

# SENATE BILL No. 241

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-1.

**Synopsis:** Pharmacy benefit managers regulation. Requires a pharmacy benefit manager to obtain a license issued by the department of insurance and sets forth requirements of the pharmacy benefit manager. Provides for the commissioner of the department of insurance to adopt rules to specify licensure, financial standards, and reporting requirements that apply to a pharmacy benefit manager. Sets forth requirements of a pharmacy benefit manager's reimbursement for a contracted pharmacy when using a maximum allowable cost for a drug product. Makes violations of the chapter concerning pharmacy benefit managers an unfair or deceptive act or practice in the business of insurance. Repeals the chapter of existing language on pharmacy benefit managers and moves the language concerning maximum allowable cost lists to a new chapter.

**Effective:** July 1, 2020.

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January 9, 2020, read first time and referred to Committee on Health and Provider Services.

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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. 241

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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 27-1-24.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]:

4 **Chapter 24.5. Pharmacy Benefit Managers**

5 **Sec. 1. As used in this chapter, "biological product" has the**  
6 **meaning set forth in 42 U.S.C. 262(i)(1).**

7 **Sec. 2. As used in this chapter, "claim processing service" means**  
8 **an administrative service performed in connection with the**  
9 **processing and adjudicating of a claim related to pharmacist**  
10 **services, including the following:**

11 **(1) Receiving payments for pharmacist services.**

12 **(2) Making payments to pharmacists or pharmacies for**  
13 **pharmacist services.**

14 **Sec. 3. As used in this chapter, "covered individual" means an**  
15 **individual who is entitled to coverage under a health plan.**

16 **Sec. 4. As used in this chapter, "generic drug" means a drug**  
17 **product that is identified by the drug's chemical name and that is:**



- 1 (1) accepted by the federal Food and Drug Administration;
- 2 (2) available from at least three (3) sources; and
- 3 (3) therapeutically equivalent to an originating brand name
- 4 drug.

5 Sec. 5. As used in this chapter, "health plan" means the  
6 following:

- 7 (1) A state employee health plan (as defined in IC 5-10-8-6.7).
- 8 (2) A policy of accident and sickness insurance (as defined in  
9 IC 27-8-5-1). However, the term does not include the  
10 coverages described in IC 27-8-5-2.5(a).
- 11 (3) An individual contract (as defined in IC 27-13-1-21) or a  
12 group contract (as defined in IC 27-13-1-16) that provides  
13 coverage for basic health care services (as defined in  
14 IC 27-13-1-4).

15 Sec. 6. As used in this chapter, "independent pharmacies"  
16 means pharmacies that are not a pharmacy benefit manager  
17 affiliate.

18 Sec. 7. As used in this chapter, "maximum allowable cost"  
19 means the maximum amount that a pharmacy benefit manager will  
20 reimburse a pharmacy for the cost of a generic prescription drug.  
21 The term does not include a dispensing fee or professional fee.

22 Sec. 8. As used in this chapter, "maximum allowable cost list"  
23 means a list of drugs that is used:

- 24 (1) by a pharmacy benefit manager; and
- 25 (2) to set the maximum amount that may be reimbursed to a  
26 pharmacy or pharmacist for a drug.

27 Sec. 9. As used in this chapter, "pharmacist" means an  
28 individual licensed as a pharmacist under IC 25-26.

29 Sec. 10. As used in this chapter, "pharmacist services" means  
30 products, goods, and services provided as part of the practice of  
31 pharmacy.

32 Sec. 11. As used in this chapter, "pharmacy" means the physical  
33 location:

- 34 (1) that is licensed under IC 25-26; and
- 35 (2) at which drugs, chemicals, medicines, prescriptions, and  
36 poisons are compounded, dispensed, or sold at retail.

