February 28, 2020

# ENGROSSED
# SENATE BILL No. 243

DIGEST OF SB 243 (Updated February 26, 2020 11:55 pm - DI 55)

**Citations Affected:** IC 25-22.5.

**Synopsis:** Physician noncompete agreements. Provides that a physician noncompete agreement, to be enforceable, must contain the following provisions: (1) A provision requiring the physician's employer to provide the physician with a copy of any notice that: (A) concerns the physician's departure; and (B) was sent to a patient seen or treated by the physician during the two years preceding the termination of the physician's employment or expiration of the departing physician's contract. (2) A provision requiring the physician's employer to provide current or last known contact and location information to a patient seen or treated by the physician during the two years preceding the termination of the physician's employment or expiration of the physician's contract. (3) A provision providing the physician whose employment has terminated or whose contract has expired with the option to purchase a complete and final release from the terms of an enforceable noncompete agreement at a reasonable price. (4) A provision prohibiting the providing of medical records to the physician in a format differing from the format used to create or store the medical record during the ordinary course of business. Allows a person or entity responsible for copying or transferring a medical record to charge a reasonable fee.

**Effective:** July 1, 2020.


# Brown L, Charbonneau

(HOUSE SPONSORS — LEHMAN, MORRIS, SCHAIBLEY)



January 9, 2020, read first time and referred to Committee on Health and Provider Services.
January 30, 2020, amended, reported favorably — Do Pass.
February 3, 2020, read second time, amended, ordered engrossed.
February 4, 2020, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 10, 2020, read first time and referred to Committee on Public Health.
February 11, 2020, reassigned to Committee on Insurance.
February 27, 2020, amended, reported — Do Pass.

February 28, 2020

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.

# ENGROSSED
# SENATE BILL No. 243

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

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

1 SECTION 1. IC 25-22.5-5.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]:
4 **Chapter 5.5. Physician Noncompete Agreements**
5 **Sec. 1. This chapter applies to physician noncompete**
6 **agreements originally entered into on or after July 1, 2020.**
7 **Sec. 2. To be enforceable, a physician noncompete agreement**
8 **must include all of the following provisions:**
9 **(1) A provision requiring the physician's employer to provide**
10 **the physician with a copy of any notice that:**
11 **(A) concerns the physician's departure from the employer;**
12 **and**
13 **(B) was sent to any patient seen or treated by the physician**
14 **during the two (2) year period preceding the termination**
15 **of the physician's employment or expiration of the**
16 **physician's contract.**
17 **The patients' names and contact information must be**

1 **redacted from the copy of a notice provided to a physician**
2 **under this subdivision.**
3 **(2) A provision requiring the physician's employer to, in good**
4 **faith, provide the physician's last known or current contact**
5 **and location information to a patient who:**
6 **(A) requests updated contact and location information**
7 **concerning the physician; and**
8 **(B) was seen or treated by the physician during the two (2)**
9 **year period preceding the termination of the physician's**
10 **employment or expiration of the physician's contract.**
11 **(3) A provision that provides the physician with:**
12 **(A) access to; or**
13 **(B) copies of;**
14 **any medical record associated with a patient described in**
15 **subdivision (1) or (2) upon receipt of the patient's consent.**
16 **(4) A provision under which a physician whose employment**
17 **has terminated or whose contract has expired may purchase**
18 **a complete and final release from the terms of the enforceable**
19 **physician noncompete agreement at a reasonable price.**
20 **However, if the physician elects not to exercise the purchase**
21 **option required by this subdivision, the purchase option may**
22 **not be used in any manner to restrict, bar, or otherwise limit**
23 **the employer's equitable remedies, including the employer's**
24 **enforcement of the physician noncompete agreement.**
25 **(5) A provision prohibiting the providing of patient medical**
26 **records to a requesting physician in a format that materially**
27 **differs from the format used to create or store the medical**
28 **record during the routine or ordinary course of business,**
29 **unless a different format is mutually agreed upon by the**
30 **parties. Paper or portable document format copies of the**
31 **medical records satisfy the formatting requirement of this**
32 **subdivision.**
33 **Sec. 3. A person or entity required to create, copy, or transfer**
34 **a patient's medical record for a reason specified in this chapter**
35 **may charge a reasonable fee for the service as permitted under**
36 **applicable state or federal law.**
37 **Sec. 4. Nothing in this chapter shall be construed to prohibit,**
38 **limit, impair, or abrogate:**
39 **(1) the ability of the parties to negotiate any other term not**
40 **specified under this chapter; or**
41 **(2) any other right, remedy, or relief permitted by law or in**
42 **equity.**

