

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80252-LN-100A (2/28)

Short Title: Prescription Drug Benefit Purchasing Program. (Public)

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

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PRESCRIPTION DRUG BENEFIT PURCHASING PROGRAM IN THE OFFICE OF THE GOVERNOR FOR THE PURPOSE OF REDUCING STATE EXPENDITURES FOR PRESCRIPTION DRUGS THROUGH VOLUME PURCHASING.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"Article 78.

"Prescription Drug Benefit Purchasing Program.

"§ 143-735. Findings; intent.

The General Assembly finds the following:

- (1) Several State agencies contract independently for the administration of prescription drug benefits provided under State health care programs administered by the agency.
- (2) Several states have realized significant savings in prescription drug benefit costs by centralizing the management of prescription drug benefits and benefit costs for all state agencies.
- (3) The State could realize significant reduction in total cost of prescription drug benefits administered by all State agencies and institutions by negotiating one price to cover prescription drug benefits for all persons who receive these benefits.
- (4) The State should use its purchasing power to assist residents who qualify for prescription drug benefits under State administered health care programs in obtaining prescription drugs at a reasonable cost.

"§ 143-736. Definitions.

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

- 1 (1) 'Executive director' means the Executive Director of the Program.
2 (2) 'Pharmaceutical benefits manager' or 'PBM' means an entity that
3 procures prescription drugs at a negotiated rate under a contract and
4 that may serve as a third-party prescription drug benefit administrator.
5 (3) 'Prescription drug purchasing agreement' means a written agreement to
6 pool prescription drug purchases in order to negotiate the best possible
7 prices and to delegate authority to make prescription drug contracts for
8 these purchases.
9 (4) 'Prescription drug', 'pharmaceutical', or 'drug' means a substance
10 recognized as a drug in the United States Pharmacopoeia, the National
11 Formulary, or the Homeopathic Pharmacopoeia of the United States,
12 or any supplement thereto, that is dispensed pursuant to a prescription
13 issued by an authorized health care practitioner for use in the
14 diagnosis, cure, mitigation, treatment, or prevention of disease in a
15 human, as well as a prescription drug delivery system, testing kit, and
16 related supplies.
17 (5) 'Program' means the Prescription Drug Benefit Purchasing Program
18 established under this Part.
19 (6) 'Purchasing' or 'purchase' means paying for or reimbursing for
20 prescription drugs covered under a State administered health care
21 program. 'Purchasing' or 'purchase' does not mean maintaining an
22 inventory of prescription drugs for dispensing to State health care
23 program beneficiaries.

24 **"§ 143-737. Prescription Drug Benefit Purchasing Program established.**

25 (a) There is established in the Office of the Governor the Prescription Drug
26 Benefit Purchasing Program. The purpose of the Program is to achieve savings in State
27 expenditures for prescription drug benefits through price negotiation based on volume
28 purchasing for all State agencies that administer prescription drug benefits under State
29 health care programs. Except as otherwise provided by law, the following State agencies
30 shall participate in the Program.

- 31 (1) The Department of Correction.
32 (2) The Department of Health and Human Services.
33 (3) The Department of Juvenile Justice and Delinquency Prevention.
34 (4) The Teachers' and State Employees' Comprehensive Major Medical
35 Plan.

36 An agency listed in this subsection may elect not to participate in the Program only
37 if the agency is able to contract for the purchase of pharmaceuticals for a lower price
38 than available through the Program. An agency electing not to participate shall report to
39 the Executive Director the price of any pharmaceutical purchased and the name of the
40 wholesaler, retailer, or manufacturer selling the pharmaceuticals.

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

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

3 **"§ 143-738. Prescription Drug Benefit Purchasing Program; executive director.**

4 (a) The Governor shall appoint and set the salary of the Executive Director of the
5 Program, who shall serve at the pleasure of the Governor.

6 (b) The Executive Director may employ such clerical and professional personnel
7 as necessary to administer the Program.

8 **"§ 143-739. Pharmaceutical benefits manager.**

9 (a) The Executive Director shall contract with a pharmaceutical benefits manager
10 for purposes of negotiating prices for and administering prescription drug benefits
11 provided under State health care programs. The pharmaceutical benefits manager shall
12 do all of the following:

13 (1) Negotiate with prescription drug manufacturers price discounts on
14 prescription drugs purchased under State health care programs.

15 (2) At the option of any entity specified in G.S. 143-737, execute
16 prescription drug purchasing agreements with the entity.

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

22 (4) Establish other cost containment measures for prescription drug
23 benefits that the PBM determines will generate cost savings and
24 maintain drug treatment efficacy.

25 (b) The PBM may negotiate and execute pharmaceutical benefits management
26 contracts for the purpose of managing rising prescription drug costs for the State and all
27 parties that have executed prescription drug purchasing agreements with the Program.

