

SENATE BILL No. 408

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-48-7.

Synopsis: INSPECT program. Requires a dispenser of ephedrine, pseudoephedrine, or a controlled substance to transmit certain information to the INSPECT program on a real time basis beginning January 1, 2018. Provides that, to the extent considered appropriate by the state board of pharmacy (board), the INSPECT data base must be interoperable with other similar registries operated by federal and state governments. Adds an investigator for the state Medicaid fraud control unit to the list of persons who can receive certain confidential INSPECT program information. Requires a practitioner to obtain information about a patient from the INSPECT data base before prescribing ephedrine, pseudoephedrine, or a controlled substance to the patient. Requires the board to establish procedures for a patient or a patient's authorized representative to access the patient's report from the INSPECT program. (Current law allows a patient to access a report that has been included in the patient's medical file by a practitioner.) Provides that if a patient or patient's authorized representative disputes information in the patient's INSPECT report, the board shall investigate the claim and promptly revise any inaccurate information. Requires the board to seek and apply for grants and other money from federal agencies and other entities for the controlled substances data fund.

Effective: July 1, 2017.

Houchin

January 10, 2017, read first time and referred to Committee on Health and Provider Services.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 408

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 35-48-7-8.1, AS AMENDED BY P.L.5-2016,
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 8.1. (a) The board shall provide for an ephedrine,
4 pseudoephedrine, and controlled substance prescription monitoring
5 program that includes the following components:
6 (1) Each time ephedrine, pseudoephedrine, or a controlled
7 substance designated by the board under IC 35-48-2-5 through
8 IC 35-48-2-10 is dispensed, the dispenser shall transmit to the
9 INSPECT program the following information:
10 (A) The ephedrine, pseudoephedrine, or controlled substance
11 recipient's name.
12 (B) The ephedrine, pseudoephedrine, or controlled substance
13 recipient's or the recipient representative's identification
14 number or the identification number or phrase designated by
15 the INSPECT program.
16 (C) The ephedrine, pseudoephedrine, or controlled substance
17 recipient's date of birth.



- 1 (D) The national drug code number of the ephedrine,
 2 pseudoephedrine, or controlled substance dispensed.
 3 (E) The date the ephedrine, pseudoephedrine, or controlled
 4 substance is dispensed.
 5 (F) The quantity of the ephedrine, pseudoephedrine, or
 6 controlled substance dispensed.
 7 (G) The number of days of supply dispensed.
 8 (H) The dispenser's United States Drug Enforcement Agency
 9 registration number.
 10 (I) The prescriber's United States Drug Enforcement Agency
 11 registration number.
 12 (J) An indication as to whether the prescription was
 13 transmitted to the pharmacist orally or in writing.
 14 (K) Other data required by the board.
- 15 (2) The information required to be transmitted under this section
 16 must be transmitted as follows:
- 17 ~~(A) Before July 1, 2015, not more than seven (7) days after the~~
 18 ~~date on which ephedrine, pseudoephedrine, or a controlled~~
 19 ~~substance is dispensed:~~
 20 ~~(B) Beginning July 1, 2015, and until December 31, 2015, not~~
 21 ~~more than three (3) days after the date on which ephedrine,~~
 22 ~~pseudoephedrine, or a controlled substance is dispensed:~~
 23 ~~(C) Beginning January 1, 2016, and thereafter, (A) Until~~
 24 **December 31, 2017**, not more than twenty-four (24) hours
 25 after the date on which ephedrine, pseudoephedrine, or a
 26 controlled substance is dispensed. However, if the dispenser's
 27 pharmacy is closed the day following the dispensing, the
 28 information must be transmitted by the end of the next
 29 business day.
 30 **(B) Beginning January 1, 2018, on a real time basis.**
- 31 (3) A dispenser shall transmit the information required under this
 32 section by:
- 33 (A) uploading to the INSPECT web site; **or**
 34 ~~(B) a computer diskette; or~~
 35 ~~(C) a CD-ROM disk; (B) another method~~ that meets
 36 specifications prescribed by the board.
- 37 (4) The board may require that prescriptions for ephedrine,
 38 pseudoephedrine, or controlled substances be written on a one (1)
 39 part form that cannot be duplicated. However, the board may not
 40 apply such a requirement to prescriptions filled at a pharmacy
 41 with a Category II permit (as described in IC 25-26-13-17) and
 42 operated by a hospital licensed under IC 16-21, or prescriptions



