

HOUSE BILL No. 1158

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-19; IC 25-1-9.5-12; IC 25-26-13-29; IC 27-8-11-12; IC 27-13-15-6.

Synopsis: Pharmaceutical matters. Requires a state employee plan, health insurer, and health maintenance organization (health plans) to perform certain activities with respect to a maximum allowable cost list used for prescription drug reimbursement, including: (1) compilation and updating of the list; and (2) pharmacy appeals. Prohibits certain actions by health plans concerning pharmacy disclosure of pricing information and the amount payable upon receiving a prescription drug. Requires the board of pharmacy to adopt rules to implement the telemedicine law. Exempts from the law regulating pharmacists and pharmacies the delivery of peritoneal renal dialysis related supplies by manufacturers and wholesale drug distributors in certain circumstances.

Effective: Upon passage; July 1, 2018.

Davisson, Karickhoff

January 8, 2018, read first time and referred to Committee on Insurance.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1158

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

- 1 SECTION 1. IC 5-10-8-19 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **Sec. 19. (a) As used in this section, "covered individual"**
4 **means an individual entitled to coverage under a state employee**
5 **plan.**
6 (b) As used in this section, "drug" means a prescription drug.
7 (c) As used in this section, "maximum allowable cost list" or
8 "MAC list" means a list of generic drugs that is created by a state
9 employee plan to establish the maximum amount that will be
10 reimbursed under a state employee plan for a particular generic
11 drug.
12 (d) As used in this section, "pharmacy" refers to a pharmacist
13 or pharmacy that has entered into an agreement with a state
14 employee plan to provide drugs to individuals covered under a
15 state employee plan.
16 (e) As used in this section, "state employee plan" refers to the
17 following that provide coverage for drugs:



- 1 (1) A self-insurance program established under section 7(b) of
2 this chapter to provide group health coverage.
3 (2) A contract with a prepaid health care delivery plan that is
4 entered into or renewed under section 7(c) of this chapter.
5 The term includes a person that administers drug benefits on
6 behalf of a state employee plan.
7 (f) A state employee plan may not include a drug on a MAC list
8 unless the drug:
9 (1) has been classified by the federal Food and Drug
10 Administration and published in its Approved Drug Products
11 with Therapeutic Equivalence Evaluations list as having a
12 therapeutic equivalence evaluation of "AB" with at least one
13 (1) other available drug;
14 (2) is available for purchase by pharmacies in Indiana from
15 a national or regional wholesale drug distributor; and
16 (3) is not obsolete.
17 (g) Upon request, a state employee plan shall inform a
18 pharmacy of the resources used to create the state employee plan's
19 MAC list.
20 (h) A state employee plan shall do all of the following:
21 (1) Establish a procedure for use in updating:
22 (A) the reimbursement amounts for; and
23 (B) the addition or removal of;
24 drugs on the state employee plan's MAC list, consistent with
25 market pricing and availability of the drugs.
26 (2) Perform the update described in subdivision (1) and
27 forward the updated MAC list to each pharmacy at least once
28 every seven (7) calendar days.
29 (3) Establish an appeal procedure through which a pharmacy
30 may appeal the amount reimbursed for a drug according to
31 the state employee plan's MAC list. The appeal procedure
32 must include all of the following:
33 (A) The provision to a pharmacy of a telephone number
34 through which the pharmacy may contact the state
35 employee plan to discuss an appeal.
36 (B) A requirement that a pharmacy may file an appeal not
37 more than fifteen (15) days after receiving notice of the
38 amount the state employee plan will reimburse for a drug.
39 (C) A requirement that the state employee plan must
40 respond to an appeal not more than fifteen (15) days after
41 receiving the appeal.
42 (D) A provision specifying that if an appeal is decided in



1 favor of the pharmacy, the state employee plan shall:

2 (i) effective on the date of the decision, adjust the
3 reimbursement for the drug accordingly and apply the
4 adjustment to the appealing pharmacy and all similarly
5 situated pharmacies, as determined appropriate by the
6 state employee plan; and

7 (ii) allow the appealing pharmacy to rebill the appealed
8 claim with the same date of service as the appealed
9 claim.

