

HOUSE BILL No. 1117

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-37.

Synopsis: Health provider contracts. Makes various changes to the provisions that are prohibited in a health provider contract. Allows the insurance commissioner to grant a waiver to allow certain prohibited provisions in a health provider contract if certain conditions are met. Establishes enforcement provisions by the attorney general, insurance commissioner, and persons who have suffered a loss due to a violation.

Effective: July 1, 2022.

Schaibley

January 4, 2022, read first time and referred to Committee on Financial Institutions and Insurance.



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.

HOUSE BILL No. 1117

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 27-1-37-0.4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2022]: **Sec. 0.4. As used in this chapter, "all or nothing clause"**
4 **means a provision of a health provider contract that requires the**
5 **health carrier or health plan administrator to:**

- 6 (1) **except for a physician practice group, include all members**
7 **of a provider in a network plan; or**
- 8 (2) **enter into any additional contract with an affiliate of the**
9 **provider as a condition of entering into a contract with the**
10 **provider.**

11 SECTION 2. IC 27-1-37-0.6 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2022]: **Sec. 0.6. As used in this chapter, "antisteering clause"**
14 **means a provision of a health provider contract that restricts the**
15 **ability of the health carrier or health plan administrator from**
16 **encouraging an enrollee to obtain a health care service from a**
17 **competitor of the hospital or health system, including offering**



1 **incentives to encourage enrollees to use specific providers.**

2 SECTION 3. IC 27-1-37-0.7 IS ADDED TO THE INDIANA CODE
3 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2022]: **Sec. 0.7. As used in this chapter, "antitiering clause"**
5 **means a provision in a health provider contract that:**

6 **(1) restricts the ability of the health carrier or health plan**
7 **administrator to introduce or modify a tiered network plan or**
8 **assign providers into tiers; or**

9 **(2) requires the health carrier or health plan administrator to**
10 **place all members that are part of a provider in the same tier**
11 **of a tiered network plan.**

12 SECTION 4. IC 27-1-37-1.2 IS ADDED TO THE INDIANA CODE
13 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2022]: **Sec. 1.2. As used in this chapter, "enrollee" means an**
15 **individual who is entitled to receive health care services under the**
16 **terms of a health benefit plan.**

17 SECTION 5. IC 27-1-37-1.4 IS ADDED TO THE INDIANA CODE
18 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2022]: **Sec. 1.4. As used in this chapter, "health benefit plan"**
20 **means a plan, policy, contract, certificate, or agreement entered**
21 **into, offered, or issued by a health carrier or health plan**
22 **administrator acting on behalf of a plan sponsor to provide,**
23 **deliver, arrange for, pay for, or reimburse any of the costs of**
24 **health care services. The term includes nonfederal governmental**
25 **plans as defined in 29 U.S.C. 1002(32).**

26 SECTION 6. IC 27-1-37-2.5 IS ADDED TO THE INDIANA CODE
27 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2022]: **Sec. 2.5. As used in this chapter, "health plan**
29 **administrator" means a third party administrator who acts on**
30 **behalf of a plan sponsor to administer a health benefit plan.**

31 SECTION 7. IC 27-1-37-3.7 IS ADDED TO THE INDIANA CODE
32 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2022]: **Sec. 3.7. As used in this chapter, "most favored nations**
34 **clause" means a provision of a health provider contract that does**
35 **any of the following:**

36 **(1) Prohibits or grants a health carrier or health plan**
37 **administrator an option to prohibit a participating provider**
38 **from contracting with another contracting entity to provide**
39 **health care services at the same or lower price than the**
40 **payment specified in the health provider contract.**

41 **(2) Requires or grants a health carrier or health plan**
42 **administrator an option to require a participating provider to**



1 accept a lower payment in the event the participating
 2 provider agrees to provide health care services to another
 3 contracting entity at a lower price.

4 (3) Requires or grants a health carrier or health plan
 5 administrator an option to require termination or
 6 renegotiation of an existing health provider contract if a
 7 participating provider agrees to provide health care services
 8 to another contracting entity at the same or lower price.

