SENATE BILL No. 140

DIGEST OF INTRODUCED BILL

Citations Affected: IC 25-26-27; IC 27-1.

Synopsis: Pharmacy benefits. Requires an ambulatory pharmacy to provide, before March 1, 2027, and March 1 of every other year thereafter, data to the Indiana board of pharmacy (board) relating to the pharmacy's dispensing costs for the previous calendar year. Requires the board to share the dispensing data with the commissioner of the department of insurance (commissioner). Requires the commissioner to: (1) make a determination relating to the average cost to dispense a prescription drug in an ambulatory pharmacy for purposes of determining the minimum reimbursement for a professional dispensing fee; and (2) conduct a study every two years relating to the dispensing data. Requires an insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits to ensure that a network utilized by the insurer, pharmacy benefit manager, or other administrator is reasonably adequate and accessible and file an annual report regarding the networks with the commissioner. Sets forth certain limitations and requirements with respect to the provision of pharmacy or pharmacist services under a health plan. Allows any insured, pharmacy, or pharmacist impacted by an alleged violation to file a complaint with the commissioner. Provides that the commissioner may order reimbursement to any person who has incurred a monetary loss as a result of a violation. Repeals a superseded provision relating to equal access and incentives to pharmacies within a pharmacy benefit manager's network.

Effective: January 1, 2026.

Charbonneau

January 8, 2025, read first time and referred to Committee on Health and Provider Services.

Introduced

First Regular Session of the 124th General Assembly (2025)

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 2024 Regular Session of the General Assembly.

SENATE BILL No. 140

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 25-26-27 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2026]:

Chapter 27. Reporting Requirements for Ambulatory Pharmacies

Sec. 1. As used in this chapter, "ambulatory pharmacy" has the meaning set forth in IC 27-1-24.6-3.

Sec. 2. As used in this chapter, "board" means the Indiana board of pharmacy.

Sec. 3. As used in this chapter, "commissioner" means the commissioner of the department of insurance.

Sec. 4. (a) An ambulatory pharmacy that is:

(1) located in Indiana; and

(2) licensed under this article;

shall, before March 1, 2027, and March 1 of every other year thereafter, provide data to the board relating to the pharmacy's dispensing costs for the previous calendar year.

(b) The data must be provided in accordance with the requirements under IC 27-1-24.6-18 and section 5 of this chapter.

Sec. 5. The board shall adopt rules under IC 4-22-2 to implement section 4 of this chapter. The rules adopted under this section must:

(1) incorporate the data elements to be collected from each ambulatory pharmacy, as determined by the commissioner under IC 27-1-24.6-18; and

(2) establish the reporting format and manner of data submission.

Sec. 6. (a) The board shall share the data collected under this chapter with the commissioner not later than thirty (30) days after the board receives the data.

(b) In carrying out the board's duties under this chapter, the board shall cooperate and consult with the commissioner.

(c) All information and data acquired by the board or commissioner under this chapter or IC 27-1-24.6-18 is:

(1) declared confidential and proprietary; and

(2) not subject to disclosure under IC 5-14-3.

Sec. 7. The board or commissioner may retain or contract with one (1) or more third party vendors or contractors to collect or process the data required under this chapter, or provide any other expertise, service, or function necessary to carry out the board's or commissioner's duties under this chapter or IC 27-1-24.6-18, if the vendor or contractor:

(1) agrees in a written or electronic record to maintain the confidential and proprietary status of the data and all information relating to the data; and

(2) is not owned by or affiliated with a pharmacy benefit manager (as defined in IC 27-1-24.5-12).