10 (E) A provision specifying that if an appeal is decided in
11 favor of the state employee plan, the state employee plan
12 shall provide to the appealing pharmacy notice of the
13 decision, including:

14 (i) the reason for the decision; and

15 (ii) the federal Food and Drug Administration's national
16 drug code of another drug that is therapeutically
17 equivalent (as described in subsection (f)(1)) and that is
18 available for purchase by a pharmacy in Indiana from a
19 national or regional wholesale drug distributor at a price
20 that does not exceed the reimbursement amount for the
21 drug on the state employee plan's MAC list.

22 (i) A state employee plan may not prohibit a pharmacy, upon
23 dispensing a drug to a covered individual, from providing to the
24 covered individual information concerning a drug, including the
25 cost and clinical efficacy of an available, more affordable,
26 alternative drug.

27 (j) A state employee plan may not require a covered individual
28 to pay more upon receiving a covered drug than the least of the
29 following:

30 (1) The amount of the deductible or copayment for the drug
31 under the state employee plan.

32 (2) The amount payable to the pharmacy for the drug under
33 the state employee plan's contract with the pharmacy.

34 (3) The amount the pharmacy would charge for the drug if
35 the covered individual did not have coverage or an applicable
36 discount for the drug.

37 (k) If an appeal is decided in favor of a state employee plan as
38 described in subsection (h)(3) and the state employee plan fails to
39 provide to the appealing pharmacy the information described in
40 subsection (h)(3)(E)(i) and (h)(3)(E)(ii), the commissioner of the
41 department of insurance created by IC 27-1-1-1:

42 (1) shall impose a civil penalty of not more than five thousand



1 **dollars (\$5,000) for each violation; and**
 2 **(2) may petition a court with jurisdiction:**
 3 **(A) to collect a civil penalty imposed under subdivision (1);**
 4 **and**
 5 **(B) for other relief that the court considers appropriate.**

6 SECTION 2. IC 25-1-9.5-12, AS ADDED BY P.L.78-2016,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 UPON PASSAGE]: Sec. 12. **(a)** The Indiana professional licensing
 9 agency may adopt policies or rules under IC 4-22-2 necessary to
 10 implement this chapter. Adoption of policies or rules under this section
 11 may not delay the implementation and provision of telemedicine
 12 services under this chapter.

13 **(b) The Indiana board of pharmacy shall, not later than July 1,**
 14 **2018, adopt rules under IC 4-22-2, including emergency rules in the**
 15 **manner provided under IC 4-22-2-37.1, to implement this chapter**
 16 **with respect to pharmacists and pharmacies.**

17 SECTION 3. IC 25-26-13-29, AS AMENDED BY P.L.158-2013,
 18 SECTION 285, IS AMENDED TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2018]: Sec. 29. (a) It is unlawful:

20 (1) For any person to display or permit to be displayed, a
 21 pharmacy permit in any facility or place of business other than
 22 that for which it was issued.

23 (2) For any person to accept a prescription for filling or
 24 compounding at any place or facility for which there is not a valid
 25 pharmacy permit.

26 (3) For any person to operate a pharmacy or to take, assume,
 27 exhibit, display, or advertise by any medium, the title "drugs",
 28 "prescriptions", "medicine", "drug store", "pharmacy", or
 29 "apothecary shop", or any combination of such titles or any other
 30 title, symbol, term, or description of like import intended to cause
 31 the public to believe that it is a pharmacy unless the person holds
 32 a valid pharmacy permit.

33 (4) For any person to engage or offer to engage in the practice of
 34 pharmacy or to hold himself or herself out as a pharmacist
 35 without a valid pharmacist's license that is classified as active by
 36 the board.

