First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1588

AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 27-1-24.8 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 24.8. Pharmacy Benefit Managers

Sec. 1. As used in this chapter, "maximum allowable cost list" means a list of drugs that is used:

(1) by a pharmacy benefit manager; and

(2) to set the maximum amount that may be reimbursed to a pharmacy or pharmacist for a drug.

Sec. 2. As used in this chapter, "pharmacy" means the physical location:

(1) that is licensed under IC 25-26; and

(2) at which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

Sec. 3. (a) As used in this chapter, "pharmacy benefit manager" means a person that provides claim processing services or other prescription drug or device services for health plans.

(b) The term includes a subsidiary of a person described in subsection (a).

(c) The term does not include the following:

(1) A person licensed under IC 16.

(2) A health provider who is:

(A) described in IC 25-0.5-1; and
(B) licensed or registered under IC 25.
(3) A consultant who only provides advice concerning the selection or performance of a pharmacy benefit manager.

Sec. 4. A pharmacy benefit manager doing business in Indiana shall, at least every seven (7) days, update, and make available to pharmacies, the pharmacy benefit manager's maximum allowable cost list.

SECTION 2. IC 27-6-5 IS REPEALED [EFFECTIVE JULY 1, 2019]. (Federal Reinsurance).

SECTION 3. IC 27-7-9-5.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 5.4. As used in this chapter, "type of insurance described in Class 3(a) of IC 27-1-5-1" does not include flood insurance.**

SECTION 4. IC 27-7-9-8.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8.4. If coverage for damage due to mine subsidence is added under this chapter as an additional form of coverage to a policy providing the ~~coverage~~ **type of insurance** described in Class 3(a) of IC 27-1-5-1, the mine subsidence coverage of the policy must apply to structures in the same manner as coverage for other perils under the policy.

SECTION 5. IC 27-8-8-2, AS AMENDED BY P.L.208-2018, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Account" means one (1) of the two (2) accounts created under section 3 of this chapter.

(c) "Annuity contract", except as provided in section 2.3(e) of this chapter, includes:
(1) a guaranteed investment contract;
(2) a deposit administration contract;
(3) a structured settlement annuity;
(4) an annuity issued to or in connection with a government lottery; and
(5) an immediate or a deferred annuity contract.

(d) "Assessment base year" means, for an impaired insurer or insolvent insurer, the most recent calendar year for which required premium information is available preceding the calendar year during which the impaired insurer's or insolvent insurer's coverage date occurs.

(e) "Association", except when the context otherwise requires,

means the Indiana life and health insurance guaranty association created by section 3 of this chapter.

(f) "Benefit plan" means a specific plan, fund, or program that is established or maintained by an employer or an employee organization, or both, that:

(1) provides retirement income to employees; or

(2) results in a deferral of income by employees for a period extending to or beyond the termination of employment.

(g) "Board" refers to the board of directors of the association selected under IC 27-8-8-4.

(h) "Called", when used in the context of assessments, means that notice has been issued by the association to member insurers requiring the member insurers to pay, within a time frame set forth in the notice, an assessment that has been authorized by the board.

(i) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(j) "Contractual obligation" means an enforceable obligation under a covered policy for which and to the extent that coverage is provided under section 2.3 of this chapter.

(k) "Coverage date" means, with respect to a member insurer, the date on which the earlier of the following occurs:

(1) The member insurer becomes an insolvent insurer.

(2) The association determines that the association will provide coverage under section 5(a) of this chapter with respect to the member insurer.

(l) "Covered policy" means a:

(1) nongroup policy or contract;

(2) certificate under a group policy or contract; or

(3) part of a policy, contract, or certificate described in subdivisions (1) and (2);

for which coverage is provided under section 2.3 of this chapter.

(m) "Extracontractual claims" includes claims that relate to bad faith in the payment of claims, punitive or exemplary damages, or attorney's fees and costs.

(n) "Funding agreement" has the meaning set forth in IC 27-1-12.7-1.

