

## BULLETIN

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Number 00-B-1

**TO:** All Licensed Health Insurance Companies  
All Licensed Health Maintenance Organizations  
All Licensed Service Corporations  
All Licensed Multiple Employer Welfare Arrangements

**DATE:** February 15, 2000

**SUBJECT:** Pharmacy of Choice Law  
North Carolina General Statute 58-51-37

**ATTENTION: Chief Executive Officer**

In 1996, the Department interpreted NCGS 58-51-37(c)(2), which provides that no health plan may deny a pharmacy the opportunity to participate as a provider of pharmacy services if the pharmacy agrees to accept all terms and conditions of reimbursement afforded under the health benefit plan. (See Bulletin 96-B-2.) In particular, the Bulletin advised that health plans may not treat retail and mail order drug benefits as separate benefit classes; both retail and mail-order pharmacies must be given an opportunity to contract with a health benefit plan to provide short-term and/or long-term supplies of drugs.

It has now come to the Department's attention that further clarification of the Pharmacy of Choice Law and the Department's interpretation of it is necessary to assure clear understanding about what is and is not permitted under this law. Two areas in particular, use of mail-order pharmacies versus retail pharmacies, and benefits for short-term versus long-term supplies of prescription drugs (e.g., 30-day supply versus 90-day supply), appear to be a source of confusion. The following is intended to clarify these issues.

Pharmacy Network Agreements

- Plans must allow any pharmacy willing to contract on the same terms as other pharmacies to participate in their network agreements.
- Plans may maintain multiple versions of network agreements (e.g., separate contracts for short-term and long-term drug refills) so long as any willing pharmacy may participate in each agreement.

### Benefit Design

- Plans may not vary prescription drug benefits within the same benefit class based on which pharmacy participating in a particular agreement dispenses the drug.
- Plans may treat short-term prescriptions and long-term refills as separate benefit classes. 58-51-37(c) prohibits differences in benefits only within the same benefit class or category, and so does not limit a plan's ability to vary benefits between benefit classes or categories (e.g. \$10 copay for 30-day supply and \$20 copay for 90-day supply).

### Mail-Order Versus Retail Pharmacies

- Neither the terms and conditions of a particular reimbursement arrangement nor benefits for any benefit class can be limited to retail or mail order sales.
- The law requires that all reimbursement arrangements negotiated for the expressed purpose of filling prescribed drugs be open to any willing pharmacy. If a retail or mail order pharmacy agrees to meet those terms and conditions, that pharmacy must be permitted to participate in the plan network.
- Benefit design may not be used to promote use of mail order over retail pharmacies.

### Short-Term Versus Long-Term Supplies of Drugs

- Benefits may be designed so that long-term refills are less costly than short-term prescriptions, so long as all pharmacies willing to contract are given the opportunity to fill both types of prescriptions, whether doing so under a single contracting arrangement or multiple arrangements.
- No class of benefit may be restricted to a certain type of pharmacy (i.e., mail order only).

Some companies may have received different direction on these points from the Department in the past, either in conversations with staff or via disapproval letters on some form or rate filings. This Bulletin supplements Bulletin 96-B-2 and, the two bulletins together supersede other interpretations which may have been communicated via conversations or correspondence with staff.

Questions regarding this interpretation should be addressed to Maston T. Jacks at (919) 733-5060, or Theresa Shackelford, at (919) 733-5060, ext. 351.

(Explanatory Memorandum Attached)

**NORTH CAROLINA DEPARTMENT OF INSURANCE**  
**P.O. Box 26387, Raleigh, NC 27611**  
*Jim Long, Commissioner*

**Memorandum**

**To:** All Licensed Insurance Companies  
All Licensed Health Maintenance Organizations  
All Licensed Medical Service Corporations  
All Licensed Multiple Employer Welfare Arrangements

**From:** Maston T. Jacks, Deputy Commissioner, Life and Health Division

**Date:** February 15, 2000

**Subject:** Attached Bulletin, 00-B-1

In 1996, the Department of Insurance distributed Bulletin 96-B-2, which interpreted NCGS 58-51-37 with respect to its prohibition against discrimination between retail and mail order pharmacies. The Bulletin concluded that carriers could establish separate pharmacy contracting arrangements for short term and long term supplies of drugs, as long as any willing pharmacy, be it retail or mail order, could participate if it met the carrier's contractual terms.

Since Bulletin 96-B-2 was issued, the Department has been required to apply its provisions to many contracts and many unexpected situations. One interpretation made by the Department, and expressed in the review of many insurance forms, was that a carrier could not have separate copayments or deductibles for short term and long term supplies of drugs, since to do so would result in discrimination between pharmacies.

Recently, the Department reevaluated this interpretation, and concluded that it is not justified by the statute. It is our position that carriers may establish separate benefit terms, including copayments and deductibles, for long term and short term drug supplies, as long as the insured may purchase the drugs from any participating pharmacy, retail or mail order.

The attached Bulletin 00-B-1 is intended to overrule any interpretations expressed subsequent to Bulletin 96-B-2 and formally notify all carriers, pharmacies and employer groups that separate benefits for short term and long term drug supplies may be established as long as both retail and mail order pharmacies have an opportunity to participate in the corresponding networks that support these separate benefits.