



March 26, 2021

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# ENGROSSED HOUSE BILL No. 1393

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DIGEST OF HB 1393 (Updated March 24, 2021 12:15 pm - DI 104)

**Citations Affected:** IC 27-1; IC 27-4.

**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.

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## Clere, Lehman, Davisson, Shackleford

(SENATE SPONSORS — BROWN L, CHARBONNEAU, YODER,  
FORD J.D.)

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

February 8, 2021, reported — Do Pass.

February 16, 2021, read second time, ordered engrossed. Engrossed.

February 18, 2021, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 24, 2021, read first time and referred to Committee on Health and Provider Services.

March 25, 2021, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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EH 1393—LS 7293/DI 137





March 26, 2021

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.

## ENGROSSED 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 would**  
12 **diminish the 340B benefit to a 340B covered entity.**  
13 **(2) A fee or adjustment that is not imposed on a pharmacy**  
14 **that is not a 340B covered entity.**  
15 **(3) A fee or adjustment amount that exceeds the fee or**  
16 **adjustment amount imposed on a pharmacy that is not a 340B**  
17 **covered entity.**

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1           **(4) Any provision that prevents or interferes with an**  
 2           **individual's choice to receive a prescription drug from a 340B**  
 3           **covered entity, including the administration of the drug.**

4           **(5) Any provision that excludes a 340B covered entity from**  
 5           **pharmacy benefit manager networks based on the 340B**  
 6           **covered entity's participation in the federal 340B Drug**  
 7           **Pricing Program.**

8           **(6) Any provision that discriminates against a 340B covered**  
 9           **entity.**

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

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

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

22               (1) Making, issuing, circulating, or causing to be made, issued, or  
 23               circulated, any estimate, illustration, circular, or statement:

24                       (A) misrepresenting the terms of any policy issued or to be  
 25                       issued or the benefits or advantages promised thereby or the  
 26                       dividends or share of the surplus to be received thereon;

27                       (B) making any false or misleading statement as to the  
 28                       dividends or share of surplus previously paid on similar  
 29                       policies;

30                       (C) making any misleading representation or any  
 31                       misrepresentation as to the financial condition of any insurer,  
 32                       or as to the legal reserve system upon which any life insurer  
 33                       operates;

34                       (D) using any name or title of any policy or class of policies  
 35                       misrepresenting the true nature thereof; or

36                       (E) making any misrepresentation to any policyholder insured  
 37                       in any company for the purpose of inducing or tending to  
 38                       induce such policyholder to lapse, forfeit, or surrender the  
 39                       policyholder's insurance.

40               (2) Making, publishing, disseminating, circulating, or placing  
 41               before the public, or causing, directly or indirectly, to be made,  
 42               published, disseminated, circulated, or placed before the public,



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

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

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

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

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

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

40 (A) Unfair discrimination between individuals of the same  
41 class and equal expectation of life in the rates or assessments  
42 charged for any contract of life insurance or of life annuity or



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

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

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

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

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

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

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

40 (8) Except as otherwise expressly provided by law, knowingly  
 41 permitting or offering to make or making any contract or policy  
 42 of insurance of any kind or kinds whatsoever, including but not in



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

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

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

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

34 (D) Paying by an insurer or insurance producer thereof duly  
35 licensed as such under the laws of this state of money,  
36 commission, or brokerage, or giving or allowing by an insurer  
37 or such licensed insurance producer thereof anything of value,  
38 for or on account of the solicitation or negotiation of policies  
39 or other contracts of any kind or kinds, to a broker, an  
40 insurance producer, or a solicitor duly licensed under the laws  
41 of this state, but such broker, insurance producer, or solicitor  
42 receiving such consideration shall not pay, give, or allow



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





- 1 insurance. However, this subdivision shall not apply to any of the  
 2 following:
- 3 (A) Insurance issued to credit unions or members of credit  
 4 unions in connection with the purchase of shares in such credit  
 5 unions.
- 6 (B) Insurance employed as a means of guaranteeing the  
 7 performance of goods and designed to benefit the purchasers  
 8 or users of such goods.
- 9 (C) Title insurance.
- 10 (D) Insurance written in connection with an indebtedness and  
 11 intended as a means of repaying such indebtedness in the  
 12 event of the death or disability of the insured.
- 13 (E) Insurance provided by or through motorists service clubs  
 14 or associations.
- 15 (F) Insurance that is provided to the purchaser or holder of an  
 16 air transportation ticket and that:
- 17 (i) insures against death or nonfatal injury that occurs during  
 18 the flight to which the ticket relates;
- 19 (ii) insures against personal injury or property damage that  
 20 occurs during travel to or from the airport in a common  
 21 carrier immediately before or after the flight;
- 22 (iii) insures against baggage loss during the flight to which  
 23 the ticket relates; or
- 24 (iv) insures against a flight cancellation to which the ticket  
 25 relates.
- 26 (14) Refusing, because of the for-profit status of a hospital or  
 27 medical facility, to make payments otherwise required to be made  
 28 under a contract or policy of insurance for charges incurred by an  
 29 insured in such a for-profit hospital or other for-profit medical  
 30 facility licensed by the state department of health.
- 31 (15) Refusing to insure an individual, refusing to continue to issue  
 32 insurance to an individual, limiting the amount, extent, or kind of  
 33 coverage available to an individual, or charging an individual a  
 34 different rate for the same coverage, solely because of that  
 35 individual's blindness or partial blindness, except where the  
 36 refusal, limitation, or rate differential is based on sound actuarial  
 37 principles or is related to actual or reasonably anticipated  
 38 experience.
- 39 (16) Committing or performing, with such frequency as to  
 40 indicate a general practice, unfair claim settlement practices (as  
 41 defined in section 4.5 of this chapter).
- 42 (17) Between policy renewal dates, unilaterally canceling an



