



April 1, 2021

**ENGROSSED
SENATE BILL No. 143**

DIGEST OF SB 143 (Updated March 31, 2021 4:41 pm - DI 125)

Citations Affected: IC 5-10; IC 12-15; IC 27-1; noncode.

Synopsis: Pharmacy benefit managers. Allows a public employer and a self-funded health plan to use a reverse auction to procure the services of a pharmacy benefit manager. Requires an audit of prescription drug cost sharing for the state Medicaid program once every three state fiscal years. Requires a pharmacy benefit manager to:
(Continued next page)

Effective: Upon passage; March 6, 2020 (retroactive); July 1, 2021.

**Zay, Grooms, Charbonneau, Doriot,
Freeman, Qaddoura**

(HOUSE SPONSORS — LEHMAN, CARBAUGH, CLERE, SHACKLEFORD)

January 4, 2021, read first time and referred to Committee on Rules and Legislative Procedure.

January 28, 2021, amended; reassigned to Committee on Insurance and Financial Institutions.

February 15, 2021, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

February 18, 2021, amended, reported favorably — Do Pass.

February 22, 2021, read second time, ordered engrossed. Engrossed.

February 23, 2021, read third time, passed. Yeas 45, nays 3.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Financial Institutions and Insurance.

March 30, 2021, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

April 1, 2021, amended, reported — Do Pass.

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Digest Continued

(1) perform its contractual duties in good faith and in observance of reasonable commercial standards of fair dealing; and (2) notify a health plan in writing if any activity, policy, or practice of the pharmacy benefit manager presents a conflict of interest. Adds requirements of pharmacy benefit managers when denying an appeal of the maximum allowable cost pricing of a prescription drug. Requires the department of insurance (department) to develop a process for complaints regarding pharmacy benefit managers. Requires a pharmacy benefit manager to provide the department with certain information within 20 business days after the date of a complaint. Prohibits a pharmacy benefit manager from requiring a pharmacy to obtain a signature from an individual for a prescription or immunization during a public health emergency. Requires the legislative services agency to conduct a study of market concentration in Indiana of: (1) the health insurance industry; (2) the hospital industry; (3) the professions of licensed health care practitioners; (4) the retail pharmaceutical industry; (5) the pharmacy benefit manager industry; and (6) the pharmacy services administrative organization industry, including its relationship to pharmaceutical wholesalers. Requires the legislative services agency to present the findings of the study not later than September 1, 2022.



April 1, 2021

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 143

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

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

1 SECTION 1. IC 5-10-8-17.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2021]: **Sec. 17.5. (a) This section applies to a contract between a
4 public employer and a pharmacy benefit manager (as defined in
5 IC 27-1-24.5-12) with an effective date after December 31, 2021.**
6 **(b) As used in this section, "public employer" means the state or
7 a local unit, including any board, commission, department,
8 division, authority, institution, establishment, facility, or
9 governmental unit under the supervision of either, having a payroll
10 in relation to persons it immediately employs, even if it is not a
11 separate taxing unit. The term includes a state educational
12 institution (as defined in IC 21-7-13-32).**
13 **(c) A public employer may procure the services of a pharmacy
14 benefit manager to administer the prescription drug benefit for a
15 group health plan using a reverse auction (as defined in
16 IC 5-22-2-28.5) through the process described in IC 5-22-7.5. A
17 public employer may procure the services of a vendor to provide**

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1 **the technology platform to conduct the reverse auction.**

2 SECTION 2. IC 12-15-13.6 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2021]:

5 **Chapter 13.6. Audit of Prescription Drug Cost Sharing**

6 **Sec. 1. Once every three (3) state fiscal years:**

7 **(1) the state board of accounts; or**

8 **(2) an independent auditor with experience auditing expenses**
9 **related to prescription drugs that is hired by the state board**
10 **of accounts;**

11 **shall conduct an audit examining prescription drug cost sharing**
12 **for the Medicaid program.**

13 **Sec. 2. For an audit conducted under section 1 of this chapter,**
14 **the audit look back period must be the previous three (3) state**
15 **fiscal years.**

