



Reprinted
April 4, 2017

ENGROSSED HOUSE BILL No. 1493

DIGEST OF HB 1493 (Updated April 3, 2017 4:32 pm - DI 104)

Citations Affected: IC 12-10; IC 12-15; IC 16-18; IC 16-27; IC 16-28; IC 22-4; IC 34-30; noncode.

Synopsis: Long term care and home health agencies. Requires a home and community based services program for individuals who are aged or disabled to include reimbursement for assisted living services in the Medicaid program. Requires the division of aging to report to the general assembly a plan to expand the scope and availability of home and community based services for individuals who are aged or disabled and requires the division to implement the plan. Prohibits the office of Medicaid policy and planning (office) from including certain
(Continued next page)

Effective: Upon passage; July 1, 2017.

Brown T, Clere

(SENATE SPONSORS — MISHLER, CHARBONNEAU, BREAUX,
RANDOLPH LONNIE M)

January 18, 2017, read first time and referred to Committee on Public Health.
February 2, 2017, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
February 21, 2017, reported — Do Pass.
February 23, 2017, read second time, amended, ordered engrossed.
February 24, 2017, engrossed.
February 27, 2017, read third time, passed. Yeas 92, nays 0.
SENATE ACTION
March 1, 2017, read first time and referred to Committee on Family and Children Services.
March 6, 2017, reassigned to Committee on Health and Provider Services pursuant to Rule 68(b).
March 16, 2017, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.
March 30, 2017, amended, reported favorably — Do Pass.
April 3, 2017, read second time, amended, ordered engrossed.

EH 1493—LS 7283/DI 104



Digest Continued

individuals who receive nursing facility services in a Medicaid risk based managed care program or a capitated managed care program through December 31, 2019. Specifies the model to be used for Medicaid nursing facility service payments. Requires the office to do the following: (1) Provide public notice of at least one year before reducing nursing facility service reimbursements. (2) Review currently offered home health programs, develop additional programs, and report on the programs to the general assembly. Requires the state department of health to amend rules concerning residential care facilities to comply with federal law concerning the provision of home and community based services. Requires the office to report by October 1, 2017, to the legislative council concerning Medicaid recipient eligibility for health facility services. Requires home health agencies to drug test job applicants and employees who come into direct contact with patients. Exempts from drug testing certain licensed home health employees. Requires random drug testing of at least 50% of certain employees to occur at least annually. Allows for random drug testing upon reasonable suspicion of illegal controlled substance use and sets forth parameters of the random drug testing. Requires verification of a positive drug test, and requires the employee to pay for the verification test. Specifies that, unless an employee has a valid prescription for the substance for which the employee tests positive on a drug test, a home health agency shall either discharge an employee or suspend an employee from direct contact with patients for at least six months if the drug test is positive. Specifies that a home health agency that discharges or suspends an employee or refuses to hire a job applicant because of a positive drug test is considered to have discharged, suspended, or refused to hire for just cause. Provides that a home health agency, when acting in good faith and in compliance with state law, is immune from civil liability for conducting employee drug testing or taking an employee disciplinary action or discharging an employee as the result of employee drug testing. Provides that immunity does not apply to actions that constitute gross negligence or wanton misconduct.

EH 1493—LS 7283/DI 104



Reprinted
April 4, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1493

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-10-11.5-8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 8. (a) To the extent permitted**
4 **under federal law, the office shall reimburse under Medicaid for**
5 **assisted living services in a home and community based services**
6 **program for individuals who are aged or disabled.**

7 **(b) If the division determines that a provider is out of**
8 **compliance with state or federal home and community based**
9 **setting requirements because of requirements of the provider's**
10 **license, the division shall provide written guidance to the agency**
11 **issuing the provider license in order to assist in the amendment of**
12 **the licensure requirements to comply with federal and state home**
13 **and community based setting requirements.**

14 SECTION 2. IC 12-10-19 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2017]:

EH 1493—LS 7283/DI 104



1 **Chapter 19. Home and Community Based Services**

2 **Sec. 1. (a) Before October 1, 2017, the division shall report to the**
3 **general assembly in an electronic format under IC 5-14-6 a plan to**
4 **expand the scope and availability of home and community based**
5 **services for individuals who are aged and disabled. The report**
6 **must include the following:**