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 243, 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 12-7-2-174.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 174.7. (a) "Service facility location", for purposes of IC 12-15-11, means the address where the services of a provider facility or practitioner were provided.**

**(b) The term consists of exact address and place of service codes as required on CMS forms 1500 and 1450, including an office, on-campus location of a hospital, and off-campus location of a hospital.**".

Page 1, line 8, delete "where the" and insert "**of the service facility location in order to obtain Medicaid reimbursement for a claim for health care services from the office or a managed care organization.**

**(c) The office or a managed care organization is not required to accept a claim for health care services that does not contain the service facility location.**".

Page 1, delete lines 9 through 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 243 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 243 be amended to read as follows:

Page 3, line 21, after "(h)" insert "**A provider may receive reimbursement as of the date of the issuance of a provisional**

**credentialing license under subsection (i) if the provider is not credentialed within thirty (30) days as required by subsection (a)(2).**".

Page 3, line 26, delete "The" and insert "**If the office of a managed care organization fails to issue a credentialing determination within thirty (30) days as required by subsection (a)(2), the**".

Page 3, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 5. IC 16-18-2-163.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 163.6. "Health care services", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-1.**

SECTION 6. IC 16-18-2-167.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 167.8. "Health maintenance organization", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-2.**

SECTION 7. IC 16-18-2-188.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 188.4. "Individual provider form", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-3.**

SECTION 8. IC 16-18-2-190.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 190.7. "Institutional provider", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-4.**

SECTION 9. IC 16-18-2-190.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 190.8. "Institutional provider form", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-5.**

SECTION 10. IC 16-18-2-190.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 190.9. "Insurer", for purposes OF IC 16-51-1, has the meaning set forth in IC 16-51-1-6.**

SECTION 11. IC 16-18-2-254.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 254.7. "Office setting", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-7.**

SECTION 12. IC 16-18-2-295, AS AMENDED BY P.L.161-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 295. (a) "Provider", for purposes of IC 16-21-8,

has the meaning set forth in IC 16-21-8-0.2.

(b) "Provider", for purposes of IC 16-38-5, IC 16-39 (except for IC 16-39-7), and IC 16-41-1 through IC 16-41-9, means any of the following:

(1) An individual (other than an individual who is an employee or a contractor of a hospital, a facility, or an agency described in subdivision (2) or (3)) who is licensed, registered, or certified as a health care professional, including the following:

(A) A physician.

(B) A psychotherapist.

(C) A dentist.

(D) A registered nurse.

(E) A licensed practical nurse.

(F) An optometrist.

(G) A podiatrist.

(H) A chiropractor.

(I) A physical therapist.

(J) A psychologist.

(K) An audiologist.

(L) A speech-language pathologist.

(M) A dietitian.

(N) An occupational therapist.

(O) A respiratory therapist.

(P) A pharmacist.

(Q) A sexual assault nurse examiner.

(2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24-1 or IC 12-29.

(3) A health facility licensed under IC 16-28-2.

(4) A home health agency licensed under IC 16-27-1.

(5) An employer of a certified emergency medical technician, a certified advanced emergency medical technician, or a licensed paramedic.

(6) The state department or a local health department or an employee, agent, designee, or contractor of the state department or local health department.

(c) "Provider", for purposes of IC 16-39-7-1, has the meaning set forth in IC 16-39-7-1(a).

(d) "Provider", for purposes of IC 16-48-1, has the meaning set forth in IC 16-48-1-3.

