



Reprinted  
January 28, 2022

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## SENATE BILL No. 88

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DIGEST OF SB 88 (Updated January 27, 2022 3:28 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 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, 2022; January 1, 2023.

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### Charbonneau, Becker, Ford J.D.

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January 4, 2022, read first time and referred to Committee on Health and Provider Services.

January 20, 2022, reported favorably — Do Pass.

January 27, 2022, read second time, amended, ordered engrossed.

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SB 88—LS 6449/DI 137





Reprinted  
January 28, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## SENATE BILL No. 88

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, 2023]:

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. 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           Sec. 4. As used in this chapter, "insurer" means an insurer that  
8 provides health insurance coverage to a covered individual. The  
9 term includes a third party administrator, including a pharmacy  
10 benefit manager (as defined in IC 27-1-24.5-12).

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

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

17           (1) a discount or other negotiated price concession, including  
18 but not limited to base price concessions (whether described  
19 as a rebate or otherwise) and reasonable estimates of price  
20 protection rebates, and performance based price concessions,  
21 that may accrue directly or indirectly or are anticipated to be  
22 passed through to an insurer during the coverage year from  
23 a manufacturer, dispensing pharmacy, or other party in  
24 connection with the dispensing or administration of a  
25 prescription drug; and

26           (2) a reasonable estimate of any negotiated price concession,  
27 fee, or other administrative cost that is passed through, or is  
28 reasonably anticipated to be passed through, to the insurer  
29 and serves to reduce the insurer's liability for a prescription  
30 drug.

31           Sec. 7. A covered individual's defined cost sharing for a  
32 prescription drug must be:

33           (1) calculated at the point of sale; and

34           (2) based on a price that is reduced by an amount equal to at  
35 least eighty-five percent (85%) of all rebates received or  
36 estimated to be received by the insurer in connection with the  
37 dispensing or administration of the prescription drug.

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

42           Sec. 9. The department may enforce the requirements of this



1 section to the extent permissible under applicable law.

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

5 **Sec. 11.** In complying with the requirements of this chapter, an  
6 insurer or an insurer's agent may not publish or otherwise reveal  
7 information regarding the actual amount of rebates the insurer  
8 receives on a product, manufacturer, or pharmacy specific basis.  
9 This information is protected as a trade secret (as defined in  
10 IC 24-2-3-2) and may not be published or otherwise disclosed  
11 directly or indirectly. An insurer shall impose the confidentiality  
12 requirements of this section on any vendor or downstream third  
13 party that performs health care or administrative services on  
14 behalf of the insurer that may receive or have access to rebate  
15 information.

16 SECTION 2. IC 27-1-49 IS ADDED TO THE INDIANA CODE AS  
17 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 2022]:

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

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

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

26 **Sec. 3.** As used in this chapter, "health insurance coverage"  
27 includes:

- 28 (1) a group policy of accident and sickness insurance (as  
29 defined in IC 27-8-5-1);
- 30 (2) a group contract (as defined in IC 27-13-1-16) that  
31 provides coverage for basic health care services (as defined in  
32 IC 27-13-1-4); and
- 33 (3) any other group health plan that limits eligibility to  
34 members of a specific group;

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

40 **Sec. 4.** As used in this chapter, "insurer" means an insurer that  
41 provides health insurance coverage to a covered individual. The  
42 term includes a third party administrator, including a pharmacy



1 benefit manager (as defined in IC 27-1-24.5-12).

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

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

8 (1) a discount or other negotiated price concession, including  
9 but not limited to base price concessions (whether described  
10 as a rebate or otherwise) and reasonable estimates of price  
11 protection rebates, and performance based price concessions,  
12 that may accrue directly or indirectly or are anticipated to be  
13 passed through to an insurer during the coverage year from  
14 a manufacturer, dispensing pharmacy, or other party in  
15 connection with the dispensing or administration of a  
16 prescription drug; and

17 (2) a reasonable estimate of any negotiated price concession,  
18 fee, or other administrative cost that is passed through, or is  
19 reasonably anticipated to be passed through, to the insurer  
20 and serves to reduce the insurer's liability for a prescription  
21 drug.

22 Sec. 7. This section applies to a policy of health insurance  
23 coverage that is issued, delivered, amended, or renewed after  
24 December 31, 2022. An insurer shall pass through to a plan  
25 sponsor one hundred percent (100%) of all rebates received or  
26 estimated to be received by the insurer concerning the dispensing  
27 or administration of prescription drugs to the covered individuals  
28 of the plan sponsor.

29 Sec. 8. At the time of contracting, an insurer shall provide plan  
30 sponsors the option of calculating defined cost sharing for covered  
31 individuals of the plan sponsor at the point of sale based on a price  
32 that is reduced by some or all of the rebates received or estimated  
33 to be received by the insurer concerning the dispensing or  
34 administration of the prescription drug.

