



Reprinted
April 12, 2023

ENGROSSED SENATE BILL No. 8

DIGEST OF SB 8 (Updated April 11, 2023 2:29 pm - DI 141)

Citations Affected: IC 27-1.

Synopsis: Prescription drug rebates and pricing. Requires, before July 1, 2024 and before July 1 of each year thereafter, the insurance commissioner to submit a copy of reports received from pharmacy benefit managers to the legislative council. Provides that, beginning January 1, 2025 for individual health insurance coverage and group health insurance coverage, an insurer shall do one of the following: (1) Apply 100% of the rebates to reduce premiums for all covered individuals equally. (2) Calculate defined cost sharing for a covered individual at the point of sale based on a price that is reduced by an amount equal to at least 85% of all rebates received by the insurer concerning the dispensing or administration of the covered individual's prescription drugs. Allows the department of insurance to enforce the provisions and impose a civil penalty.

Effective: July 1, 2023.

**Charbonneau, Bohacek, Becker,
Busch, Donato, Johnson T, Crider,
Randolph Lonnie M**

(HOUSE SPONSORS — SCHAIBLEY, BARRETT, OLTHOFF, PORTER)

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.

February 21, 2023, engrossed.

February 23, 2023, read third time, passed. Yeas 42, nays 5.

HOUSE ACTION

February 28, 2023, read first time and referred to Committee on Insurance.

April 6, 2023, amended, reported — Do Pass.

April 11, 2023, read second time, amended, ordered engrossed.

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Reprinted
April 12, 2023

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.

ENGROSSED 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 27-1-24.5-21, AS ADDED BY P.L.68-2020,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 21. (a) Beginning June 1, 2021, and annually
4 thereafter, a pharmacy benefit manager shall submit a report containing
5 data from the immediately preceding calendar year to the
6 commissioner. The commissioner shall determine what must be
7 included in the report and consider the following information to be
8 included in the report:
9 (1) The aggregate amount of all rebates that the pharmacy benefit
10 manager received from all pharmaceutical manufacturers for:
11 (A) all insurers; and
12 (B) each insurer;
13 with which the pharmacy benefit manager contracted during the
14 immediately preceding calendar year.
15 (2) The aggregate amount of administrative fees that the
16 pharmacy benefit manager received from all pharmaceutical
17 manufacturers for:

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- 1 (A) all insurers; and
 2 (B) each insurer;
 3 with which the pharmacy benefit manager contracted during the
 4 immediately preceding calendar year.
 5 (3) The aggregate amount of retained rebates that the pharmacy
 6 benefit manager received from all pharmaceutical manufacturers
 7 and did not pass through to insurers with which the pharmacy
 8 benefit manager contracted during the immediately preceding
 9 calendar year.
 10 (4) The highest, lowest, and mean aggregate retained rebate for:
 11 (A) all insurers; and
 12 (B) each insurer;
 13 with which the pharmacy benefit manager contracted during the
 14 immediately preceding calendar year.
 15 **(5) The aggregate amount charged for pharmaceutical claims**
 16 **to:**
 17 **(A) all insurers; and**
 18 **(B) each insurer;**
 19 **with which the pharmacy benefit manager contracted during**
 20 **the immediately preceding calendar year.**
 21 **(6) The aggregate amount paid to pharmacies for claims**
 22 **processed by the pharmacy benefit manager for:**
 23 **(A) all insurers; and**
 24 **(B) each insurer;**
 25 **with which the pharmacy benefit manager contracted during**
 26 **the immediately preceding calendar year.**
 27 (b) A pharmacy benefit manager that provides information under
 28 this section may designate the information as a trade secret (as defined
 29 in IC 24-2-3-2). **Except as provided in subsection (d)**, information
 30 designated as a trade secret under this subsection must not be published
 31 unless required under subsection (c).
 32 (c) Disclosure of information designated as a trade secret under
 33 subsection (b) may be ordered by a court of Indiana for good cause
 34 shown or made in a court filing.
 35 **(d) Before July 1, 2024, and before July 1 of each year**
 36 **thereafter, the commissioner shall submit a copy of any reports**
 37 **received under subsection (a) to the legislative council in an**
 38 **electronic format under IC 5-14-6.**
 39 SECTION 2. IC 27-1-49 IS ADDED TO THE INDIANA CODE AS
 40 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2023]:
 42 **Chapter 49. Individual Prescription Drug Rebates**



1 **Sec. 0.5.** This chapter applies beginning January 1, 2025.

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

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

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

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

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

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

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

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

26 **Sec. 5.** As used in this chapter, "pharmacy benefit manager" has
27 the meaning set forth in IC 27-1-24.5-12.

28 **Sec. 6.** As used in this chapter, "rebate" means a formulary
29 discount or concession attributable to the utilization of prescription
30 drugs in Indiana that is paid by a pharmaceutical manufacturer
31 directly to a pharmacy benefit manager as a rebate after the
32 pharmacy benefit manager processes a claim from a pharmacy for
33 a prescription drug.