16 **Sec. 3. An audit conducted under section 1 of this chapter must**
17 **evaluate all prescription drug cost sharing for the Medicaid**
18 **program for the audit look back period, including for prescription**
19 **drugs paid for directly by the Medicaid program and prescription**
20 **drugs paid for by managed care organizations.**

21 **Sec. 4. The results of an audit conducted under section 1 of this**
22 **chapter must be provided to the office of the secretary.**

23 SECTION 3. IC 27-1-24.4 IS ADDED TO THE INDIANA CODE
24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2021]:

26 **Chapter 24.4. Reverse Auctions**

27 **Sec. 1. This chapter applies to a contract between a self-funded**
28 **plan and a pharmacy benefit manager (as defined in**
29 **IC 27-1-24.5-12) with an effective date after December 31, 2021.**

30 **Sec. 2. As used in this chapter, "self-funded plan" means a**
31 **self-funded health benefit plan that complies with the federal**
32 **Employee Retirement Income Security Act (ERISA) of 1974 (29**
33 **U.S.C. 1001 et seq.).**

34 **Sec. 3. A self-funded plan may procure the services of a**
35 **pharmacy benefit manager to administer the prescription drug**
36 **benefit for the plan using a reverse auction (as defined in**
37 **IC 5-22-2-28.5) through the process described in IC 5-22-7.5. A**
38 **self-funded plan may procure the services of a vendor to provide**
39 **the technology platform to conduct the reverse auction.**

40 SECTION 4. IC 27-1-24.5-19, AS AMENDED BY THE
41 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
42 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2021]: Sec. 19. (a) A pharmacy benefit manager shall provide
 2 equal access and incentives to all pharmacies within the pharmacy
 3 benefit **manager's** network.

4 (b) A pharmacy benefit manager may not do any of the following:

5 (1) Condition participation in any network on accreditation,
 6 credentialing, or licensing of a pharmacy, ~~provider that~~, other than
 7 a license or permit required by the Indiana board of pharmacy or
 8 other state or federal regulatory authority for the services
 9 provided by the pharmacy. However, nothing in this subdivision
 10 precludes the department from providing credentialing or
 11 accreditation standards for pharmacies.

12 (2) Discriminate against any pharmacy. ~~provider.~~

13 (3) Directly or indirectly retroactively deny a claim or aggregate
 14 of claims after the claim or aggregate of claims has been
 15 adjudicated, unless any of the following apply:

16 (A) The original claim was submitted fraudulently.

17 (B) The original claim payment was incorrect because the
 18 pharmacy or pharmacist had already been paid for the drug.

19 (C) The pharmacist services were not properly rendered by the
 20 pharmacy or pharmacist.

21 (4) Reduce, directly or indirectly, payment to a pharmacy for
 22 pharmacist services to an effective rate of reimbursement,
 23 including permitting an insurer or plan sponsor to make such a
 24 reduction.

25 (5) Reimburse a pharmacy that is affiliated with the pharmacy
 26 benefit manager, other than solely being included in the pharmacy
 27 benefit manager's network, at a greater reimbursement rate than
 28 other pharmacies in the same network.

29 **(6) Impose limits, including quantity limits or refill frequency**
 30 **limits, on a pharmacy's access to medication that differ from**
 31 **those existing for a pharmacy benefit manager affiliate.**

32 **(7) Share any covered individual's information, including**
 33 **de-identified covered individual information, received from a**
 34 **pharmacy or pharmacy benefit manager affiliate.**

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

38 SECTION 5. IC 27-1-24.5-19.7 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2021]: **Sec. 19.7. (a) A pharmacy benefit**
 41 **manager shall perform its contractual duties in good faith and in**
 42 **observance of reasonable commercial standards of fair dealing.**



1 **This requirement may not be waived or limited by contract.**

2 **(b) A pharmacy benefit manager shall immediately provide**
 3 **written notice to a health plan with which it has a contract if any**
 4 **activity, policy, or practice of the pharmacy benefit manager**
 5 **presents a conflict of interest with its contractual duties or the**
 6 **requirements of subsection (a).**

7 SECTION 6. IC 27-1-24.5-22, AS AMENDED BY THE
 8 TECHNICAL CORRECTIONS BILL OF THE 2021 GENERAL
 9 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2021]: Sec. 22. (a) A pharmacy benefit manager shall do the
 11 following:

12 (1) Identify to contracted:

13 (A) pharmacy ~~service administration services~~ **administrative**
 14 **organizations; or**

15 (B) pharmacies if the pharmacy benefit manager contracts
 16 directly with pharmacies;

17 the sources used by the pharmacy benefit manager to calculate the
 18 drug product reimbursement paid for covered drugs available
 19 under the pharmacy health ~~benefit~~ plan administered by the
 20 pharmacy benefit manager.