37 Sec. 12. (a) As used in this chapter, "pharmacy benefit  
38 manager" means an entity that, on behalf of a health benefits plan,  
39 state agency, insurer, managed care organization, or other third  
40 party payor:

- 41 (1) contracts directly or indirectly with pharmacies to provide  
42 prescription drugs to individuals;



- 1 (2) administers a prescription drug benefit;  
 2 (3) processes or pays pharmacy claims;  
 3 (4) creates or updates prescription drug formularies;  
 4 (5) makes or assists in making prior authorization  
 5 determinations on prescription drugs;  
 6 (6) administers rebates on prescription drugs; or  
 7 (7) establishes a pharmacy network.
- 8 (b) The term does not include the following:  
 9 (1) A person licensed under IC 16.  
 10 (2) A health provider who is:  
 11 (A) described in IC 25-0.5-1; and  
 12 (B) licensed or registered under IC 25.  
 13 (3) A consultant who only provides advice concerning the  
 14 selection or performance of a pharmacy benefit manager.
- 15 Sec. 13. As used in this chapter, "pharmacy benefit manager  
 16 affiliate" means a pharmacy or pharmacist that directly or  
 17 indirectly, through one (1) or more intermediaries:  
 18 (1) owns or controls;  
 19 (2) is owned or controlled by; or  
 20 (3) is under common ownership or control with;  
 21 a pharmacy benefit manager.
- 22 Sec. 14. As used in this chapter, "pharmacy benefit manager  
 23 network" means a group of pharmacies or pharmacists that is  
 24 offered:  
 25 (1) through an agreement or health plan contract; and  
 26 (2) to provide pharmacist services for health plans.
- 27 Sec. 15. As used in this chapter, "pharmacy services  
 28 administrative organization" means an organization that assists  
 29 independent pharmacies and pharmacy benefit managers or health  
 30 plans to achieve administrative efficiencies, including contracting  
 31 and payment efficiencies.
- 32 Sec. 16. (a) As used in this chapter, "rebate" means a discount  
 33 or other price concession that is:  
 34 (1) based on use of a prescription drug; and  
 35 (2) paid by a manufacturer or third party to a pharmacy  
 36 benefit manager, pharmacy services administrative  
 37 organization, or pharmacy after a claim has been processed  
 38 and paid at a pharmacy.
- 39 (b) The term includes an incentive, a disbursement, and a  
 40 reasonable estimate of a volume based discount.
- 41 Sec. 17. As used in this chapter, "third party" means a person  
 42 other than a:



1 (1) pharmacy benefit manager; or

2 (2) covered individual.

3 Sec. 18. A person shall, before establishing or operating as a  
4 pharmacy benefit manager, apply to and obtain a license from the  
5 commissioner under this chapter.

6 Sec. 19. A pharmacy benefit manager shall do the following:

7 (1) Provide a pharmacy benefit manager network for a  
8 covered individual to obtain prescription drugs from a  
9 pharmacy within a reasonable distance from the covered  
10 individual's residence.

11 (2) Not include a mail order pharmacy in the determination  
12 of compliance with subdivision (1).

13 (3) Annually submit to the commissioner a pharmacy benefit  
14 manager network adequacy report describing covered  
15 individuals' access to pharmacies included in the pharmacy  
16 benefit manager network in Indiana, as required under  
17 section 20(b)(3)(B)(i) of this chapter.

18 (4) Provide equal access and incentives to all pharmacies  
19 within the pharmacy benefit network.

20 Sec. 20. (a) The commissioner shall do the following:

21 (1) Prescribe an application for use in applying for a license  
22 to operate as a pharmacy benefit manager.

23 (2) Adopt rules under IC 4-22-2 to establish the following:

24 (A) Pharmacy benefit manager licensing requirements.

25 (B) Licensing fees.

26 (C) A license application.

27 (D) Financial standards for pharmacy benefit managers.

28 (b) The commissioner may do the following:

29 (1) Charge a license application fee and renewal fees  
30 established under subsection (a)(2).

31 (2) Examine or audit the books and records of a pharmacy  
32 benefit manager to determine if the pharmacy benefit  
33 manager is in compliance with this chapter.

34 (3) Adopt rules under IC 4-22-2 to:

35 (A) implement this chapter; and

36 (B) specify requirements for the following:

37 (i) Pharmacy benefit manager network adequacy.

38 (ii) Prohibited market conduct practices.

39 (iii) Data reporting in connection with violations of state  
40 law.

41 (iv) Rebates.

