

SENATE BILL No. 15

DIGEST OF INTRODUCED BILL

Citations Affected: IC 25-26-25; IC 27-1-24.8.

Synopsis: Pharmacy benefit managers. Requires a pharmacy benefit manager that is not licensed as an administrator to be registered with the board of pharmacy. Specifies requirements for registration, renewal, conduct, appeals, and annual reporting by pharmacy benefit managers. Repeals certain provisions regulating pharmacy benefit managers doing business in Indiana.

Effective: July 1, 2020.

Grooms

January 6, 2020, read first time and referred to Committee on Health and Provider Services.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 15

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 25-26-25 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]:
4 **Chapter 25. Pharmacy Benefit Managers**
5 **Sec. 1. (a) This chapter applies to a person that:**
6 **(1) performs claim processing or other prescription drug or**
7 **device related services on behalf of an insurer that provides**
8 **coverage for prescription drugs; and**
9 **(2) is not licensed as an administrator under IC 27-1-25.**
10 **(b) The definitions in IC 25-26-13-2 apply throughout this**
11 **chapter.**
12 **Sec. 2. As used in this chapter, "aggregate retained rebate"**
13 **means the total of all rebates received:**
14 **(1) by a pharmacy benefit manager;**
15 **(2) from a pharmaceutical manufacturer or other entity; and**
16 **(3) for prescription drug utilization;**
17 **that is not passed on to the insurers with which the pharmacy**



1 benefit manager contracted during the immediately preceding
2 calendar year.

3 Sec. 3. As used in this chapter, "covered individual" means an
4 individual entitled to coverage under a health plan.

5 Sec. 4. As used in this chapter, "health plan" means a policy,
6 contract, or plan under which an insurer provides coverage for
7 prescription drugs.

8 Sec. 5. As used in this chapter, "insurer" means:

9 (1) a person who obtains a certificate of authority under:

10 (A) IC 27-1-3-20;

11 (B) IC 27-13-3; or

12 (C) IC 27-13-34;

13 (2) an employer that provides life, health, or annuity coverage
14 in Indiana under a governmental plan or a church plan (as
15 defined in IC 27-1-25-1); or

16 (3) the state or a political subdivision of the state that provides
17 coverage for prescription drugs.

18 Sec. 6. As used in this chapter, "list" means the list of
19 prescription drugs for which a maximum allowable cost has been
20 established.

21 Sec. 7. As used in this chapter, "maximum allowable cost"
22 means the maximum amount that a pharmacy benefit manager will
23 reimburse a pharmacy for the cost of a generic prescription drug.

24 Sec. 8. As used in this chapter, "network pharmacy" means a
25 pharmacist or pharmacy that has entered into a contract with a
26 pharmacy benefit manager to provide prescription drugs to
27 covered individuals whose insurer has entered into a contract with
28 the pharmacy benefit manager.

29 Sec. 9. As used in this chapter, "pharmacy benefit manager"
30 means a person that, directly or through an intermediary, manages
31 the prescription drug coverage provided by an insurer, including
32 the following:

33 (1) Processing and payment of claims for prescription drugs.

34 (2) Performance of prescription drug utilization review.

35 (3) Processing of prescription drug prior authorization
36 requests.

37 (4) Adjudication of appeals or grievances related to
38 prescription drug coverage.

39 (5) Contracting with pharmacies.

40 (6) Controlling the cost of covered prescription drugs.

41 Sec. 10. As used in this chapter, "rebate" means a price
42 concession paid by a manufacturer to a pharmacy benefit manager



1 or insurer, including a rebate, a discount, or another price
2 concession based on the following:

3 (1) Actual or estimated utilization of a prescription drug.

4 (2) In a value based or performance based contract between
5 the manufacturer and the pharmacy benefit manager or
6 insurer, patient health outcomes attributed to use of a
7 particular prescription drug.

8 Sec. 11. (a) A person may not act as a pharmacy benefit
9 manager without first obtaining a certificate of registration issued
10 by the board.

11 (b) A person that fails to obtain a certificate of registration
12 before acting as a pharmacy benefit manager is subject to a civil
13 penalty of five hundred dollars (\$500) for each violation.

