

HOUSE BILL No. 1393

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-1-24.5-19.5; IC 27-4-1-4.

Synopsis: Pharmacy benefit managers. Prohibits the inclusion of certain provisions in a contract between a pharmacy benefit manager and an entity authorized to participate in the federal 340B Drug Pricing Program. Provides that a pharmacy benefit manager's violation of the prohibition is an unfair or deceptive act or practice in the business of insurance.

Effective: July 1, 2021.

**Clere, Lehman, Davisson,
Shackleford**

January 14, 2021, read first time and referred to Committee on Financial Institutions and Insurance.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1393

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 27-1-24.5-19.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2021]: **Sec. 19.5. (a) As used in this section,**
4 **"340B covered entity" means an entity authorized to participate in**
5 **the federal 340B Drug Pricing Program under Section 340B(a)(4)**
6 **of the federal Public Health Service Act (42 U.S.C. 256b(a)(4)) and**
7 **includes any pharmacy under contract with the entity to dispense**
8 **drugs on behalf of the entity.**
9 (b) The following provisions may not be contained in a contract
10 between a pharmacy benefit manager and a 340B covered entity:
11 (1) A reimbursement rate for a prescription drug that is less
12 than the national average drug acquisition cost rate for the
13 prescription drug as determined by the federal Centers for
14 Medicare and Medicaid Services, measured at the time the
15 prescription drug is dispensed or administered, or, if no such
16 rate is available at that time, a reimbursement rate that is less
17 than the wholesale acquisition cost of the prescription drug



- 1 (as defined in 42 U.S.C. 1395w-3a(c)(6)(B)).
- 2 (2) A fee that is not imposed on a pharmacy that is not a 340B
- 3 covered entity.
- 4 (3) A fee amount that exceeds the fee amount imposed on a
- 5 pharmacy that is not a 340B covered entity.
- 6 (4) Any provision that prevents or interferes with an
- 7 individual's choice to receive a prescription drug from a 340B
- 8 covered entity.
- 9 (5) Any provision that discriminates against a 340B covered
- 10 entity.

11 A violation of this subsection by a pharmacy benefit manager
 12 constitutes an unfair or deceptive act or practice in the business of
 13 insurance under IC 27-4-1-4.

14 (c) For contracts between a pharmacy benefit manager and a
 15 340B covered entity that are entered into, amended, or renewed
 16 after June 30, 2021, a provision that violates subsection (b) is
 17 considered void and unenforceable.

18 SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.50-2020,
 19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2021]: Sec. 4. (a) The following are hereby defined as unfair
 21 methods of competition and unfair and deceptive acts and practices in
 22 the business of insurance:

- 23 (1) Making, issuing, circulating, or causing to be made, issued, or
- 24 circulated, any estimate, illustration, circular, or statement:
 - 25 (A) misrepresenting the terms of any policy issued or to be
 - 26 issued or the benefits or advantages promised thereby or the
 - 27 dividends or share of the surplus to be received thereon;
 - 28 (B) making any false or misleading statement as to the
 - 29 dividends or share of surplus previously paid on similar
 - 30 policies;
 - 31 (C) making any misleading representation or any
 - 32 misrepresentation as to the financial condition of any insurer,
 - 33 or as to the legal reserve system upon which any life insurer
 - 34 operates;
 - 35 (D) using any name or title of any policy or class of policies
 - 36 misrepresenting the true nature thereof; or
 - 37 (E) making any misrepresentation to any policyholder insured
 - 38 in any company for the purpose of inducing or tending to
 - 39 induce such policyholder to lapse, forfeit, or surrender the
 - 40 policyholder's insurance.
- 41 (2) Making, publishing, disseminating, circulating, or placing
- 42 before the public, or causing, directly or indirectly, to be made,



1 published, disseminated, circulated, or placed before the public,
2 in a newspaper, magazine, or other publication, or in the form of
3 a notice, circular, pamphlet, letter, or poster, or over any radio or
4 television station, or in any other way, an advertisement,
5 announcement, or statement containing any assertion,
6 representation, or statement with respect to any person in the
7 conduct of the person's insurance business, which is untrue,
8 deceptive, or misleading.

9 (3) Making, publishing, disseminating, or circulating, directly or
10 indirectly, or aiding, abetting, or encouraging the making,
11 publishing, disseminating, or circulating of any oral or written
12 statement or any pamphlet, circular, article, or literature which is
13 false, or maliciously critical of or derogatory to the financial
14 condition of an insurer, and which is calculated to injure any
15 person engaged in the business of insurance.

