

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1402

AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 27-1-44.5-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.2. As used in this chapter, "administrator" means the entity that contracts with the department to create, operate, and maintain the data base.**

SECTION 2. IC 27-1-44.5-0.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.4. As used in this chapter, "advisory board" means the all payer claims data base advisory board established under IC 27-1-44.6-5.**

SECTION 3. IC 27-1-44.5-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.2. As used in this chapter, "executive director" means the individual who is responsible for overseeing the operations of the data base as an employee of the department.**

SECTION 4. IC 27-1-44.5-2, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2. As used in this chapter, "health payer" includes the following:**

- (1) Medicare.

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(2) Medicaid or a managed care organization (as defined in IC 12-7-2-126.9) that has contracted with Medicaid to provide services to a Medicaid recipient.

(3) An insurer that issues a policy of accident and sickness insurance (as defined in IC 27-8-5-1), **except for the following types of coverage:**

(A) **Accident only, credit, dental, vision, Medicare supplement, long term care, or disability income insurance.**

(B) **Coverage issued as a supplement to liability insurance.**

(C) **Automobile medical payment insurance.**

(D) **A specified disease policy.**

(E) **A policy that provides indemnity benefits not based on any expense incurred requirements, including a plan that provides coverage for:**

(i) **hospital confinement, critical illness, or intensive care;**
or

(ii) **gaps for deductibles or copayments.**

(F) **Worker's compensation or similar insurance.**

(G) **A student health plan.**

(H) **A supplemental plan that always pays in addition to other coverage.**

(I) **An employer sponsored health benefit plan that is:**

(i) **provided to individuals who are eligible for Medicare;**
and

(ii) **not marketed as, or held out to be, a Medicare supplement policy.**

(4) A health maintenance organization (as defined in IC 27-13-1-19).

(5) A pharmacy benefit manager (as defined in ~~IC 27-1-24.8-3~~; **IC 27-1-24.5-12**).

(6) ~~A third party~~ **An administrator (as defined in IC 27-1-25-1).**

(7) ~~An insurer (as defined in IC 27-1-26-1); excluding insurers of life insurance.~~

~~(8)~~ (7) Any other person identified by the commissioner for participation in the data base described in this chapter.

SECTION 5. IC 27-1-44.5-4, AS ADDED BY P.L.50-2020, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After ~~May 30, 2021~~, **December 31, 2021**, the department shall issue a request for an entity that is not a state agency or political subdivision to create, operate, and maintain the data base under this chapter. In addition to the requirements of IC 5-22-9, the request for proposals must include the considerations



contained in the request for information under section 3 of this chapter.

(b) The request for proposals must state that the data base's purpose is to facilitate the following:

- (1) Identifying health care needs and informing health care policy.
- (2) Comparing costs between various treatment settings and approaches.
- (3) Providing information to consumers and purchasers of health care.
- (4) Improving the quality and affordability of patient health care and health care coverage.

(c) The department shall publish the department's decision concerning the submissions not later than ~~November 30, 2021~~, **April 1, 2022**, on the department's Internet web site.

(d) If the department accepts a submission for the request for proposals, the department shall enter into a contract with the person to act as administrator of the data base and develop the data base.

(e) The administrator shall ensure that the data base is secure and compliant with the federal Health Insurance Portability and Accountability Act (HIPAA).

SECTION 6. IC 27-1-44.5-5, AS ADDED BY P.L.50-2020, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A health payer shall begin submitting the required data in a format specified by the administrator of the data base not later than three (3) months from the first day the department declares the data base to be fully operational.

(b) An employer may opt-in to share claims data with the data base.

(c) The state, the Indiana Medicaid state plan, and Medicaid managed care entities must submit data for the data base.

SECTION 7. IC 27-1-44.5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. **The administrator, with input from the executive director and the advisory board:**

- (1) shall ensure the security of the data;**
- (2) shall protect the privacy of the data in compliance with state and federal law;**
- (3) shall incorporate and utilize publicly available data other than administrative claims data if necessary to measure and analyze a significant health care quality, safety, or cost issue that cannot be adequately measured with administrative claims data alone;**
- (4) shall ensure uniform data collection and determine the data elements to be collected, the reporting formats for data**



submitted, and the use and reporting of any data submitted, which shall align with national, regional, and other uniform all payer claims data bases' standards where possible;

(5) may audit the accuracy of all data submitted;

(6) shall collect, aggregate, distribute, and publicly report performance data on cost, utilization, and pricing in a manner accessible for consumers, public and private purchasers, providers, and policymakers;

(7) may share data nationally or help develop a multistate effort if recommended by the advisory board; and

(8) may share data for research and publication purposes if approved by the advisory board.

