



January 28, 2020

HOUSE BILL No. 1042

DIGEST OF HB 1042 (Updated January 27, 2020 3:34 pm - DI 77)

Citations Affected: IC 27-1.

Synopsis: Pharmacy benefit managers. Requires a pharmacy benefit manager to obtain a license issued by the department of insurance and sets forth requirements of the pharmacy benefit manager. Provides for the commissioner of the department of insurance to adopt rules to specify licensure, financial standards, and reporting requirements that apply to a pharmacy benefit manager. Makes violations of the chapter concerning pharmacy benefit managers an unfair or deceptive act or practice in the business of insurance. Repeals the chapter of existing language on pharmacy benefit managers and moves the language concerning maximum allowable cost lists to a new chapter. (The introduced version of this bill was prepared by the interim study committee on public health, behavioral health, and human services.)

Effective: July 1, 2020.

**Davisson, Karickhoff, Shackelford,
Clere**

January 6, 2020, read first time and referred to Committee on Public Health.
January 28, 2020, amended, reported — Do Pass.

HB 1042—LS 6213/DI 104



January 28, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1042

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 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]:

4 **Chapter 24.5. Pharmacy Benefit Managers**

5 **Sec. 1. As used in this chapter, "claim processing service" means**
6 **an administrative service performed in connection with the**
7 **processing and adjudicating of a claim related to pharmacist**
8 **services, including the following:**

9 (1) Receiving payments for pharmacist services.

10 (2) Making payments to pharmacists or pharmacies for
11 pharmacist services.

12 **Sec. 2. As used in this chapter, "covered individual" means an**
13 **individual who is entitled to coverage under a health plan.**

14 **Sec. 3. As used in this chapter, "health plan" means the**
15 **following:**

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

17 (2) A policy of accident and sickness insurance (as defined in

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1 IC 27-8-5-1). However, the term does not include the
2 coverages described in IC 27-8-5-2.5(a).

3 (3) An individual contract (as defined in IC 27-13-1-21) or a
4 group contract (as defined in IC 27-13-1-16) that provides
5 coverage for basic health care services (as defined in
6 IC 27-13-1-4).

7 Sec. 4. As used in this chapter, "independent pharmacy" means
8 a pharmacy that is not a pharmacy benefit manager affiliate.

9 Sec. 5. As used in this chapter, "maximum allowable cost list"
10 means a list of drugs that is used:

- 11 (1) by a pharmacy benefit manager; and
12 (2) to set the maximum amount that may be reimbursed to a
13 pharmacy or pharmacist for a drug.

14 Sec. 6. As used in this chapter, "other prescription drug or
15 device service" means a service other than a claim processing
16 service, whether in connection with or separate from a claim
17 processing service, including the following:

- 18 (1) Negotiating rebates, discounts, or other financial
19 incentives and arrangements with drug companies.
20 (2) Disbursing or distributing rebates.
21 (3) Managing or participating in incentive programs or
22 arrangements for pharmacist services.
23 (4) Negotiating or entering into contractual arrangements
24 with pharmacists or pharmacies.
25 (5) Developing formularies.
26 (6) Designing prescription benefit programs.
27 (7) Advertising or promoting services.

28 Sec. 7. As used in this chapter, "pharmacist" means an
29 individual licensed as a pharmacist under IC 25-26.

30 Sec. 8. As used in this chapter, "pharmacist services" means
31 products, goods, and services provided as part of the practice of
32 pharmacy.

33 Sec. 9. As used in this chapter, "pharmacy" means the physical
34 location:

- 35 (1) that is licensed under IC 25-26; and
36 (2) at which drugs, chemicals, medicines, prescriptions, and
37 poisons are compounded, dispensed, or sold at retail.

38 Sec. 10. (a) As used in this chapter, "pharmacy benefit
39 manager" means a person that provides claim processing services
40 or other prescription drug or device services for health plans.

41 (b) The term includes a subsidiary of a person described in
42 subsection (a).



1 (c) The term does not include the following:

2 (1) A person licensed under IC 16.

3 (2) A health provider who is:

4 (A) described in IC 25-0.5-1; and

5 (B) licensed or registered under IC 25.

6 (3) A consultant who only provides advice concerning the
7 selection or performance of a pharmacy benefit manager.

8 Sec. 11. As used in this chapter, "pharmacy benefit manager
9 affiliate" means a pharmacy or pharmacist that directly or
10 indirectly, through one (1) or more intermediaries:

11 (1) owns or controls;

12 (2) is owned or controlled by; or

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

14 a pharmacy benefit manager.

15 Sec. 12. As used in this chapter, "pharmacy benefit manager
16 network" means a group of pharmacies or pharmacists that are
17 offered:

18 (1) through an agreement or health plan contract; and

19 (2) to provide pharmacist services for health plans.

