

SENATE BILL No. 97

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-23; IC 27-8-36; IC 27-13-7-25.

Synopsis: Insurance drug coverage. Prohibits a state employee health plan, a policy of accident and sickness insurance, or a health maintenance organization from modifying an enrollee's coverage of a drug during the plan year. Provides for certain exceptions. (The introduced version of this bill was prepared by the interim study committee on public health, behavioral health, and human services.)

Effective: July 1, 2020.

Becker, Charbonneau

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



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

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 97

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 5-10-8-23 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2020]: **Sec. 23. (a) As used in this section, "covered individual"**
- 4 **means an individual entitled to coverage under a state employee**
- 5 **health plan.**
- 6 **(b) As used in this section, "state employee health plan" means**
- 7 **the following:**
- 8 **(1) A self-insurance program established under section 7(b) of**
- 9 **this chapter.**
- 10 **(2) A contract for prepaid health care services entered into**
- 11 **under section 7(c) of this chapter.**
- 12 **(c) Nothing in this section prevents a covered individual's:**
- 13 **(1) prescribing provider from prescribing a drug that the**
- 14 **prescribing provider considers to be medically necessary for**
- 15 **the covered individual; or**
- 16 **(2) pharmacist from substituting:**
- 17 **(A) a generic drug under IC 16-42-22; or**



- 1 **(B) a biosimilar biological product under IC 16-42-25.**
 2 **(d) Nothing in this section prevents a state employee health plan**
 3 **from doing any of the following:**
 4 **(1) Adding a drug to the state employee health plan**
 5 **formulary.**
 6 **(2) Removing a drug from the state employee health plan**
 7 **formulary if the drug's manufacturer has removed the drug**
 8 **from sale in the United States.**
 9 **(e) A state employee health plan may not modify a covered**
 10 **individual's coverage of a drug during the plan year for the**
 11 **covered individual if:**
 12 **(1) the drug has been previously approved for coverage by the**
 13 **state employee health plan for a medical condition of the**
 14 **covered individual;**
 15 **(2) the covered individual's prescribing provider continues to**
 16 **prescribe the drug for the medical condition; and**
 17 **(3) the covered individual continues to be entitled to coverage**
 18 **in the state employee health plan.**
 19 **(f) A prohibited modification under subsection (e) includes, with**
 20 **respect to the covered individual, the following:**
 21 **(1) The exclusion of coverage for a drug.**
 22 **(2) A limitation or reduction of the maximum drug benefit.**
 23 **(3) An increase of the out-of-pocket costs applicable to a drug.**
 24 **(4) The movement of a drug to a more restrictive coverage**
 25 **category or tier.**
 26 **(5) The discontinuation of coverage of a drug before the date**
 27 **on which a covered individual is no longer entitled to**
 28 **coverage.**
 29 **(6) The removal of a drug from a formulary, unless any of the**
 30 **following occur:**
 31 **(A) The federal Food and Drug Administration has issued**
 32 **a statement calling into question the clinical safety of the**
 33 **drug.**
 34 **(B) The manufacturer of the drug has notified the federal**
 35 **Food and Drug Administration of a manufacturing**
 36 **discontinuance or potential discontinuance of the drug as**
 37 **required by 21 U.S.C. 356c.**
 38 **(7) A limitation or reduction in the coverage of a drug in any**
 39 **other way, including subjecting it to a new prior authorization**
 40 **or step therapy requirement.**
 41 SECTION 2. IC 27-8-36 IS ADDED TO THE INDIANA CODE AS
 42 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2020]:

Chapter 36. Modification of Drug Coverage

Sec. 1. As used in this chapter, "insured" means an individual entitled to coverage under a policy of accident and sickness insurance.

Sec. 2. As used in this chapter, "policy of accident and sickness insurance" has the meaning set forth in IC 27-8-5-1.

Sec. 3. Nothing in this chapter prevents an insured's:

(1) prescribing provider from prescribing a drug that the prescribing provider considers to be medically necessary for the insured; or

(2) pharmacist from substituting:

(A) a generic drug under IC 16-42-22; or

(B) a biosimilar biological product under IC 16-42-25.

Sec. 4. Nothing in this chapter prevents a policy of accident and sickness insurance from doing any of the following:

(1) Adding a drug to the policy of accident and sickness insurance formulary.

(2) Removing a drug from the accident and sickness insurance formulary if the drug's manufacturer has removed the drug from sale in the United States.