SECTION 8. IC 27-1-44.5-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. The data base must do the following:**

- (1) Provide an online, public web portal that is free to use and allows the public to view the average negotiated charges by each health carrier for specific health care services provided by an individual health care provider, as well as the quality metrics for facilities and providers for specific health care services. Facilities and providers include hospitals, physician groups, ambulatory outpatient surgical centers, physical therapy offices, imaging centers, laboratories, infusion clinics, pharmacies, and any other location providing health care services.
- (2) Be available to the public as a resource to insurers, consumers, employers, providers, purchasers of health care, and state agencies to allow for continuous review of health care utilization, expenditures, and quality and safety performance in the state.
- (3) Be available to state agencies and private entities in the state that are engaged in efforts to improve health care, subject to rules adopted by the department.
- (4) Be presented to allow for comparisons of geographic, demographic, and economic factors and institutional size.
- (5) Present data in a consumer friendly manner.

SECTION 9. IC 27-1-44.5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) The executive director shall do the following:**

- (1) Report to the governor and, in an electronic format under IC 5-14-6, to the general assembly not later than September



1 of each year on the following:

- (A) The status of the operations of the data base.**
- (B) The financial stability of the data base.**
- (C) The status of efforts to obtain funding for the data base.**
- (2) Seek to establish agreements or requests with the federal Centers for Medicare and Medicaid Services to obtain their health claims data.**
- (3) Maximize private and federal funding opportunities, including private and federal grants, and the use of fees for the costs of implementing and operating the data base.**
- (4) Establish a fee formula for data licensing and claims data collection and release.**
- (5) Ensure privacy and security of the data collected.**
- (6) Provide leadership and coordination of public and private health care quality and performance measurements to ensure efficiency, cost effectiveness, transparency, and informed choice by consumers and public and private purchasers.**
- (7) Seek to establish agreements for voluntary reporting of health care claims data from health payers that are not subject to mandatory reporting requirements in order to ensure availability of the most comprehensive and systemwide data on health care costs and quality.**
- (8) Determine the data to be collected from health payers and the method of collection, including mandatory and voluntary reporting of health care and health quality data.**
- (9) Determine the measures necessary to implement the reporting requirements in a manner that is cost effective and reasonable for data sources and timely, relevant, and reliable for consumers, public and private purchasers, providers, and policymakers.**
- (10) Determine the reports and data to be made available to the public, with recommendations from the advisory board, in order to accomplish the purposes of this chapter, including conducting studies and reporting the results of the studies.**

(b) The executive director may contract with third parties to collect and process the health care data collected under this chapter.

SECTION 10. IC 27-1-44.5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The collection, storage, and release of health care data and other information under this

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chapter is subject to the federal Health Insurance Portability and Accountability Act (42 U.S.C. 201 et seq.), as amended.

SECTION 11. IC 27-1-44.5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) The department shall adopt emergency rules under IC 4-22-2-37.1 to implement this chapter. The rules must include a requirement that health payer data sources submit necessary information to the administrator. Rules enacted under this subsection must cover all health payer data sources as follows:**

(1) The department shall adopt rules that apply to health payers regulated under IC 27.

(2) The office of the secretary of family and social services shall adopt rules that apply to health payers regulated under IC 12.

(b) The department shall adopt emergency rules under IC 4-22-2-37.1 establishing a fee formula for data licensing and the collection and release of claims data.

(c) The department may impose a civil penalty on a health payer that is required to submit information under this chapter and fails to comply. A civil penalty collected under this section must be deposited in the department of insurance fund created by IC 27-1-3-28.

SECTION 12. IC 27-1-44.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 44.6. All Payer Claims Data Base Advisory Board

Sec. 1. As used in this chapter, "administrator" has the meaning in IC 27-1-44.5-0.2.

Sec. 2. As used in this chapter, "advisory board" refers to the all payer claims data base advisory board established under section 5 of this chapter.

Sec. 3. As used in this chapter, "data base" refers to the all payer claims data base established under IC 27-1-44.5.

Sec. 4. As used in this chapter, "executive director" has the meaning in IC 27-1-44.5-1.2.