SECTION 2. IC 27-1-24.5-19 IS REPEALED [EFFECTIVE JANUARY 1, 2026]. ~~Sec. 19. (a) A pharmacy benefit manager shall provide equal access and incentives to all pharmacies within the pharmacy benefit manager's network.~~

~~(b) A pharmacy benefit manager may not do any of the following:~~

~~(1) Condition participation in any network on accreditation, credentialing, or licensing of a pharmacy, other than a license or permit required by the Indiana board of pharmacy or other state or federal regulatory authority for the services provided by the pharmacy. However, nothing in this subdivision precludes the department from providing credentialing or accreditation standards for pharmacies.~~

~~(2) Discriminate against any pharmacy.~~

~~(3) Directly or indirectly retroactively deny a claim or aggregate of claims after the claim or aggregate of claims has been adjudicated, unless any of the following apply:~~

~~(A) The original claim was submitted fraudulently.~~

~~(B) The original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the drug.~~

~~(C) The pharmacist services were not properly rendered by the pharmacy or pharmacist.~~

~~(4) Reduce, directly or indirectly, payment to a pharmacy for pharmacist services to an effective rate of reimbursement, including permitting an insurer or plan sponsor to make such a reduction.~~

~~(5) Reimburse a pharmacy that is affiliated with the pharmacy benefit manager, other than solely being included in the pharmacy benefit manager's network, at a greater reimbursement rate than other pharmacies in the same network.~~

~~(6) Impose limits, including quantity limits or refill frequency limits, on a pharmacy's access to medication that differ from those existing for a pharmacy benefit manager affiliate.~~

~~(7) Share any covered individual's information, including de-identified covered individual information, received from a pharmacy or pharmacy benefit manager affiliate, except as permitted by the federal Health Insurance Portability and Accountability Act (HIPAA) (P.L.104-191).~~

~~A violation of this subsection by a pharmacy benefit manager constitutes an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.~~

SECTION 3. IC 27-1-24.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2026]:

Chapter 24.6. Pharmacy Benefits

Sec. 1. This chapter applies to a policy or contract that is issued, delivered, entered into, renewed, or amended after December 31, 2025.

Sec. 2. As used in this chapter, "actual overpayment" means the portion of any amount paid for pharmacy or pharmacist services that:

(1) is duplicative because the pharmacy or pharmacist has already been paid for the services; or

(2) was erroneously paid because the services were not rendered in accordance with the prescriber's order, in which

case only the amount paid for the portion of the prescription that was filled incorrectly or in excess of the prescriber's order is deemed an actual overpayment.

Sec. 3. As used in this chapter, "ambulatory pharmacy" means a pharmacy that:

(1) is open to the general public; and

(2) dispenses outpatient prescription drugs.

Sec. 4. As used in this chapter, "common control" includes:

(1) sharing common management or managers; and

(2) having common members on boards of directors.

Sec. 5. As used in this chapter, "cost sharing" means the cost to an insured under a health plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the health plan.

Sec. 6. (a) As used in this chapter, "health plan" means the following:

(1) A state employee health plan (as defined in IC 5-10-8-6.7).

(2) A policy of accident and sickness insurance (as defined in IC 27-8-5-1). However, the term does not include the coverages described in IC 27-8-5-2.5(a).

(3) An individual contract (as defined in IC 27-13-1-21) or 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).

(4) Any other plan or program that provides payment, reimbursement, or indemnification to a covered individual for the cost of prescription drugs.

(b) The term does not include the following:

(1) A self-insured health plan provided by a hospital or health system to its employees and dependents of employees if the hospital or health system owns a pharmacy.

(2) A prescription drug plan established under Medicare Part D.

Sec. 7. As used in this chapter, "insured" means an individual covered under a health plan.

Sec. 8. (a) As used in this chapter, "insurer" means any of the following that offer or issue a health plan:

(1) An insurance company.

(2) A health maintenance organization.

(3) A limited health service organization.

(4) A self-insurer, including a governmental plan, church plan, or multiple employer welfare arrangement.

(5) A provider sponsored integrated health delivery network.

(6) A self-insured employer organized association.

(7) A nonprofit hospital, medical-surgical, dental, and health service corporation.