34 **Sec. 7.** An insurer shall do one (1) of the following:

35 (1) Apply one hundred percent (100%) of the rebates to
36 reduce premiums for all covered individuals equally.

37 (2) Calculate defined cost sharing for a covered individual at
38 the point of sale based on a price that is reduced by an amount
39 equal to at least eighty-five percent (85%) of all rebates
40 received by the insurer concerning the dispensing or
41 administration of the covered individual's prescription drugs.

42 **Sec. 8.** Nothing in this chapter prohibits an insurer from



1 implementing a program designed to lower a covered individual's
 2 defined cost sharing or decreasing a covered individual's defined
 3 cost sharing by an amount greater than the amount required under
 4 section 7(2) of this chapter.

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

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

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

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

21 SECTION 3. IC 27-1-50 IS ADDED TO THE INDIANA CODE AS
 22 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2023]:

24 **Chapter 50. Group Prescription Drug Rebates**

25 **Sec. 0.5.** This chapter applies beginning January 1, 2025.

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

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

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

34 (1) a group policy of accident and sickness insurance (as
 35 defined in IC 27-8-5-1);

36 (2) a group contract (as defined in IC 27-13-1-16) that
 37 provides coverage for basic health care services (as defined in
 38 IC 27-13-1-4); and

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

41 and that is subject to state law regulating insurance and offers
 42 health insurance coverage (as defined in 42 U.S.C. 300gg-91). The



1 term includes coverage of a dependent of the covered individual
2 under a group policy or contract described in subdivisions (1)
3 through (3).

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

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

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

12 Sec. 6. As used in this chapter, "pharmacy benefit manager" has
13 the meaning set forth in IC 27-1-24.5-12.

14 Sec. 7. As used in this chapter, "rebate" means a formulary
15 discount or concession attributable to the utilization of prescription
16 drugs in Indiana that is paid by a pharmaceutical manufacturer
17 directly to a pharmacy benefit manager as a rebate after the
18 pharmacy benefit manager processes a claim from a pharmacy for
19 a prescription drug.

20 Sec. 8. An insurer shall do one (1) of the following:

21 (1) Apply one hundred percent (100%) of the rebates to
22 reduce premiums for all covered individuals equally.

23 (2) Calculate defined cost sharing for a covered individual at
24 the point of sale based on a price that is reduced by an amount
25 equal to at least eighty-five percent (85%) of all rebates
26 received by the insurer concerning the dispensing or
27 administration of the covered individual's prescription drugs.

28 Sec. 9. Nothing in this chapter prohibits an insurer from
29 implementing a program designed to lower a covered individual's
30 defined cost sharing or decreasing a covered individual's defined
31 cost sharing by an amount greater than the amount required under
32 section 8(2) of this chapter.

33 Sec. 10. Upon request, an insurer shall disclose to a plan sponsor
34 the approximate aggregate amount of rebates:

35 (1) received by the insurer in the preceding year; and

36 (2) expected to be received by the insurer in the following
37 year;

38 concerning the dispensing or administration of prescription drugs
39 to the covered individuals of the plan sponsor.

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

42 Sec. 12. The commissioner may take appropriate action to



1 enforce this chapter by imposing a civil penalty not to exceed ten
2 thousand dollars (\$10,000) per violation.

3 Sec. 13. (a) In complying with the requirements of this chapter,
4 an insurer may not publish or otherwise reveal information
5 regarding the actual amount of rebates the insurer receives on a
6 product, manufacturer, or pharmacy specific basis. This
7 information is protected as a trade secret (as defined in
8 IC 24-2-3-2) and may not be published or otherwise disclosed
9 directly or indirectly.

10 (b) An insurer shall impose the confidentiality requirements of
11 this section on any vendor or third party that performs health care
12 or administrative services on behalf of the insurer and that may
13 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

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 8, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE JULY 1, 2023]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"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."

Page 1, line 1, delete "IC 27-1-48" and insert "IC 27-1-49".

Page 1, line 4, delete "48." and insert "49."

Page 1, between lines 4 and 5, begin a new paragraph and insert: **"Sec. 0.5. This chapter applies beginning January 1, 2025."**

Page 2, line 11, delete "The".

Page 2, delete lines 12 through 42, begin a new paragraph and insert:

"Sec. 5. As used in this chapter, "pharmacy benefit manager" has the meaning set forth in IC 27-1-24.5-12.

Sec. 6. As used in this chapter, "rebate" means a formulary discount or concession attributable to the utilization of prescription drugs in Indiana that is paid by a pharmaceutical manufacturer directly to a pharmacy benefit manager as a rebate after the pharmacy benefit manager processes a claim from a pharmacy for a prescription drug.

Sec. 7. An insurer shall do one (1) of the following:

(1) Apply one hundred percent (100%) of the rebates to reduce premiums for all covered individuals equally.