7 **(1) Evaluation of the current system of services to determine**
8 **which services provide the most appropriate use of resources.**

9 **(2) Study of the eligibility assessment process, including the**
10 **function and financial assessment process, for home and**
11 **community based services to determine how to streamline the**
12 **process to allow access to services in a time frame similar to**
13 **that of institutional care.**

14 **(3) Options for individuals to receive services and supports**
15 **appropriate to meet the individual's needs in a cost effective**
16 **and high quality manner that focuses on social and health**
17 **outcomes.**

18 **(4) Evaluation of the adequacy of reimbursement rates to**
19 **attract and retain a sufficient number of providers, including**
20 **a plan to regularly and periodically increase reimbursement**
21 **rates to address increased costs of providing services.**

22 **(5) Migration of individuals from the aged and disabled**
23 **Medicaid waiver to amended Medicaid waivers, new**
24 **Medicaid waivers, the state Medicaid plan, or other programs**
25 **that offer home and community based services.**

26 **(b) In preparing the report, the division shall consult with home**
27 **and community based stakeholders, including:**

28 **(1) consumers;**

29 **(2) organizations representing consumers; and**

30 **(3) experts in the field;**

31 **of home and community based services to provide insight**
32 **concerning the needs of Indiana residents seeking services and**
33 **supports to allow the individuals to remain at home and in the**
34 **individuals' communities.**

35 **Sec. 2. The division shall, in consultation with the office, take**
36 **any action necessary to implement the plan under section 1 of this**
37 **chapter, including applying to the United States Department of**
38 **Health and Human Services for approval to amend the aged and**
39 **disabled Medicaid waiver, implement a new Medicaid waiver, or**
40 **amend the state Medicaid plan.**

41 **Sec. 3. The division may adopt rules under IC 4-22-2 necessary**
42 **to implement the plan and this chapter.**



1 SECTION 3. IC 12-15-5-17 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2017]: **Sec. 17. (a) This section does not apply to a Medicaid
 4 recipient participating in the Program of All-Inclusive Care for the
 5 Elderly (PACE) program described in IC 12-15-43.**

6 **(b) The office may not include a Medicaid recipient who is
 7 eligible to:**

8 **(1) participate in the Medicare program (42 U.S.C. 1395 et
 9 seq.); and**

10 **(2) receive nursing facility services;
 11 in a risk based managed care program or capitated managed care
 12 program.**

13 **(c) This section expires December 31, 2019.**

14 SECTION 4. IC 12-15-14-8 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2017]: **Sec. 8. (a) The office shall use the RUG-IV, 48-Group
 17 model for payment of nursing facility services.**

18 **(b) Beginning July 1, 2018, the office may implement an end of
 19 therapy reclassification methodology in the RUG-IV, 48-Group
 20 model for payment of nursing facility services.**

21 **(c) Before the office changes a health facility service
 22 reimbursement that results in a reduction in reimbursement, the
 23 office shall provide public notice of at least one (1) year. The public
 24 notice under this subsection:**

25 **(1) is not a rulemaking action or part of the administrative
 26 rulemaking process under IC 4-22; and**

27 **(2) must include the fiscal impact of the proposed
 28 reimbursement change.**

29 SECTION 5. IC 12-15-34-15 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2017]: **Sec. 15. (a) Before January 1, 2018,
 32 the office shall review currently offered programs and develop
 33 additional funded programs for home health agencies participating
 34 in the Medicaid program. In developing a program under this
 35 section, the office shall focus on programs for home health agencies
 36 that do any of the following:**

37 **(1) Provide incentives to home health agencies that meet
 38 established quality outcome and performance metrics.**

39 **(2) Ensure that there are a sufficient number of home health
 40 agencies to serve the population in need of home health
 41 services.**

42 **(b) Not later than January 1, 2018, the office shall report the**



1 office's review and development of programs under subsection (a)
2 to the general assembly in an electronic format under IC 5-14-6.

3 (c) If the office determines an additional funding program is
4 feasible, the office shall implement the program.

5 (d) This section expires December 31, 2018.

6 SECTION 6. IC 16-18-2-173 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 173. (a) "Home health
8 agency", for purposes of IC 16-27-1, has the meaning set forth in
9 IC 16-27-1-2.