37 (b) A person who violates a provision of subsection (a) commits a
 38 Level 6 felony.

39 (c) Nothing in this chapter shall apply to, nor in any manner
 40 interfere with the business of a general merchant in selling and
 41 distributing nonnarcotic, nonprescription medicines or drugs which are
 42 prepackaged, fully prepared by the manufacturer for use by the



1 consumer, and labeled in accordance with the requirements of the state
2 and federal food and drug acts.

3 **(d) This chapter does not apply to, or in any manner interfere**
4 **with, the business of a manufacturer in selling and delivering**
5 **dialysate, a drug, or a device that is necessary for home peritoneal**
6 **renal dialysis for a patient who has end state renal disease if all of**
7 **the following apply:**

8 **(1) The dialysate, drug, or device is approved by the federal**
9 **Food and Drug Administration under federal law.**

10 **(2) The dialysate, drug, or device is held by the manufacturer**
11 **or a wholesale drug distributor in accordance with the**
12 **requirements of IC 25-26-14.**

13 **(3) The dialysate, drug, or device is delivered in the**
14 **manufacturer's original, sealed packaging.**

15 **(4) The dialysate, drug, or device is delivered only upon:**

16 **(A) receipt of a physician's prescription by a pharmacy**
17 **that holds a pharmacy permit under this chapter; and**

18 **(B) the transmittal of an order from the pharmacy**
19 **described in clause (A) to the manufacturer or wholesale**
20 **drug distributor.**

21 **(5) The manufacturer or wholesale drug distributor delivers**
22 **the dialysate, drug, or device directly to:**

23 **(A) the patient or the patient's designee for**
24 **self-administration of the dialysis therapy; or**

25 **(B) a health care provider for administration of the dialysis**
26 **therapy to the patient.**

27 SECTION 4. IC 27-8-11-12 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2018]: **Sec. 12. (a) As used in this section, "drug" means a**
30 **prescription drug.**

31 **(b) As used in this section, "insurer" refers to an insurer that**
32 **provides coverage for drugs. The term includes a person that**
33 **administers drug benefits on behalf of an insurer.**

34 **(c) As used in this section, "maximum allowable cost list" or**
35 **"MAC list" means a list of generic drugs that is created by an**
36 **insurer to establish the maximum amount that will be reimbursed**
37 **under a policy for a particular generic drug.**

38 **(d) As used in this section, "pharmacy" refers to a pharmacist**
39 **or pharmacy that has entered into an agreement with an insurer**
40 **under section 3 of this chapter.**

41 **(e) An insurer may not include a drug on a MAC list unless the**
42 **drug:**



- 1 (1) has been classified by the federal Food and Drug
 2 Administration and published in its Approved Drug Products
 3 with Therapeutic Equivalence Evaluations list as having a
 4 therapeutic equivalence evaluation of "AB" with at least one
 5 (1) other available drug;
 6 (2) is available for purchase by pharmacies in Indiana from
 7 a national or regional wholesale drug distributor; and
 8 (3) is not obsolete.
- 9 (f) Upon request, an insurer shall inform a pharmacy of the
 10 resources used to create the insurer's MAC list.
- 11 (g) An insurer shall do all of the following:
- 12 (1) Establish a procedure for use in updating:
- 13 (A) the reimbursement amounts for; and
 14 (B) the addition or removal of;
 15 drugs on the insurer's MAC list, consistent with market
 16 pricing and availability of the drugs.
- 17 (2) Perform the update described in subdivision (1) and
 18 forward the updated MAC list to each pharmacy at least once
 19 every seven (7) calendar days.
- 20 (3) Establish an appeal procedure through which a pharmacy
 21 may appeal the amount reimbursed for a drug according to
 22 the insurer's MAC list. The appeal procedure must include all
 23 of the following:
- 24 (A) The provision to a pharmacy of a telephone number
 25 through which the pharmacy may contact the insurer to
 26 discuss an appeal.
- 27 (B) A requirement that a pharmacy may file an appeal not
 28 more than fifteen (15) days after receiving notice of the
 29 amount the insurer will reimburse for a drug.
- 30 (C) A requirement that the insurer must respond to an
 31 appeal not more than fifteen (15) days after receiving the
 32 appeal.
- 33 (D) A provision specifying that if an appeal is decided in
 34 favor of the pharmacy, the insurer shall:
- 35 (i) effective on the date of the decision, adjust the
 36 reimbursement for the drug accordingly and apply the
 37 adjustment to the appealing pharmacy and all similarly
 38 situated pharmacies, as determined appropriate by the
 39 insurer; and
 40 (ii) allow the appealing pharmacy to rebill the appealed
 41 claim with the same date of service as the appealed
 42 claim.



