

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.

HOUSE ENROLLED ACT No. 1493

AN ACT to amend the Indiana Code concerning health.

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

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

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

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

Chapter 19. Home and Community Based Services

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

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

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

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

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

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

(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.

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

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

SECTION 3. IC 12-15-5-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 17. (a) 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) The office may not include a Medicaid recipient who is



eligible to:

- (1) participate in the Medicare program (42 U.S.C. 1395 et seq.); and
- (2) receive nursing facility services;

in a risk based managed care program or capitated managed care program.

(c) This section expires December 31, 2019.

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

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

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

- (1) is not a rulemaking action or part of the administrative rulemaking process under IC 4-22; and**
- (2) must include the fiscal impact of the proposed reimbursement change.**

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

- (1) Provide incentives to home health agencies that meet established quality outcome and performance metrics.**
- (2) Ensure that there are a sufficient number of home health agencies to serve the population in need of home health services.**

(b) Not later than January 1, 2018, the office shall report the office's review and development of programs under subsection (a) to the general assembly in an electronic format under IC 5-14-6.

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

(d) This section expires December 31, 2018.

SECTION 6. 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.

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

SECTION 8. 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.

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 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.

(c) 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.

SECTION 9. IC 16-28-2-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 11. The state department shall amend rules concerning the licensure of a residential care facility to comply



with federal law and regulation concerning the provision of home and community based services in the Medicaid program in order for a residential care facility to qualify as a home and community based services provider.

SECTION 10. 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 11. 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 12. [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 13. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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