- 1 individual's coverage under an individual or group health  
 2 insurance policy solely because of the individual's medical or  
 3 physical condition.
- 4 (18) Using a policy form or rider that would permit a cancellation  
 5 of coverage as described in subdivision (17).
- 6 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1  
 7 concerning motor vehicle insurance rates.
- 8 (20) Violating IC 27-8-21-2 concerning advertisements referring  
 9 to interest rate guarantees.
- 10 (21) Violating IC 27-8-24.3 concerning insurance and health plan  
 11 coverage for victims of abuse.
- 12 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 13 (23) Violating IC 27-1-15.6-3(b) concerning licensure of  
 14 insurance producers.
- 15 (24) Violating IC 27-1-38 concerning depository institutions.
- 16 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning  
 17 the resolution of an appealed grievance decision.
- 18 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired  
 19 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,  
 20 2007, and repealed).
- 21 (27) Violating IC 27-2-21 concerning use of credit information.
- 22 (28) Violating IC 27-4-9-3 concerning recommendations to  
 23 consumers.
- 24 (29) Engaging in dishonest or predatory insurance practices in  
 25 marketing or sales of insurance to members of the United States  
 26 Armed Forces as:
- 27 (A) described in the federal Military Personnel Financial  
 28 Services Protection Act, P.L.109-290; or
- 29 (B) defined in rules adopted under subsection (b).
- 30 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated  
 31 life insurance.
- 32 (31) Violating IC 27-2-22 concerning retained asset accounts.
- 33 (32) Violating IC 27-8-5-29 concerning health plans offered  
 34 through a health benefit exchange (as defined in IC 27-19-2-8).
- 35 (33) Violating a requirement of the federal Patient Protection and  
 36 Affordable Care Act (P.L. 111-148), as amended by the federal  
 37 Health Care and Education Reconciliation Act of 2010 (P.L.  
 38 111-152), that is enforceable by the state.
- 39 (34) After June 30, 2015, violating IC 27-2-23 concerning  
 40 unclaimed life insurance, annuity, or retained asset account  
 41 benefits.
- 42 (35) Willfully violating IC 27-1-12-46 concerning a life insurance



1 policy or certificate described in IC 27-1-12-46(a).

2 (36) Violating IC 27-1-37-7 concerning prohibiting the disclosure  
3 of health care service claims data.

4 **(37) Violating IC 27-1-24.5 concerning pharmacy benefit**  
5 **managers.**

6 (b) Except with respect to federal insurance programs under  
7 Subchapter III of Chapter 19 of Title 38 of the United States Code, the  
8 commissioner may, consistent with the federal Military Personnel  
9 Financial Services Protection Act (10 U.S.C. 992 note), adopt rules  
10 under IC 4-22-2 to:

11 (1) define; and

12 (2) while the members are on a United States military installation  
13 or elsewhere in Indiana, protect members of the United States  
14 Armed Forces from;

15 dishonest or predatory insurance practices.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions and Insurance, to which was referred House Bill 1393, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1393 as introduced.)

CARBAUGH

Committee Vote: Yeas 13, Nays 0

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1393, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 11, delete "is less" and insert "**would diminish the 340B benefit to a 340B covered entity.**".

Page 1, delete lines 12 through 17.

Page 2, delete line 1.

Page 2, line 2, after "fee" insert "**or adjustment**".

Page 2, line 4, after "A fee" insert "**or adjustment**".

Page 2, line 4, after "the fee" insert "**or adjustment**".

Page 2, line 8, delete "." and insert "**, including the administration of the drug.**".

Page 2, line 9, after "(5)" insert "**Any provision that excludes a 340B covered entity from pharmacy benefit manager networks based on the 340B covered entity's participation in the federal 340B Drug Pricing Program.**

(6)".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to HB 1393 as printed February 8, 2021.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 8, Nays 0.

**EH 1393—LS 7293/DI 137**

