

SENATE BILL No. 221

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-48-7.

Synopsis: INSPECT program. Allows a dispenser of ephedrine, pseudoephedrine, or a controlled substance to transmit certain information to the INSPECT program by any electronic method that meets specifications prescribed by the state board of pharmacy (board). Provides that, to the extent considered appropriate by the board, the INSPECT data base must be interoperable with other similar registries operated by federal and state governments. Requires the following practitioners to obtain information about a patient from the data base before prescribing an opioid or benzodiazepine to the patient: (1) A practitioner who has had the information from the data base integrated into the patient's electronic health records. (2) Beginning January 1, 2019, a practitioner who provides services to the patient in the emergency department of a hospital or a pain management clinic. (3) Beginning January 1, 2020, a practitioner who provides services to the patient in a hospital. (4) Beginning January 1, 2021, all practitioners. Removes lapsed provisions. Provides that beginning January 1, 2019, a practitioner who is permitted to distribute, dispense, prescribe, conduct research with respect to, or administer ephedrine, pseudoephedrine, or a controlled substance in the course of the practitioner's professional practice or research must be certified to receive information from the INSPECT program.

Effective: July 1, 2018.

Houchin, Charbonneau

January 3, 2018, read first time and referred to Committee on Health and Provider Services.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 221

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 35-48-7-5.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2018]: **Sec. 5.5. (a) As used in this chapter, "pain management**
- 4 **clinic" means a publicly or privately owned facility that primarily**
- 5 **engages in the treatment of pain or pain management through**
- 6 **prescribing controlled substances.**
- 7 **(b) The term does not include the following:**
- 8 **(1) A hospital licensed under 16-21, including a facility owned**
- 9 **by the hospital or an office of a hospital employed physician.**
- 10 **(2) An accredited school, college, university, or other**
- 11 **educational institution or program that is related to providing**
- 12 **instruction to individuals preparing to practice as a dentist,**
- 13 **physician, physician assistant, nurse, optometrist, podiatrist,**
- 14 **or veterinarian.**
- 15 **(3) A hospice program licensed under IC 16-25-3.**
- 16 **(4) An ambulatory outpatient surgical center licensed under**
- 17 **IC 16-21-2.**



1 **(5) A long term care facility licensed under IC 16-28-2.**

2 SECTION 2. IC 35-48-7-8.1, AS AMENDED BY P.L.164-2017,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2018]: Sec. 8.1. (a) The board shall provide for an ephedrine,
5 pseudoephedrine, and controlled substance prescription monitoring
6 program that includes the following components:

7 (1) Each time ephedrine, pseudoephedrine, or a controlled
8 substance designated by the board under IC 35-48-2-5 through
9 IC 35-48-2-10 is dispensed, the dispenser shall transmit to the
10 INSPECT program the following information:

11 (A) The ephedrine, pseudoephedrine, or controlled substance
12 recipient's name.

13 (B) The ephedrine, pseudoephedrine, or controlled substance
14 recipient's or the recipient representative's identification
15 number or the identification number or phrase designated by
16 the INSPECT program.

17 (C) The ephedrine, pseudoephedrine, or controlled substance
18 recipient's date of birth.

19 (D) The national drug code number of the ephedrine,
20 pseudoephedrine, or controlled substance dispensed.

21 (E) The date the ephedrine, pseudoephedrine, or controlled
22 substance is dispensed.

23 (F) The quantity of the ephedrine, pseudoephedrine, or
24 controlled substance dispensed.

25 (G) The number of days of supply dispensed.

26 (H) The dispenser's United States Drug Enforcement Agency
27 registration number.

28 (I) The prescriber's United States Drug Enforcement Agency
29 registration number.

30 (J) An indication as to whether the prescription was
31 transmitted to the pharmacist orally or in writing.

32 (K) Other data required by the board.