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

39 Sec. 10. An insurer shall disclose the following information to a  
40 plan sponsor on at least an annual basis:

41 (1) The approximate amount of rebates expected to be  
42 received by the insurer concerning the dispensing or



1 administration of prescription drugs to the covered  
2 individuals of the plan sponsor.

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

4 (A) apply the rebates to reduce premiums for all covered  
5 individuals; or

6 (B) calculate defined cost sharing for a covered individual  
7 at the point of sale based on a price that is reduced by  
8 rebates received or estimated to be received by the insurer  
9 concerning the dispensing or administration of the covered  
10 individual's prescription drugs.

11 (3) An explanation that, in the individual market, IC 27-1-48  
12 requires that covered individual defined cost sharing be  
13 calculated at the point of sale based on a price that is reduced  
14 by at least eighty-five percent (85%) of the rebates received  
15 or estimated to be received by the insurer concerning the  
16 dispensing or administration of the covered individual's  
17 prescription drugs.

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

20 Sec. 12. The commissioner may take appropriate action to  
21 enforce this chapter by imposing a civil penalty not to exceed ten  
22 thousand dollars (\$10,000) per violation.

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

29 (b) An insurer shall impose the confidentiality requirements of  
30 this section on any vendor or third party that performs health care  
31 or administrative services on behalf of the insurer and that may  
32 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. 88, 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 88 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 7, Nays 4

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 SENATE MOTION

Madam President: I move that Senate Bill 88 be amended to read as follows:

Page 1, line 4, after "48." insert "**Individual**".

Page 1, line 13, delete "a" and insert "**an individual**".

Page 1, line 15, delete "or a".

Page 1, line 16, delete "group contract (as defined in IC 27-13-1-16)".

Page 2, line 2, after "is" insert "**issued on an individual basis; and that is**".

Page 2, line 4, after "300gg-91)." insert "**The term includes coverage of a dependent of the covered individual under an individual policy or contract described in subdivisions (1) through (3).**".

Page 2, line 6, after "individual." insert "**The term includes a third party administrator, including a pharmacy benefit manager (as defined in IC 27-1-24.5-12).**".

Page 2, line 38, delete "of insurance".

Page 2, line 42, delete "section" and insert "**chapter**".

Page 3, after line 12, begin a new paragraph and insert:

"SECTION 2. IC 27-1-49 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

**Chapter 49. Group Prescription Drug Rebates**

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

**Sec. 2. As used in this chapter, "defined cost sharing" means a deductible payment or coinsurance amount imposed on a covered**





individual for a covered prescription drug under the covered individual's health insurance coverage.

**Sec. 3.** As used in this chapter, "health insurance coverage" includes:

- (1) a group policy of accident and sickness insurance (as defined in IC 27-8-5-1);
- (2) a group contract (as defined in IC 27-13-1-16) that provides coverage for basic health care services (as defined in IC 27-13-1-4); and
- (3) any other group health plan that limits eligibility to members of a specific group;

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

**Sec. 4.** As used in this chapter, "insurer" means an insurer that provides health insurance coverage to a covered individual. The term includes a third party administrator, including a pharmacy benefit manager (as defined in IC 27-1-24.5-12).

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

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

- (1) a discount or other negotiated price concession, including but not limited to base price concessions (whether described as a rebate or otherwise) and reasonable estimates of price protection rebates, and performance based price concessions, that may accrue directly or indirectly or are anticipated to be passed through to an insurer during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug; and
- (2) a reasonable estimate of any negotiated price concession, fee, or other administrative cost that is passed through, or is reasonably anticipated to be passed through, to the insurer and serves to reduce the insurer's liability for a prescription drug.

**Sec. 7.** This section applies to a policy of health insurance coverage that is issued, delivered, amended, or renewed after



December 31, 2022. An insurer shall pass through to a plan sponsor one hundred percent (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.

Sec. 8. At the time of contracting, an insurer shall provide plan sponsors 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.

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

Sec. 10. An insurer shall disclose the following information to a plan sponsor on at least an annual basis:

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

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

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

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

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

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

Sec. 12. The commissioner may take appropriate action to enforce this chapter by imposing a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

Sec. 13. (a) In complying with the requirements of this chapter,



**an insurer may not publish or otherwise reveal information regarding the actual amount of rebates the insurer receives on a product, manufacturer, or pharmacy specific basis. This information is protected as a trade secret (as defined in IC 24-2-3-2) and may not be published or otherwise disclosed.**

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

Renumber all SECTIONS consecutively.

(Reference is to SB 88 as printed January 21, 2022.)

CHARBONNEAU