10 (b) "Home health agency", for purposes of IC 16-27-2 and
11 IC 16-27-2.5, has the meaning set forth in IC 16-27-2-2.

12 SECTION 7. IC 16-18-2-317.7 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2017]: Sec. 317.7. "Residential care facility",
15 for purposes of IC 16-28-2, means an entity licensed under
16 IC 16-28 and registered as a housing with services establishment
17 under IC 12-10-15.

18 SECTION 8. IC 16-27-2.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2017]:

21 **Chapter 2.5. Drug Testing of Employees**

22 **Sec. 0.5. This chapter does not apply to a home health employee**
23 **licensed under IC 25.**

24 **Sec. 1. (a) After giving a job applicant written notice of the**
25 **home health agency's drug testing policy, a home health agency**
26 **shall require a job applicant who is seeking employment with the**
27 **home health agency for a position that will have direct contact with**
28 **a patient to be tested for the illegal use of a controlled substance.**

29 **(b) A home health agency may use a job applicant's:**

- 30 **(1) refusal to submit to a drug test; or**
31 **(2) positive test result from a drug test;**

32 **as a basis for refusing to hire the job applicant.**

33 **(c) If a job applicant is hired by the home health agency before**
34 **the job applicant's results of the drug test are received, the hired**
35 **individual may not have any contact with patients until the home**
36 **health agency obtains results of the drug test that indicate that the**
37 **individual tested negative on the drug test. If the drug test results**
38 **indicate that the individual tested positive on the drug test, the**
39 **home health agency shall discharge or discipline the individual. If**
40 **the home health agency disciplines the individual, the individual**
41 **may have no direct contact with a patient for at least six (6)**
42 **months.**



1 **Sec. 2. (a) A home health agency must:**

- 2 (1) have a written drug testing policy that is distributed to all
3 employees; and
4 (2) require each employee to acknowledge receipt of the
5 policy.

6 **(b) A home health agency shall randomly test:**

- 7 (1) at least fifty percent (50%) of the home health agency's
8 employees who:
9 (A) have direct contact with patients; and
10 (B) are not licensed by a board or commission under IC 25;
11 at least annually; or
12 (2) when the home health agency has reasonable suspicion
13 that an employee is engaged in the illegal use of a controlled
14 substance.

15 **(c) A home health agency shall either discharge or discipline**
16 **with a minimum of a six (6) month suspension an employee who**
17 **refuses to submit to a drug test.**

18 **Sec. 3. If an employee tests positive on a drug test, and the**
19 **employee does not have a valid prescription for the substance for**
20 **which the employee tested positive on the drug test, the home**
21 **health agency shall have the results of the test verified by a**
22 **confirmation test. The employee shall pay for the confirmation test.**
23 **If the positive test result is confirmed, the home health agency shall**
24 **either discharge the employee or suspend the employee from**
25 **coming into direct contact with patients for at least six (6) months**
26 **after the date of the confirmation test result. An employee who has**
27 **a valid prescription for the substance for which the employee**
28 **tested positive on a drug test may not be terminated or suspended**
29 **under this subsection.**

30 **Sec. 4. A home health agency that:**

- 31 (1) discharges or disciplines an employee; or
32 (2) refuses to hire a job applicant;

33 **because of a positive drug test result or a refusal to submit to a**
34 **drug test is considered to have discharged, disciplined, or refused**
35 **to hire the individual for just cause.**

36 **Sec. 5. (a) A home health agency, when acting in good faith, is**
37 **immune from civil liability for:**

- 38 (1) conducting employee drug testing in compliance with this
39 chapter; or
40 (2) taking an employee disciplinary action or discharging an
41 employee in compliance with this chapter as a result of the
42 employee drug testing.



1 **(b) Subsection (a) does not apply to actions that constitute gross**
 2 **negligence or willful or wanton misconduct.**

3 SECTION 9. IC 16-28-2-11 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2017]: **Sec. 11. The state department shall amend rules**
 6 **concerning the licensure of a residential care facility to comply**
 7 **with federal law and regulation concerning the provision of home**
 8 **and community based services in the Medicaid program in order**
 9 **for a residential care facility to qualify as a home and community**
 10 **based services provider.**

11 SECTION 10. IC 22-4-15-1, AS AMENDED BY P.L.183-2015,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2017]: Sec. 1. (a) Regarding an individual's most recent
 14 separation from employment before filing an initial or additional claim
 15 for benefits, an individual who voluntarily left the employment without
 16 good cause in connection with the work or was discharged from the
 17 employment for just cause is ineligible for waiting period or benefit
 18 rights for the week in which the disqualifying separation occurred and
 19 until:

- 20 (1) the individual has earned remuneration in employment in at
 21 least eight (8) weeks; and
 22 (2) the remuneration earned equals or exceeds the product of the
 23 weekly benefit amount multiplied by eight (8).