42 (v) Compensation.



- 1 (vi) Maximum allowable cost list compliance and  
2 enforcement requirements.
- 3 (vii) Prohibitions and limits on pharmacy benefit  
4 manager practices that require licensure under  
5 IC 25-22.5.
- 6 (viii) Pharmacy benefit manager affiliate information  
7 sharing.
- 8 (ix) Lists of health plans administered by a pharmacy  
9 benefit manager in Indiana.
- 10 (c) Information or data acquired during an examination or  
11 audit under subsection (b) is confidential.
- 12 Sec. 21. (a) A pharmacy benefit manager shall, on a schedule  
13 established by the commissioner but at least annually, report to the  
14 commissioner the following for a sample of claims for pharmacist  
15 services under a health plan, as determined by the commissioner:
- 16 (1) The amount actually paid to the pharmacy or pharmacist.  
17 (2) The identity of the pharmacy or pharmacist.  
18 (3) The prescription number or other identification for the  
19 pharmacist services.
- 20 (b) A report made under this section is confidential.
- 21 Sec. 22. A pharmacy benefit manager doing business in Indiana  
22 shall, at least every seven (7) days, update, and make available to  
23 pharmacies, the pharmacy benefit manager's maximum allowable  
24 cost list.
- 25 Sec. 23. (a) Beginning June 1, 2021, and annually thereafter, a  
26 pharmacy benefit manager shall submit a report containing data  
27 from the immediately preceding calendar year to the commissioner  
28 containing all of the following:
- 29 (1) The aggregate amount of all rebates that the pharmacy  
30 benefit manager received from all pharmaceutical  
31 manufacturers for:
- 32 (A) all insurers; and  
33 (B) each insurer;  
34 with which the pharmacy benefit manager contracted during  
35 the immediately preceding calendar year.
- 36 (2) The aggregate amount of administrative fees that the  
37 pharmacy benefit manager received from all pharmaceutical  
38 manufacturers for:
- 39 (A) all insurers; and  
40 (B) each insurer;  
41 with which the pharmacy benefit manager contracted during  
42 the immediately preceding calendar year.



1 (3) The aggregate amount of retained rebates that the  
 2 pharmacy benefit manager received from all pharmaceutical  
 3 manufacturers and did not pass through to insurers with  
 4 which the pharmacy benefit manager contracted during the  
 5 immediately preceding calendar year.

6 (4) The highest, lowest, and mean aggregate retained rebate  
 7 for:

8 (A) all insurers; and

9 (B) each insurer;

10 with which the pharmacy benefit manager contracted during  
 11 the immediately preceding calendar year.

12 (b) Not later than sixty (60) days after the commissioner  
 13 receives a report required by this section, the commissioner shall  
 14 publish the report on the department's Internet web site.

15 (c) A pharmacy benefit manager that provides information  
 16 under this section may designate the information as a trade secret  
 17 (as defined in IC 24-2-3-2). Information designated as a trade  
 18 secret under this subsection must not be published under  
 19 subsection (b), unless required under subsection (d).

20 (d) Disclosure of information designated as a trade secret under  
 21 subsection (c) may be ordered by a court of Indiana for good cause  
 22 shown or made in a court filing.

23 **Sec. 24. (a) A pharmacy benefit manager shall do the following:**

24 (1) Identify to contracted pharmacies the sources used by the  
 25 pharmacy benefit manager to calculate the drug product  
 26 reimbursement paid for covered drugs available under the  
 27 pharmacy health benefit plan administered by the pharmacy  
 28 benefit manager.

29 (2) Establish an appeal process for contracted pharmacies,  
 30 pharmacy services administrative organizations, or group  
 31 purchasing organizations to appeal and resolve disputes  
 32 concerning the maximum allowable cost pricing.

33 (3) Establish an Internet web site to support the appeal  
 34 process described in subdivision (2) that allows contracted  
 35 pharmacies, pharmacy services administrative organizations,  
 36 and group purchasing organizations to submit appeals on  
 37 maximum allowable cost pricing.

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

40 (1) The right to appeal a claim not to exceed sixty (60) days  
 41 following the initial filing of the claim.

