

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 8

AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-24.5-29 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 29. (a) At least every six (6) months, a pharmacy benefit manager shall provide a report to the department.**

(b) A report under subsection (a) must include the:

(1) overall aggregate amount charged to a health plan for all pharmaceutical claims processed by the pharmacy benefit manager; and

(2) overall aggregate amount paid to pharmacies for claims processed by the pharmacy benefit manager.

(c) Upon request, the department shall make a report received under subsection (a) available to the members of the general assembly in an electronic format under IC 5-14-6.

SECTION 2. IC 27-1-49 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 49. Individual Prescription Drug Rebates

Sec. 0.5. This chapter applies to a policy of health insurance coverage that is issued, delivered, amended, or renewed after December 31, 2024.

Sec. 1. As used in this chapter, "covered individual" means an

SEA 8 — CC 1



individual who is entitled to health insurance coverage.

Sec. 2. As used in this chapter, "defined cost sharing" means a deductible payment or coinsurance amount imposed on a covered individual for a covered prescription drug under the covered individual's health insurance coverage.

Sec. 3. (a) As used in this chapter, "health insurance coverage" includes:

(1) an individual policy of accident and sickness insurance (as defined in IC 27-8-5-1);

(2) an individual contract (as defined in IC 27-13-1-21) that provides coverage for basic health care services (as defined in IC 27-13-1-4); and

(3) any other health plan that is issued on an individual basis; and that is subject to state law regulating insurance and offers health insurance coverage (as defined in 42 U.S.C. 300gg-91). The term includes coverage of a dependent of the covered individual under an individual policy or contract described in subdivisions (1) through (3).

(b) The term does not include a self-funded health benefit plan that complies with the federal Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1001 et seq.).

Sec. 4. As used in this chapter, "insurer" means an insurer that provides health insurance coverage to a covered individual.

Sec. 5. As used in this chapter, "price protection rebate" means a negotiated price concession that accrues directly or indirectly to an insurer, or another party on behalf of an insurer, if there is an increase in the wholesale acquisition cost of a prescription drug above a specified threshold.

Sec. 6. As used in this chapter, "rebate" means:

(1) a discount or other negotiated price concession, including base price concessions (whether described as a rebate or otherwise) and reasonable estimates of price protection rebates, and performance based price concessions, that may accrue directly or indirectly or are anticipated to be passed through to an insurer during the coverage year from a manufacturer, dispensing pharmacy, or other party concerning the dispensing or administration of a prescription drug; and

(2) a reasonable estimate of any negotiated price concession, fee, or other administrative cost that is passed through, or is reasonably anticipated to be passed through, to the insurer and serves to reduce the insurer's liability for a prescription



drug.

Sec. 7. A covered individual's defined cost sharing for a prescription drug must be:

- (1) calculated at the point of sale; and
- (2) based on a price that is reduced by an amount equal to at least eighty-five percent (85%) of all rebates in connection with the dispensing or administration of the prescription drug.

Sec. 8. Nothing in this chapter prohibits an insurer from decreasing a covered individual's defined cost sharing by an amount greater than the amount required under section 7 of this chapter.

Sec. 9. The department may enforce the requirements of this chapter to the extent permissible under applicable law.

Sec. 10. The commissioner may take appropriate action to enforce this chapter by imposing a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

Sec. 11. (a) In complying with the requirements of this chapter, an insurer or an insurer's agent may not publish or otherwise reveal information regarding the actual amount of rebates the insurer receives on a product, manufacturer, or pharmacy specific basis. This information is protected as a trade secret (as defined in IC 24-2-3-2) and may not be published or otherwise disclosed directly or indirectly.

(b) An insurer shall impose the confidentiality requirements of this section on any vendor or third party that performs health care or administrative services on behalf of the insurer and that may receive or have access to rebate information.

SECTION 3. IC 27-1-50 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 50. Group Prescription Drug Rebates

Sec. 0.5. This chapter applies to a policy of health insurance coverage that is issued, delivered, amended, or renewed after December 31, 2024.

Sec. 1. As used in this chapter, "covered individual" means an individual who is entitled to health insurance coverage.