**(e) "Provider", for purposes of IC 16-51-1, has the meaning set forth in IC 16-51-1-8.**

SECTION 13. IC 16-51 IS ADDED TO THE INDIANA CODE AS

A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

**ARTICLE 51. HEALTH CARE REQUIREMENTS**

**Chapter 1. Health Care Billing**

**Sec. 1. (a) As used in this chapter, "health care services" means health care related services or products rendered or sold by a provider within the scope of the provider's license or legal authorization.**

**(b) The term includes hospital, medical, surgical, dental, vision, and pharmaceutical services or products.**

**Sec. 2. As used in this chapter, "health maintenance organization" has the meaning set forth in IC 27-13-1-19.**

**Sec. 3. (a) As used in this chapter, "individual provider form" means a medical claim form that:**

**(1) is accepted by the federal Centers for Medicare and Medicaid Services for use by individual providers or groups of providers; and**

**(2) includes a claim field for disclosure of the site at which the health care services to which the form relates were provided.**

**(b) The term includes the following:**

**(1) The CMS-1500 form.**

**(2) The HCFA-1500 form.**

**Sec. 4. As used in this chapter, "institutional provider" means any of the following:**

**(1) A hospital.**

**(2) A skilled nursing facility.**

**(3) An end stage renal disease provider.**

**(4) A home health agency.**

**(5) A hospice organization.**

**(6) An outpatient physical therapy, occupational therapy, or speech pathology service provider.**

**(7) A comprehensive outpatient rehabilitation facility.**

**(8) A community mental health center.**

**(9) A critical access hospital.**

**(10) A federally qualified health center.**

**(11) A histocompatibility laboratory.**

**(12) An Indian health service facility.**

**(13) An organ procurement organization.**

**(14) A religious nonmedical health care institution.**

**(15) A rural health clinic.**

**Sec. 5. (a) As used in this chapter, "institutional provider form" means a medical claim form that:**

**(1) is accepted by the federal Centers for Medicare and Medicaid Services for use by institutional providers; and**

**(2) does not include a claim field for disclosure of the site at which the health care services to which the form relates were provided.**

**(b) The term includes the following:**

**(1) The 8371 Institutional form.**

**(2) The CMS-1450 form.**

**(3) The UB-04 form.**

**Sec. 6. As used in this chapter, "insurer" has the meaning set forth in IC 27-8-11-1(e).**

**Sec. 7. As used in this chapter, "office setting" means a location, whether or not physically located within the facility of an institutional provider, where a provider routinely provides health examinations and diagnosis and treatment of illness or injury on an ambulatory basis.**

**Sec. 8. As used in this chapter, "provider" means an individual or entity duly licensed or legally authorized to provide health care services.**

**Sec. 9. (a) A bill for health care services provided by a provider in an office setting:**

**(1) must not be submitted on an institutional provider form; and**

**(2) must be submitted on an individual provider form.**

**(b) An insurer, health maintenance organization, employer, or other person responsible for the payment of the cost of health care services provided by a provider in an office setting is not required to accept a bill for the health care services that is submitted on an institutional provider form.**

**Sec. 10. The state department shall adopt rules under IC 4-22-2 for the enforcement of this chapter.**".

Page 4, after line 14, begin a new paragraph and insert:

"SECTION 15. IC 27-8-11-7, AS AMENDED BY P.L.195-2018, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. (a) This section applies to an insurer that issues or administers a policy that provides coverage for basic health care services (as defined in IC 27-13-1-4).

(b) The department of insurance shall prescribe the credentialing application form used by the Council for Affordable Quality Healthcare (CAQH) in electronic or paper format, which must be used by:

(1) a provider who applies for credentialing by an insurer; and

(2) an insurer that performs credentialing activities.

(c) An insurer shall notify a provider concerning a deficiency on a completed credentialing application form submitted by the provider not later than ~~thirty (30)~~ **fifteen (15)** business days after the insurer receives the completed credentialing application form.

(d) An insurer shall notify a provider concerning the status of the provider's completed credentialing application not later than

~~(1)~~ ~~sixty (60)~~ **thirty (30)** days after the insurer receives the completed credentialing application form. ~~and~~

~~(2) every thirty (30) days after the notice is provided under subdivision (1), until the insurer makes a final credentialing determination concerning the provider.~~

(e) ~~Notwithstanding subsection (d),~~ If an insurer fails to issue a credentialing determination within thirty (30) days after receiving a completed credentialing application form from a provider, the insurer shall provisionally credential the provider if the provider meets the following criteria:

(1) The provider has submitted a completed and signed credentialing application form and any required supporting material to the insurer.