1 ordered for and dispensed to bona fide enrolled patients in
 2 facilities licensed under IC 16-28. The board may not require
 3 multiple copy prescription forms for any prescriptions written.
 4 The board may not require different prescription forms for any
 5 individual drug or group of drugs. Prescription forms required
 6 under this subdivision must be approved by the Indiana board of
 7 pharmacy established by IC 25-26-13-3.

8 (5) The costs of the program.

9 (b) The board shall consider the recommendations of the committee
 10 concerning the INSPECT program.

11 (c) This subsection applies only to a retail pharmacy. A pharmacist,
 12 pharmacy technician, or person authorized by a pharmacist to dispense
 13 ephedrine, pseudoephedrine, or a controlled substance may not
 14 dispense ephedrine, pseudoephedrine, or a controlled substance to a
 15 person who is not personally known to the pharmacist, pharmacy
 16 technician, or person authorized by a pharmacist to dispense a
 17 controlled substance unless the person taking possession of the
 18 ephedrine, pseudoephedrine, or controlled substance provides
 19 documented proof of the person's identification to the pharmacist,
 20 pharmacy technician, or person authorized by a pharmacist to dispense
 21 ephedrine, pseudoephedrine, or a controlled substance.

22 SECTION 2. IC 35-48-7-10.1, AS AMENDED BY P.L.5-2016,
 23 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2017]: Sec. 10.1. (a) The INSPECT program must do the
 25 following:

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

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

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

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

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

38 (E) The dates ephedrine, pseudoephedrine, or a controlled
 39 substance are dispensed.

40 (F) The quantities of ephedrine, pseudoephedrine, or
 41 controlled substance dispensed.

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



- 1 (H) A dispenser's United States Drug Enforcement Agency
2 registration number.
- 3 (I) A prescriber's United States Drug Enforcement Agency
4 registration number.
- 5 (J) Whether a prescription was transmitted to the pharmacist
6 orally or in writing.
- 7 (K) An ephedrine, pseudoephedrine, or a controlled substance
8 recipient's method of payment for the ephedrine,
9 pseudoephedrine, or controlled substance dispensed.
- 10 (2) Provide the board with continuing twenty-four (24) hour a day
11 online access to the data base.
- 12 (3) Secure the information collected and the data base maintained
13 against access by unauthorized persons.
- 14 **(4) To the extent considered appropriate by the board, the**
15 **data base must be interoperable with other similar registries**
16 **operated by federal and state governments.**
- 17 (b) The board may not execute a contract with a vendor designated
18 by the board to perform any function associated with the administration
19 of the INSPECT program, unless the contract has been approved by the
20 committee.
- 21 (c) The INSPECT program may gather prescription data from the
22 Medicaid retrospective drug utilization review (DUR) program
23 established under IC 12-15-35.
- 24 (d) The board may accept and designate grants, public and private
25 financial assistance, and licensure fees to provide funding for the
26 INSPECT program.
- 27 SECTION 3. IC 35-48-7-11.1, AS AMENDED BY THE
28 TECHNICAL CORRECTIONS BILL OF THE 2017 GENERAL
29 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2017]: Sec. 11.1. (a) Information received by the INSPECT
31 program under section 8.1 of this chapter is confidential.
- 32 (b) The board shall carry out a program to protect the confidentiality
33 of the information described in subsection (a). The board may disclose
34 the information to another person only under subsection (c), (d), or (g).
- 35 (c) The board may disclose confidential information described in
36 subsection (a) to any person who is authorized to engage in receiving,
37 processing, or storing the information.
- 38 (d) Except as provided in subsections (e) and (f), the board may
39 release confidential information described in subsection (a) to the
40 following persons:
- 41 (1) A member of the board or another governing body that
42 licenses practitioners and is engaged in an investigation, an



1 adjudication, or a prosecution of a violation under any state or
 2 federal law that involves *ephedrine, pseudoephedrine, or* a
 3 controlled substance.