20 Sec. 13. As used in this chapter, "pharmacy services
21 administrative organization" means an organization that assists
22 independent pharmacies and pharmacy benefit managers or health
23 plans to achieve administrative efficiencies, including contracting
24 and payment efficiencies.

25 Sec. 14. (a) As used in this chapter, "rebate" means a discount
26 or other price concession that is:

27 (1) based on use of a prescription drug; and

28 (2) paid by a manufacturer or third party to a pharmacy
29 benefit manager, pharmacy services administrative
30 organization, or pharmacy after a claim has been processed
31 and paid at a pharmacy.

32 (b) The term includes an incentive, a disbursement, and a
33 reasonable estimate of a volume based discount.

34 Sec. 15. As used in this chapter, "third party" means a person
35 other than a:

36 (1) pharmacy benefit manager; or

37 (2) covered individual.

38 Sec. 16. A person shall obtain a license from the commissioner
39 under this chapter to operate as a pharmacy benefit manager.

40 Sec. 17. A pharmacy benefit manager shall do the following:

41 (1) Provide a pharmacy benefit manager network for a
42 covered individual to obtain prescription drugs from a



1 pharmacy within a reasonable distance from the covered
2 individual's residence.

3 (2) Not include a mail order pharmacy in the determination
4 of compliance with subdivision (1).

5 (3) Annually submit to the commissioner a pharmacy benefit
6 manager network adequacy report describing covered
7 individuals' access to pharmacies included in the pharmacy
8 benefit manager network in Indiana, as required under
9 section 18(b)(3)(B)(i) of this chapter.

10 (4) Provide equal access and incentives to all pharmacies
11 within the pharmacy benefit network.

12 **Sec. 18. (a) The commissioner shall do the following:**

13 (1) Prescribe an application for use in applying for a license
14 to operate as a pharmacy benefit manager.

15 (2) Adopt rules under IC 4-22-2 to establish the following:

16 (A) Pharmacy benefit manager licensing requirements.

17 (B) Licensing fees.

18 (C) A license application.

19 (D) Financial standards for pharmacy benefit managers.

20 (E) Reporting requirements for pharmacy benefit
21 managers.

22 (b) The commissioner may do the following:

23 (1) Charge a license application fee and renewal fees
24 established under subsection (a)(2).

25 (2) Examine or audit the books and records of a pharmacy
26 benefit manager to determine if the pharmacy benefit
27 manager is in compliance with this chapter.

28 (3) Adopt rules under IC 4-22-2 to:

29 (A) implement this chapter; and

30 (B) specify requirements for the following:

31 (i) Pharmacy benefit manager network adequacy.

32 (ii) Prohibited market conduct practices.

33 (iii) Data reporting in connection with violations of state
34 law.

35 (iv) Rebates.

36 (v) Compensation.

37 (vi) Maximum allowable cost list compliance and
38 enforcement requirements.

39 (vii) Prohibitions and limits on pharmacy benefit
40 manager practices that require licensure under
41 IC 25-22.5.

42 (viii) Pharmacy benefit manager affiliate information



- 1 **sharing.**
2 **(ix) Lists of health plans administered by a pharmacy**
3 **benefit manager in Indiana.**
4 **(c) Information or data acquired during an examination or**
5 **audit under subsection (b) is confidential.**
6 **Sec. 19. (a) A pharmacy benefit manager shall, on a schedule**
7 **established by the commissioner but at least annually, report to the**
8 **commissioner the following for a sample of claims for pharmacist**
9 **services under a health plan, as determined by the commissioner:**
10 **(1) The amount actually paid to the pharmacy or pharmacist.**
11 **(2) The identity of the pharmacy or pharmacist.**
12 **(3) The prescription number or other identification for the**
13 **pharmacist services.**
14 **(b) A report made under this section is confidential.**
15 **Sec. 20. A pharmacy benefit manager doing business in Indiana**
16 **shall, at least every seven (7) days, update, and make available to**
17 **pharmacies, the pharmacy benefit manager's maximum allowable**
18 **cost list.**
19 **Sec. 21. A violation of this chapter is an unfair or deceptive act**
20 **or practice in the business of insurance under IC 27-4-1-4.**
21 **SECTION 2. IC 27-1-24.8 IS REPEALED [EFFECTIVE JULY 1,**
22 **2020]. (Pharmacy Benefit Managers).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1042, 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:

Page 3, delete lines 38 through 40, begin a new paragraph and insert:

"Sec. 16. A person shall obtain a license from the commissioner under this chapter to operate as a pharmacy benefit manager."

and when so amended that said bill do pass.

(Reference is to HB 1042 as introduced.)

KIRCHHOFER

Committee Vote: yeas 10, nays 0.