21 (2) Establish an appeal process for contracted pharmacies,
 22 pharmacy services administrative organizations, or group
 23 purchasing organizations to appeal and resolve disputes
 24 concerning the maximum allowable cost pricing.

25 (3) Update and make available to pharmacies:

26 (A) at least every ~~forty-five (45)~~ **seven (7)** days; or

27 (B) in a different time frame if contracted between a pharmacy
 28 benefit manager and a pharmacy;

29 the pharmacy benefit manager's maximum allowable cost list.

30 **(4) Determine that a prescription drug:**

31 **(A) is not obsolete;**

32 **(B) is generally available for purchase by pharmacies in**
 33 **Indiana from a national or regional wholesaler licensed in**
 34 **Indiana; and**

35 **(C) is not:**

36 **(i) temporarily unavailable;**

37 **(ii) listed on a drug shortage list; or**

38 **(iii) unable to be lawfully substituted;**

39 **before the prescription drug is placed or continued on a**
 40 **maximum allowable cost list.**

41 (b) The appeal process required by subsection (a)(2) must include
 42 the following:



- 1 (1) The right to appeal a claim not to exceed sixty (60) days
 2 following the initial filing of the claim.
- 3 (2) The investigation and resolution of a filed appeal by the
 4 pharmacy benefit manager in a time frame determined by the
 5 commissioner.
- 6 (3) If an appeal is denied, a requirement that the pharmacy benefit
 7 manager ~~provide the reason for the denial.~~ **do the following:**
 8 **(A) Provide the reason for the denial.**
 9 **(B) Provide the appealing contracted pharmacy, pharmacy**
 10 **services administrative organization, or group purchasing**
 11 **organization with the national drug code number of the**
 12 **prescription drug that is available from a national or**
 13 **regional wholesaler operating in Indiana.**
- 14 (4) If an appeal is approved, a requirement that the pharmacy
 15 benefit manager do the following:
 16 (A) Change the maximum allowable cost of the drug for the
 17 pharmacy that filed the appeal as of the initial date of service
 18 that the appealed drug was dispensed.
 19 (B) Adjust the maximum allowable cost of the drug for the
 20 appealing pharmacy and for all other contracted pharmacies in
 21 the same network of the pharmacy benefit manager that filled
 22 a prescription for patients covered under the same health
 23 benefit plan beginning on the initial date of service the
 24 appealed drug was dispensed.
 25 **(C) Notify each pharmacy in the pharmacy benefit**
 26 **manager's network that:**
 27 **(i) the maximum allowable cost for the drug was**
 28 **adjusted as a result of an approved appeal; and**
 29 **(ii) the adjustment is retroactive to the initial date of**
 30 **service the appealed drug was dispensed.**
- 31 ~~(D)~~ **(D)** Adjust the drug product reimbursement for contracted
 32 pharmacies that resubmit claims to reflect the adjusted
 33 maximum allowable cost, if applicable.
- 34 ~~(E)~~ **(E)** Allow the appealing pharmacy and all other contracted
 35 pharmacies in the network that filled the prescriptions for
 36 patients covered under the same health benefit plan to reverse
 37 and resubmit claims and receive payment based on the
 38 adjusted maximum allowable cost from the initial date of
 39 service the appealed drug was dispensed.
- 40 ~~(F)~~ **(F)** Make retroactive price adjustments in the next
 41 payment cycle unless otherwise agreed to by the pharmacy.
- 42 (5) The establishment of procedures for auditing submitted claims



1 by a ~~contract~~ **contracted** pharmacy in a manner established by
 2 administrative rules under IC 4-22-2 by the department. The
 3 auditing procedures:

- 4 (A) may not use extrapolation or any similar methodology;
 5 (B) may not allow for recovery by a pharmacy benefit manager
 6 of a submitted claim due to clerical or other error where the
 7 patient has received the drug for which the claim was
 8 submitted;
 9 (C) must allow for recovery by a ~~contract~~ **contracted**
 10 pharmacy for underpayments by the pharmacy benefit
 11 manager; and
 12 (D) may only allow for the pharmacy benefit manager to
 13 recover overpayments on claims that are actually audited and
 14 discovered to include a recoverable error.