(o) "Health benefit plan" means a hospital or medical expense policy or certificate, a health maintenance organization subscriber contract or certificate, or another similar health contract. The term does not include the following:

(1) Accident only, credit, dental only, vision only, Medicare supplement, or disability income insurance.

(2) Coverage for:
(A) long term care;
(B) home health care;
(C) community based care; or
(D) a combination of coverage specified in clauses (A) through (C).
(3) Coverage for onsite medical clinics.
(4) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies, contracts, or certificates.

(p) "Health care provider" means a health care provider that renders health care services covered under a health insurance policy or contract for which coverage is provided under section 2.3 of this chapter.

(q) "Impaired insurer" means a member insurer that is:
(1) not an insolvent insurer; and
(2) placed under an order of rehabilitation or conservation by a court with jurisdiction.

(r) "Insolvent insurer" means a member insurer that is placed under an order of liquidation with a finding of insolvency by a court with jurisdiction.

(s) "Member insurer" means any person that holds a certificate of authority to transact in Indiana any kind of insurance or health maintenance organization business for which coverage is provided under section 2.3 of this chapter. The term includes an insurer whose certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily withdrawn but does not include the following:
(1) A for-profit or nonprofit hospital or medical service organization.
(2) A fraternal benefit society under IC 27-11.
(3) The Indiana Comprehensive Health Insurance Association or any other mandatory state pooling plan or arrangement.
(4) An assessment company or another person that operates on an assessment plan (as defined in IC 27-1-2-3(y)).
(5) An interinsurance or reciprocal exchange authorized by IC 27-6-6.
(6) A farm mutual insurance company under IC 27-5.1.
(7) A person operating as a Lloyds under IC 27-7-1.
(8) The political subdivision risk management fund established by IC 27-1-29-10 and the political subdivision catastrophic liability fund established by IC 27-1-29.1-7.

~~(9) The small employer health reinsurance board established by IC 27-8-15.5-5.~~

~~(10)~~ **(9)** A person similar to any person described in subdivisions (1) through ~~(9).~~ **(8).**

(t) "Moody's Corporate Bond Yield Average" means:

(1) the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.; or

(2) if the monthly average described in subdivision (1) is no longer published, an alternative publication of interest rates or yields determined appropriate by the association.

(u) "Multiple employer welfare arrangement" has the meaning set forth in IC 27-1-34-1.

(v) "Owner" means the person:

(1) identified as the legal owner of a policy or contract according to the terms of the policy or contract; or

(2) otherwise vested with legal title to a policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer.

The term does not include a person with a mere beneficial interest in a policy or contract.

(w) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a governmental entity, a voluntary organization, a trust, a trustee, or another business entity or organization.

(x) "Plan sponsor" refers to only one (1) of the following with respect to a benefit plan:

(1) The employer, in the case of a benefit plan established or maintained by a single employer.

(2) The holding company or controlling affiliate, in the case of a benefit plan established or maintained by affiliated companies comprising a consolidated corporation.

(3) The employee organization, in the case of a benefit plan established or maintained by an employee organization.

(4) In a case of a benefit plan established or maintained:

(A) by two (2) or more employers;

(B) by two (2) or more employee organizations; or

(C) jointly by one (1) or more employers and one (1) or more employee organizations;

and that is not of a type described in subdivision (2), the association, committee, joint board of trustees, or other similar

group of representatives of the parties that establish or maintain the benefit plan.

(y) "Premiums" means amounts, deposits, and considerations received on covered policies, less returned premiums, returned deposits, returned considerations, dividends, and experience credits. The term does not include the following:

(1) Amounts, deposits, and considerations received for policies or contracts or parts of policies or contracts for which coverage is not provided under section 2.3(d) of this chapter, as qualified by section 2.3(e) of this chapter, except that an assessable premium must not be reduced on account of the limitations set forth in section 2.3(e)(3), 2.3(e)(15), or 2.3(f)(2) of this chapter.