9 (4) Restricts other health carriers or health plan
 10 administrators, that are not a party to the contract, from
 11 paying the same or lower rates for items or services than the
 12 contracting health carrier or health plan administrator pays
 13 for the items or services.

14 SECTION 8. IC 27-1-37-3.9 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2022]: **Sec. 3.9.** As used in this chapter, "network plan" means
 17 a health benefit plan that either requires enrollees to use or creates
 18 incentives, including financial incentives, for enrollees to use
 19 certain providers managed, owned, affiliated, under contract with,
 20 or employed by a health carrier, a health plan administrator, or
 21 plan sponsor. Network plans include health maintenance
 22 organization plans, preferred provider organization plans, and
 23 exclusive provider organization plans.

24 SECTION 9. IC 27-1-37-5.5 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2022]: **Sec. 5.5.** As used in this chapter, "tiered network plan"
 27 means a health benefit plan that sorts some or all types of
 28 providers into specific groups to which different provider
 29 reimbursement, enrollee cost sharing, or provider access
 30 requirements, or any combination thereof, are applied for the same
 31 services.

32 SECTION 10. IC 27-1-37-8, AS ADDED BY P.L.198-2021,
 33 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2022]: **Sec. 8.** (a) **Except as provided in subsection (b),** this
 35 section applies to a health provider contract entered into, amended, or
 36 renewed after June 30, 2021.

37 **(b) Subsection (c)(1) through (c)(3), as amended during the 2022**
 38 **regular session of the general assembly, applies to a health**
 39 **provider contract entered into, amended, or renewed after June 30,**
 40 **2022.**

41 ~~(b)~~ (c) A health provider contract, including a contract with a
 42 pharmacy benefit manager, may not contain a provision that does any



1 of the following:

2 (1) Limits the ability of ~~either~~ the health carrier, **provider, health**
 3 **plan administrator**, or the health provider facility to disclose the
 4 allowed amount and fees of services to any insured (as defined in
 5 IC 27-8-5.8-3) or enrollee (as defined in IC 27-13-1-12), or to the
 6 treating health provider facility or ~~physician~~ **provider** of the
 7 insured or enrollee.

8 (2) Limits the ability of ~~either~~ the health carrier, **provider, health**
 9 **plan administrator**, or the health provider facility to disclose
 10 **price, out-of-pocket costs, or quality information** to an insured
 11 (as defined in IC 27-8-5.8-3) or an enrollee (as defined in
 12 IC 27-13-1-12).

13 (3) **Contains any of the following:**

14 (A) **A most favored nations clause.**

15 (B) **An antisteering clause.**

16 (C) **An antitiering clause.**

17 (D) **An all or nothing clause.**

18 (E) **Any other clause that results or intends to result in**
 19 **anticompetitive effects as specified in a rule adopted by the**
 20 **insurance commissioner.**

21 ~~(c)~~ (d) Any provision of a health provider contract that includes a
 22 provision described in subsection ~~(b)~~ (c) in violation of this section is
 23 severable and the provision in violation is null and void. The remaining
 24 provisions of the health provider contract, excluding the provision in
 25 violation of this section, remain in effect and are enforceable.

26 ~~(d)~~ (e) The attorney general may issue **subpoenas** or a civil
 27 investigative demand to obtain information from a party of, or
 28 pertaining to, a health provider contract and compliance of this section.

29 (f) **The attorney general may institute proceedings for injunctive**
 30 **relief to prevent and restrain a violation of any provision of this**
 31 **section, including a temporary restraining order, preliminary**
 32 **injunction, permanent injunction, or other equitable relief**
 33 **including disgorgement or restitution.**

34 SECTION 11. IC 27-1-37-9 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2022]: **Sec. 9. (a) A party to a health provider contract that**
 37 **contains a provision specified in section 8(c) of this chapter may**
 38 **submit the health provider contract to the insurance commissioner**
 39 **for a waiver. The health provider contract must be accompanied**
 40 **by the following information:**