4 (2) An investigator for the consumer protection division of the
 5 office of the attorney general, **an investigator for the state**
 6 **Medicaid fraud control unit**, a prosecuting attorney, the attorney
 7 general, a deputy attorney general, or an investigator from the
 8 office of the attorney general, who is engaged in:

- 9 (A) an investigation;
 10 (B) an adjudication; or
 11 (C) a prosecution;

12 of a violation under any state or federal law that involves
 13 *ephedrine, pseudoephedrine, or* a controlled substance.

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

- 15 (A) a local, state, or federal law enforcement agency; or
 16 (B) an entity that regulates *ephedrine, pseudoephedrine, or*
 17 controlled substances or enforces *ephedrine, pseudoephedrine,*
 18 *or* controlled substances rules or laws in another state;

19 that is certified to receive *ephedrine, pseudoephedrine, or*
 20 controlled substance prescription drug information from the
 21 INSPECT program.

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

24 (5) *An ephedrine, pseudoephedrine, or* a controlled substance
 25 monitoring program in another state with which Indiana has
 26 established an interoperability agreement.

27 (6) The state toxicologist.

28 (7) A certified representative of the Medicaid retrospective and
 29 prospective drug utilization review program.

30 (8) A substance abuse assistance program for a licensed health
 31 care provider who:

- 32 (A) has prescriptive authority under IC 25; and
 33 (B) is participating in the assistance program.

34 (9) An individual who holds a valid temporary medical permit
 35 issued under IC 25-22.5-5-4 or a temporary fellowship permit
 36 issued under IC 25-22.5-5-4.6.

37 (10) *Beginning July 1, 2016, a county coroner conducting a*
 38 *medical investigation of the cause of death.*

39 (e) Information provided to an individual under:

- 40 (1) subsection (d)(3) is limited to information:
 41 (A) concerning an individual or proceeding involving the
 42 unlawful diversion or misuse of a schedule II, III, IV, or V



- 1 controlled substance; and
 2 (B) that will assist in an investigation or proceeding; and
 3 (2) subsection (d)(4) may be released only for the purpose of:
 4 (A) providing medical or pharmaceutical treatment; or
 5 (B) evaluating the need for providing medical or
 6 pharmaceutical treatment to a patient.
- 7 (f) Before the board releases confidential information under
 8 subsection (d), the applicant must be approved by the INSPECT
 9 program in a manner prescribed by the board.
- 10 (g) The board may release to:
 11 (1) a member of the board or another governing body that licenses
 12 practitioners;
 13 (2) an investigator for the consumer protection division of the
 14 office of the attorney general, a prosecuting attorney, the attorney
 15 general, a deputy attorney general, or an investigator from the
 16 office of the attorney general; or
 17 (3) a law enforcement officer who is:
 18 (A) authorized by the state police department to receive
 19 *ephedrine, pseudoephedrine, or* controlled substance
 20 prescription drug information; and
 21 (B) approved by the board to receive the type of information
 22 released;
 23 confidential information generated from computer records that
 24 identifies practitioners who are prescribing or dispensing large
 25 quantities of a controlled substance.
- 26 (h) The information described in subsection (g) may not be released
 27 until it has been reviewed by:
 28 (1) a member of the board who is licensed in the same profession
 29 as the prescribing or dispensing practitioner identified by the data;
 30 or
 31 (2) the board's designee;
 32 and until that member or the designee has certified that further
 33 investigation is warranted. However, failure to comply with this
 34 subsection does not invalidate the use of any evidence that is otherwise
 35 admissible in a proceeding described in subsection (i).
- 36 (i) An investigator or a law enforcement officer receiving
 37 confidential information under subsection (c), (d), or (g) may disclose
 38 the information to a law enforcement officer or an attorney for the
 39 office of the attorney general for use as evidence in the following:
 40 (1) A proceeding under IC 16-42-20.
 41 (2) A proceeding under any state or federal law that involves
 42 *ephedrine, pseudoephedrine, or* a controlled substance.