(8) Any other third party payor that is:

(A) authorized to transact health insurance business in Indiana; or

(B) not exempt by federal law from regulation under the insurance laws of Indiana.

(b) The term includes any person or entity that has contracted with a state or federal agency to provide coverage under a health plan.

Sec. 9. As used in this chapter, "national drug code number" means the unique national drug code number that identifies:

(1) a specific approved drug;

(2) the manufacturer of the drug; and

(3) the package presentation of the drug.

Sec. 10. As used in this chapter, "net amount" means the amount paid to a pharmacy or pharmacist by the insurer, pharmacy benefit manager, or other administrator minus:

(1) any fees;

(2) any price concessions; and

(3) all other revenue;

passing from the pharmacy or pharmacist to the insurer, pharmacy benefit manager, or other administrator.

Sec. 11. As used in this chapter, "pharmacy" has the meaning set forth in IC 25-26-13-2.

Sec. 12. As used in this chapter, "pharmacy affiliate" means a pharmacy, including a specialty pharmacy, that directly or indirectly, through one (1) or more intermediaries:

(1) owns or controls;

(2) is owned or controlled by; or

(3) is under common ownership or common control with;

an insurer, a pharmacy benefit manager, or other administrator of pharmacy benefits.

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

Sec. 14. (a) As used in this chapter, "pharmacy or pharmacist services" means any:

(1) health care procedures or treatments within the scope of practice of a pharmacist; or

(2) services provided by a pharmacy or pharmacist.

(b) The term includes the sale and provision of the following by a pharmacy or pharmacist:

(1) Prescription drugs.

(2) Home medical equipment (as defined in IC 25-26-21-2).

Sec. 15. As used in this chapter, "wholesale acquisition cost":

(1) means the manufacturer's list price for a drug to wholesalers or direct purchasers in the United States for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug pricing data; and

(2) does not include prompt pay or other discounts, rebates, or reductions in price.

Sec. 16. (a) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits that utilizes a network to provide pharmacy or pharmacist services under a health plan shall ensure that the network is reasonably adequate and accessible with respect to the provision of pharmacy or pharmacist services.

(b) A reasonably adequate and accessible network with respect to the provision of pharmacy or pharmacist services must, at a minimum:

(1) offer an adequate number of accessible pharmacies that are not mail order pharmacies; and

(2) provide convenient access to pharmacies that are not mail order pharmacies within a reasonable distance of not more than thirty (30) miles from each insured's residence, to the extent that pharmacy or pharmacist services are available.

(c) An insurer, a pharmacy benefit manager, and any other administrator of pharmacy benefits shall file an annual report with the commissioner in a manner and form prescribed by the commissioner. The annual report must describe the networks of the insurer, pharmacy benefit manager, or other administrator that are utilized for the provision of pharmacy or pharmacist services under a health plan.

(d) The commissioner shall review each network reported under subsection (c) to ensure that the network complies with this section.

(e) All information and data acquired by the department under this section that is generally recognized as confidential or proprietary is confidential for the purposes of IC 5-14-3-4 and may not be disclosed by the department. However, the department may publicly disclose aggregated information that is not descriptive of any readily identifiable person or entity.

Sec. 17. (a) A contract between a pharmacy or pharmacist and

an insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits for the provision of pharmacy or pharmacist services under a health plan, either directly or through a pharmacy services administration organization or group purchasing organization, must include provisions that do the following:

(1) Outline the terms and conditions for the provision of pharmacy or pharmacist services.

(2) Prohibit the insurer, pharmacy benefit manager, or other administrator from doing the following:

(A) Reducing payment for pharmacy or pharmacist services, directly or indirectly, under a reconciliation process to an effective rate of reimbursement, including creating, imposing, or establishing:

(i) direct or indirect remuneration fees;

(ii) generic effective rates;

(iii) dispensing effective rates;

(iv) brand effective rates;

(v) any other effective rates;

(vi) in network fees;

(vii) performance fees;

(viii) point of sale fees;

(ix) retroactive fees;

(x) preadjudication fees;

(xi) post-adjudication fees; and

(xii) any other mechanism that reduces or aggregately reduces payment for pharmacy or pharmacist services.

