



Reprinted
February 21, 2023

SENATE BILL No. 8

DIGEST OF SB 8 (Updated February 20, 2023 2:21 pm - DI 104)

Citations Affected: IC 27-1.

Synopsis: Prescription drug rebates and pricing. Provides that, for individual health insurance coverage, the defined cost sharing for a prescription drug must be calculated at the point of sale and based on a price that is reduced by an amount equal to at least 85% of all rebates received by the insurer in connection with the dispensing or administration of the prescription drug. Requires that, for group health insurance coverage, an insurer: (1) pass through to a plan sponsor 100% of all rebates received or estimated to be received by the insurer concerning the dispensing or administration of prescription drugs to the covered individuals of the plan sponsor; (2) provide a plan sponsor, at the time of contracting, 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; and (3) disclose specified information to the plan sponsor. Allows the department of insurance to enforce the provisions and impose a civil penalty.

Effective: July 1, 2023; January 1, 2024.

**Charbonneau, Bohacek, Becker,
Busch, Donato, Johnson T, Crider**

January 9, 2023, read first time and referred to Committee on Health and Provider Services.
February 16, 2023, reported favorably — Do Pass.
February 20, 2023, read second time, amended, ordered engrossed.

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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 BILL No. 8

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 27-1-48 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2024]:
4 **Chapter 48. Individual Prescription Drug Rebates**
5 **Sec. 1. As used in this chapter, "covered individual" means an**
6 **individual who is entitled to health insurance coverage.**
7 **Sec. 2. As used in this chapter, "defined cost sharing" means a**
8 **deductible payment or coinsurance amount imposed on a covered**
9 **individual for a covered prescription drug under the covered**
10 **individual's health insurance coverage.**
11 **Sec. 3. (a) As used in this chapter, "health insurance coverage"**
12 **includes:**
13 **(1) an individual policy of accident and sickness insurance (as**
14 **defined in IC 27-8-5-1);**
15 **(2) an individual contract (as defined in IC 27-13-1-21) that**
16 **provides coverage for basic health care services (as defined in**
17 **IC 27-13-1-4); and**

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

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

10 Sec. 4. As used in this chapter, "insurer" means an insurer that
 11 provides health insurance coverage to a covered individual. The
 12 term includes the following:

13 (1) A third party administrator, except when acting as an
 14 administrator for a self-funded health benefit plan that
 15 complies with the federal Employee Retirement Income
 16 Security Act (ERISA) of 1974 (29 U.S.C. 1001 et seq.).

17 (2) A pharmacy benefit manager (as defined in
 18 IC 27-1-24.5-12), except when acting as a pharmacy benefit
 19 manager for a self-funded health benefit plan that complies
 20 with the federal Employee Retirement Income Security Act
 21 (ERISA) of 1974 (29 U.S.C. 1001 et seq.).

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

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

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

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

42 Sec. 7. A covered individual's defined cost sharing for a



1 prescription drug must be:

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

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

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

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

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

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

27 SECTION 2. IC 27-1-49 IS ADDED TO THE INDIANA CODE AS
 28 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2023]:

30 **Chapter 49. Group Prescription Drug Rebates**

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

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

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

- 39 (1) a group policy of accident and sickness insurance (as
 40 defined in IC 27-8-5-1);
 41 (2) a group contract (as defined in IC 27-13-1-16) that
 42 provides coverage for basic health care services (as defined in



1 **IC 27-13-1-4); and**

2 **(3) any other group health plan that limits eligibility to**
 3 **members of a specific group;**

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

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

12 **Sec. 4. As used in this chapter, "insurer" means an insurer that**
 13 **provides health insurance coverage to a covered individual. The**
 14 **term includes the following:**

15 **(1) A third party administrator, except when acting as an**
 16 **administrator for a self-funded health benefit plan that**
 17 **complies with the federal Employee Retirement Income**
 18 **Security Act (ERISA) of 1974 (29 U.S.C. 1001 et seq.).**

19 **(2) A pharmacy benefit manager (as defined in**
 20 **IC 27-1-24.5-12), except when acting as a pharmacy benefit**
 21 **manager for a self-funded health benefit plan that complies**
 22 **with the federal Employee Retirement Income Security Act**
 23 **(ERISA) of 1974 (29 U.S.C. 1001 et seq.).**

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

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

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

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

42 **(2) a reasonable estimate of any negotiated price concession,**



1 fee, or other administrative cost that is passed through, or is
2 reasonably anticipated to be passed through, to the insurer
3 and serves to reduce the insurer's liability for a prescription
4 drug.