33 (2) The information required to be transmitted under this section
34 must be transmitted as follows:

35 (A) ~~Before July 1, 2015; not more than seven (7) days after the~~
36 ~~date on which ephedrine, pseudoephedrine, or a controlled~~
37 ~~substance is dispensed:~~

38 (B) ~~Beginning July 1, 2015; and until December 31, 2015; not~~
39 ~~more than three (3) days after the date on which ephedrine;~~
40 ~~pseudoephedrine, or a controlled substance is dispensed:~~

41 (C) ~~Beginning January 1, 2016, and thereafter; not more than~~
42 ~~twenty-four (24) hours after the date on which ephedrine,~~



- 1 pseudoephedrine, or a controlled substance is dispensed.
 2 However, if the dispenser's pharmacy is closed the day
 3 following the dispensing, the information must be transmitted
 4 by the end of the next business day.
- 5 (3) A dispenser shall transmit the information required under this
 6 section by:
- 7 (A) uploading to the INSPECT web site; or
 8 ~~(B) a computer diskette; or~~
 9 ~~(C) a CD-ROM disk;~~ **(B) another electronic method** that
 10 meets specifications prescribed by the board.
- 11 (4) The board may require that prescriptions for ephedrine,
 12 pseudoephedrine, or controlled substances be written on a one (1)
 13 part form that cannot be duplicated. However, the board may not
 14 apply such a requirement to prescriptions filled at a pharmacy
 15 with a Category II permit (as described in IC 25-26-13-17) and
 16 operated by a hospital licensed under IC 16-21, or prescriptions
 17 ordered for and dispensed to bona fide enrolled patients in
 18 facilities licensed under IC 16-28. The board may not require
 19 multiple copy prescription forms for any prescriptions written.
 20 The board may not require different prescription forms for any
 21 individual drug or group of drugs. Prescription forms required
 22 under this subdivision must be approved by the Indiana board of
 23 pharmacy established by IC 25-26-13-3.
- 24 (5) The costs of the program.
- 25 (6) As part of the information to be completed in the data base
 26 and if available, an entry where a dispenser indicates that a
 27 patient is participating in a pain management contract with a
 28 designated practitioner.
- 29 (b) The board shall consider the recommendations of the committee
 30 concerning the INSPECT program.
- 31 (c) This subsection applies only to a retail pharmacy. A pharmacist,
 32 pharmacy technician, or person authorized by a pharmacist to dispense
 33 ephedrine, pseudoephedrine, or a controlled substance may not
 34 dispense ephedrine, pseudoephedrine, or a controlled substance to a
 35 person who is not personally known to the pharmacist, pharmacy
 36 technician, or person authorized by a pharmacist to dispense a
 37 controlled substance unless the person taking possession of the
 38 ephedrine, pseudoephedrine, or controlled substance provides
 39 documented proof of the person's identification to the pharmacist,
 40 pharmacy technician, or person authorized by a pharmacist to dispense
 41 ephedrine, pseudoephedrine, or a controlled substance.
- 42 SECTION 3. IC 35-48-7-10.1, AS AMENDED BY P.L.5-2016,



1 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2018]: Sec. 10.1. (a) The INSPECT program must do the
3 following:

4 (1) Create a data base for information required to be transmitted
5 under section 8.1 of this chapter in the form required under rules
6 adopted by the board, including search capability for the
7 following:

8 (A) An ephedrine, pseudoephedrine, or a controlled substance
9 recipient's name.

10 (B) An ephedrine, pseudoephedrine, or a controlled substance
11 recipient's or recipient representative's identification number.

12 (C) An ephedrine, pseudoephedrine, or a controlled substance
13 recipient's date of birth.

14 (D) The national drug code number of ephedrine,
15 pseudoephedrine, or a controlled substance dispensed.

16 (E) The dates ephedrine, pseudoephedrine, or a controlled
17 substance are dispensed.

18 (F) The quantities of ephedrine, pseudoephedrine, or
19 controlled substance dispensed.

20 (G) The number of days of supply dispensed.

21 (H) A dispenser's United States Drug Enforcement Agency
22 registration number.

23 (I) A prescriber's United States Drug Enforcement Agency
24 registration number.

25 (J) Whether a prescription was transmitted to the pharmacist
26 orally or in writing.

27 (K) An ephedrine, pseudoephedrine, or a controlled substance
28 recipient's method of payment for the ephedrine,
29 pseudoephedrine, or controlled substance dispensed.

30 **To the extent considered appropriate by the board, the data**
31 **base must be interoperable with other similar registries**
32 **operated by federal and state governments.**

33 (2) Provide the board with continuing twenty-four (24) hour a day
34 online access to the data base.

35 (3) Secure the information collected and the data base maintained
36 against access by unauthorized persons.

37 (b) The board may not execute a contract with a vendor designated
38 by the board to perform any function associated with the administration
39 of the INSPECT program, unless the contract has been approved by the
40 committee.