15 (c) The department must approve the manner in which a pharmacy
 16 benefit manager may respond to an appeal filed under this section. The
 17 department shall establish a process for a pharmacy benefit manager to
 18 obtain approval from the department under this section.

19 SECTION 7. IC 27-1-24.5-22.6 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2021]: **Sec. 22.6. (a) If a pharmacy benefit**
 22 **manager denies an appeal under section 22(a)(2) of this chapter,**
 23 **the appealing contracted pharmacy, pharmacy services**
 24 **administrative organization, or group purchasing organization**
 25 **may file a complaint with the department not later than thirty (30)**
 26 **days from the date of the denial. The department may request**
 27 **additional information from either party as necessary to resolve a**
 28 **complaint.**

29 (b) **If a contracted pharmacy or pharmacy services**
 30 **administrative organization believes that its contract with a**
 31 **pharmacy benefit manager contains an unfair, unjust, or unlawful**
 32 **contractual provision regarding reimbursement rates, the**
 33 **contracted pharmacy or pharmacy services administrative**
 34 **organization may file a complaint with the department.**

35 (c) **A pharmacy benefit manager that receives written notice of**
 36 **a complaint filed under this section shall promptly conduct an**
 37 **investigation of the matters alleged in the complaint. Not later than**
 38 **twenty (20) business days after the date of the complaint, the**
 39 **pharmacy benefit manager shall provide to the department and the**
 40 **complaining party a written report containing the following**
 41 **information:**

- 42 (1) **The specific actions taken by the pharmacy benefit**



- 1 manager with respect to:
- 2 (A) the appeal, for a complaint filed under subsection (a);
- 3 or
- 4 (B) the contract, for a complaint filed under subsection (b).
- 5 (2) A good faith estimate of the time required for a resolution
- 6 of the complaint.
- 7 (d) If an independent pharmacy believes that its contract with
- 8 a pharmacy services administrative organization contains an
- 9 unfair, unjust, or unlawful contractual provision regarding
- 10 reimbursement rates, the independent pharmacy may file a
- 11 complaint with the department.
- 12 (e) The department shall establish a process for complaints filed
- 13 under this section.
- 14 SECTION 8. IC 27-1-24.5-29 IS ADDED TO THE INDIANA
- 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 16 [EFFECTIVE MARCH 6, 2020 (RETROACTIVE)]: **Sec. 29. A**
- 17 **pharmacy benefit manager may not require a pharmacy to obtain**
- 18 **a signature from an individual for a prescription or immunization**
- 19 **during a public health emergency declared under IC 10-14-3-12.**
- 20 SECTION 9. [EFFECTIVE UPON PASSAGE] (a) The legislative
- 21 services agency shall conduct a study of market concentration in
- 22 Indiana in the following:
- 23 (1) The health insurance industry.
- 24 (2) The hospital industry.
- 25 (3) The professions of licensed health care practitioners.
- 26 (4) The retail pharmaceutical industry.
- 27 (5) The pharmacy benefit manager industry.
- 28 (6) The pharmacy services administrative organization
- 29 industry, including its relationship to pharmaceutical
- 30 wholesalers.
- 31 (b) Before September 1, 2022, the legislative services agency
- 32 shall present the findings of the study conducted under subsection
- 33 (a) in an electronic format under IC 5-14-6 to the following:
- 34 (1) The combined interim study committees on:
- 35 (A) financial institutions and insurance; and
- 36 (B) public health, behavioral health, and human services;
- 37 established by IC 2-5-1.3-4.
- 38 (2) The legislative council.
- 39 (3) The office of the governor.
- 40 (c) This SECTION expires January 1, 2024.
- 41 SECTION 10. An emergency is declared for this act.



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 143, 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 insurance.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Insurance and Financial Institutions.

(Reference is to SB 143 as introduced.)