1 (E) A provision specifying that if an appeal is decided in
 2 favor of the insurer, the insurer shall provide to the
 3 appealing pharmacy notice of the decision, including:

4 (i) the reason for the decision; and

5 (ii) the federal Food and Drug Administration's national
 6 drug code of another drug that is therapeutically
 7 equivalent (as described in subsection (e)(1)) and that is
 8 available for purchase by a pharmacy in Indiana from a
 9 national or regional wholesale drug distributor at a price
 10 that does not exceed the reimbursement amount for the
 11 drug on the insurer's MAC list.

12 (h) An insurer may not prohibit a pharmacy, upon dispensing
 13 a drug to an insured, from providing to the insured information
 14 concerning a drug, including the cost and clinical efficacy of an
 15 available, more affordable, alternative drug.

16 (i) An insurer may not require an insured to pay more upon
 17 receiving a covered drug than the least of the following:

18 (1) The amount of the deductible or copayment for the drug
 19 under the insured's policy.

20 (2) The amount payable to the pharmacy for the drug under
 21 the insurer's agreement with the pharmacy.

22 (3) The amount the pharmacy would charge for the drug if
 23 the insured did not have coverage or an applicable discount
 24 for the drug.

25 (j) If an appeal is decided in favor of an insurer as described in
 26 subsection (g)(3) and the insurer fails to provide to the appealing
 27 pharmacy the information described in subsection (g)(3)(E)(i) and
 28 (g)(3)(E)(ii), the commissioner:

29 (1) shall impose a civil penalty of not more than five thousand
 30 dollars (\$5,000) for each violation; and

31 (2) may petition a court with jurisdiction:

32 (A) to collect a civil penalty imposed under subdivision (1);
 33 and

34 (B) for other relief that the court considers appropriate.

35 SECTION 5. IC 27-13-15-6 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2018]: Sec. 6. (a) As used in this section, "drug" means a
 38 prescription drug.

39 (b) As used in this section, "health maintenance organization"
 40 refers to a health maintenance organization that provides coverage
 41 for drugs. The term includes the following:

42 (1) A limited service health maintenance organization.