Sec. 5. (a) An insurer may not modify an insured's coverage of a drug during the plan year for the insured if:

(1) the drug has been previously approved for coverage by the policy of accident and sickness insurance for a medical condition of the insured;

(2) the insured's prescribing provider continues to prescribe the drug for the medical condition; and

(3) the insured continues to be entitled to coverage by the policy of accident and sickness insurance.

(b) A prohibited modification under subsection (a) includes, with respect to the insured, the following:

(1) The exclusion of coverage for a drug.

(2) A limitation or reduction of the maximum drug benefit.

(3) An increase of the out-of-pocket costs applicable to a drug.

(4) The movement of a drug to a more restrictive coverage category or tier.

(5) The discontinuation of coverage of a drug before the date on which an insured is no longer entitled to coverage.

(6) The removal of a drug from a formulary, unless any of the following occur:

(A) The federal Food and Drug Administration has issued



- 1 a statement calling into question the clinical safety of the
2 drug.
- 3 (B) The manufacturer of the drug has notified the federal
4 Food and Drug Administration of a manufacturing
5 discontinuance or potential discontinuance of the drug as
6 required by 21 U.S.C. 356c.
- 7 (7) A limitation or reduction in the coverage of a drug in any
8 other way, including subjecting it to a new prior authorization
9 or step therapy requirement.
- 10 SECTION 3. IC 27-13-7-25 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2020]: **Sec. 25. (a) Nothing in this section prevents an enrollee's:**
- 13 (1) prescribing provider from prescribing a drug that the
14 prescribing provider considers to be medically necessary for
15 the enrollee; or
- 16 (2) pharmacist from substituting:
17 (A) a generic drug under IC 16-42-22; or
18 (B) a biosimilar biological product under IC 16-42-25.
- 19 (b) Nothing in this section prevents a health maintenance
20 organization from doing any of the following:
- 21 (1) Adding a drug to the health maintenance organization
22 formulary.
- 23 (2) Removing a drug from the health maintenance
24 organization formulary if the drug's manufacturer has
25 removed the drug from sale in the United States.
- 26 (c) A health maintenance organization may not modify an
27 enrollee's coverage of a drug during the plan year for the covered
28 enrollee if:
- 29 (1) the drug has been previously approved for coverage by the
30 health maintenance organization for a medical condition of
31 the enrollee;
- 32 (2) the enrollee's prescribing provider continues to prescribe
33 the drug for the medical condition; and
- 34 (3) the enrollee continues to be entitled to coverage by the
35 health maintenance organization.
- 36 (d) A prohibited modification under subsection (c) includes,
37 with respect to the enrollee, the following:
- 38 (1) The exclusion of coverage for a drug.
- 39 (2) A limitation or reduction of the maximum drug benefit.
- 40 (3) An increase of the out-of-pocket costs applicable to a drug.
- 41 (4) The movement of a drug to a more restrictive coverage
42 category or tier.



1 (5) The discontinuation of coverage of a drug before the date
2 on which a covered enrollee is no longer entitled to coverage.

3 (6) The removal of a drug from a formulary, unless any of the
4 following occur:

5 (A) The federal Food and Drug Administration has issued
6 a statement calling into question the clinical safety of the
7 drug.

8 (B) The manufacturer of the drug has notified the federal
9 Food and Drug Administration of a manufacturing
10 discontinuance or potential discontinuance of the drug as
11 required by 21 U.S.C. 356c.

12 (7) A limitation or reduction in the coverage of a drug in any
13 other way, including subjecting it to a new prior authorization
14 or step therapy requirement.

15 SECTION 4. [EFFECTIVE JULY 1, 2020] (a) IC 5-10-8-23, as
16 added by this act, applies to a state employee health plan (as
17 defined by IC 5-10-8-23(b), as added by this act) that is established,
18 entered into, amended, or renewed after June 30, 2020.

19 (b) IC 27-8-36, as added by this act, applies to a policy of
20 accident and sickness insurance (as defined by IC 27-8-5-1) that is
21 issued, delivered, amended, or renewed after June 30, 2020.

22 (c) IC 27-13-7-25, as added by this act, applies to an individual
23 contract (as defined by IC 27-13-1-21) and a group contract (as
24 defined by IC 27-13-1-16) that is entered into, delivered, amended,
25 or renewed after June 30, 2020.

26 (d) This SECTION expires July 1, 2023.

