

# HOUSE BILL No. 1371

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10-8-17; IC 27-8-11-12; IC 27-13-15-6.

**Synopsis:** Pharmacy benefits. Requires a state employee plan, health insurer, and health maintenance organization to perform certain activities with respect to a maximum allowable cost list used for prescription drug reimbursement, including: (1) compilation and updating of the list; and (2) pharmacy appeals.

**Effective:** July 1, 2016.

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## Davisson

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January 12, 2016, read first time and referred to Committee on Insurance.

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Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# HOUSE BILL No. 1371



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 5-10-8-17 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]: **Sec. 17. (a) As used in this section, "drug" means a**  
4 **prescription drug.**  
5 **(b) As used in this section, "maximum allowable cost list" or**  
6 **"MAC list" means a list of generic drugs that is created by a state**  
7 **employee plan to establish the maximum amount that will be**  
8 **reimbursed under the state employee plan for a particular generic**  
9 **drug.**  
10 **(c) As used in this section, "pharmacy" refers to a pharmacist**  
11 **or pharmacy that has entered into an agreement with a state**  
12 **employee plan to provide drugs to individuals covered under a**  
13 **state employee plan.**  
14 **(d) As used in this section, "state employee plan" refers to the**  
15 **following that provide coverage for drugs:**  
16 **(1) A self-insurance program established under section 7(b) of**



1           **this chapter to provide group health coverage.**

2           **(2) A contract with a prepaid health care delivery plan that is**  
 3           **entered into or renewed under section 7(c) of this chapter.**

4           **The term includes a person that administers drug benefits on**  
 5           **behalf of a state employee plan.**

6           **(e) A state employee plan may not include a drug on a MAC list**  
 7           **unless the drug:**

8           **(1) has been classified by the federal Food and Drug**  
 9           **Administration and published in its Approved Drug Products**  
 10           **with Therapeutic Equivalence Evaluations list as having a**  
 11           **therapeutic equivalence evaluation of "AB" with at least one**

12           **(1) other available drug;**

13           **(2) is available for purchase by pharmacies in Indiana from**  
 14           **a national or regional wholesale drug distributor; and**

15           **(3) is not obsolete.**

16           **(f) Upon request, a state employee plan shall inform a pharmacy**  
 17           **of the resources used to create the state employee plan's MAC list.**

18           **(g) A state employee plan shall do all of the following:**

19           **(1) Establish a procedure for use in updating:**

20           **(A) reimbursement amounts for; and**

21           **(B) addition or removal of;**

22           **drugs on the state employee plan's MAC list, consistent with**  
 23           **market pricing and availability of the drugs.**

24           **(2) Perform the update described in subdivision (1) and**  
 25           **forward the updated MAC list to each pharmacy at least once**  
 26           **every seven (7) calendar days.**

27           **(3) Establish an appeal procedure through which a pharmacy**  
 28           **may appeal the amount reimbursed for a drug according to**  
 29           **the state employee plan's MAC list. The appeal procedure**  
 30           **must include all of the following:**

31           **(A) The provision to a pharmacy of a telephone number**  
 32           **through which the pharmacy may contact the state**  
 33           **employee plan to discuss an appeal.**

34           **(B) A requirement that a pharmacy may file an appeal not**  
 35           **more than fifteen (15) days after receiving notice of the**  
 36           **amount the state employee plan will reimburse for a drug.**

37           **(C) A requirement that the state employee plan must**  
 38           **respond to an appeal not more than fifteen (15) days after**  
 39           **receiving the appeal.**

40           **(D) A provision specifying that if an appeal is decided in**  
 41           **favor of the pharmacy, the state employee plan shall:**

42           **(i) effective on the date of the decision, adjust the**



1 reimbursement for the drug accordingly and apply the  
 2 adjustment to the appealing pharmacy and all similarly  
 3 situated pharmacies, as determined appropriate by the  
 4 state employee plan; and

5 (ii) allow the appealing pharmacy to rebill the appealed  
 6 claim with the same date of service as the appealed  
 7 claim.