BRAY, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 143, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-15-5-5, AS AMENDED BY P.L.152-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. (a) The office may provide a prescription drug benefit to a Medicaid recipient in a Medicaid risk based managed care program **through:**

- (1) until December 31, 2021, the use of a managed care organization that has contracted with the office to provide services under the risk based managed care organization; and**
- (2) beginning January 1, 2022, a contract entered into with a postsecondary educational institution that has entered into a contract with the office as described in this section.**

(b) If the office provides a prescription drug benefit to a Medicaid

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recipient in a Medicaid risk based managed care program:

(1) the office shall develop a procedure and provide:

(A) until December 31, 2021, the recipient's risk based managed care provider with information concerning the recipient's prescription drug utilization for the risk based managed care provider's case management program; **and**

(B) beginning January 1, 2022, the postsecondary educational institution that has contracted with the office to administer the program described in subsection (c) with information necessary to administer the program; and

(2) the provisions of IC 12-15-35.5 apply.

(c) ~~If the office does not provide a prescription drug benefit to a Medicaid recipient in a Medicaid risk based managed care program, a managed care organization shall provide coverage and reimbursement for outpatient single source legend drugs subject to IC 12-15-35-46, IC 12-15-35-47, and IC 12-15-35.5. The office shall contract with an in state postsecondary educational institution that has a pharmacy school to provide, beginning January 1, 2022, a prescription drug benefit to Medicaid recipients in a Medicaid risk based managed care program. However, if the office is unable to enter into a contract with a postsecondary educational institution under this subsection to provide the prescription drug benefit, the office shall provide the prescription drug benefit to a Medicaid recipient in a Medicaid risk based managed care program.~~

(d) The office shall apply to the United States Department of Health and Human Services for any Medicaid state plan amendment or Medicaid waiver necessary to implement this section.

SECTION 2. IC 12-15-5-8, AS ADDED BY P.L.246-2005, SECTION 105, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) As used in this section, "maintenance drug" means a medication that is dispensed under a single prescription for a period of not less than one hundred eighty (180) days, excluding authorized refills, for the ongoing treatment of a chronic medical condition or disease or congenital condition or disorder.

(b) The office may designate:

(1) a mail order pharmacy;

(2) an Internet based pharmacy (as defined in IC 25-26-18-1);

(3) a pharmacy that agrees to sell a maintenance drug at the same price as a mail order or an Internet based pharmacy; or

(4) all the pharmacies listed in subdivisions (1) through (3);



through which a recipient may obtain a maintenance drug.

(c) If the office makes a designation under subsection (b), a managed care organization that has a contract with the office under IC 12-15-12 **or a postsecondary educational institution that has a contract with the office under section (5)(c) of this chapter** is not required to use a pharmacy that is designated under subsection (b).

(d) If a Medicaid recipient's physician prescribes a maintenance prescription drug, the Medicaid recipient may purchase the maintenance prescription drug from a pharmacy that is designated under subsection (b).

(e) The office shall apply to amend the state Medicaid plan if the office determines that an amendment is necessary to carry out this section.

(f) The office may require a recipient to pay the maximum copayment allowable under federal law if the recipient obtains a maintenance drug from a pharmacy other than a pharmacy described in subsection (b).

SECTION 3. IC 12-15-12-4.5, AS ADDED BY P.L.101-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4.5. A managed care ~~provider's~~ **organization's** contract or provider agreement with the office may, **until December 31, 2021**, include a prescription drug program, subject to IC 12-15-5-5, IC 12-15-35, and IC 12-15-35.5. **Beginning January 1, 2022, the office may not contract with a managed care organization to include a prescription drug program for Medicaid recipients.**

SECTION 4. IC 12-15-12-22, AS AMENDED BY P.L.152-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 22. A:

(1) managed care organization that has a contract with the office to provide Medicaid services under a risk based managed care program; ~~or~~

(2) behavioral health managed care organization that has contracted with a managed care organization described in subdivision (1); ~~or~~

(3) postsecondary educational institution that has a contract with the office to provide a prescription drug benefit as described in IC 12-15-5-5(c);

shall accept, receive, and process claims for payment that are filed electronically by a Medicaid provider."

Page 1, line 6, delete "auditor of state;" and insert "**state board of accounts;**".

