

HOUSE BILL No. 1207

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-20; IC 25-26-13; IC 27-1-24.8-5; IC 27-8-11-12; IC 27-13-15-6.

Synopsis: Pharmacy matters. Provides that a state employee plan, health maintenance organization, insurer, or pharmacy benefits manager (health plan provider) may not require a pharmacy or pharmacist to collect a higher copayment for a prescription drug from a covered individual than the health plan provider allows the pharmacy or pharmacist to retain. Adds advanced practice registered nurses and physician assistants to the list of out-of-state providers whose prescriptions a pharmacist has a duty to honor. Allows a prescription for a patient to be transferred electronically or by facsimile by a pharmacy to another pharmacy if the pharmacies do not share a common data base. Allows a licensed pharmacy technician to transfer the prescription. Allows a pharmacist to substitute a therapeutic alternative for epinephrine products for a patient. Subject to rules adopted by the board of pharmacy, allows a pharmacy technician to administer an influenza immunization to an individual under a drug order or prescription. Requires a manufacturer that engages in prescription drug marketing to provide to a practitioner the wholesale acquisition cost of the prescription drug. Urges the legislative council to assign to an interim study committee the task of studying and evaluating: (1) a process to determine prescription drug pricing by drug manufacturers; (2) the results of other states' prescription drug transparency laws; and (3) allowing pharmacists to prescribe drugs or devices for certain conditions.

Effective: Upon passage; July 1, 2020.

Davisson

January 16, 2020, read first time and referred to Committee on Public Health.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1207

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 5-10-8-20, AS ADDED BY P.L.209-2018,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 20. (a) As used in this section, "covered
4 individual" means an individual entitled to coverage under a state
5 employee plan.
6 (b) As used in this section, "drug" means a prescription drug.
7 (c) As used in this section, "pharmacy" refers to a pharmacist or
8 pharmacy that has entered into an agreement with a state employee
9 plan to provide drugs to individuals covered under a state employee
10 plan.
11 (d) As used in this section, "state employee plan" refers to the
12 following that provide coverage for drugs:
13 (1) A self-insurance program established under section 7(b) of
14 this chapter to provide group health coverage.
15 (2) A contract with a prepaid health care delivery plan that is
16 entered into or renewed under section 7(c) of this chapter.
17 The term includes a person that administers drug benefits on behalf of



1 a state employee plan.

2 (e) A pharmacy or pharmacist shall have the right to provide a
3 covered individual with information concerning the amount of the
4 covered individual's cost share for a prescription drug. Neither a
5 pharmacy nor a pharmacist shall be proscribed by a pharmacy benefits
6 manager from discussing this information or from selling to the
7 covered individual a more affordable alternative if an affordable
8 alternative is available.

9 (f) A pharmacy benefits manager that covers prescription drugs may
10 not include a provision that requires a covered individual to make
11 payment for a prescription drug at the point of sale in an amount that
12 exceeds the lesser of:

- 13 (1) the contracted copayment amount; or
14 (2) the amount of total approved charges by the pharmacy benefits
15 manager at the point of sale.

16 This subsection does not prohibit the adjudication of claims in
17 accordance with the state employee plan administered by a pharmacy
18 benefits manager. The covered individual is not liable for any
19 additional charges or entitled to any credits as a result of the
20 adjudicated claim.

21 **(g) The state employee plan or a pharmacy benefits manager**
22 **may not require a pharmacy or pharmacist to collect a higher**
23 **copayment for a prescription drug from a covered individual than**
24 **the state employee plan or pharmacy benefits manager allows the**
25 **pharmacy or pharmacist to retain.**

26 SECTION 2. IC 25-26-13-16 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 16. (a) A pharmacist
28 shall exercise ~~his~~ **the pharmacist's** professional judgment in the best
29 interest of the patient's health when engaging in the practice of
30 pharmacy.

31 (b) A pharmacist has a duty to honor all prescriptions from a
32 practitioner or from a physician, podiatrist, dentist, **advanced practice**
33 **registered nurse, physician assistant**, or veterinarian licensed under
34 the laws of another state. Before honoring a prescription, the
35 pharmacist shall take reasonable steps to determine whether the
36 prescription has been issued in compliance with the laws of the state
37 where it originated. The pharmacist is immune from criminal
38 prosecution or civil liability if ~~he~~, **the pharmacist**, in good faith,
39 refuses to honor a prescription because, in ~~his~~ **the pharmacist's**
40 professional judgment, the honoring of the prescription would:

- 41 (1) be contrary to law;
42 (2) be against the best interest of the patient;



1 (3) aid or abet an addiction or habit; or

2 (4) be contrary to the health and safety of the patient.