41 (c) The INSPECT program may gather prescription data from the
42 Medicaid retrospective drug utilization review (DUR) program



1 established under IC 12-15-35.

2 (d) The board may accept and designate grants, public and private
3 financial assistance, and licensure fees to provide funding for the
4 INSPECT program.

5 SECTION 4. IC 35-48-7-11.1, AS AMENDED BY P.L.164-2017,
6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2018]: Sec. 11.1. (a) Information received by the INSPECT
8 program under section 8.1 of this chapter is confidential.

9 (b) The board shall carry out a program to protect the confidentiality
10 of the information described in subsection (a). The board may disclose
11 the information to another person only under subsection (c), (d), or (g).

12 (c) The board may disclose confidential information described in
13 subsection (a) to any person who is authorized to engage in receiving,
14 processing, or storing the information.

15 (d) Except as provided in subsections (e) and (f), the board may
16 release confidential information described in subsection (a) to the
17 following persons:

18 (1) A member of the board or another governing body that
19 licenses practitioners and is engaged in an investigation, an
20 adjudication, or a prosecution of a violation under any state or
21 federal law that involves ephedrine, pseudoephedrine, or a
22 controlled substance.

23 (2) An investigator for the consumer protection division of the
24 office of the attorney general, a prosecuting attorney, the attorney
25 general, a deputy attorney general, or an investigator from the
26 office of the attorney general, who is engaged in:

- 27 (A) an investigation;
28 (B) an adjudication; or
29 (C) a prosecution;

30 of a violation under any state or federal law that involves
31 ephedrine, pseudoephedrine, or a controlled substance.

32 (3) A law enforcement officer who is an employee of:

- 33 (A) a local, state, or federal law enforcement agency; or
34 (B) an entity that regulates ephedrine, pseudoephedrine, or
35 controlled substances or enforces ephedrine, pseudoephedrine,
36 or controlled substances rules or laws in another state;

37 that is certified to receive ephedrine, pseudoephedrine, or
38 controlled substance prescription drug information from the
39 INSPECT program.

40 (4) A practitioner or practitioner's agent certified to receive
41 information from the INSPECT program.

42 (5) An ephedrine, pseudoephedrine, or controlled substance



- 1 monitoring program in another state with which Indiana has
 2 established an interoperability agreement.
- 3 (6) The state toxicologist.
- 4 (7) A certified representative of the Medicaid retrospective and
 5 prospective drug utilization review program.
- 6 (8) A substance abuse assistance program for a licensed health
 7 care provider who:
- 8 (A) has prescriptive authority under IC 25; and
 9 (B) is participating in the assistance program.
- 10 (9) An individual who holds a valid temporary medical permit
 11 issued under IC 25-22.5-5-4 or a temporary fellowship permit
 12 issued under IC 25-22.5-5-4.6.
- 13 (10) ~~Beginning July 1, 2016,~~ A county coroner conducting a
 14 medical investigation of the cause of death.
- 15 (11) The management performance hub established by Indiana
 16 Executive Order 14-06 and continued by Executive Order 17-09.
- 17 (12) The state epidemiologist under the state department of
 18 health.
- 19 (e) Information provided to a person under:
- 20 (1) subsection (d)(3) is limited to information:
- 21 (A) concerning an individual or proceeding involving the
 22 unlawful diversion or misuse of a schedule II, III, IV, or V
 23 controlled substance; and
 24 (B) that will assist in an investigation or proceeding;
- 25 (2) subsection (d)(4) may be released only for the purpose of:
- 26 (A) providing medical or pharmaceutical treatment; or
 27 (B) evaluating the need for providing medical or
 28 pharmaceutical treatment to a patient; and
- 29 (3) subsection (d)(11) must be released to the extent disclosure of
 30 the information is not prohibited by applicable federal law.
- 31 (f) Before the board releases confidential information under
 32 subsection (d), the applicant must be approved by the INSPECT
 33 program in a manner prescribed by the board.
- 34 (g) The board may release to:
- 35 (1) a member of the board or another governing body that licenses
 36 practitioners;
- 37 (2) an investigator for the consumer protection division of the
 38 office of the attorney general, a prosecuting attorney, the attorney
 39 general, a deputy attorney general, or an investigator from the
 40 office of the attorney general; or
- 41 (3) a law enforcement officer who is:
- 42 (A) authorized by the state police department to receive



