

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 347  
Insurance Committee Substitute Adopted 4/14/99

Short Title: Pres. Drug Formularies.

(Public)

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Sponsors:

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Referred to:

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March 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO COVER NONFORMULARY  
3 DRUGS AND DEVICES WHEN MEDICALLY NECESSARY.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 3 of Chapter 58 of the General Statutes is amended by  
6 adding the following section to read:

7 "**§ 58-3-221. Access to nonformulary prescription drugs.**

8 (a) If an insurer maintains one or more closed formularies for prescription drugs or  
9 devices, then the insurer shall do all of the following:

10 (1) Develop the formulary or formularies in consultation with and with the  
11 approval of a pharmacy and therapeutics committee, which shall include  
12 participating providers who are licensed to prescribe prescription drugs  
13 or devices.

14 (2) Make available to participating providers and pharmacists the complete  
15 drugs or devices formulary or formularies maintained by the insurer  
16 including a list of the devices and prescription drugs on the formulary  
17 by major therapeutic category that specifies whether a particular drug or  
18 device is preferred over other drugs or devices.

- 1           (3)   Establish and maintain an expeditious process or procedure that allows  
2           an enrollee to obtain, without penalty or additional cost-sharing beyond  
3           that provided for in the health benefit plan, coverage for a specific  
4           nonformulary drug or device determined to be medically necessary and  
5           appropriate by the participating physician without prior approval from  
6           the insurer, after the participating physician notifies the insurer that:  
7           a.     Either (i) the formulary alternatives have been ineffective in the  
8           treatment of the enrollee's disease or condition, or (ii) the  
9           formulary alternatives cause or are reasonably expected by the  
10           physician to cause a harmful or adverse clinical reaction in the  
11           enrollee; and  
12           b.     Either (i) the drug is prescribed in accordance with any  
13           applicable clinical protocol of the insurer for the prescribing of  
14           the drug, or (ii) the drug has been approved as an exception to the  
15           clinical protocol pursuant to the insurer's exception procedure.  
16       (b)   An insurer may not void a contract or refuse to renew a contract between the  
17       insurer and a prescribing provider because the prescribing provider has prescribed a  
18       medically necessary and appropriate nonformulary drug or device as provided in this  
19       section.  
20       (c)   As used in this section:  
21       (1)   'Health benefit plan' means an accident and health insurance policy or  
22       certificate; a nonprofit hospital or medical service corporation contract;  
23       a health maintenance organization subscriber contract; a plan provided  
24       by a multiple employer welfare arrangement; or a plan provided by  
25       another benefit arrangement, to the extent permitted by the Employee  
26       Retirement Income Security Act of 1974, as amended, or by any waiver  
27       of or other exception to that Act provided under federal law or  
28       regulation. 'Health benefit plan' does not mean any plan implemented or  
29       administered by the North Carolina Department of Health and Human  
30       Services or the United States Department of Health and Human  
31       Services, or any successor agency, or its representatives. 'Health benefit  
32       plan' also does not mean any of the following kinds of insurance:  
33       a.     Accident.  
34       b.     Credit.  
35       c.     Disability income.  
36       d.     Long-term care or nursing home care.  
37       e.     Medicare supplement.  
38       f.     Specified disease.  
39       g.     Dental or vision.  
40       h.     Coverage issued as a supplement to liability insurance.  
41       i.     Workers' compensation.  
42       j.     Medical payments under automobile or homeowners.  
43       k.     Hospital income or indemnity.

1                   1.     Insurance under which benefits are payable with or without  
2                             regard to fault and that are statutorily required to be contained in  
3                             any liability policy or equivalent self-insurance.

4                   (2)   'Insurer' means an entity that writes a health benefit plan and that is an  
5                             insurance company subject to this Chapter, a service corporation  
6                             organized under Article 65 of this Chapter, a health maintenance  
7                             organization organized under Article 67 of this Chapter, or a multiple  
8                             employer welfare arrangement under Article 49 of this Chapter."

9                   Section 2. This act is effective when it becomes law and applies to health  
10 benefit plans that are delivered, issued for delivery, or renewed on and after January 1,  
11 2000. For purposes of this act, renewal of a health benefit policy, contract, or plan is  
12 presumed to occur on each anniversary of the date on which coverage was first effective  
13 on the person or persons covered by the health benefit plan.