14 Sec. 12. A person that wishes to obtain a certificate of
15 registration to act as a pharmacy benefit manager must file with
16 the board the following:

17 (1) An application for a certificate of registration on a form
18 prescribed by the board, including the following:

19 (A) The name, address, official position, and professional
20 qualifications of each individual who is responsible for the
21 conduct of the affairs of the pharmacy benefit manager,
22 including all members of the board of directors, board of
23 trustees, executive committee, other governing board or
24 committee, the principal officers in the case of a
25 corporation, the partners or members in the case of a
26 partnership or association, and any other individual who
27 exercises control or influence over the affairs of the
28 pharmacy benefit manager.

29 (B) The name and address of the applicant's agent for
30 service of process in Indiana.

31 (2) A nonrefundable application fee of one hundred forty
32 dollars (\$140).

33 Sec. 13. The board shall issue a certificate of registration to a
34 person that complies with the filing requirements in section 12 of
35 this chapter.

36 Sec. 14. (a) A certificate of registration issued under this chapter
37 expires one (1) year after the date of issue and may be renewed by
38 payment to the board, not later than the renewal date set by the
39 board, of a renewal fee of one hundred forty dollars (\$140).

40 (b) If a person does not pay the renewal fee by the renewal date
41 set by the board under subsection (a):

42 (1) the certificate of registration may be suspended or revoked



1 by the board; and

2 (2) the renewal fee specified in subsection (a) plus a penalty of
3 one hundred forty dollars (\$140) must be paid for renewal of
4 the certificate of registration.

5 **Sec. 15. (a) A pharmacy benefit manager may not place a**
6 **prescription drug on a list unless:**

7 (1) there:

8 (A) are at least two (2) therapeutically equivalent
9 multisource generic prescription drugs; or

10 (B) is at least one (1) generically equivalent prescription
11 drug manufactured by at least one (1) manufacturer;
12 generally available for purchase by network pharmacies from
13 national or regional wholesalers; and

14 (2) the prescription drug is not obsolete.

15 (b) A pharmacy benefit manager shall do all the following:

16 (1) Provide to each network pharmacy:

17 (A) at the beginning of the term of the contract between
18 the pharmacy benefit manager and the network pharmacy;
19 and

20 (B) upon request;

21 the sources used to determine each maximum allowable cost.

22 (2) Provide to each network pharmacy a process to be used to
23 readily access the maximum allowable cost specific to the
24 network pharmacy.

25 (3) Review and update each applicable list every seven (7)
26 business days.

27 (4) Apply the updates required by subdivision (3) to future
28 reimbursements not later than one (1) business day after the
29 list is updated.

30 (5) Establish a process for:

31 (A) eliminating products from the list; or

32 (B) modifying the prices on the list;

33 in a timely manner to remain consistent with product
34 availability and pricing changes in the marketplace.

35 (6) Provide a process for each network pharmacy that is
36 subject to the list to receive prompt notification of an update
37 to the list.

38 (7) Ensure that dispensing fees are not included in the
39 calculation of maximum allowable cost.

40 (8) Establish a process by which a network pharmacy may
41 appeal reimbursement for a prescription drug subject to
42 maximum allowable cost, including the following:



- 1 (A) A dedicated telephone number and electronic mail
 2 address or Internet web site for the appeal submission.
- 3 (B) A method of submitting an appeal:
 4 (i) directly to the pharmacy benefit manager; or
 5 (ii) through a pharmacy service administrative
 6 organization.
- 7 (C) A requirement that the network pharmacy must file
 8 the appeal not later than sixty (60) business days after the
 9 date on which the prescription drug was filled.
- 10 (D) A requirement that the pharmacy benefit manager
 11 must provide a response to the appealing network
 12 pharmacy not later than ten (10) business days after the
 13 pharmacy benefit manager receives an appeal request that
 14 contains information sufficient for the pharmacy benefit
 15 manager to process the appeal, as specified by the contract
 16 between the pharmacy benefit manager and the network
 17 pharmacy.
- 18 (E) A provision specifying that if the appeal is resolved in
 19 favor of the network pharmacy, the pharmacy benefit
 20 manager shall do the following:
 21 (i) Make the adjustment of the prescription drug price
 22 effective not later than one (1) business day after the date
 23 on which the appeal is resolved.
 24 (ii) Make the adjustment required by item (i) applicable
 25 to all similarly situated network pharmacies, as
 26 determined by the insurer or pharmacy benefit manager,
 27 not later than three (3) days after the date on which the
 28 appeal is resolved.
 29 (iii) Permit the network pharmacy to reverse and rebill
 30 the appealed claim using the date of the original claim.
- 31 (F) A provision specifying that if the appeal is resolved in
 32 favor of the pharmacy benefit manager, the pharmacy
 33 benefit manager shall provide to the appealing network
 34 pharmacy the national drug code number for the
 35 prescription drug from a national or regional wholesaler
 36 operating in Indiana from which the prescription drug:
 37 (i) is generally available for purchase at a price equal to
 38 or less than the maximum allowable cost; and
 39 (ii) may be lawfully substituted.
- 40 This subdivision does not prohibit the adjudication of claims
 41 in accordance with a health plan administered by a pharmacy
 42 benefit manager. A covered individual is not liable for