42 (2) The investigation and resolution of a filed appeal by the



1 pharmacy benefit manager not later than ten (10) calendar  
2 days from the filing of the appeal.

3 **(3) If an appeal is denied, a requirement that the pharmacy**  
4 **benefit manager do the following:**

5 **(A) Provide the reason for the denial.**

6 **(B) Identify:**

7 **(i) the national drug code of a drug product that is**  
8 **commercially available with no minimum purchase**  
9 **amounts; and**

10 **(ii) the source where the drug product may be purchased**  
11 **at a price that is at or below the stated maximum**  
12 **allowable cost and from a licensed wholesaler by any**  
13 **contract pharmacy.**

14 **(C) Identify alternative sources for a drug product as**  
15 **described in clause (B) if the contracting pharmacy**  
16 **provides reasonable evidence to the pharmacy benefit**  
17 **manager that the pharmacy is unable to source the drug**  
18 **product as described in clause (B).**

19 **(4) If an appeal is approved, a requirement that the pharmacy**  
20 **benefit manager do the following:**

21 **(A) Change the maximum allowable cost of the drug for**  
22 **the pharmacy that filed the appeal as of the initial date of**  
23 **service that the appealed drug was dispensed.**

24 **(B) Adjust the maximum allowable cost of the drug for the**  
25 **appealing pharmacy and for all other contracted**  
26 **pharmacies in the network of the pharmacy benefit**  
27 **manager that filled a prescription for patients covered**  
28 **under the same health benefit plan beginning on the initial**  
29 **date of service the appealed drug was dispensed.**

30 **(C) Individually notify all other contracted pharmacies in**  
31 **the network of the pharmacy benefit manager that a**  
32 **retroactive maximum allowable cost adjustment has been**  
33 **made as a result of an approved appeal that is effective on**  
34 **the initial date of service the appealed drug was dispensed.**

35 **(D) Adjust the drug product reimbursement for contracted**  
36 **pharmacies that resubmit claims to reflect the adjusted**  
37 **maximum allowable cost, if applicable.**

38 **(E) Allow the appealing pharmacy and all other contracted**  
39 **pharmacies in the network that filled the prescriptions for**  
40 **patients covered under the same health benefit plan to**  
41 **reverse and resubmit claims and receive payment based on**  
42 **the adjusted maximum allowable cost from the initial date**





- 1 of service the appealed drug was dispensed.  
 2 (F) Make retroactive price adjustments in the next  
 3 payment cycle.  
 4 (5) The establishment of procedures for auditing submitted  
 5 claims by a contract pharmacy in a manner established by  
 6 administrative rules under IC 4-22-2 by the department. The  
 7 auditing procedures:  
 8 (A) may not use extrapolation or any similar methodology;  
 9 (B) may not allow for recovery by a pharmacy benefit  
 10 manager of a submitted claim due to clerical or other error  
 11 where the patient has received the drug for which the  
 12 claim was submitted;  
 13 (C) must allow for recovery by a contract pharmacy for  
 14 underpayments by the pharmacy benefit manager; and  
 15 (D) may only allow for the pharmacy benefit manager to  
 16 recover overpayments on claims that are actually audited  
 17 and discovered to include a recoverable error.  
 18 (c) The department must approve the manner in which a  
 19 pharmacy benefit manager may respond to an appeal filed under  
 20 this section. The department shall establish a process for a  
 21 pharmacy benefit manager to obtain approval from the  
 22 department under this section.  
 23 **Sec. 25. (a) For every drug for which the pharmacy benefit**  
 24 **manager establishes a maximum allowable cost to determine the**  
 25 **drug product reimbursement, the pharmacy benefit manager shall**  
 26 **make available to all contracted pharmacies in a manner**  
 27 **established by the department by administrative rule described in**  
 28 **subsection (b) the following:**  
 29 (1) Information identifying the national drug pricing  
 30 compendia or sources used to obtain the drug price data.  
 31 (2) The comprehensive list of drugs subject to maximum  
 32 allowable cost and the actual maximum allowable cost for  
 33 each drug.  
 34 (3) Weekly updates to the list of drugs subject to maximum  
 35 allowable cost and the actual maximum allowable cost for  
 36 each drug.  
 37 (b) The department shall adopt rules under IC 4-22-2  
 38 concerning the manner in which a pharmacy benefit manager shall  
 39 communicate the following to contracted pharmacies:  
 40 (1) Drug price data should be used to establish drug  
 41 reimbursements by pharmacy benefit managers as described  
 42 in subsection (a)(1).



