Reprinted
January 30, 2008

HOUSE BILL No. 1097

DIGEST OF HB 1097 (Updated January 29, 2008 4:55 pm - DI 84)

Citations Affected: IC 27-1; IC 27-4; noncode.

Synopsis: Third party rights under health care contracts. Specifies terms under which a third party may obtain a contractor's rights and responsibilities concerning a provider's delivery of health care services. Makes a violation an unfair and deceptive act in the business of insurance.

Effective: July 1, 2008.

Hoy, Brown T

January 14, 2008, read first time and referred to Committee on Public Health.
January 24, 2008, amended, reported — Do Pass.
January 29, 2008, read second time, amended, ordered engrossed.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1097

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

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

SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.131-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or

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employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A)

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and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

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(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers.

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However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a

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different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

(30) Violating IC 27-1-37.3 concerning third party rights and responsibilities under health care contracts.

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel

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Financial Services Protection Act (P.L.109-290), adopt rules under IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 2. IC 27-1-37.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 37.3. Third Party Rights and Responsibilities Under Health Care Contracts

Sec. 1. Unless otherwise specified in this chapter, the definitions in IC 27-8-11-1 apply throughout this chapter.

Sec. 2. As used in this chapter, "contractor" refers to the person that enters into a health care contract with a provider.

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

Sec. 4. As used in this chapter, "health plan" means a plan through which coverage is provided for health care services through insurance, prepayment, reimbursement, or otherwise. The term includes the following:

(1) An employee welfare benefit plan (as defined in 29 U.S.C. 1002 et seq.).

(2) A policy of accident and sickness insurance (as defined in IC 27-8-5-1). However, the term does not include the following:

(A) Accident only, credit, Medicare supplement, long term care, or disability income insurance.

(B) Coverage issued as a supplement to liability insurance.

(C) Automobile medical payment insurance.

(D) A specified disease policy.

(E) A short term insurance plan that:

(i) may not be renewed; and

(ii) has a duration of not more than six (6) months.

(F) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(i) hospital confinement, critical illness, or intensive care; or

(ii) gaps for deductibles or copayments.

(G) Worker's compensation or similar insurance.

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(H) A student health plan.

(I) A supplemental plan that always pays in addition to other coverage.

(J) An employer sponsored health benefit plan that is:

(i) provided to individuals who are eligible for Medicare; and

(ii) not marketed as, or held out to be, a Medicare supplement policy.

(3) An individual contract (as defined in IC 27-13-1-21) or a group contract (as defined in IC 27-13-1-16).

Sec. 5. As used in this chapter, "health care contract" means a contract between a person and a provider specifying the rights and responsibilities of the:

(1) person; and

(2) provider;

in relation to payment for and delivery of health care services to a covered individual.

Sec. 6. As used in this chapter, "third party agreement" means an agreement between a contractor and a third party through which the third party obtains the contractor's rights and responsibilities under a health care contract, including provider payment discounts, as if the third party were the contractor.

Sec. 7. (a) A contractor may not enter into a third party agreement unless one (1) of the following is true:

(1) The third party with which the third party agreement is entered into:

(A) is:

(i) an employer that provides coverage for health care services to the employer's employees; or

(ii) the sponsor of a group that provides coverage for health care services to the group's members; and

(B) has an agreement with the contractor for the contractor to administer claims related to health care services provided to the employees or members under the health care contract.

(2) The:

(A) health care contract specifically and conspicuously states, at the place of signature, that the contractor may enter into an agreement with a third party allowing the third party to obtain the contractor's rights and responsibilities under the health care contract as if the third party were the contractor;

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(B) third party:

(i) obtains all of the contractor's rights and responsibilities; and

(ii) complies with all of the applicable contractor rights and responsibilities;

under the health care contract as a result of the third party agreement; and

(C) contractor, initially and not more than thirty (30) days after a change to the information, furnishes to the provider and each individual receiving health care services delivered by the provider under the health care contract complete information concerning the location to which inquiries and claims related to health care services delivered under the health care contract may be directed.

(b) A contractor that enters into a third party agreement shall maintain an Internet web page and a toll free telephone number through which the provider may obtain a listing, updated at least quarterly, of the official business names, addresses, and telephone numbers of all third parties that have obtained the contractor's rights and responsibilities under the health care contract.

Sec. 8. A third party that enters into a third party agreement shall ensure that an explanation of benefits furnished to:

(1) the provider that delivers; or

(2) an individual who receives;

health care services under the health care contract includes the official business name, address, and telephone number of the contractor.

Sec. 9. A person other than a contractor may not:

(1) enter into a third party agreement; or

(2) otherwise obtain the contractor's rights and responsibilities under a health care contract.

Sec. 10. A third party's right to exercise a contractor's rights and responsibilities under a health care contract terminates on the date that the health care contract is terminated.

Sec. 11. A violation of this chapter by a contractor is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 3. [EFFECTIVE JULY 1, 2008] **IC 27-1-37.3, as added by this act, applies to a health care contract (as defined in IC 27-1-37.3-5) or a third party agreement (as defined in IC 27-1-37.3-6) that is entered into, amended, or renewed after June 30, 2008.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1097, 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:

Page 8, line 26, after "IC 27-8-5-1)." insert "**However, the term does not include a policy of accident and sickness insurance excluded under IC 27-8-5-2.5(a).**".

and when so amended that said bill do pass.

(Reference is to HB 1097 as introduced.)

BROWN C, Chair

Committee Vote: yeas 8, nays 1.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1097 be amended to read as follows:

Page 8, line 26, delete "a policy of " and insert "**the following:**

(A) Accident only, credit, Medicare supplement, long term care, or disability income insurance.

(B) Coverage issued as a supplement to liability insurance.

(C) Automobile medical payment insurance.

(D) A specified disease policy.

(E) A short term insurance plan that:

(i) may not be renewed; and

(ii) has a duration of not more than six (6) months.

(F) A policy that provides indemnity benefits not based on any expense incurred requirement, including a plan that provides coverage for:

(i) hospital confinement, critical illness, or intensive care; or

(ii) gaps for deductibles or copayments.

(G) Worker's compensation or similar insurance.

(H) A student health plan.

(I) A supplemental plan that always pays in addition to other coverage.

(J) An employer sponsored health benefit plan that is:

(i) provided to individuals who are eligible for Medicare;

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and

(ii) not marketed as, or held out to be, a Medicare supplement policy.".

Page 8, delete lines 27 through 28.

(Reference is to HB 1097 as printed January 25, 2008.)

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