3 SECTION 3. IC 25-26-13-24.8, AS ADDED BY P.L.28-2019,
4 SECTION 16, AND P.L.246-2019, SECTION 9, IS AMENDED TO
5 READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 24.8. **(a)**
6 Upon request of a patient, a pharmacy shall transfer to another
7 pharmacy a prescription for the patient that the pharmacy has received
8 but not filled unless:

9 (1) prohibited in writing on the prescription by the prescriber; or

10 (2) otherwise prohibited by federal law.

11 **(b) Unless prohibited by federal law, a prescription for a patient**
12 **may be transferred electronically or by facsimile by a pharmacy to**
13 **another pharmacy if the pharmacies do not share a common data**
14 **base.**

15 **(c) A licensed pharmacy technician may transfer a prescription**
16 **under subsection (b).**

17 SECTION 4. IC 25-26-13-25.3, AS ADDED BY P.L.246-2019,
18 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2020]: Sec. 25.3. **(a)** ~~Beginning January 1, 2020,~~ A pharmacy
20 may not dispense injectable epinephrine or glucagon to a person
21 unless:

22 (1) the injectable epinephrine or glucagon has an expiration date
23 of not less than twelve (12) months from the date that the drug is
24 dispensed; or

25 (2) the person consents to the injectable epinephrine or glucagon
26 having an expiration date of less than twelve (12) months from
27 the date that the drug is dispensed.

28 **(b) Except as provided in IC 25-26-16.5, a pharmacist may**
29 **substitute a therapeutic alternative (as defined in IC 25-26-16.5-4)**
30 **for epinephrine products for a patient.**

31 SECTION 5. IC 25-26-13-31.7 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2020]: Sec. 31.7. **(a) Subject to rules adopted**
34 **under subsection (c), a pharmacy technician may administer an**
35 **influenza immunization to an individual under a drug order or**
36 **prescription.**

37 **(b) Subject to rules adopted under subsection (c), a pharmacy**
38 **technician may administer an influenza immunization to an**
39 **individual or a group of individuals under a drug order, under a**
40 **prescription, or according to a protocol approved by a physician.**

41 **(c) The board shall adopt rules under IC 4-22-2 to establish**
42 **requirements applying to a pharmacy technician who administers**



1 **an influenza immunization to an individual or group of individuals.**

2 **The rules adopted under this section:**

3 **(1) must provide for the direct supervision of the pharmacy**
 4 **technician by a pharmacist, a physician, a physician assistant,**
 5 **or an advanced practice registered nurse; and**

6 **(2) may not be less stringent than the requirements applying**
 7 **to a pharmacist who administers an influenza immunization**
 8 **to an individual as provided under section 31.2 of this chapter.**

9 SECTION 6. IC 25-26-13-34 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2020]: **Sec. 34. A person who:**

12 **(1) is a manufacturer (as defined in IC 25-26-14-8) or a**
 13 **representative, agent, or employee of a manufacturer;**

14 **(2) engages in prescription drug marketing while employed by**
 15 **or under a contract to represent a manufacturer; and**

16 **(3) provides information concerning the drug to the**
 17 **practitioner in the course of conducting business;**

18 **shall provide to the practitioner, in writing, the wholesale**
 19 **acquisition cost of the prescription drug.**

20 SECTION 7. IC 27-1-24.8-5 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2020]: **Sec. 5. A pharmacy benefits manager may not require a**
 23 **pharmacy or pharmacist to collect a higher copayment for a**
 24 **prescription drug from a customer than the pharmacy benefits**
 25 **manager allows the pharmacy or pharmacist to retain.**

26 SECTION 8. IC 27-8-11-12, AS ADDED BY P.L.209-2018,
 27 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2020]: **Sec. 12. (a) As used in this section, "drug" means a**
 29 **prescription drug.**