(B) Subject to subsection (b), retroactively denying, reducing reimbursement for, or seeking any refunds or recoupments for a claim for pharmacy or pharmacist services, in whole or in part, from the pharmacy or pharmacist after returning a paid claim response as part of the adjudication of the claim, including claims for the cost of a medication or dispensed product and claims for pharmacy or pharmacist services that are deemed ineligible for coverage, unless:

(i) the original claim was submitted fraudulently; or

(ii) the pharmacy or pharmacist received an actual overpayment.

(C) Reimbursing the pharmacy or pharmacist for a prescription drug or other service at a net amount that is less than the amount the insurer, pharmacy benefit

manager, or other administrator reimburses itself or a pharmacy affiliate for the same:

(i) prescription drug by national drug code number; or

(ii) service.

(D) Collecting cost sharing from a pharmacy or pharmacist that was provided to the pharmacy or pharmacist by an insured for the provision of pharmacy or pharmacist services under the health plan.

(E) Designating a prescription drug as a specialty drug unless the drug is a limited distribution drug that:

(i) requires special handling; and

(ii) is not commonly carried at retail pharmacies or oncology clinics or practices.

(3) Notwithstanding any other law, provide the following minimum reimbursements to the pharmacy or pharmacist for each prescription drug or other service provided by the pharmacy or pharmacist:

(A) Reimbursement for the cost of the drug or other service at an amount that is not less than:

(i) the national average drug acquisition cost for the drug or service at the time the drug or service is administered, dispensed, or provided; or

(ii) if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, the wholesale acquisition cost for the drug at the time the drug is administered or dispensed.

For purposes of this clause, the insurer, pharmacy benefit manager, or other administrator shall utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's or pharmacist's reimbursement for drugs appearing on the national average drug acquisition cost list.

(B) This clause does not apply to a mail order pharmaceutical distributor, including a mail order pharmacy. For health plan years:

(i) beginning on or after January 1, 2028, reimbursement for a professional dispensing fee in an amount that is not less than the average cost to dispense a prescription drug in an ambulatory pharmacy located in Indiana, as determined by the commissioner; or

(ii) beginning after December 31, 2025, and before

January 1, 2028, and for any subsequent health plan years for which a determination under item (i) has not taken effect, reimbursement for a professional dispensing fee for an independent retail pharmacy in Indiana or a pharmacist practicing at an independent retail pharmacy in Indiana that is not less than ten dollars and sixty-four cents ($10.64).

(b) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits may not request a refund or make a recoupment of a dispensing fee paid to the pharmacy if the correct medication was dispensed to the patient.

Sec. 18. (a) In acquiring data for, and making, the determination required under section 17(a)(3)(B)(i) of this chapter, the commissioner shall:

(1) adopt rules under IC 4-22-2 to establish the data elements to be collected by the Indiana board of pharmacy under IC 25-26-27-4;

(2) conduct a study of the dispensing data submitted to the commissioner by the Indiana board of pharmacy in accordance with IC 25-26-27-6;

(3) repeat the study described in subdivision (2) every two (2) years to obtain updated information;

(4) adjust the determination required under section 17(a)(3)(B)(i) of this chapter every two (2) years as appropriate based upon the results of each study; and

(5) comply with all requirements of IC 25-26-27.

(b) In carrying out the duties set forth in this section, the commissioner shall cooperate and consult with the Indiana board of pharmacy.

Sec. 19. (a) As used in this section, "interfere" includes:

(1) inducing;

(2) steering;

(3) offering financial or other incentives; and

(4) imposing a penalty.