28 **"§ 143-740. Contracts reviewed by Office of State Budget and Management.**

29 The Office of State Budget and Management shall review any purchasing
30 agreement, proposed contract, or amendment to an existing contract, authorized by this
31 Article before the agreement or contract is executed. If the Office of State Budget and
32 Management makes the following findings, the Office shall approve the agreement or
33 contract:

34 (1) The proposed contract meets the requirements of this Article and
35 would assist in effectively managing State expenditures for
36 prescription drugs for the health care programs involved.

37 (2) The proposed contract would not adversely affect State funds or funds
38 due the State.

39 **"§ 143-741. Program funds subject to audit.**

40 The State Auditor shall audit funds expended pursuant to any prescription drug
41 purchasing agreement or pharmaceutical benefits management contract executed under
42 this Article for each fiscal year that the agreement or contract is in effect. The Executive
43 Director shall provide information and documents requested by the State Auditor
44 pursuant to this section. The State Auditor shall report the results of the audit to the

1 General Assembly and the Governor upon completion of the audit, but not later than
2 December 31, after the end of the fiscal year subject to the audit.

3 **"§ 143-742. Strategies for managing increases in prescription drug costs.**

4 The Executive Director, in consultation with the PBM, shall explore innovative
5 strategies by which the State may manage the increasing costs of prescription drugs and
6 increase access to prescription drugs for all of the State's citizens, including by any of
7 the following means:

- 8 (1) Adopting fair prescription drug pricing policies.
- 9 (2) Providing for discount policies or rebate programs for seniors and
10 persons without prescription drug insurance coverage.
- 11 (3) Coordinating programs offered by pharmaceutical manufacturers that
12 provide prescription drugs for free or at reduced prices.
- 13 (4) Establishing programs aimed at educating health care practitioners
14 authorized to prescribe prescription drugs about the relative costs and
15 benefits of various prescription drugs, with an emphasis on generic
16 substitution for brand-name drugs when available and appropriate,
17 prescribing older, less costly drugs instead of newer, more expensive
18 drugs when appropriate, and prescribing lower dosages of prescription
19 drugs when available and appropriate.
- 20 (5) Studying the feasibility and appropriateness of requiring prescription
21 drug manufacturers to disclose to the State expenditures for
22 advertising, marketing, and promotion, as well as for provider
23 incentives and research and development efforts.
- 24 (6) Studying the feasibility and appropriateness of executing prescription
25 drug purchasing agreements with large private sector purchasers of
26 prescription drugs and including those private entities in pharmacy
27 benefit management contracts.
- 28 (7) Studying the feasibility and appropriateness of authorizing the
29 establishment of voluntary private buying clubs, cooperatives, or
30 purchasing alliances comprised of small businesses or individuals for
31 the purpose of purchasing prescription drugs at optimal prices.
- 32 (8) Implementing other strategies, as permitted under State and federal
33 law, aimed at managing prescription drug prices and increasing
34 affordable access to prescription drugs for all State citizens.

35 The Executive Director shall also explore the feasibility of contracting with the PBM
36 to manage clinical programs such as disease management programs, drug utilization
37 review, and long-term care intervention. If the Executive Director finds that contracting
38 with the PBM to manage clinical programs will generate cost savings to the State and
39 maintain quality and integrity in health program benefits, the Executive Director may
40 execute a contract for this purpose in accordance with this Article.

41 **"§ 143-743. Pharmaceutical manufacturers to file information with Executive**
42 **Director.**

1 (a) A person who manufactures a drug, including a person who manufactures a
2 generic drug, that is sold in this State shall file with the Executive Director, annually or
3 more frequently as determined by the Executive Director, the following:

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

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

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

11 (c) The Executive Director and the Attorney General may investigate the
12 manufacturer to determine the accuracy of the information provided under this section.
13 The Attorney General may take appropriate action to enforce this section.

14 **"§ 143-744. Wholesalers to file information upon request.**

15 (a) Upon the request of the Executive Director, a person who engages in the
16 wholesale distribution of drugs in this State shall file with the Executive Director
17 information showing the actual price at which the wholesale distributor sells a particular
18 drug to a retail pharmacy.

19 (b) The Attorney General may investigate the distributor to determine the
20 accuracy of the information provided under this section. The Attorney General may take
21 appropriate action to enforce this section."

22 **SECTION 2.** There is appropriated from the General Fund to the
23 Department of Administration the sum of two hundred thousand dollars (\$200,000) for
24 the 2005-2006 fiscal year and the sum of two hundred thousand dollars (\$200,000) for
25 the 2006-2007 fiscal year. These funds shall be used to develop and administer the
26 Prescription Drug Bulk Purchasing Program enacted by this act.

27 **SECTION 3.** Section 2 of this act becomes effective July 1, 2005. The
28 remainder of this act is effective when it becomes law.