- 1 **(2) A person that administers drug benefits on behalf of a**
 2 **health maintenance organization or a limited service health**
 3 **maintenance organization.**
- 4 **(c) As used in this section, "maximum allowable cost list" or**
 5 **"MAC list" means a list of generic drugs that is created by a health**
 6 **maintenance organization to establish the maximum amount that**
 7 **will be reimbursed under an individual contract or a group**
 8 **contract for a particular generic drug.**
- 9 **(d) As used in this section, "pharmacy" refers to a pharmacist**
 10 **or pharmacy that is a participating provider.**
- 11 **(e) A health maintenance organization may not include a drug**
 12 **on a MAC list unless the drug:**
- 13 **(1) has been classified by the federal Food and Drug**
 14 **Administration and published in its Approved Drug Products**
 15 **with Therapeutic Equivalence Evaluations list as having a**
 16 **therapeutic equivalence evaluation of "AB" with at least one**
 17 **(1) other available drug;**
 18 **(2) is available for purchase by pharmacies in Indiana from**
 19 **a national or regional wholesale drug distributor; and**
 20 **(3) is not obsolete.**
- 21 **(f) Upon request, a health maintenance organization shall**
 22 **inform a pharmacy of the resources used to create the health**
 23 **maintenance organization's MAC list.**
- 24 **(g) A health maintenance organization shall do all of the**
 25 **following:**
- 26 **(1) Establish a procedure for use in updating:**
 27 **(A) the reimbursement amounts for; and**
 28 **(B) the addition or removal of;**
 29 **drugs on the health maintenance organization's MAC list,**
 30 **consistent with market pricing and availability of the drugs.**
 31 **(2) Perform the update described in subdivision (1) and**
 32 **forward the updated MAC list to each pharmacy at least once**
 33 **every seven (7) calendar days.**
 34 **(3) Establish an appeal procedure through which a pharmacy**
 35 **may appeal the amount reimbursed for a drug according to**
 36 **the health maintenance organization's MAC list. The appeal**
 37 **procedure must include all of the following:**
 38 **(A) The provision to a pharmacy of a telephone number**
 39 **through which the pharmacy may contact the health**
 40 **maintenance organization to discuss an appeal.**
 41 **(B) A requirement that a pharmacy may file an appeal not**
 42 **more than fifteen (15) days after receiving notice of the**



1 amount the health maintenance organization will
2 reimburse for a drug.

3 (C) A requirement that the health maintenance
4 organization must respond to an appeal not more than
5 fifteen (15) days after receiving the appeal.

6 (D) A provision specifying that if an appeal is decided in
7 favor of the pharmacy, the health maintenance
8 organization shall:

9 (i) effective on the date of the decision, adjust the
10 reimbursement for the drug accordingly and apply the
11 adjustment to the appealing pharmacy and all similarly
12 situated pharmacies, as determined appropriate by the
13 health maintenance organization; and

14 (ii) allow the appealing pharmacy to rebill the appealed
15 claim with the same date of service as the original claim.

16 (E) A provision specifying that if an appeal is decided in
17 favor of the health maintenance organization, the health
18 maintenance organization shall provide to the appealing
19 pharmacy notice of the decision, including:

20 (i) the reason for the decision; and

21 (ii) the federal Food and Drug Administration's national
22 drug code of another drug that is therapeutically
23 equivalent (as described in subsection (e)(1)) and that is
24 available for purchase by a pharmacy in Indiana from a
25 national or regional wholesale drug distributor at a price
26 that does not exceed the reimbursement amount for the
27 drug on the health maintenance organization's MAC list.

28 (h) A health maintenance organization may not prohibit a
29 pharmacy, upon dispensing a drug to an enrollee, from providing
30 to the enrollee information concerning a drug, including the cost
31 and clinical efficacy of an available, more affordable, alternative
32 drug.

33 (i) A health maintenance organization may not require an
34 enrollee to pay more upon receiving a covered drug than the least
35 of the following:

36 (1) The amount of the copayment for the drug under the
37 individual contract or group contract.

38 (2) The amount payable to the pharmacy for the drug under
39 the health maintenance organization's participating provider
40 agreement with the pharmacy.

41 (3) The amount the pharmacy would charge for the drug if
42 the enrollee did not have coverage or an applicable discount



1 **for the drug.**
2 **(j) If an appeal is decided in favor of a health maintenance**
3 **organization as described in subsection (g)(3) and the health**
4 **maintenance organization fails to provide to the appealing**
5 **pharmacy the information described in subsection (g)(3)(E)(i) and**
6 **(g)(3)(E)(ii), the commissioner:**
7 **(1) shall impose a civil penalty of not more than five thousand**
8 **dollars (\$5,000) for each violation; and**
9 **(2) may petition a court with jurisdiction:**
10 **(A) to collect a civil penalty imposed under subdivision (1);**
11 **and**
12 **(B) for other relief that the court considers appropriate.**
13 **SECTION 6. An emergency is declared for this act.**