Page 1, line 8, delete "auditor of" and insert "**state board of**



accounts;"

Page 1, delete line 9.

Page 2, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 6. IC 12-15-35-45, AS AMENDED BY P.L.152-2017, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 45. (a) The chairman of the board, subject to the approval of the board members, may appoint an advisory committee to make recommendations to the board on the development of a Medicaid outpatient drug formulary.

(b) If the office decides to establish a Medicaid outpatient drug formulary, the formulary shall be developed by the board.

(c) A formulary, preferred drug list, or prescription drug benefit used by:

(1) a managed care organization; or

(2) **a postsecondary educational institution that has contracted with the office under IC 12-15-5-5(c);**

is subject to IC 12-15-5-5, IC 12-15-35.5, and sections 46 and 47 of this chapter.

SECTION 7. IC 12-15-35-48, AS AMENDED BY P.L.130-2018, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 48. (a) The board shall review the prescription drug program of a managed care organization **until December 31, 2021**, that participates in a risk based managed care program, **and beginning January 1, 2022, a postsecondary educational institution that has entered into a contract with the office under IC 12-15-5-5(c) to provide a prescription drug benefit in the risk based managed care program** at least one (1) time per year. The board's review of a prescription drug program must include the following:

(1) An analysis of the single source drugs requiring prior authorization, including **for a managed care organization**, the number of drugs requiring prior authorization in comparison to other managed care organizations' prescription drug programs that participate in the state's Medicaid program.

(2) A determination and analysis of the number and the type of drugs subject to a restriction.

(3) A review of the rationale for:

(A) the prior authorization of a drug described in subdivision (1); and

(B) a restriction on a drug.

(4) A review of the number of requests a managed care organization **or postsecondary educational institution** received



for prior authorization, including the number of times prior authorization was approved and the number of times prior authorization was disapproved.

(5) A review of:

- (A) patient and provider satisfaction survey reports; and
- (B) pharmacy-related grievance data for a twelve (12) month period.

(b) A managed care organization **and a postsecondary educational institution** described in subsection (a) shall provide the board with the information necessary for the board to conduct its review under subsection (a)."

Renumber all SECTIONS consecutively.

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

(Reference is to SB 143 as printed January 29, 2021.)

ZAY, Chairperson

Committee Vote: Yeas 6, Nays 1.

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 143, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 4.

Page 5, delete lines 1 through 21.

Page 9, delete lines 21 through 32.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 143 as printed February 16, 2021.)

MISHLER, Chairperson

Committee Vote: Yeas 12, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions and Insurance, to which was referred Senate Bill 143, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning insurance and to make an appropriation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-10-8-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 17.5. (a) This section applies to a contract between a public employer and a pharmacy benefit manager (as defined in IC 27-1-24.5-12) with an effective date after December 31, 2021.**

(b) As used in this section, "public employer" means the state or a local unit, including any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of either, having a payroll in relation to persons it immediately employs, even if it is not a separate taxing unit. The term includes a state educational institution (as defined in IC 21-7-13-32).

(c) A public employer may procure the services of a pharmacy benefit manager to administer the prescription drug benefit for a group health plan using a reverse auction (as defined in IC 5-22-2-28.5) through the process described in IC 5-22-7.5. A public employer may procure the services of a vendor to provide the technology platform to conduct the reverse auction.

SECTION 2. IC 12-15-13.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 13.6. Audit of Prescription Drug Cost Sharing

Sec. 1. Once every three (3) state fiscal years:

(1) the auditor of state; or

(2) an independent auditor with experience auditing expenses related to prescription drugs that is hired by the auditor of state;

shall conduct an audit examining prescription drug cost sharing for the Medicaid program.

Sec. 2. For an audit conducted under section 1 of this chapter, the audit look back period must be the previous three (3) state



fiscal years.

Sec. 3. An audit conducted under section 1 of this chapter must evaluate all prescription drug cost sharing for the Medicaid program for the audit look back period, including for prescription drugs paid for directly by the Medicaid program and prescription drugs paid for by managed care organizations.

Sec. 4. The results of an audit conducted under section 1 of this chapter must be provided to the office of the secretary.