- 1 ephedrine, pseudoephedrine, or controlled substance
 2 prescription drug information; and
 3 (B) approved by the board to receive the type of information
 4 released;
 5 confidential information generated from computer records that
 6 identifies practitioners who are prescribing or dispensing large
 7 quantities of a controlled substance.
- 8 (h) The information described in subsection (g) may not be released
 9 until it has been reviewed by:
- 10 (1) a member of the board who is licensed in the same profession
 11 as the prescribing or dispensing practitioner identified by the data;
 12 or
 13 (2) the board's designee;
 14 and until that member or the designee has certified that further
 15 investigation is warranted. However, failure to comply with this
 16 subsection does not invalidate the use of any evidence that is otherwise
 17 admissible in a proceeding described in subsection (i).
- 18 (i) An investigator or a law enforcement officer receiving
 19 confidential information under subsection (c), (d), or (g) may disclose
 20 the information to a law enforcement officer or an attorney for the
 21 office of the attorney general for use as evidence in the following:
- 22 (1) A proceeding under IC 16-42-20.
 23 (2) A proceeding under any state or federal law that involves
 24 ephedrine, pseudoephedrine, or a controlled substance.
 25 (3) A criminal proceeding or a proceeding in juvenile court that
 26 involves ephedrine, pseudoephedrine, or a controlled substance.
- 27 (j) The board may compile statistical reports from the information
 28 described in subsection (a). The reports must not include information
 29 that identifies any practitioner, ultimate user, or other person
 30 administering ephedrine, pseudoephedrine, or a controlled substance.
 31 Statistical reports compiled under this subsection are public records.
- 32 (k) **Except as In addition to any requirements** provided in
 33 **IC 25-22.5-13, this section may not be construed to require a**
 34 **practitioner to the following practitioners shall** obtain information
 35 **about a patient from the data base before prescribing an opioid or**
 36 **benzodiazepine to the patient:**
- 37 (1) **A practitioner who has had the information from the data**
 38 **base integrated into the patient's electronic health records.**
 39 (2) **Beginning January 1, 2019, a practitioner who provides**
 40 **services to the patient in:**
- 41 (A) **the emergency department of a hospital licensed under**
 42 **IC 16-21; or**



- 1 **(B) a pain management clinic.**
 2 **(3) Beginning January 1, 2020, a practitioner who provides**
 3 **services to the patient in a hospital licensed under IC 16-21.**
 4 **(4) Beginning January 1, 2021, all practitioners.**
 5 (l) A practitioner who checks the INSPECT program for the
 6 available data on a patient is immune from civil liability for an injury,
 7 death, or loss to a person solely due to a practitioner:
 8 (1) seeking information from the INSPECT program; and
 9 (2) in good faith using the information for the treatment of the
 10 patient.
 11 The civil immunity described in this subsection does not extend to a
 12 practitioner if the practitioner receives information directly from the
 13 INSPECT program and then negligently misuses this information. This
 14 subsection does not apply to an act or omission that is a result of gross
 15 negligence or intentional misconduct.
 16 (m) The board may review the records of the INSPECT program. If
 17 the board determines that a violation of the law may have occurred, the
 18 board shall notify the appropriate law enforcement agency or the
 19 relevant government body responsible for the licensure, regulation, or
 20 discipline of practitioners authorized by law to prescribe controlled
 21 substances.
 22 (n) A practitioner who in good faith discloses information based on
 23 a report from the INSPECT program to a law enforcement agency is
 24 immune from criminal or civil liability. A practitioner that discloses
 25 information to a law enforcement agency under this subsection is
 26 presumed to have acted in good faith.
 27 (o) A practitioner's agent may act as a delegate and check INSPECT
 28 program reports on behalf of the practitioner.
 29 (p) A patient may access a report from the INSPECT program that
 30 has been included in the patient's medical file by a practitioner.
 31 SECTION 5. IC 35-48-7-11.3 IS ADDED TO THE INDIANA
 32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2018]: **Sec. 11.3. Beginning January 1, 2019,**
 34 **a practitioner who is permitted to distribute, dispense, prescribe,**
 35 **conduct research with respect to, or administer ephedrine,**
 36 **pseudoephedrine, or a controlled substance in the course of the**
 37 **practitioner's professional practice or research in the United States**
 38 **must be certified under section 11.1(d)(4) of this chapter to receive**
 39 **information from the INSPECT program.**

