HOUSE BILL No. 1252

DIGEST OF INTRODUCED BILL

Citations Affected: IC 25-26-24.

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.

Effective: July 1, 2019.

Davisson, Karickhoff, Shackleford

January 10, 2019, read first time and referred to Committee on Public Health.

Introduced

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 BILL No. 1252

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 25-26-24 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]:
4 **Chapter 24. 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**

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

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

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

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

(b) A person that violates subsection (a) is subject to a civil penalty of five hundred dollars ($500) for each violation.

Sec. 12. (a) A person seeking a certificate of registration to act as a pharmacy benefit manager shall file with the board the following:

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

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

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

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

(b) A certificate of registration issued under this section expires one (1) year after the date of issue and may be renewed by payment to the board, not later than the renewal date set by the board, of a renewal fee of one hundred forty dollars ($140).

(c) If a renewal fee is not paid by the renewal date set by the board under subsection (b):

(1) the certificate of registration may be suspended or revoked by the board; and

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

1 **Sec. 13. (a) A pharmacy benefit manager shall not place a**
2 **prescription drug on a list unless:**
3 **(1) there:**
4 **(A) are at least two (2) therapeutically equivalent**
5 **multi-source generic prescription drugs; or**
6 **(B) is at least one (1) generically equivalent prescription**
7 **drug manufactured by at least one (1) manufacturer;**
8 **generally available for purchase by network pharmacies from**
9 **national or regional wholesalers; and**
10 **(2) the prescription drug is not obsolete.**
11 **(b) A pharmacy benefit manager shall do all the following:**
12 **(1) Provide to each network pharmacy:**
13 **(A) at the beginning of the term of the contract between**
14 **the pharmacy benefit manager and the network pharmacy;**
15 **and**
16 **(B) upon request;**
17 **the sources used to determine each maximum allowable cost.**
18 **(2) Provide to each network pharmacy a process to be used to**
19 **readily access the maximum allowable cost specific to the**
20 **network pharmacy.**
21 **(3) Review and update each applicable list every seven (7)**
22 **business days.**
23 **(4) Apply the updates required by subdivision (3) to**
24 **reimbursements not later than one (1) business day after the**
25 **list is updated.**
26 **(5) Establish a process for:**
27 **(A) eliminating products from the list; or**
28 **(B) modifying the prices on the list;**
29 **in a timely manner to remain consistent with product**
30 **availability and pricing changes in the marketplace.**
31 **(6) Provide a process for each network pharmacy that is**
32 **subject to the list to receive prompt notification of an update**
33 **to the list.**
34 **(7) Ensure that dispensing fees are not included in the**
35 **calculation of maximum allowable cost.**
36 **(8) Establish a process by which a network pharmacy may**
37 **appeal reimbursement for a prescription drug subject to**
38 **maximum allowable cost, including the following:**
39 **(A) A dedicated telephone number and email address or**
40 **Internet web site for the appeal submission.**
41 **(B) A method of submitting an appeal:**
42 **(i) directly to the pharmacy benefit manager; or**

1 **(ii) through a pharmacy service administrative**
2 **organization.**
3 **(C) A requirement that the network pharmacy must file**
4 **the appeal not later than sixty (60) business days after the**
5 **date on which the prescription drug was filled.**
6 **(D) A requirement that the pharmacy benefit manager**
7 **must provide a response to the appealing network**
8 **pharmacy not later than ten (10) business days after the**
9 **pharmacy benefit manager receives an appeal request that**
10 **contains information sufficient for the pharmacy benefit**
11 **manager to process the appeal, as specified by the contract**
12 **between the pharmacy benefit manager and the network**
13 **pharmacy.**
14 **(E) A provision specifying that if the appeal is resolved in**
15 **favor of the network pharmacy, the pharmacy benefit**
16 **manager shall do the following:**
17 **(i) Make the adjustment of the prescription drug price**
18 **effective not later than one (1) business day after the date**
19 **on which the appeal is resolved.**
20 **(ii) Make the adjustment required by item (i) applicable**
21 **to all similarly situated network pharmacies, as**
22 **determined by the insurer or pharmacy benefit manager,**
23 **not later than three (3) days after the date on which the**
24 **appeal is resolved.**
25 **(iii) Permit the network pharmacy to reverse and rebill**
26 **the appealed claim using the date of the original claim.**
27 **(F) A provision specifying that if the appeal is resolved in**
28 **favor of the pharmacy benefit manager, the pharmacy**
29 **benefit manager shall provide to the appealing network**
30 **pharmacy the national drug code number for the**
31 **prescription drug from a national or regional wholesaler**
32 **operating in Indiana from which the prescription drug:**
33 **(i) is generally available for purchase at a price equal to**
34 **or less than the maximum allowable cost; and**
35 **(ii) may be lawfully substituted.**
36 **This subdivision does not prohibit the adjudication of claims**
37 **in accordance with a health plan administered by a pharmacy**
38 **benefit manager. A covered individual is not liable for**
39 **additional charges, or entitled to credits, as a result of an**
40 **appeal under this subdivision.**
41 **Sec. 14. (a) Beginning June 1, 2020, and annually thereafter, a**
42 **pharmacy benefit manager shall submit a report containing data**

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

1 **premium, deductible, copayment, or coinsurance, to;**
2 **a covered individual as an incentive to use a specific retail, mail**
3 **order, or other pharmacy in which a pharmacy benefit manager**
4 **has an ownership interest or that has an ownership interest in a**
5 **pharmacy benefit manager.**
6 **Sec. 16. A pharmacy benefit manager may charge or hold a**
7 **pharmacy, a pharmacist, or a pharmacy technician responsible for**
8 **a fee related to the adjudication of a claim only if the total amount**
9 **of the fee is:**
10 **(1) identified, reported, and specifically explained for each**
11 **line item on the remittance advice of the adjudicated claim; or**
12 **(2) apparent at the point of sale and not adjusted between the**
13 **point of sale and the issuance of the remittance advice.**