SECTION 3. IC 27-1-24.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 24.4. Reverse Auctions

Sec. 1. This chapter applies to a contract between a self-funded plan and a pharmacy benefit manager (as defined in IC 27-1-24.5-12) with an effective date after December 31, 2021.

Sec. 2. As used in this chapter, "self-funded plan" means a self-funded health benefit plan that complies with the federal Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1001 et seq.).

Sec. 3. A self-funded plan may procure the services of a pharmacy benefit manager to administer the prescription drug benefit for the plan using a reverse auction (as defined in IC 5-22-2-28.5) through the process described in IC 5-22-7.5. A self-funded plan may procure the services of a vendor to provide the technology platform to conduct the reverse auction."

Page 2, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 5. IC 27-1-24.5-19.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 19.7. (a) A pharmacy benefit manager shall perform its contractual duties in good faith and in observance of reasonable commercial standards of fair dealing. This requirement may not be waived or limited by contract.**

(b) A pharmacy benefit manager shall immediately provide written notice to a health plan with which it has a contract if any activity, policy, or practice of the pharmacy benefit manager presents a conflict of interest with its contractual duties or the requirements of subsection (a)."

Page 3, delete lines 26 through 42, begin a new line double block indented and insert:

"(B) Provide the appealing contracted pharmacy, pharmacy services administrative organization, or group purchasing organization with the national drug code



number of the prescription drug that is available from a national or regional wholesaler operating in Indiana."

Page 4, delete line 1.

Page 5, between lines 22 and 23, begin a new paragraph and insert:

"(c) A pharmacy benefit manager that receives written notice of a complaint filed under this section shall promptly conduct an investigation of the matters alleged in the complaint. Not later than twenty (20) business days after the date of the complaint, the pharmacy benefit manager shall provide to the department and the complaining party a written report containing the following information:

(1) The specific actions taken by the pharmacy benefit manager with respect to:

**(A) the appeal, for a complaint filed under subsection (a);
or**

(B) the contract, for a complaint filed under subsection (b).

(2) A good faith estimate of the time required for a resolution of the complaint.

(d) If an independent pharmacy believes that its contract with a pharmacy services administrative organization contains an unfair, unjust, or unlawful contractual provision regarding reimbursement rates, the independent pharmacy may file a complaint with the department."

Page 5, line 23, delete "(c)" and insert "(e)".

Page 5, after line 24, begin a new paragraph and insert:

"SECTION 8. IC 27-1-24.5-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE MARCH 6, 2020 (RETROACTIVE)]: **Sec. 29. A pharmacy benefit manager may not require a pharmacy to obtain a signature from an individual for a prescription or immunization during a public health emergency declared under IC 10-14-3-12.**

SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) There is appropriated to the department of insurance six hundred thousand dollars (\$600,000) from the state general fund for the purpose of administering IC 27-1-24.5 regarding pharmacy benefit managers beginning July 1, 2021, and ending June 30, 2023.**

(b) This SECTION expires July 1, 2023.

SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) The legislative services agency shall conduct a study of market concentration in Indiana in the following:**

(1) The health insurance industry.

(2) The hospital industry.



- (3) The professions of licensed health care practitioners.
- (4) The retail pharmaceutical industry.
- (5) The pharmacy benefit manager industry.
- (6) The pharmacy services administrative organization industry, including its relationship to pharmaceutical wholesalers.

(b) Before September 1, 2022, the legislative services agency shall present the findings of the study conducted under subsection (a) in an electronic format under IC 5-14-6 to the following:

- (1) The combined interim study committees on:
 - (A) financial institutions and insurance; and
 - (B) public health, behavioral health, and human services; established by IC 2-5-1.3-4.
- (2) The legislative council.
- (3) The office of the governor.

(c) This SECTION expires January 1, 2024.

SECTION 11. An emergency is declared for this act."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 143 as printed February 19, 2021.)

CARBAUGH

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Engrossed Senate Bill 143, 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:

Delete the title and insert the following:

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

Page 2, delete lines 7 through 10, begin a new line block indented and insert:

- "(1) the state board of accounts; or
- (2) an independent auditor with experience auditing expenses related to prescription drugs that is hired by the state board

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of accounts;"

Page 7, delete lines 20 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to ESB 143 as printed March 30, 2021.)

BROWN T

Committee Vote: yeas 23, nays 0.