1 (3) A criminal proceeding or a proceeding in juvenile court that
2 involves *ephedrine, pseudoephedrine, or a controlled substance.*

3 (j) The board may compile statistical reports from the information
4 described in subsection (a). The reports must not include information
5 that identifies any practitioner, ultimate user, or other person
6 administering *ephedrine, pseudoephedrine, or a controlled substance.*
7 Statistical reports compiled under this subsection are public records.

8 (k) ~~Except as provided in IC 25-22.5-13, this section may not be~~
9 ~~construed to require~~ A practitioner **shall** obtain information about a
10 patient from the data base **before prescribing ephedrine,**
11 **pseudoephedrine, or a controlled substance to the patient.**

12 (l) A practitioner *who checks the INSPECT program for the*
13 *available data on a patient* is immune from civil liability for an injury,
14 death, or loss to a person solely due to a practitioner:

15 (1) seeking ~~or not seeking~~ information from the INSPECT
16 program; and

17 (2) *in good faith using the information for the treatment of the*
18 *patient.*

19 The civil immunity described in this subsection does not extend to a
20 practitioner if the practitioner receives information directly from the
21 INSPECT program and then negligently misuses this information. This
22 subsection does not apply to an act or omission that is a result of gross
23 negligence or intentional misconduct.

24 (m) The board may review the records of the INSPECT program. If
25 the board determines that a violation of the law may have occurred, the
26 board shall notify the appropriate law enforcement agency or the
27 relevant government body responsible for the licensure, regulation, or
28 discipline of practitioners authorized by law to prescribe controlled
29 substances.

30 (n) A practitioner who in good faith discloses information based on
31 a report from the INSPECT program to a law enforcement agency is
32 immune from criminal or civil liability. A practitioner that discloses
33 information to a law enforcement agency under this subsection is
34 presumed to have acted in good faith.

35 (o) *A practitioner's agent may act as a delegate and check*
36 *INSPECT program reports on behalf of the practitioner.*

37 (p) **The board shall establish procedures for a patient may or a**
38 **patient's authorized representative to access ~~the~~ the patient's report**
39 **from the INSPECT program. ~~that has been included in the patient's~~**
40 **~~medical file by a practitioner.~~ If a patient or the patient's authorized**
41 **representative disputes information in the patient's INSPECT**
42 **report, the board shall investigate the claim and promptly revise**



1 **any inaccurate information.**
2 SECTION 4. IC 35-48-7-13.1, AS AMENDED BY P.L.112-2014,
3 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2017]: Sec. 13.1. (a) The controlled substances data fund is
5 established to fund the administration of the INSPECT program. The
6 fund shall be administered by the Indiana professional licensing
7 agency.
8 (b) Expenses of administering the fund shall be paid from money in
9 the fund. The fund consists of grants, public and private financial
10 assistance, and the controlled substances registration fees imposed
11 under rules adopted under IC 35-48-3-1.
12 (c) The treasurer of state shall invest the money in the fund not
13 currently needed to meet the obligations of the fund in the same
14 manner as other public money may be invested.
15 (d) Money in the fund at the end of a state fiscal year does not revert
16 to the state general fund.
17 **(e) The board shall seek and apply for grants and other money**
18 **for the fund from federal agencies and other entities.**