- 1 additional charges, or entitled to credits, as a result of an
 2 appeal under this subdivision.
- 3 **Sec. 16. (a) Beginning June 1, 2021, and annually thereafter, a**
 4 **pharmacy benefit manager shall submit a report containing data**
 5 **from the immediately preceding calendar year to the board**
 6 **containing all of the following:**
- 7 (1) The aggregate amount of all rebates that the pharmacy
 8 benefit manager received from all pharmaceutical
 9 manufacturers for:
- 10 (A) all insurers; and
 11 (B) each insurer;
 12 with which the pharmacy benefit manager contracted during
 13 the immediately preceding calendar year.
- 14 (2) The aggregate amount of administrative fees that the
 15 pharmacy benefit manager received from all pharmaceutical
 16 manufacturers for:
- 17 (A) all insurers; and
 18 (B) each insurer;
 19 with which the pharmacy benefit manager contracted during
 20 the immediately preceding calendar year.
- 21 (3) The aggregate retained rebate that the pharmacy benefit
 22 manager received from all pharmaceutical manufacturers
 23 during the immediately preceding calendar year.
- 24 (4) The highest, lowest, and mean aggregate retained rebate
 25 for:
- 26 (A) all insurers; and
 27 (B) each insurer;
 28 with which the pharmacy benefit manager contracted during
 29 the immediately preceding calendar year.
- 30 (b) Subject to subsection (c), the board shall publish the report
 31 on the board's Internet web site not later than sixty (60) days after
 32 the board receives a report required by this section.
- 33 (c) A pharmacy benefit manager that provides information
 34 under this section may designate the information as a trade secret
 35 (as defined in IC 24-2-3-2). Information designated as a trade
 36 secret under this subsection must not be published under
 37 subsection (b), unless required under subsection (d).
- 38 (d) Disclosure of information designated as a trade secret under
 39 subsection (c) may be ordered by a court of Indiana for good cause
 40 shown or made in a court filing.
- 41 (e) If a pharmacy benefit manager fails to submit a report as
 42 required by this section, the board may:



1 (1) issue a penalty or fine in an amount to be determined by
2 the board;
3 (2) suspend the pharmacy benefit manager's certificate of
4 registration; or
5 (3) revoke the pharmacy benefit manager's certificate of
6 registration.
7 **Sec. 17. An insurer or a pharmacy benefit manager may not:**
8 (1) penalize;
9 (2) require; or
10 (3) provide a financial incentive, including a variation in
11 premium, deductible, copayment, or coinsurance, to;
12 a covered individual as an incentive to use a specific retail, mail
13 order, or other pharmacy in which a pharmacy benefit manager
14 has an ownership interest or that has an ownership interest in a
15 pharmacy benefit manager.
16 **Sec. 18. A pharmacy benefit manager may charge or hold a**
17 **pharmacy, a pharmacist, or a pharmacy technician responsible for**
18 **a fee related to the adjudication of a claim only if the total amount**
19 **of the fee is:**
20 (1) identified, reported, and specifically explained for each
21 line item on the remittance advice of the adjudicated claim; or
22 (2) apparent at the point of sale and not adjusted between the
23 point of sale and the issuance of the remittance advice.
24 SECTION 2. IC 27-1-24.8 IS REPEALED [EFFECTIVE JULY 1,
25 2020]. (Pharmacy Benefit Managers).