24 If the qualification amount has not been earned at the expiration of an
 25 individual's benefit period, the unearned amount shall be carried
 26 forward to an extended benefit period or to the benefit period of a
 27 subsequent claim.

28 (b) When it has been determined that an individual has been
 29 separated from employment under disqualifying conditions as outlined
 30 in this section, the maximum benefit amount of the individual's current
 31 claim, as initially determined, shall be reduced by an amount
 32 determined as follows:

- 33 (1) For the first separation from employment under disqualifying
 34 conditions, the maximum benefit amount of the individual's
 35 current claim is equal to the result of:

36 (A) the maximum benefit amount of the individual's current
 37 claim, as initially determined; multiplied by

38 (B) seventy-five percent (75%);

39 rounded (if not already a multiple of one dollar (\$1)) to the next
 40 higher dollar.

- 41 (2) For the second separation from employment under
 42 disqualifying conditions, the maximum benefit amount of the



- 1 individual's current claim is equal to the result of:
 2 (A) the maximum benefit amount of the individual's current
 3 claim determined under subdivision (1); multiplied by
 4 (B) eighty-five percent (85%);
 5 rounded (if not already a multiple of one dollar (\$1)) to the next
 6 higher dollar.
- 7 (3) For the third and any subsequent separation from employment
 8 under disqualifying conditions, the maximum benefit amount of
 9 the individual's current claim is equal to the result of:
 10 (A) the maximum benefit amount of the individual's current
 11 claim determined under subdivision (2); multiplied by
 12 (B) ninety percent (90%);
 13 rounded (if not already a multiple of one dollar (\$1)) to the next
 14 higher dollar.
- 15 (c) The disqualifications provided in this section shall be subject to
 16 the following modifications:
- 17 (1) An individual shall not be subject to disqualification because
 18 of separation from the individual's employment if:
 19 (A) the individual left to accept with another employer
 20 previously secured permanent full-time work which offered
 21 reasonable expectation of continued covered employment and
 22 betterment of wages or working conditions and thereafter was
 23 employed on said job;
 24 (B) having been simultaneously employed by two (2)
 25 employers, the individual leaves one (1) such employer
 26 voluntarily without good cause in connection with the work
 27 but remains in employment with the second employer with a
 28 reasonable expectation of continued employment; or
 29 (C) the individual left to accept recall made by a base period
 30 employer.
- 31 (2) An individual whose unemployment is the result of medically
 32 substantiated physical disability and who is involuntarily
 33 unemployed after having made reasonable efforts to maintain the
 34 employment relationship shall not be subject to disqualification
 35 under this section for such separation.
- 36 (3) An individual who left work to enter the armed forces of the
 37 United States shall not be subject to disqualification under this
 38 section for such leaving of work.
- 39 (4) An individual whose employment is terminated under the
 40 compulsory retirement provision of a collective bargaining
 41 agreement to which the employer is a party, or under any other
 42 plan, system, or program, public or private, providing for



1 compulsory retirement and who is otherwise eligible shall not be
 2 deemed to have left the individual's work voluntarily without
 3 good cause in connection with the work. However, if such
 4 individual subsequently becomes reemployed and thereafter
 5 voluntarily leaves work without good cause in connection with the
 6 work, the individual shall be deemed ineligible as outlined in this
 7 section.

8 (5) An otherwise eligible individual shall not be denied benefits
 9 for any week because the individual is in training approved under
 10 Section 236(a)(1) of the Trade Act of 1974, nor shall the
 11 individual be denied benefits by reason of leaving work to enter
 12 such training, provided the work left is not suitable employment,
 13 or because of the application to any week in training of provisions
 14 in this law (or any applicable federal unemployment
 15 compensation law), relating to availability for work, active search
 16 for work, or refusal to accept work. For purposes of this
 17 subdivision, the term "suitable employment" means with respect
 18 to an individual, work of a substantially equal or higher skill level
 19 than the individual's past adversely affected employment (as
 20 defined for purposes of the Trade Act of 1974), and wages for
 21 such work at not less than eighty percent (80%) of the individual's
 22 average weekly wage as determined for the purposes of the Trade
 23 Act of 1974.