(2) The provider was previously credentialed by the insurer in Indiana and in the same scope of practice for which the provider has applied for provisional credentialing.

(3) The provider is a member of a provider group that is credentialed and a participating provider with the insurer.

(4) The provider is a network provider with the insurer.

(f) The criteria for issuing provisional credentialing under subsection (e) may not be less stringent than the standards and guidelines governing provisional credentialing from the National Committee for Quality Assurance or its successor organization.

(g) ~~Once~~ **If** an insurer ~~fully credentials~~ **fails to meet the thirty (30) day credentialing requirement under subsection (d), in addition to issuing to** a provider ~~that holds~~ provisional credentialing **under subsection (e), the insurer shall provide the provider with** reimbursement payments under the contract **that** shall be retroactive to the date of the provisional credentialing. The insurer shall reimburse the provider at the rates determined by the contract between the provider and the insurer.

(h) If an insurer does not fully credential a provider that is provisionally credentialed under subsection (e), the provisional credentialing **and reimbursement** is terminated on the date the insurer notifies the provider of the adverse credentialing determination. ~~The insurer is not required to reimburse for services rendered while the~~

provider was provisionally credentialed.

SECTION 16. IC 27-13-43-2, AS AMENDED BY P.L.1-2006, SECTION 489, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. (a) The department shall prescribe the credentialing application form used by the Council for Affordable Quality Healthcare (CAQH) in electronic or paper format. The form must be used by:

(1) a provider who applies for credentialing by a health maintenance organization; and

(2) a health maintenance organization that performs credentialing activities.

(b) A health maintenance organization shall notify a provider concerning a deficiency on a completed credentialing application form submitted by the provider not later than thirty (30) **fifteen (15)** business days after the health maintenance organization receives the completed credentialing application form.

(c) A health maintenance organization shall notify a provider concerning the status of the provider's completed credentialing application not later than

(1) sixty (60) **thirty (30)** days after the health maintenance organization receives the completed credentialing application form. and

(2) every thirty (30) days after the notice is provided under subdivision (1), until the health maintenance organization makes a final credentialing determination concerning the provider.

SECTION 17. IC 27-13-43-3, AS ADDED BY P.L.195-2018, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) Notwithstanding section 2 of this chapter, If a health maintenance organization fails to issue a credentialing determination within thirty (30) days after receiving a completed credentialing application form from a provider, the health maintenance organization shall provisionally credential the provider if the provider meets the following criteria:

(1) The provider has submitted a completed and signed credentialing application form and any required supporting material to the health maintenance organization.

(2) The provider was previously credentialed by the health maintenance organization in Indiana and in the same scope of practice for which the provider has applied for provisional credentialing.

(3) The provider is a member of a provider group that is credentialed and a participating provider with the health

maintenance organization.

(4) The provider is a network provider with the health maintenance organization.

(b) The criteria for issuing provisional credentialing under subsection (a) may not be less stringent than the standards and guidelines governing provisional credentialing from the National Committee for Quality Assurance or its successor organization.

(c) ~~Once~~ **If** a health maintenance organization ~~fully credentials~~ **fails to meet the thirty (30) day credentialing requirement under section 2 of this chapter, in addition to issuing to** a provider ~~that holds~~ provisional credentialing **under subsection (a), the health maintenance organization shall provide the provider with** reimbursement payments under the contract **that** shall be retroactive to the date of the provisional credentialing. The health maintenance organization shall reimburse the provider at the rates determined by the contract between the provider and the health maintenance organization.

(d) If a health maintenance organization does not fully credential a provider that is provisionally credentialed under subsection (a), the provisional credentialing **and reimbursement** is terminated on the date the health maintenance organization notifies the provider of the adverse credentialing determination. ~~The health maintenance organization is not required to reimburse for services rendered while the provider was provisionally credentialed.~~".

Renumber all SECTIONS consecutively.

(Reference is to SB 243 as printed January 31, 2020.)

BROWN L

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 243, 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 everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 243 as reprinted February 4, 2020.)

CARBAUGH

Committee Vote: yeas 12, nays 0.