Sec. 5. The all payer claims data base advisory board is established to:

(1) provide executive director candidate recommendations to the department for consideration. A candidate may only be considered if the candidate:

(A) has subject matter expertise in setting up an all payer



claims data base; and

(B) is not affiliated with the administrator;

(2) advise the executive director and administrator in the administration of the all payer claims data base under IC 27-1-44.5; and

(3) ensure the integrity, security, and privacy of the all payer claims data base's operations.

Sec. 6. (a) The advisory board consists of the following members, appointed by the governor:

(1) One (1) individual representing the Indiana Hospital Association.

(2) One (1) individual who is a physician or surgeon and is not employed by or contracted to predominantly provide health care services at a hospital licensed under IC 16-21-2 or a hospital system.

(3) One (1) individual representing a small employer that purchases a group health plan for its employees.

(4) One (1) individual representing a large employer that purchases a group health plan for its employees.

(5) One (1) individual representing a self-insured employer.

(6) One (1) individual from a firm that processes claims for health plans.

(7) One (1) individual representing a domestic insurance company that issues policies of accident and sickness insurance (as defined in IC 27-8-5-1).

(8) One (1) individual representing pharmacists or an affiliate society.

(9) The executive director.

Individuals appointed to represent an employer under subdivisions (3), (4), and (5) may not represent an employer who is a health care facility or provider or a supplier or broker of health plans.

(b) The advisory board consists of the following nonvoting advisory members:

(1) The commissioner of the department or a designee of the commissioner.

(2) The secretary of family and social services or a designee of the secretary.

(3) The commissioner of the state department of health or a designee of the commissioner.

(4) Two (2) members of the senate, who may not be members of the same political party, appointed by the president pro tempore of the senate with the advice of the minority leader



of the senate.

(5) Two (2) members of the house of representatives, who may not be members of the same political party, appointed by the speaker of the house of representatives with the advice of the minority leader of the house of representatives.

Sec. 7. (a) The initial appointment of members beginning July 1, 2021, must be made not later than August 1, 2021.

(b) For the initial appointment of the twelve (12) members appointed to the advisory board by the governor under section 6(a) of this chapter, six (6) members will serve for a term of two (2) years and six (6) members will serve for a term of four (4) years. For all subsequent appointments by the governor under section 6(a) of this chapter and all appointments made under section 6(b) of this chapter, members will serve for a term of four (4) years. Members may be reappointed.

(c) Subject to subsection (e), the executive director is a permanent member of the advisory board.

(d) Each appointed member serves until the member's successor is appointed and qualified. A vacancy must be filled by appointment of the governor for the unexpired term.

(e) A member may be removed from the advisory board for good cause.

Sec. 8. The advisory board must meet at least two (2) times per calendar year. A majority of the members of the advisory board constitutes a quorum.

Sec. 9. (a) Each member of the advisory board who is not a state employee is entitled to the minimum financial compensation per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the advisory board who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the advisory board who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study



committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

(d) Membership on the advisory board does not constitute the holding of a public office.

Sec. 10. (a) The advisory board may make recommendations to the executive director and administrator regarding the data base that:

- (1) include specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;
- (2) focus on data elements that foster quality improvement and peer group comparisons;
- (3) facilitate value based, cost effective purchasing of health care services by public and private purchasers and consumers;
- (4) result in usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost effective, high quality health care services;
- (5) use and build upon existing data collection standards and methods to establish and maintain the data base in a cost effective and efficient manner;
- (6) are designed to measure the following performance domains:
 - (A) safety;
 - (B) timeliness;
 - (C) effectiveness;
 - (D) efficiency;
 - (E) equity; and
 - (F) patient centeredness;
- (7) incorporate and utilize claims, eligibility, and other publicly available data to the extent it is the most cost effective method of collecting data to minimize the cost and administrative burden on data sources;
- (8) include recommendations about whether to include data on the uninsured;
- (9) discuss the harmonization of the data base with other state, regional, and federal efforts concerning all payer claims



data bases;

(10) discuss the harmonization of the data base with federal legislation concerning all payer claims data bases;

(11) discuss a limit on the number of times the executive director and administrator may require submission of the required data elements;

(12) discuss a limit on the number of times the executive director and administrator may change the required data elements for submission in a calendar year considering administrative costs, resources, and time required to fulfill the requests; and

(13) discuss compliance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. 201 et seq.), as amended, and other proprietary information related to collection and release of data.

(b) The advisory board shall make recommendations to the executive director regarding how the ongoing oversight of the operations of the data base should function, including where the data base should be housed.

(c) Any recommendations or actions by the advisory board are subject to the approval of the commissioner.

SECTION 13. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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