Sec. 2. As used in this chapter, "defined cost sharing" means a deductible payment or coinsurance amount imposed on a covered individual for a covered prescription drug under the covered individual's health insurance coverage.

Sec. 3. (a) As used in this chapter, "health insurance coverage"



includes:

- (1) a group policy of accident and sickness insurance (as defined in IC 27-8-5-1);**
- (2) a group contract (as defined in IC 27-13-1-16) that provides coverage for basic health care services (as defined in IC 27-13-1-4); and**
- (3) any other group health plan that limits eligibility to members of a specific group;**

and that is subject to state law regulating insurance and offers health insurance coverage (as defined in 42 U.S.C. 300gg-91). The term includes coverage of a dependent of the covered individual under a group policy or contract described in subdivisions (1) through (3).

(b) The term does not include a self-funded health benefit plan that complies with the federal Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1001 et seq.).

Sec. 4. As used in this chapter, "insurer" means an insurer that provides health insurance coverage to a covered individual.

Sec. 5. As used in this chapter, "plan sponsor" means an employer or organization that offers health insurance coverage to its employees or members through an insurer.

Sec. 6. As used in this chapter, "price protection rebate" means a negotiated price concession that accrues directly or indirectly to an insurer, or another party on behalf of an insurer, if there is an increase in the wholesale acquisition cost of a prescription drug above a specified threshold.

Sec. 7. As used in this chapter, "rebate" means:

- (1) a discount or other negotiated price concession, including base price concessions (whether described as a rebate or otherwise) and reasonable estimates of price protection rebates, and performance based price concessions, that may accrue directly or indirectly or are anticipated to be passed through to an insurer during the coverage year from a manufacturer, dispensing pharmacy, or other party concerning the dispensing or administration of a prescription drug; and**
- (2) a reasonable estimate of any negotiated price concession, fee, or other administrative cost that is passed through, or is reasonably anticipated to be passed through, to the insurer and serves to reduce the insurer's liability for a prescription drug.**

Sec. 8. An insurer shall pass through to a plan sponsor one



hundred percent (100%) of all rebates concerning the dispensing or administration of prescription drugs to the covered individuals of the plan sponsor.

Sec. 9. At the time of contracting, an insurer shall provide plan sponsors the option of calculating defined cost sharing for covered individuals of the plan sponsor at the point of sale based on a price that is reduced by some or all of the rebates received or estimated to be received by the insurer concerning the dispensing or administration of the prescription drug.

Sec. 10. Nothing in this chapter prohibits an insurer from decreasing a covered individual's defined cost sharing by an amount greater than the amount required under section 8 of this chapter.

Sec. 11. An insurer shall disclose the following information to a plan sponsor on at least an annual basis:

- (1) The approximate amount of rebates expected to be received by the insurer concerning the dispensing or administration of prescription drugs to the covered individuals of the plan sponsor.
- (2) An explanation that the plan sponsor may choose to:
 - (A) apply the rebates to reduce premiums for all covered individuals; or
 - (B) calculate defined cost sharing for a covered individual at the point of sale based on a price that is reduced by rebates received or estimated to be received by the insurer concerning the dispensing or administration of the covered individual's prescription drugs.
- (3) An explanation that, in the individual market, IC 27-1-49 requires that covered individual defined cost sharing be calculated at the point of sale based on a price that is reduced by at least eighty-five percent (85%) of the rebates concerning the dispensing or administration of the covered individual's prescription drugs.

Sec. 12. The department may enforce the requirements of this chapter to the extent permissible under applicable law.

Sec. 13. The commissioner may take appropriate action to enforce this chapter by imposing a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

Sec. 14. (a) In complying with the requirements of this chapter, an insurer may not publish or otherwise reveal information regarding the actual amount of rebates the insurer receives on a product, manufacturer, or pharmacy specific basis. This



information is protected as a trade secret (as defined in IC 24-2-3-2) and may not be published or otherwise disclosed directly or indirectly.

(b) An insurer shall impose the confidentiality requirements of this section on any vendor or third party that performs health care or administrative services on behalf of the insurer and that may receive or have access to the rebate information.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 8 — CC 1