8 (E) A provision specifying that if an appeal is decided in  
 9 favor of the state employee plan, the state employee plan  
 10 shall provide to the appealing pharmacy notice of the  
 11 decision, including:

12 (i) the reason for the decision; and

13 (ii) the federal Food and Drug Administration's national  
 14 drug code of another drug that is therapeutically  
 15 equivalent (as described in subsection (e)(1)) and that is  
 16 available for purchase by a pharmacy in Indiana from a  
 17 national or regional wholesale drug distributor at a price  
 18 that does not exceed the reimbursement amount for the  
 19 drug on the state employee plan's MAC list.

20 SECTION 2. IC 27-8-11-12 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 22 1, 2016]: Sec. 12. (a) As used in this section, "drug" means a  
 23 prescription drug.

24 (b) As used in this section, "insurer" refers to an insurer that  
 25 provides coverage for drugs. The term includes a person that  
 26 administers drug benefits on behalf of an insurer.

27 (c) As used in this section, "maximum allowable cost list" or  
 28 "MAC list" means a list of generic drugs that is created by an  
 29 insurer to establish the maximum amount that will be reimbursed  
 30 under a policy for a particular generic drug.

31 (d) As used in this section, "pharmacy" refers to a pharmacist  
 32 or pharmacy that has entered into an agreement with an insurer  
 33 under section 3 of this chapter.

34 (e) An insurer may not include a drug on a MAC list unless the  
 35 drug:

36 (1) has been classified by the federal Food and Drug  
 37 Administration and published in its Approved Drug Products  
 38 with Therapeutic Equivalence Evaluations list as having a  
 39 therapeutic equivalence evaluation of "AB" with at least one

40 (1) other available drug;

41 (2) is available for purchase by pharmacies in Indiana from  
 42 a national or regional wholesale drug distributor; and



- 1           (3) is not obsolete.
- 2           (f) Upon request, an insurer shall inform a pharmacy of the
- 3 resources used to create the insurer's MAC list.
- 4           (g) An insurer shall do all of the following:
- 5           (1) Establish a procedure for use in updating:
- 6               (A) reimbursement amounts for; and
- 7               (B) addition or removal of;
- 8 drugs on the insurer's MAC list, consistent with market
- 9 pricing and availability of the drugs.
- 10          (2) Perform the update described in subdivision (1) and
- 11 forward the updated MAC list to each pharmacy at least once
- 12 every seven (7) calendar days.
- 13          (3) Establish an appeal procedure through which a pharmacy
- 14 may appeal the amount reimbursed for a drug according to
- 15 the insurer's MAC list. The appeal procedure must include all
- 16 of the following:
- 17           (A) The provision to a pharmacy of a telephone number
- 18 through which the pharmacy may contact the insurer to
- 19 discuss an appeal.
- 20           (B) A requirement that a pharmacy may file an appeal not
- 21 more than fifteen (15) days after receiving notice of the
- 22 amount the insurer will reimburse for a drug.
- 23           (C) A requirement that the insurer must respond to an
- 24 appeal not more than fifteen (15) days after receiving the
- 25 appeal.
- 26           (D) A provision specifying that if an appeal is decided in
- 27 favor of the pharmacy, the insurer shall:
- 28               (i) effective on the date of the decision, adjust the
- 29 reimbursement for the drug accordingly and apply the
- 30 adjustment to the appealing pharmacy and all similarly
- 31 situated pharmacies, as determined appropriate by the
- 32 insurer; and
- 33               (ii) allow the appealing pharmacy to rebill the appealed
- 34 claim with the same date of service as the appealed
- 35 claim.
- 36           (E) A provision specifying that if an appeal is decided in
- 37 favor of the insurer, the insurer shall provide to the
- 38 appealing pharmacy notice of the decision, including:
- 39               (i) the reason for the decision; and
- 40               (ii) the federal Food and Drug Administration's national
- 41 drug code of another drug that is therapeutically
- 42 equivalent (as described in subsection (e)(1)) and that is



1 available for purchase by a pharmacy in Indiana from a  
 2 national or regional wholesale drug distributor at a price  
 3 that does not exceed the reimbursement amount for the  
 4 drug on the insurer's MAC list.