(2) Calculate defined cost sharing for a covered individual at the point of sale based on a price that is reduced by an amount equal to at least eighty-five percent (85%) of all rebates received by the insurer concerning the dispensing or administration of the covered individual's prescription drugs."

Page 3, delete lines 1 through 6.

Page 3, line 7, after "from" insert **"implementing a program designed to lower a covered individual's defined cost sharing or"**.

Page 3, line 9, delete "7" and insert **"7(2)"**.

Page 3, line 27, delete "IC 27-1-49" and insert "IC 27-1-50".

Page 3, line 30, delete "49." and insert **"50."**

Page 3, between lines 30 and 31, begin a new paragraph and insert: **"Sec. 0.5. This chapter applies beginning January 1, 2025."**

Page 4, line 13, delete "The".

Page 4, delete lines 14 through 23.

Page 4, delete lines 27 through 42, begin a new paragraph and insert:

"Sec. 6. As used in this chapter, "pharmacy benefit manager"



has the meaning set forth in IC 27-1-24.5-12.

Sec. 7. As used in this chapter, "rebate" means a formulary discount or concession attributable to the utilization of prescription drugs in Indiana that is paid by a pharmaceutical manufacturer directly to a pharmacy benefit manager as a rebate after the pharmacy benefit manager processes a claim from a pharmacy for a prescription drug."

Page 5, delete lines 1 through 17, begin a new paragraph and insert:

"Sec. 8. An insurer shall do one (1) of the following:

(1) Apply one hundred percent (100%) of the rebates to reduce premiums for all covered individuals equally.

(2) Calculate defined cost sharing for a covered individual at the point of sale based on a price that is reduced by an amount equal to at least eighty-five percent (85%) of all rebates received by the insurer concerning the dispensing or administration of the covered individual's prescription drugs."

Page 5, line 18, delete "10." and insert "9."

Page 5, line 18, after "from" insert **"implementing a program designed to lower a covered individual's defined cost sharing or"**.

Page 5, line 20, delete "8" and insert **"8(2)"**.

Page 5, delete lines 22 through 42, begin a new paragraph and insert:

"Sec. 10. Upon request, an insurer shall disclose to a plan sponsor the approximate aggregate amount of rebates:

(1) received by the insurer in the preceding year; and

(2) expected to be received by the insurer in the following year;

concerning the dispensing or administration of prescription drugs to the covered individuals of the plan sponsor."

Page 6, line 1, delete "12." and insert **"11."**

Page 6, line 3, delete "13." and insert **"12."**

Page 6, line 6, delete "14." and insert **"13."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 8 as reprinted February 21, 2023.)

CARBAUGH

Committee Vote: yeas 9, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 8 be amended to read as follows:

Page 1, delete lines 1 through 14, begin a new paragraph and insert: "SECTION 1. IC 27-1-24.5-21, AS ADDED BY P.L.68-2020, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 21. (a) Beginning June 1, 2021, and annually thereafter, a pharmacy benefit manager shall submit a report containing data from the immediately preceding calendar year to the commissioner. The commissioner shall determine what must be included in the report and consider the following information to be included in the report:

(1) The aggregate amount of all rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers for:

(A) all insurers; and

(B) each insurer;

with which the pharmacy benefit manager contracted during the immediately preceding calendar year.

(2) The aggregate amount of administrative fees that the pharmacy benefit manager received from all pharmaceutical manufacturers for:

(A) all insurers; and

(B) each insurer;

with which the pharmacy benefit manager contracted during the immediately preceding calendar year.

(3) The aggregate amount of retained rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers and did not pass through to insurers with which the pharmacy benefit manager contracted during the immediately preceding calendar year.

(4) The highest, lowest, and mean aggregate retained rebate for:

(A) all insurers; and

(B) each insurer;

with which the pharmacy benefit manager contracted during the immediately preceding calendar year.

(5) The aggregate amount charged for pharmaceutical claims to:

(A) all insurers; and

(B) each insurer;

with which the pharmacy benefit manager contracted during the immediately preceding calendar year.



(6) The aggregate amount paid to pharmacies for claims processed by the pharmacy benefit manager for:

(A) all insurers; and

(B) each insurer;

with which the pharmacy benefit manager contracted during the immediately preceding calendar year.

(b) A pharmacy benefit manager that provides information under this section may designate the information as a trade secret (as defined in IC 24-2-3-2). **Except as provided in subsection (d)**, information designated as a trade secret under this subsection must not be published unless required under subsection (c).

(c) Disclosure of information designated as a trade secret under subsection (b) may be ordered by a court of Indiana for good cause shown or made in a court filing.

(d) Before July 1, 2024, and before July 1 of each year thereafter, the commissioner shall submit a copy of any reports received under subsection (a) to the legislative council in an electronic format under IC 5-14-6."

Renumber all SECTIONS consecutively.

(Reference is to ESB 8 as printed April 6, 2023.)

SCHAIBLEY

