143-64G. Program funds subject to audit.

The State Auditor shall audit funds expended pursuant to any prescription drug purchasing agreement or pharmaceutical benefits management contract executed under this Part for each fiscal year that the agreement or contract is in effect. The Division shall provide information and documents requested by the State Auditor pursuant to this section. The State Auditor shall report the results of the audit to the General Assembly and the Governor upon completion of the audit, but not later than December 31, after the end of the fiscal year subject to the audit.

"§ 143-64H. Strategies for managing increases in prescription drug costs.

The Division may explore innovative strategies by which the State may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the State's citizens, including by any of the following means:

- (1) Enacting fair prescription drug pricing policies.
- (2) Providing for discount policies or rebate programs for seniors and persons without prescription drug insurance coverage.
- (3) Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices.
- (4) Establishing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand-name drugs when available and appropriate, prescribing older, less costly drugs instead of newer, more expensive drugs when appropriate, and prescribing lower dosages of prescription drugs when available and appropriate.
- (5) Studying the feasibility and appropriateness of requiring prescription drug manufacturers to disclose to the State expenditures for advertising, marketing, and promotion, as well as for provider incentives and research and development efforts.
- (6) Studying the feasibility and appropriateness of executing prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts.
- (7) Studying the feasibility and appropriateness of authorizing the establishment of voluntary private buying clubs, cooperatives, or

1 purchasing alliances comprised of small businesses or individuals for
2 the purpose of purchasing prescription drugs at optimal prices.

- 3 (8) Implementing other strategies, as permitted under State and federal
4 law, aimed at managing escalating prescription drug prices and
5 increasing affordable access to prescription drugs for all State citizens.

6 **"§ 143-64I. Distribution of prescription drugs.**

7 The Division shall use existing distribution networks, including wholesale and retail
8 distributors, to distribute pharmaceuticals for purposes of this Part.

9 **"§ 143-64J. Pharmaceutical manufacturers to file information with Department.**

10 (a) A person who manufactures a drug, including a person who manufactures a
11 generic drug, that is sold in this State shall file with the Department, annually or more
12 frequently as determined by the Department, the following:

13 (1) The average manufacturer price for the drug.

14 (2) The price that each wholesaler in this State pays the manufacturer to
15 purchase the drug.

16 (b) As used in this section, "average manufacturer price" means the average price
17 paid to the manufacturer for a drug in the United States by wholesalers for drugs
18 distributed to the retail pharmacy class of trade, after deducting customary prompt pay
19 discounts.

20 (c) The Department and the Attorney General may investigate the manufacturer
21 to determine the accuracy of the information provided under this section. The Attorney
22 General may take appropriate action to enforce this section.

23 (d) The Department shall report the information collected under this section to
24 the Division.

25 **"§ 143-64K. Wholesalers to file information upon request.**

26 (a) Upon the request of the Division, a person who engages in the wholesale
27 distribution of drugs in this State shall file with the Department information showing the
28 actual price at which the wholesale distributor sells a particular drug to a retail
29 pharmacy.

30 (b) The Department shall adopt rules to implement this section.

31 (c) The Attorney General may investigate the distributor to determine the
32 accuracy of the information provided under this section. The Attorney General may take
33 appropriate action to enforce this section."

34 **SECTION 2.** There is appropriated from the General Fund to the
35 Department of Administration the sum of one hundred thousand dollars (\$100,000) for
36 the 2003-2004 fiscal year and the sum of one hundred thousand dollars (\$100,000) for
37 the 2004-2005 fiscal year. These funds shall be used to develop and administer the
38 Prescription Drug Bulk Purchasing Program enacted by this act.

39 **SECTION 3.** Section 2 of this act becomes effective July 1, 2003. The
40 remainder of this act is effective when it becomes law.