(2) Premiums in excess of five million dollars ($5,000,000) on an unallocated annuity contract not issued or not connected with a governmental benefit plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code.

(z) "Principal place of business" refers to the single state in which individuals who establish policy for the direction, control, and coordination of the operations of an entity as a whole primarily exercise the direction, control, and coordination, as determined by the association in the association's reasonable judgment by considering the following factors:

(1) The state in which the primary executive and administrative headquarters of the entity is located.

(2) The state in which the principal office of the chief executive officer of the entity is located.

(3) The state in which the board of directors or similar governing person of the entity conducts the majority of the board of directors' or governing person's meetings.

(4) The state in which the executive or management committee of the board of directors or similar governing person of the entity conducts the majority of the committee's meetings.

(5) The state from which the management of the overall operations of the entity is directed.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are employed in a single state, that state is considered to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor of a benefit plan described in subsection (x)(4), if more than fifty percent (50%) of the participants in the plan sponsor's benefit plan are not employed in a single state, is considered to be the principal place of business of the association, committee, joint board of trustees, or

other similar group of representatives of the parties that establish or maintain the benefit plan and, in the absence of a specific or clear designation of a principal place of business, is considered to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question on the coverage date.

(aa) "Receivership court" refers to the court in an insolvent insurer's or impaired insurer's state that has jurisdiction over the conservation, rehabilitation, or liquidation of the insolvent insurer or impaired insurer.

(bb) "Resident" means the following:

(1) An individual who resides in Indiana on the applicable coverage date.

(2) A person that is not an individual and has the person's principal place of business in Indiana on the applicable coverage date.

(cc) "State" includes a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(dd) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(ee) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(ff) "Unallocated annuity contract" means an annuity contract or group annuity certificate:

(1) the owner of which is not a natural person; and

(2) that does not identify at least one (1) specific natural person as an annuitant;

except to the extent of any annuity benefits guaranteed to a natural person by an insurer under the contract or certificate. For purposes of this chapter, an unallocated annuity contract shall not be considered a group policy or group contract.

SECTION 6. IC 27-8-15.5 IS REPEALED [EFFECTIVE JULY 1, 2019]. (Small Employer Insurer Voluntary Reinsurance Program).

SECTION 7. IC 34-30-2-116, AS AMENDED BY P.L.86-2018, SECTION 297, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 116. ~~(a)~~ IC 27-8-10-8 (Concerning persons for participation in the Indiana comprehensive health insurance association).

~~(b) IC 27-8-15.5-29 (Concerning persons for participation in the~~

~~Indiana small employer health reinsurance program).~~

SECTION 8. [EFFECTIVE JULY 1, 2019] **(a) The legislative council is urged to assign to an appropriate interim study committee the topic of regulation and practices of pharmacy benefit managers.**

(b) If the legislative council assigns the topic under subsection (a), the study committee shall, not later than November 1, 2019, report to the legislative council in an electronic format under IC 5-14-6 the results of the study and any recommended legislation concerning the following:

(1) State licensure of pharmacy benefit managers.

(2) Pharmacy benefit manager use of contract provisions that limit a pharmacist's ability to inform customers concerning the least expensive price that may be paid by the customer.

(3) Pharmacy benefit manager potential conflicts of interest, including differences in reimbursement with respect to pharmacy benefit manager affiliates and independent pharmacies.

(4) Pharmacy benefit manager practices in charging customers who obtain pharmacy services from pharmacies in which the pharmacy benefit manager has no ownership or other financial interest.

(5) Pharmacy benefit manager practices in specifying a particular wholesale drug distributor or other pharmaceutical supplier from which a pharmacy must purchase pharmaceutical supplies.

(6) Pharmacy services administrative organization contracts.

(7) Formulary determination methods, including criteria for inclusion or exclusion of pharmaceuticals in a formulary.

(c) This SECTION expires December 1, 2019.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: __________________ Time: __________________