1           (2) The comprehensive list of drugs described in subsection  
2           (a)(2).

3           (3) The weekly updates to the list of drugs described in  
4           subsection (a)(3).

5           Sec. 26. (a) For every drug for which a pharmacy benefit  
6           manager establishes a maximum allowable cost to determine  
7           reimbursement for the drug product, the pharmacy benefit  
8           manager shall make available to the department, upon request of  
9           the department, information that is needed to resolve an appeal.

10          (b) If the pharmacy benefit manager fails to promptly make  
11          available to the department the information as required in  
12          subsection (a), the department shall consider the appeal granted in  
13          favor of the appealing pharmacy.

14          Sec. 27. (a) A pharmacy benefit manager shall:

15           (1) review any drug the pharmacy benefit manager subjects  
16           to a maximum allowable cost to set the drug product  
17           reimbursement; and

18           (2) make any adjustments to reimbursement for the maximum  
19           allowable cost for the drug;

20          at least every seven (7) calendar days. The pharmacy benefit  
21          manager shall immediately implement any adjustment to the  
22          reimbursement to the maximum allowable cost in calculating  
23          payments for all pharmacies that have contracted with the  
24          pharmacy benefit manager.

25          (b) The pharmacy benefit manager shall, for every drug for  
26          which the pharmacy benefit manager establishes a maximum  
27          allowable cost for reimbursement of a drug product, ensure that a  
28          drug subject to a maximum allowable cost meets the following:

29           (1) Is generally available for purchase by pharmacies and  
30           pharmacists from an appropriately licensed national or  
31           regional wholesaler.

32           (2) Is not any of the following:

33           (A) Obsolete.

34           (B) Temporarily unavailable.

35           (C) Included on a drug shortage list.

36           (D) Unable to be lawfully substituted.

37           (3) Is rated either as:

38           (A) an "A" or "B" rating in the most recent version of the  
39           federal Food and Drug Administration's Approved Drug  
40           Products with Therapeutic Equivalence Evaluations; or

41           (B) a "NR", "NA", or a similar rating by a nationally  
42           recognized reference.



1           **(4) Is reimbursed at a rate based solely on the drug if the drug**  
2           **does not have a therapeutically equivalent drug.**  
3           **(c) A pharmacy benefit manager shall, for every drug for which**  
4           **the pharmacy benefit manager establishes a maximum allowable**  
5           **cost for reimbursement of a drug product, ensure that**  
6           **reimbursement for a drug that is subject to maximum allowable**  
7           **cost is based solely on the drug and therapeutically equivalent**  
8           **drugs listed in the most recent version of the federal Food and**  
9           **Drug Administration's Approved Drug Products with Therapeutic**  
10           **Equivalence Evaluations.**  
11           **(d) A pharmacy benefit manager shall reimburse for a drug for**  
12           **which the pharmacy benefit manager establishes a maximum**  
13           **allowable cost as follows:**  
14           **(1) For a "B" rated drug, reimbursement based solely on that**  
15           **drug.**  
16           **(2) For a "NR" or "NA" drug with a similar rating by a**  
17           **nationally recognized reference, reimbursement is based**  
18           **solely on the drug and other drugs with that rating that are a**  
19           **therapeutically equivalent drug.**  
20           **Sec. 28. (a) A violation of this chapter is an unfair or deceptive**  
21           **act or practice in the business of insurance under IC 27-4-1-4.**  
22           **(b) The department may also adopt rules under IC 4-22-2 to set**  
23           **forth fines for a violation under this chapter.**  
24           **SECTION 2. IC 27-1-24.8 IS REPEALED [EFFECTIVE JULY 1,**  
25           **2020]. (Pharmacy Benefit Managers).**