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

33 **(c) As used in this section, "pharmacy" refers to a pharmacist or**
 34 **pharmacy that has entered into an agreement with an insurer under**
 35 **section 3 of this chapter.**

36 **(d) A pharmacy or pharmacist shall have the right to provide an**
 37 **insured with information concerning the amount of the insured's cost**
 38 **share for a prescription drug. Neither a pharmacy nor a pharmacist**
 39 **shall be proscribed by an insurer from discussing this information or**
 40 **from selling to the insured a more affordable alternative if an**
 41 **affordable alternative is available.**

42 **(e) An insurer that covers prescription drugs may not include a**



1 provision that requires an insured to make payment for a prescription
2 drug at the point of sale in an amount that exceeds the lesser of:

- 3 (1) the contracted copayment amount; or
4 (2) the amount of total approved charges by the insurer at the
5 point of sale.

6 This subsection does not prohibit the adjudication of claims in
7 accordance with an accident and sickness insurance policy issued or
8 administered by an insurer. The insured is not liable for any additional
9 charges or entitled to any credits as a result of the adjudicated claim.

10 **(f) The insurer or a pharmacy benefits manager may not**
11 **require a pharmacy or pharmacist to collect a higher copayment**
12 **for a prescription drug from an insured than the insurer or**
13 **pharmacy benefits manager allows the pharmacy or pharmacist to**
14 **retain.**

15 SECTION 9. IC 27-13-15-6, AS ADDED BY P.L.209-2018,
16 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2020]: Sec. 6. (a) As used in this section, "drug" means a
18 prescription drug.

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

- 22 (1) A limited service health maintenance organization.
23 (2) A person that administers drug benefits on behalf of a health
24 maintenance organization or a limited service health maintenance
25 organization.

26 (c) As used in this section, "pharmacy" refers to a pharmacist or
27 pharmacy that is a participating provider.

28 (d) A pharmacy or pharmacist shall have the right to provide an
29 enrollee with information concerning the amount of the enrollee's cost
30 share for a prescription drug. Neither a pharmacy nor a pharmacist
31 shall be proscribed by a health maintenance organization from
32 discussing this information or from selling to the enrollee a more
33 affordable alternative if an affordable alternative is available.

34 (e) A health maintenance organization that covers prescription drugs
35 may not include a provision that requires an enrollee to make payment
36 for a prescription drug at the point of sale in an amount that exceeds the
37 lesser of:

- 38 (1) the contracted copayment amount; or
39 (2) the amount of total approved charges by the health
40 maintenance organization at the point of sale.

41 This subsection does not prohibit the adjudication of claims in
42 accordance with an individual contract or group contract issued or



1 administered by a health maintenance organization. The enrollee is not
 2 liable for any additional charges or entitled to any credits as a result of
 3 the adjudicated claim.

4 **(f) The health maintenance organization or a pharmacy benefits**
 5 **manager may not require a pharmacy or pharmacist to collect a**
 6 **higher copayment for a prescription drug from an enrollee than**
 7 **the health maintenance organization or pharmacy benefits**
 8 **manager allows the pharmacy or pharmacist to retain.**

9 SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) The legislative**
 10 **council is urged to assign to the interim study committee on public**
 11 **health, behavioral health, and human services established by**
 12 **IC 2-5-1.3-4 or another appropriate interim study committee the**
 13 **task of studying and evaluating the following:**

14 **(1) The processes that can support further oversight,**
 15 **transparency, and clarity concerning the determination of**
 16 **prescription drug pricing by drug manufacturers.**

17 **(2) The results of other states' prescription drug transparency**
 18 **laws that have taken effect in order to consider replicating**
 19 **similar language to create consistency and reduce the burden**
 20 **on the reporting entity.**

21 **(3) Allowing pharmacists to prescribe drugs or devices for**
 22 **conditions that:**

23 **(A) do not require a new diagnosis;**

24 **(B) are minor or self-limiting; and**

25 **(C) are diagnosed by a test that has received a waiver**
 26 **under the Clinical Laboratory Improvement Amendments**
 27 **Act of 1988;**

28 **and for which the board of pharmacy determines the drugs**
 29 **and devices in these classes are appropriate for pharmacist**
 30 **prescriptive authority.**

31 **(b) This SECTION expires January 1, 2021.**

32 SECTION 11. An emergency is declared for this act.