16 (4) Entering into any agreement to commit, or individually or by
17 a concerted action committing any act of boycott, coercion, or
18 intimidation resulting or tending to result in unreasonable
19 restraint of, or a monopoly in, the business of insurance.

20 (5) Filing with any supervisory or other public official, or making,
21 publishing, disseminating, circulating, or delivering to any person,
22 or placing before the public, or causing directly or indirectly, to
23 be made, published, disseminated, circulated, delivered to any
24 person, or placed before the public, any false statement of
25 financial condition of an insurer with intent to deceive. Making
26 any false entry in any book, report, or statement of any insurer
27 with intent to deceive any agent or examiner lawfully appointed
28 to examine into its condition or into any of its affairs, or any
29 public official to which such insurer is required by law to report,
30 or which has authority by law to examine into its condition or into
31 any of its affairs, or, with like intent, willfully omitting to make a
32 true entry of any material fact pertaining to the business of such
33 insurer in any book, report, or statement of such insurer.

34 (6) Issuing or delivering or permitting agents, officers, or
35 employees to issue or deliver, agency company stock or other
36 capital stock, or benefit certificates or shares in any common law
37 corporation, or securities or any special or advisory board
38 contracts or other contracts of any kind promising returns and
39 profits as an inducement to insurance.

40 (7) Making or permitting any of the following:

41 (A) Unfair discrimination between individuals of the same
42 class and equal expectation of life in the rates or assessments



1 charged for any contract of life insurance or of life annuity or
 2 in the dividends or other benefits payable thereon, or in any
 3 other of the terms and conditions of such contract. However,
 4 in determining the class, consideration may be given to the
 5 nature of the risk, plan of insurance, the actual or expected
 6 expense of conducting the business, or any other relevant
 7 factor.

8 (B) Unfair discrimination between individuals of the same
 9 class involving essentially the same hazards in the amount of
 10 premium, policy fees, assessments, or rates charged or made
 11 for any policy or contract of accident or health insurance or in
 12 the benefits payable thereunder, or in any of the terms or
 13 conditions of such contract, or in any other manner whatever.
 14 However, in determining the class, consideration may be given
 15 to the nature of the risk, the plan of insurance, the actual or
 16 expected expense of conducting the business, or any other
 17 relevant factor.

18 (C) Excessive or inadequate charges for premiums, policy
 19 fees, assessments, or rates, or making or permitting any unfair
 20 discrimination between persons of the same class involving
 21 essentially the same hazards, in the amount of premiums,
 22 policy fees, assessments, or rates charged or made for:

23 (i) policies or contracts of reinsurance or joint reinsurance,
 24 or abstract and title insurance;

25 (ii) policies or contracts of insurance against loss or damage
 26 to aircraft, or against liability arising out of the ownership,
 27 maintenance, or use of any aircraft, or of vessels or craft,
 28 their cargoes, marine builders' risks, marine protection and
 29 indemnity, or other risks commonly insured under marine,
 30 as distinguished from inland marine, insurance; or

31 (iii) policies or contracts of any other kind or kinds of
 32 insurance whatsoever.

33 However, nothing contained in clause (C) shall be construed to
 34 apply to any of the kinds of insurance referred to in clauses (A)
 35 and (B) nor to reinsurance in relation to such kinds of insurance.
 36 Nothing in clause (A), (B), or (C) shall be construed as making or
 37 permitting any excessive, inadequate, or unfairly discriminatory
 38 charge or rate or any charge or rate determined by the department
 39 or commissioner to meet the requirements of any other insurance
 40 rate regulatory law of this state.