24 (6) An individual is not subject to disqualification because of
 25 separation from the individual's employment if:

- 26 (A) the employment was outside the individual's labor market;
- 27 (B) the individual left to accept previously secured full-time
 28 work with an employer in the individual's labor market; and
- 29 (C) the individual actually became employed with the
 30 employer in the individual's labor market.

31 (7) An individual who, but for the voluntary separation to move
 32 to another labor market to join a spouse who had moved to that
 33 labor market, shall not be disqualified for that voluntary
 34 separation, if the individual is otherwise eligible for benefits.
 35 Benefits paid to the spouse whose eligibility is established under
 36 this subdivision shall not be charged against the employer from
 37 whom the spouse voluntarily separated.

38 (8) An individual shall not be subject to disqualification if the
 39 individual voluntarily left employment or was discharged due to
 40 circumstances directly caused by domestic or family violence (as
 41 defined in IC 31-9-2-42). An individual who may be entitled to
 42 benefits based on this modification may apply to the office of the



1 attorney general under IC 5-26.5 to have an address designated by
 2 the office of the attorney general to serve as the individual's
 3 address for purposes of this article.

4 As used in this subsection, "labor market" means the area surrounding
 5 an individual's permanent residence, outside which the individual
 6 cannot reasonably commute on a daily basis. In determining whether
 7 an individual can reasonably commute under this subdivision, the
 8 department shall consider the nature of the individual's job.

9 (d) "Discharge for just cause" as used in this section is defined to
 10 include but not be limited to:

11 (1) separation initiated by an employer for falsification of an
 12 employment application to obtain employment through
 13 subterfuge;

14 (2) knowing violation of a reasonable and uniformly enforced rule
 15 of an employer, including a rule regarding attendance;

16 (3) if an employer does not have a rule regarding attendance, an
 17 individual's unsatisfactory attendance, if good cause for absences
 18 or tardiness is not established;

19 (4) damaging the employer's property through willful negligence;

20 (5) refusing to obey instructions;

21 (6) reporting to work under the influence of alcohol or drugs or
 22 consuming alcohol or drugs on employer's premises during
 23 working hours;

24 (7) conduct endangering safety of self or coworkers;

25 (8) incarceration in jail following conviction of a misdemeanor or
 26 felony by a court of competent jurisdiction; ~~or~~

27 (9) any breach of duty in connection with work which is
 28 reasonably owed an employer by an employee; ~~or~~

29 **(10) testing positive on a drug test under IC 16-27-2.5.**

30 (e) To verify that domestic or family violence has occurred, an
 31 individual who applies for benefits under subsection (c)(8) shall
 32 provide one (1) of the following:

33 (1) A report of a law enforcement agency (as defined in
 34 IC 10-13-3-10).

35 (2) A protection order issued under IC 34-26-5.

36 (3) A foreign protection order (as defined in IC 34-6-2-48.5).

37 (4) An affidavit from a domestic violence service provider
 38 verifying services provided to the individual by the domestic
 39 violence service provider.

40 SECTION 11. IC 34-30-2-66.7 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2017]: **Sec. 66.7. IC 16-27-2.5-5 (Concerning**



1 **drug testing of home health employees by home health agencies).**

2 SECTION 12. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
3 **SECTION, "office" refers to the office of Medicaid policy and**
4 **planning established by IC 12-8-6.5-1.**

5 (b) **Before October 1, 2017, the office shall report to the**
6 **legislative council in an electronic format under IC 5-14-6 the**
7 **following information concerning Medicaid recipient eligibility for**
8 **health facility services:**

9 (1) **Income limitations and resource limitations.**

10 (2) **The look back period used in determining eligibility.**

11 (3) **Current Indiana Medicaid recipient occupancy in health**
12 **facilities, categorized by the age of the Medicaid recipient.**

13 (4) **Federal statutory and regulatory requirements and**
14 **guidelines concerning the topics set forth in subdivisions (1)**
15 **and (2) and specification of any flexibility states have in**
16 **setting forth requirements concerning income limitations,**
17 **resource limitations, and the look back period.**

18 (c) **This SECTION expires December 31, 2017.**

19 **SECTION 13. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1493, 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 1, line 4, delete "any" and insert "**the office shall reimburse under Medicaid for assisted living services in a**".