5 SECTION 3. IC 27-13-15-6 IS ADDED TO THE INDIANA CODE  
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 7 1, 2016]: Sec. 6. (a) As used in this section, "drug" means a  
 8 prescription drug.

9 (b) As used in this section, "health maintenance organization"  
 10 refers to a health maintenance organization that provides coverage  
 11 for drugs. The term includes the following:

- 12 (1) A limited service health maintenance organization.  
 13 (2) A person that administers drug benefits on behalf of a  
 14 health maintenance organization or a limited service health  
 15 maintenance organization.

16 (c) As used in this section, "maximum allowable cost list" or  
 17 "MAC list" means a list of generic drugs that is created by a health  
 18 maintenance organization to establish the maximum amount that  
 19 will be reimbursed under an individual contract or a group  
 20 contract for a particular generic drug.

21 (d) As used in this section, "pharmacy" refers to a pharmacist  
 22 or pharmacy that is a participating provider.

23 (e) A health maintenance organization may not include a drug  
 24 on a MAC list unless the drug:

- 25 (1) has been classified by the federal Food and Drug  
 26 Administration and published in its Approved Drug Products  
 27 with Therapeutic Equivalence Evaluations list as having a  
 28 therapeutic equivalence evaluation of "AB" with at least one  
 29 (1) other available drug;  
 30 (2) is available for purchase by pharmacies in Indiana from  
 31 a national or regional wholesale drug distributor; and  
 32 (3) is not obsolete.

33 (f) Upon request, a health maintenance organization shall  
 34 inform a pharmacy of the resources used to create the health  
 35 maintenance organization's MAC list.

36 (g) A health maintenance organization shall do all of the  
 37 following:

- 38 (1) Establish a procedure for use in updating:  
 39 (A) reimbursement amounts for; and  
 40 (B) addition or removal of;  
 41 drugs on the health maintenance organization's MAC list,  
 42 consistent with market pricing and availability of the drugs.



- 1 (2) Perform the update described in subdivision (1) and  
2 forward the updated MAC list to each pharmacy at least once  
3 every seven (7) calendar days.
- 4 (3) Establish an appeal procedure through which a pharmacy  
5 may appeal the amount reimbursed for a drug according to  
6 the health maintenance organization's MAC list. The appeal  
7 procedure must include all of the following:
- 8 (A) The provision to a pharmacy of a telephone number  
9 through which the pharmacy may contact the health  
10 maintenance organization to discuss an appeal.
- 11 (B) A requirement that a pharmacy may file an appeal not  
12 more than fifteen (15) days after receiving notice of the  
13 amount the health maintenance organization will  
14 reimburse for a drug.
- 15 (C) A requirement that the health maintenance  
16 organization must respond to an appeal not more than  
17 fifteen (15) days after receiving the appeal.
- 18 (D) A provision specifying that if an appeal is decided in  
19 favor of the pharmacy, the health maintenance  
20 organization shall:
- 21 (i) effective on the date of the decision, adjust the  
22 reimbursement for the drug accordingly and apply the  
23 adjustment to the appealing pharmacy and all similarly  
24 situated pharmacies, as determined appropriate by the  
25 health maintenance organization; and
- 26 (ii) allow the appealing pharmacy to rebill the appealed  
27 claim with the same date of service as the original claim.
- 28 (E) A provision specifying that if an appeal is decided in  
29 favor of the health maintenance organization, the health  
30 maintenance organization shall provide to the appealing  
31 pharmacy notice of the decision, including:
- 32 (i) the reason for the decision; and
- 33 (ii) the federal Food and Drug Administration's national  
34 drug code of another drug that is therapeutically  
35 equivalent (as described in subsection (e)(1)) and that is  
36 available for purchase by a pharmacy in Indiana from a  
37 national or regional wholesale drug distributor at a price  
38 that does not exceed the reimbursement amount for the  
39 drug on the health maintenance organization's MAC list.