41 (8) Except as otherwise expressly provided by law, knowingly
 42 permitting or offering to make or making any contract or policy



1 of insurance of any kind or kinds whatsoever, including but not in
2 limitation, life annuities, or agreement as to such contract or
3 policy other than as plainly expressed in such contract or policy
4 issued thereon, or paying or allowing, or giving or offering to pay,
5 allow, or give, directly or indirectly, as inducement to such
6 insurance, or annuity, any rebate of premiums payable on the
7 contract, or any special favor or advantage in the dividends,
8 savings, or other benefits thereon, or any valuable consideration
9 or inducement whatever not specified in the contract or policy; or
10 giving, or selling, or purchasing or offering to give, sell, or
11 purchase as inducement to such insurance or annuity or in
12 connection therewith, any stocks, bonds, or other securities of any
13 insurance company or other corporation, association, limited
14 liability company, or partnership, or any dividends, savings, or
15 profits accrued thereon, or anything of value whatsoever not
16 specified in the contract. Nothing in this subdivision and
17 subdivision (7) shall be construed as including within the
18 definition of discrimination or rebates any of the following
19 practices:

20 (A) Paying bonuses to policyholders or otherwise abating their
21 premiums in whole or in part out of surplus accumulated from
22 nonparticipating insurance, so long as any such bonuses or
23 abatement of premiums are fair and equitable to policyholders
24 and for the best interests of the company and its policyholders.

25 (B) In the case of life insurance policies issued on the
26 industrial debit plan, making allowance to policyholders who
27 have continuously for a specified period made premium
28 payments directly to an office of the insurer in an amount
29 which fairly represents the saving in collection expense.

30 (C) Readjustment of the rate of premium for a group insurance
31 policy based on the loss or expense experience thereunder, at
32 the end of the first year or of any subsequent year of insurance
33 thereunder, which may be made retroactive only for such
34 policy year.

35 (D) Paying by an insurer or insurance producer thereof duly
36 licensed as such under the laws of this state of money,
37 commission, or brokerage, or giving or allowing by an insurer
38 or such licensed insurance producer thereof anything of value,
39 for or on account of the solicitation or negotiation of policies
40 or other contracts of any kind or kinds, to a broker, an
41 insurance producer, or a solicitor duly licensed under the laws
42 of this state, but such broker, insurance producer, or solicitor



- 1 receiving such consideration shall not pay, give, or allow
2 credit for such consideration as received in whole or in part,
3 directly or indirectly, to the insured by way of rebate.
- 4 (9) Requiring, as a condition precedent to loaning money upon the
5 security of a mortgage upon real property, that the owner of the
6 property to whom the money is to be loaned negotiate any policy
7 of insurance covering such real property through a particular
8 insurance producer or broker or brokers. However, this
9 subdivision shall not prevent the exercise by any lender of the
10 lender's right to approve or disapprove of the insurance company
11 selected by the borrower to underwrite the insurance.
- 12 (10) Entering into any contract, combination in the form of a trust
13 or otherwise, or conspiracy in restraint of commerce in the
14 business of insurance.
- 15 (11) Monopolizing or attempting to monopolize or combining or
16 conspiring with any other person or persons to monopolize any
17 part of commerce in the business of insurance. However,
18 participation as a member, director, or officer in the activities of
19 any nonprofit organization of insurance producers or other
20 workers in the insurance business shall not be interpreted, in
21 itself, to constitute a combination in restraint of trade or as
22 combining to create a monopoly as provided in this subdivision
23 and subdivision (10). The enumeration in this chapter of specific
24 unfair methods of competition and unfair or deceptive acts and
25 practices in the business of insurance is not exclusive or
26 restrictive or intended to limit the powers of the commissioner or
27 department or of any court of review under section 8 of this
28 chapter.
- 29 (12) Requiring as a condition precedent to the sale of real or
30 personal property under any contract of sale, conditional sales
31 contract, or other similar instrument or upon the security of a
32 chattel mortgage, that the buyer of such property negotiate any
33 policy of insurance covering such property through a particular
34 insurance company, insurance producer, or broker or brokers.
35 However, this subdivision shall not prevent the exercise by any
36 seller of such property or the one making a loan thereon of the
37 right to approve or disapprove of the insurance company selected
38 by the buyer to underwrite the insurance.
- 39 (13) Issuing, offering, or participating in a plan to issue or offer,
40 any policy or certificate of insurance of any kind or character as
41 an inducement to the purchase of any property, real, personal, or
42 mixed, or services of any kind, where a charge to the insured is



1 not made for and on account of such policy or certificate of
 2 insurance. However, this subdivision shall not apply to any of the
 3 following:

4 (A) Insurance issued to credit unions or members of credit
 5 unions in connection with the purchase of shares in such credit
 6 unions.

7 (B) Insurance employed as a means of guaranteeing the
 8 performance of goods and designed to benefit the purchasers
 9 or users of such goods.

10 (C) Title insurance.