Page 1, line 5, delete "must include" and insert ".".

Page 1, delete line 6.

Page 4, line 9, after "services" insert "**in the Medicaid program**".

Page 5, line 39, delete "a health care facility that" and insert "**an entity licensed under IC 16-28 and registered as a housing with services establishment under IC 12-10-15.**".

Page 5, delete lines 40 through 42.

Page 6, delete lines 1 through 5.

Page 6, line 11, after "services" insert "**in the Medicaid program**".

Page 6, line 26, strike "July 2, 2015." and insert "**July 1, 2017.**".

Page 8, delete lines 13 through 42, begin a new paragraph and insert:

"SECTION 13. IC 16-28-2.5-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 6.5. The state department may approve a construction permit, a new or amended license to operate, a transfer of comprehensive care beds, or Medicaid certification for a comprehensive care health facility for any of the following:**

(1) A replacement facility, if the comprehensive care health facility that is being replaced by the replacement facility:

(A) will no longer be licensed as a comprehensive care health facility sixty (60) days after the replacement facility obtains a license from the state department; and

(B) transfers any of the comprehensive care beds, including the certification status of the beds, to the replacement facility.

(2) An existing comprehensive care health facility adding comprehensive care beds, if the additional comprehensive care beds are obtained through a written agreement with another comprehensive care health facility that has provided notice of closure under 42 CFR 483.70, or any successor regulation or law. The existing comprehensive care health facility obtaining comprehensive care beds or Medicaid certification of comprehensive care beds from the closing



comprehensive care health facility shall take all necessary actions to add the obtained comprehensive care beds or Medicaid certification of comprehensive care beds not later than one (1) year after the closure of the closing comprehensive care health facility.

(3) The licensure and Medicaid certification of a new comprehensive care health facility, if a person has applied to construct at least one (1) new comprehensive care health facility and:

(A) the person submitting the application has obtained through a written agreement with at least two (2) existing comprehensive care health facilities any of the existing comprehensive care health facilities' beds, including the certification status of the comprehensive care beds that will be transferred to the applicant's new comprehensive care health facility;

(B) the existing comprehensive care health facilities that will transfer comprehensive care beds, including the certification status of the comprehensive care beds, to the applicant's new comprehensive care health facility may no longer be licensed as a comprehensive care health facility sixty (60) days after the applicant obtains a license from the state department; and

(C) unless granted an exception by both the state department and the office of Medicaid policy and planning, if an existing comprehensive care health facility seeking to transfer comprehensive care beds is located in a medically underserved area, as designated by the federal Health Resources & Services Administration, at least one (1) of the new comprehensive care health facilities constructed by the applicant must be constructed within five (5) minutes drive time or five (5) miles of the existing comprehensive care health facility that is located in the medically underserved area.

A person may submit an application to construct more than one (1) new comprehensive care health facility if the number of existing comprehensive care health facilities that would close under clause (B) is greater than the number of new comprehensive care health facilities to be constructed."



Page 9, delete lines 1 through 26.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1493 as introduced.)

KIRCHHOFFER

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1493, 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 HB1493 as printed February 3, 2017.)

BROWN T

Committee Vote: Yeas 17, Nays 5

HOUSE MOTION

Mr. Speaker: I move that House Bill 1493 be amended to read as follows:

Page 3, line 2, delete "June 30, 2022." and insert "**December 31, 2019.**".

Page 4, delete lines 34 through 42.

Page 5, delete lines 1 through 17.

Page 5, line 33, after "in" insert "**an**".

Page 6, delete lines 9 through 42.

Delete pages 7 through 13.

Renumber all SECTIONS consecutively.

(Reference is to HB 1493 as printed February 21, 2017.)

BROWN T



Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that House Bill 1493, currently assigned to the Committee on Children and Family Services, be reassigned to the Committee on Health and Provider Services.

LONG

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1493, 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 2, line 3, after "1." insert "(a)".