5 **Sec. 8.** This section applies to a policy of health insurance
6 coverage that is issued, delivered, amended, or renewed after
7 December 31, 2023. An insurer shall pass through to a plan
8 sponsor one hundred percent (100%) of all rebates received or
9 estimated to be received by the insurer concerning the dispensing
10 or administration of prescription drugs to the covered individuals
11 of the plan sponsor.

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

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

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

24 (1) The approximate amount of rebates expected to be
25 received by the insurer concerning the dispensing or
26 administration of prescription drugs to the covered
27 individuals of the plan sponsor.

28 (2) An explanation that the plan sponsor may choose to:

29 (A) apply the rebates to reduce premiums for all covered
30 individuals; or

31 (B) calculate defined cost sharing for a covered individual
32 at the point of sale based on a price that is reduced by
33 rebates received or estimated to be received by the insurer
34 concerning the dispensing or administration of the covered
35 individual's prescription drugs.

36 (3) An explanation that, in the individual market, IC 27-1-48
37 requires that covered individual defined cost sharing be
38 calculated at the point of sale based on a price that is reduced
39 by at least eighty-five percent (85%) of the rebates received
40 or estimated to be received by the insurer concerning the
41 dispensing or administration of the covered individual's
42 prescription drugs.



1 **Sec. 12. The department may enforce the requirements of this**
2 **chapter to the extent permissible under applicable law.**
3 **Sec. 13. The commissioner may take appropriate action to**
4 **enforce this chapter by imposing a civil penalty not to exceed ten**
5 **thousand dollars (\$10,000) per violation.**
6 **Sec. 14. (a) In complying with the requirements of this chapter,**
7 **an insurer may not publish or otherwise reveal information**
8 **regarding the actual amount of rebates the insurer receives on a**
9 **product, manufacturer, or pharmacy specific basis. This**
10 **information is protected as a trade secret (as defined in**
11 **IC 24-2-3-2) and may not be published or otherwise disclosed**
12 **directly or indirectly.**
13 **(b) An insurer shall impose the confidentiality requirements of**
14 **this section on any vendor or third party that performs health care**
15 **or administrative services on behalf of the insurer and that may**
16 **receive or have access to the rebate information.**



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 8, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 08 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 10, Nays 1

 SENATE MOTION

Madam President: I move that Senate Bill 8 be amended to read as follows:

Page 1, line 11, after "3." insert "**(a)**".

Page 2, between lines 6 and 7, begin a new paragraph and insert:

"(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.)."

Page 2, line 10, delete "administrator." and insert **"administrator, except when acting as an administrator for 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.)."**

Page 2, line 12, delete "IC 27-1-24.5-12)." and insert **"IC 27-1-24.5-12), except when acting as a pharmacy benefit manager for 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.)."**

Page 3, line 28, after "3." insert "**(a)**".

Page 3, between lines 41 and 42, begin a new paragraph and insert:

"(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.)."

Page 4, line 3, delete "administrator." and insert **"administrator, except when acting as an administrator for 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.)."**

Page 4, line 5, delete "IC 27-1-24.5-12)." and insert **"IC 27-1-24.5-12), except when acting as a pharmacy benefit manager**

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for 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.)."

Page 4, line 6, after "5." insert "**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."

Page 4, line 11, delete "Sec. 6." and insert "**Sec. 7."**

Page 4, line 26, delete "Sec. 7." and insert "**Sec. 8."**

Page 4, line 33, delete "Sec. 8." and insert "**Sec. 9."**

Page 4, line 39, delete "Sec. 9." and insert "**Sec. 10."**

Page 4, line 41, delete "7" and insert "**8**".

Page 5, line 1, delete "Sec. 10." and insert "**Sec. 11."**

Page 5, line 22, delete "Sec. 11." and insert "**Sec. 12."**

Page 5, line 24, delete "Sec. 12." and insert "**Sec. 13."**

Page 5, line 27, delete "Sec. 13." and insert "**Sec. 14."**

(Reference is to SB 8 as printed February 17, 2023.)

CHARBONNEAU