11 (D) Insurance written in connection with an indebtedness and
 12 intended as a means of repaying such indebtedness in the
 13 event of the death or disability of the insured.

14 (E) Insurance provided by or through motorists service clubs
 15 or associations.

16 (F) Insurance that is provided to the purchaser or holder of an
 17 air transportation ticket and that:

18 (i) insures against death or nonfatal injury that occurs during
 19 the flight to which the ticket relates;

20 (ii) insures against personal injury or property damage that
 21 occurs during travel to or from the airport in a common
 22 carrier immediately before or after the flight;

23 (iii) insures against baggage loss during the flight to which
 24 the ticket relates; or

25 (iv) insures against a flight cancellation to which the ticket
 26 relates.

27 (14) Refusing, because of the for-profit status of a hospital or
 28 medical facility, to make payments otherwise required to be made
 29 under a contract or policy of insurance for charges incurred by an
 30 insured in such a for-profit hospital or other for-profit medical
 31 facility licensed by the state department of health.

32 (15) Refusing to insure an individual, refusing to continue to issue
 33 insurance to an individual, limiting the amount, extent, or kind of
 34 coverage available to an individual, or charging an individual a
 35 different rate for the same coverage, solely because of that
 36 individual's blindness or partial blindness, except where the
 37 refusal, limitation, or rate differential is based on sound actuarial
 38 principles or is related to actual or reasonably anticipated
 39 experience.

40 (16) Committing or performing, with such frequency as to
 41 indicate a general practice, unfair claim settlement practices (as
 42 defined in section 4.5 of this chapter).



- 1 (17) Between policy renewal dates, unilaterally canceling an
 2 individual's coverage under an individual or group health
 3 insurance policy solely because of the individual's medical or
 4 physical condition.
 5 (18) Using a policy form or rider that would permit a cancellation
 6 of coverage as described in subdivision (17).
 7 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
 8 concerning motor vehicle insurance rates.
 9 (20) Violating IC 27-8-21-2 concerning advertisements referring
 10 to interest rate guarantees.
 11 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 12 coverage for victims of abuse.
 13 (22) Violating IC 27-8-26 concerning genetic screening or testing.
 14 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 15 insurance producers.
 16 (24) Violating IC 27-1-38 concerning depository institutions.
 17 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
 18 the resolution of an appealed grievance decision.
 19 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
 20 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
 21 2007, and repealed).
 22 (27) Violating IC 27-2-21 concerning use of credit information.
 23 (28) Violating IC 27-4-9-3 concerning recommendations to
 24 consumers.
 25 (29) Engaging in dishonest or predatory insurance practices in
 26 marketing or sales of insurance to members of the United States
 27 Armed Forces as:
 28 (A) described in the federal Military Personnel Financial
 29 Services Protection Act, P.L.109-290; or
 30 (B) defined in rules adopted under subsection (b).
 31 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
 32 life insurance.
 33 (31) Violating IC 27-2-22 concerning retained asset accounts.
 34 (32) Violating IC 27-8-5-29 concerning health plans offered
 35 through a health benefit exchange (as defined in IC 27-19-2-8).
 36 (33) Violating a requirement of the federal Patient Protection and
 37 Affordable Care Act (P.L. 111-148), as amended by the federal
 38 Health Care and Education Reconciliation Act of 2010 (P.L.
 39 111-152), that is enforceable by the state.
 40 (34) After June 30, 2015, violating IC 27-2-23 concerning
 41 unclaimed life insurance, annuity, or retained asset account
 42 benefits.



- 1 (35) Willfully violating IC 27-1-12-46 concerning a life insurance
2 policy or certificate described in IC 27-1-12-46(a).
3 (36) Violating IC 27-1-37-7 concerning prohibiting the disclosure
4 of health care service claims data.
5 **(37) Violating IC 27-1-24.5 concerning pharmacy benefit**
6 **managers.**
7 (b) Except with respect to federal insurance programs under
8 Subchapter III of Chapter 19 of Title 38 of the United States Code, the
9 commissioner may, consistent with the federal Military Personnel
10 Financial Services Protection Act (10 U.S.C. 992 note), adopt rules
11 under IC 4-22-2 to:
12 (1) define; and
13 (2) while the members are on a United States military installation
14 or elsewhere in Indiana, protect members of the United States
15 Armed Forces from;
16 dishonest or predatory insurance practices.