(b) Except as provided in section 17 of this chapter, with respect to the provision of pharmacy or pharmacist services under a health plan, an insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits:

(1) may not:

(A) require or incentivize an insured to use a mail order pharmaceutical distribution, including a mail order pharmacy, such as imposing any cost sharing requirement,

fee, drug supply limitation, or other condition relating to pharmacy or pharmacist services received from a retail pharmacy that is greater, or more restrictive, than what would otherwise be imposed if the insured used a mail order pharmaceutical distributor, including a mail order pharmacy;

(B) prohibit a pharmacy or pharmacist from, or impose a penalty on a pharmacy or pharmacist for:

(i) selling a lower cost alternative to an insured, if a lower cost alternative is available; or

(ii) providing information to an insured under subsection (d);

(C) discriminate against any pharmacy or pharmacist that is:

(i) located within the geographic coverage area of the health plan; and

(ii) willing to agree to, or accept, reasonable terms and conditions established for participation in the insurer's, pharmacy benefit manager's, other administrator's, or health plan's network;

(D) impose limits, including quantity limits or refill frequency limits, on an insured's access to medication from a pharmacy that are more restrictive than those existing for a pharmacy affiliate;

(E) subject to subsection (c), require or incentivize an insured to receive pharmacy or pharmacist services from a pharmacy affiliate, including:

(i) requiring or incentivizing an insured to obtain a specialty drug from a pharmacy affiliate;

(ii) charging less cost sharing to insureds that use pharmacy affiliates than what is charged to insureds that use nonaffiliated pharmacies; and

(iii) providing any incentives for insureds that use pharmacy affiliates that are not provided for insureds that use nonaffiliated pharmacies; or

(F) interfere with an insured's right to choose the insured's network pharmacy of choice, such as:

(i) promoting one (1) participating pharmacy over another;

(ii) offering a monetary advantage;

(iii) charging higher cost sharing; and

(iv) reducing an insured's allowable reimbursement for

pharmacy or pharmacist services; and

(2) shall:

(A) provide equal access and incentives to all pharmacies within the insurer's, pharmacy benefit manager's, other administrator's, or health plan's network; and

(B) offer all pharmacies located in the health plan's geographic coverage area eligibility to participate in the insurer's, pharmacy benefit manager's, other administrator's, or health plan's network under identical reimbursement terms for the provision of pharmacy or pharmacist services.

(c) Subsection (b)(1)(E) may not be construed to prohibit:

(1) communications to insureds regarding networks and prices if the communication is accurate and includes information about all eligible nonaffiliated pharmacies; or

(2) an insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits from:

(A) requiring an insured to utilize a network that may include pharmacy affiliates in order to receive coverage under the health plan; or

(B) providing financial incentives for utilizing the network, if the insurer, pharmacy benefit manager, or other administrator complies with this section and section 16 of this chapter.

(d) A pharmacist shall have the right to provide an insured with information regarding lower cost alternatives to assist the insured in making informed decisions.

Sec. 20. (a) Any insured, pharmacy, or pharmacist impacted by an alleged violation of this chapter may file a complaint with the commissioner.

(b) The commissioner shall:

(1) review and investigate all complaints filed under this section;

(2) issue, in writing, a determination to the insured, pharmacy, or pharmacist as to whether a violation occurred; and

(3) for alleged violations of section 17(a)(2)(E) of this chapter, consult with the Indiana board of pharmacy in making the determination of whether a violation occurred.

(c) An insurer, a pharmacy benefit manager, or any other administrator of pharmacy benefits shall:

(1) respond to; and

(2) comply with;

any requests made by the commissioner under this section.

Sec. 21. In addition to any other remedies, penalties, or damages available under common law or statute, the commissioner may order reimbursement to any person who has incurred a monetary loss as a result of a violation of this chapter.

Sec. 22. This chapter applies to the extent that it is not in conflict with federal law.