41 (1) **The name and business address of each party to the health**
 42 **provider contract.**



- 1 **(2) The location where each party to the agreement or policy**
 2 **provides health care services.**
- 3 **(3) Any information required to demonstrate that the**
 4 **proposed agreement or policy results in an increase in the**
 5 **welfare of consumers in this state that could not have been**
 6 **accomplished through alternative means that are less**
 7 **restrictive.**
- 8 **(b) The insurance commissioner shall approve or deny any**
 9 **waiver application in writing within sixty (60) days.**
- 10 **(c) The insurance commissioner may approve a waiver to allow**
 11 **a contract to include a provision specified in section 8(c) of this**
 12 **chapter if the insurance commissioner determines the following:**
- 13 **(1) The agreement or policy results in an increase in the**
 14 **welfare of consumers in this state such that the**
 15 **procompetitive benefits of including the provision outweigh**
 16 **the harms to competition.**
- 17 **(2) The increase in the welfare could not have been**
 18 **accomplished through alternative means that are less**
 19 **restrictive.**
- 20 **(3) The agreement or policy does not otherwise constitute a**
 21 **contract, combination, or conspiracy in restraint of trade**
 22 **under state or federal antitrust laws.**
- 23 **(d) The insurance commissioner may adopt rules under**
 24 **IC 4-22-2 concerning allowable conduct, agreements, or**
 25 **arrangements for which waivers may be granted.**
- 26 SECTION 12. IC 27-1-37-10 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2022]: **Sec. 10. (a) All records and papers of**
 29 **a health carrier concerning health benefit plans or negotiations**
 30 **between the health carrier and any provider are subject to**
 31 **inspection by the insurance commissioner or an agent designated**
 32 **by the insurance commissioner. The insurance commissioner may**
 33 **require any health carrier to produce a list of all health provider**
 34 **contracts, transactions, or pricing arrangements entered into**
 35 **within the preceding twelve (12) months.**
- 36 **(b) Except for contracts granted a waiver under section 9 of this**
 37 **chapter, the insurance commissioner may impose an**
 38 **administrative penalty of up to five thousand dollars (\$5,000) on a**
 39 **health carrier per day for each day that a contract in violation of**
 40 **section 8 of this chapter is in effect.**
- 41 **(c) The insurance commissioner may under IC 27-1-22 deny the**
 42 **sale of any health insurance plan where the contract between the**



1 health carrier and any provider is in violation of section 8 of this
2 chapter.

3 (d) The insurance commissioner may refer any health provider
4 contract subject to this section to the attorney general to review the
5 contract for compliance with this chapter. The referral of any
6 health provider contract by the insurance commissioner to the
7 attorney general does not constitute a violation of any
8 confidentiality agreement between the health carrier and the
9 insurance commissioner. Nothing in this section affects the
10 authority of the attorney general to prosecute antitrust or
11 consumer protection violations.

12 SECTION 13. IC 27-1-37-11 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2022]: **Sec. 11. A violation of section 8 of this**
15 **chapter is a deceptive act that is actionable under IC 24-5-0.5-4. A**
16 **person who suffers a loss as a result of the violation of section 8 of**
17 **this chapter may initiate an action and seek all remedies, damages,**
18 **costs, and fees available under IC 24-5-0.5-4.**

19 SECTION 14. IC 27-1-37-12 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2022]: **Sec. 12. Nothing in this chapter shall**
22 **be construed to limit network design or cost or quality initiatives**
23 **by a group health plan, health carrier, or administrators working**
24 **on behalf of a plan sponsor, including accountable care**
25 **organizations, exclusive provider organizations, or networks that**
26 **tier providers by cost or quality or steer enrollees to centers of**
27 **excellence, or other pay for performance programs.**

28 SECTION 15. IC 27-1-37-13 IS ADDED TO THE INDIANA
29 CODE AS A NEW SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2022]: **Sec. 13. The insurance commissioner**
31 **may adopt rules under IC 4-22-2 that are necessary to implement**
32 **and ensure compliance with this chapter.**