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"(b) In preparing the report, the division shall consult with home and community based stakeholders, including:

- (1) consumers;**
- (2) organizations representing consumers; and**
- (3) experts in the field;**

of home and community based services to provide insight concerning the needs of Indiana residents seeking services and supports to allow the individuals to remain at home and in the individuals' communities."

Page 2, line 37, after "(a)" insert **"This section does not apply to a Medicaid recipient participating in the Program of All-Inclusive Care for the Elderly (PACE) program described in IC 12-15-43.**

(b)".

Page 3, line 1, delete "." and insert **"if the inclusion in a risk based managed care program would reduce payments permitted by IC 12-15-14-1(b) and IC 12-15-14-1(c)."**

Page 3, delete line 2.

Page 4, line 32, delete "subsection" and insert **"subsection:**

- (1) is not a rulemaking action or part of the administrative rulemaking process under IC 4-22; and**
- (2)".**

and when so amended that said bill do pass and be reassigned to the

EH 1493—LS 7283/DI 104



Senate Committee on Tax and Fiscal Policy.

(Reference is to HB 1493 as reprinted February 24, 2017.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Engrossed House Bill No. 1493, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Page 3, line 13, delete "if the inclusion in a risk based managed care program" and insert "

(c) This section expires December 31, 2019."

Page 3, delete lines 14 through 42.

Page 4, delete lines 1 through 34.

Page 5, between lines 26 and 27, begin a new paragraph and insert:
"SECTION 8. IC 16-18-2-173 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 173. (a) "Home health agency", for purposes of IC 16-27-1, has the meaning set forth in IC 16-27-1-2.

(b) "Home health agency", for purposes of IC 16-27-2 **and IC 16-27-2.5**, has the meaning set forth in IC 16-27-2-2."

Page 5, between lines 32 and 33, begin a new paragraph and insert:
"SECTION 10. IC 16-27-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

Chapter 2.5. Drug Testing of Employees

Sec. 0.5. This chapter does not apply to a home health employee licensed under IC 25 who is employed by a home health agency owned by a hospital licensed under IC 16-21-2.

Sec. 1. (a) After giving a job applicant written notice of the home health agency's drug testing policy, a home health agency shall require a job applicant who is seeking employment with the home health agency for a position that will have direct contact with



a patient to be tested for the illegal use of a controlled substance.

(b) A home health agency may use a job applicant's:

- (1) refusal to submit to a drug test; or
- (2) positive test result from a drug test;

as a basis for refusing to hire the job applicant.

(c) If a job applicant is hired by the home health agency before the job applicant's results of the drug test are received, the hired individual may not have any contact with patients until the home health agency obtains results of the drug test that indicate that the individual tested negative on the drug test. If the drug test results indicate that the individual tested positive on the drug test, the home health agency shall discharge or discipline the individual. If the home health agency disciplines the individual, the individual may have no direct contact with a patient for at least six (6) months.

Sec. 2. (a) A home health agency must:

- (1) have a written drug testing policy that is distributed to all employees; and
- (2) require each employee to acknowledge receipt of the policy.

(b) A home health agency shall, at least annually, require an employee who comes into direct contact with a patient to be tested for the illegal use of a controlled substance.

(c) In addition to the drug testing under subsection (b), a home health agency shall randomly test:

- (1) at least fifty percent (50%) of the home health agency's employees who:
 - (A) have direct contact with patients; and
 - (B) are not licensed by a board or commission under IC 25; at least annually; or
- (2) when the home health agency has reasonable suspicion that an employee is engaged in the illegal use of a controlled substance.

(d) A home health agency shall either discharge or discipline with a minimum of a six (6) month suspension an employee who refuses to submit to a drug test.

Sec. 3. If an employee tests positive on a drug test, and the employee does not have a valid prescription for the substance for which the employee tested positive on the drug test, the home health agency shall have the results of the test verified by a confirmation test. The employee shall pay for the confirmation test. If the positive test result is confirmed, the home health agency shall



either discharge the employee or suspend the employee from coming into direct contact with patients for at least six (6) months after the date of the confirmation test result. An employee who has a valid prescription for the substance for which the employee tested positive on a drug test may not be terminated or suspended under this subsection.

Sec. 4. A home health agency that:

- (1) discharges or disciplines an employee; or**
- (2) refuses to hire a job applicant;**

because of a positive drug test result or a refusal to submit to a drug test is considered to have discharged, disciplined, or refused to hire the individual for just cause.

Sec. 5. (a) A home health agency, when acting in good faith, is immune from civil liability for:

- (1) conducting employee drug testing in compliance with this chapter; or**
- (2) taking an employee disciplinary action or discharging an employee in compliance with this chapter as a result of the employee drug testing.**

(b) Subsection (a) does not apply to actions that constitute gross negligence or willful or wanton misconduct."

Page 5, after line 40, begin a new paragraph and insert:

"SECTION 12. IC 22-4-15-1, AS AMENDED BY P.L.183-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) Regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until:

- (1) the individual has earned remuneration in employment in at least eight (8) weeks; and
- (2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by eight (8).

If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of the individual's current



claim, as initially determined, shall be reduced by an amount determined as follows:

(1) For the first separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim, as initially determined; multiplied by

(B) seventy-five percent (75%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(2) For the second separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (1); multiplied by

(B) eighty-five percent (85%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(3) For the third and any subsequent separation from employment under disqualifying conditions, the maximum benefit amount of the individual's current claim is equal to the result of:

(A) the maximum benefit amount of the individual's current claim determined under subdivision (2); multiplied by

(B) ninety percent (90%);

rounded (if not already a multiple of one dollar (\$1)) to the next higher dollar.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.



(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.



(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual shall not be subject to disqualification if the individual voluntarily left employment or was discharged due to circumstances directly caused by domestic or family violence (as defined in IC 31-9-2-42). An individual who may be entitled to benefits based on this modification may apply to the office of the attorney general under IC 5-26.5 to have an address designated by the office of the attorney general to serve as the individual's address for purposes of this article.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;
- (3) if an employer does not have a rule regarding attendance, an individual's unsatisfactory attendance, if good cause for absences or tardiness is not established;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers;
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; ~~or~~
- (9) any breach of duty in connection with work which is reasonably owed an employer by an employee; ~~or~~
- (10) testing positive on a drug test under IC 16-27-2.5.**

(e) To verify that domestic or family violence has occurred, an



individual who applies for benefits under subsection (c)(8) shall provide one (1) of the following:

- (1) A report of a law enforcement agency (as defined in IC 10-13-3-10).
- (2) A protection order issued under IC 34-26-5.
- (3) A foreign protection order (as defined in IC 34-6-2-48.5).
- (4) An affidavit from a domestic violence service provider verifying services provided to the individual by the domestic violence service provider.

SECTION 13. IC 34-30-2-66.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 66.7. IC 16-27-2.5-5 (Concerning drug testing of home health employees by home health agencies).**

SECTION 14. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6.5-1.**

(b) **Before October 1, 2017, the office shall report to the legislative council in an electronic format under IC 5-14-6 the following information concerning Medicaid recipient eligibility for health facility services:**

- (1) **Income limitations and resource limitations.**
- (2) **The look back period used in determining eligibility.**
- (3) **Current Indiana Medicaid recipient occupancy in health facilities, categorized by the age of the Medicaid recipient.**
- (4) **Federal statutory and regulatory requirements and guidelines concerning the topics set forth in subdivisions (1) and (2) and specification of any flexibility states have in setting forth requirements concerning income limitations, resource limitations, and the look back period.**

(c) **This SECTION expires December 31, 2017.**

SECTION 15. **An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to EHB 1493 as printed March 17, 2017.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.



SENATE MOTION

Madam President: I move that Engrossed House Bill 1493 be amended to read as follows:

Page 4, line 22, delete "who is employed by a home health agency" and insert ".".

Page 4, delete line 23.

Page 5, delete lines 6 through 18, begin a new paragraph and insert:

""**(b) A home health agency shall randomly test:**

(1) at least fifty percent (50%) of the home health agency's employees who:

(A) have direct contact with patients; and

(B) are not licensed by a board or commission under IC 25; at least annually; or

(2) when the home health agency has reasonable suspicion that an employee is engaged in the illegal use of a controlled substance."

Page 5, line 19, delete "(d)" and insert "(c)".

(Reference is to EHB 1493 as printed March 31, 2017.)

HERSHMAN

