

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Health and Provider Services, to which was referred Engrossed House Bill No. 1273, 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:

- 1 Page 1, between lines 7 and 8, begin a new paragraph and insert:
2 "SECTION 2. IC 16-37-1-13 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Except as
4 **provided in subsection (c) or (d) or as** otherwise provided, a person
5 who recklessly violates or fails to comply with this chapter commits a
6 Class B misdemeanor.
7 (b) Each day a violation continues constitutes a separate offense.
8 **(c) A person who:**
9 **(1) is licensed under IC 25 in a profession listed in section**
10 **3.1(c) of this chapter; and**
11 **(2) recklessly violates or fails to comply with this chapter;**
12 **is subject only to sanctions under IC 25-1-9-4(a)(3).**
13 **(d) The state department may not begin sanctioning a person for**
14 **failing to submit a document in electronic format as required in**
15 **section 3.1 of this chapter until January 1, 2012."**
16 Page 14, between lines 21 and 22, begin a new paragraph and insert:
17 "SECTION 14. IC 25-1-7-3 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) Except as**
19 **provided in subsection (b),** the division is responsible for the
20 investigation of complaints concerning licensees.

1 **(b) The medical licensing board of Indiana shall investigate a**
 2 **complaint concerning a physician licensed under IC 25-22.5 and a**
 3 **violation specified in IC 25-22.5-2-8. The division shall forward a**
 4 **complaint concerning a physician licensed under IC 25-22.5 and a**
 5 **violation specified in IC 25-22.5-2-8 to the medical licensing board**
 6 **of Indiana for investigation by the board. However, if the**
 7 **complaint includes a violation in addition to a violation specified in**
 8 **IC 25-22.5-2-8, the division shall investigate the complaint in its**
 9 **entirety and notify the medical licensing board of Indiana of the**
 10 **investigation.**

11 SECTION 15. IC 25-1-7-5, AS AMENDED BY P.L.206-2005,
 12 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2011]: Sec. 5. (a) Subsection (b)(1) does not apply to:

14 (1) a complaint filed by:

15 (A) a member of any of the boards listed in section 1 of this
 16 chapter; or

17 (B) the Indiana professional licensing agency; or

18 (2) a complaint filed under IC 25-1-5-4.

19 **(b) Except as provided in section 3(b) of this chapter,** the director
 20 has the following duties and powers:

21 (1) The director shall make an initial determination as to the merit
 22 of each complaint. A copy of a complaint having merit shall be
 23 submitted to the board having jurisdiction over the licensee's
 24 regulated occupation, that board thereby acquiring jurisdiction
 25 over the matter except as otherwise provided in this chapter.

26 (2) The director shall through any reasonable means notify the
 27 licensee of the nature and ramifications of the complaint and of
 28 the duty of the board to attempt to resolve the complaint through
 29 negotiation.

30 (3) The director shall report any pertinent information regarding
 31 the status of the complaint to the complainant.

32 (4) The director may investigate any written complaint against a
 33 licensee. The investigation shall be limited to those areas in which
 34 there appears to be a violation of statutes governing the regulated
 35 occupation.

36 (5) The director has the power to subpoena witnesses and to send
 37 for and compel the production of books, records, papers, and
 38 documents for the furtherance of any investigation under this

1 chapter. The circuit or superior court located in the county where
2 the subpoena is to be issued shall enforce any such subpoena by
3 the director.

4 SECTION 16. IC 25-1-7-10, AS AMENDED BY P.L.1-2007,
5 SECTION 167, IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) **Except as provided in**
7 **section 3(b) of this chapter**, all complaints and information pertaining
8 to the complaints shall be held in strict confidence until the attorney
9 general files notice with the board of the attorney general's intent to
10 prosecute the licensee.

11 (b) A person in the employ of the office of attorney general or any
12 of the boards, or any person not a party to the complaint, may not
13 disclose or further a disclosure of information concerning the
14 complaint unless the disclosure is required:

- 15 (1) under law; or
16 (2) for the advancement of an investigation.

17 SECTION 17. IC 25-22.5-2-5, AS AMENDED BY P.L.1-2006,
18 SECTION 446, IS AMENDED TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2011]: Sec. 5. **Except for a penalty under**
20 **section 8 of this chapter**, the funds obtained from registration and
21 penalty fees shall, upon receipt thereof, be accounted for and paid over
22 by the agency to the treasurer of state and be placed in the general fund
23 of the state. The expenses of the board shall be paid from the general
24 fund upon appropriation being made therefor in the manner required by
25 law for the making of such appropriations. The amount to be expended
26 by the board shall not exceed the amount collected by the board from
27 all sources.

28 SECTION 18. IC 25-22.5-2-8 IS ADDED TO THE INDIANA
29 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2011]: **Sec. 8. (a) The board shall implement**
31 **a program to investigate and assess a civil penalty of not more than**
32 **one thousand dollars (\$1,000) against a physician licensed under**
33 **this article for the following violations:**

- 34 (1) **Licensure renewal fraud.**
35 (2) **Failure to timely provide copies of patient medical records.**
36 (3) **Overcharging for copies of patient medical records.**
37 (4) **Improper release of confidential patient information.**
38 (5) **Failure to maintain accurate patient records.**

1 **(6) Improper termination of a physician and patient**
2 **relationship.**

3 **(7) Misleading advertising concerning specific board**
4 **certification.**

5 **(8) Practicing with an expired medical license.**

6 **(9) Providing office based anesthesia without the proper**
7 **accreditation.**

8 **(10) Failure to perform duties required for issuing birth or**
9 **death certificates.**

10 **(b) An individual who is investigated by the board and found by**
11 **the board to have committed a violation specified in subsection (a)**
12 **may appeal the determination made by the board in accordance**
13 **with IC 4-21.5.**

14 **(c) In accordance with the federal Health Care Quality**
15 **Improvement Act (42 U.S.C. 11132), the board shall report a**
16 **disciplinary board action that is subject to reporting to the**
17 **National Practitioner Data Bank. However, the board may not**
18 **report board action against a physician for only an administrative**
19 **penalty described in subsection (a). The board's action concerning**
20 **disciplinary action or an administrative penalty described in**
21 **subsection (a) shall be conducted at a hearing that is open to the**
22 **public.**

23 **(d) The physician compliance fund is established to provide**
24 **funds for administering and enforcing the investigation of**
25 **violations specified in subsection (a). The fund shall be**
26 **administered by the Indiana professional licensing agency.**

27 **(e) The expenses of administering the physician compliance fund**
28 **shall be paid from the money in the fund. The fund consists of**
29 **penalties collected through investigations and assessments by the**
30 **board concerning violations specified in subsection (a). Money in**
31 **the fund at the end of a state fiscal year does not revert to the state**
32 **general fund.**

33 SECTION 19. IC 27-4-1-4, AS AMENDED BY P.L.1-2009,
34 SECTION 146, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following are hereby
36 defined as unfair methods of competition and unfair and deceptive acts
37 and practices in the business of insurance:

38 (1) Making, issuing, circulating, or causing to be made, issued, or

- 1 circulated, any estimate, illustration, circular, or statement:
- 2 (A) misrepresenting the terms of any policy issued or to be
- 3 issued or the benefits or advantages promised thereby or the
- 4 dividends or share of the surplus to be received thereon;
- 5 (B) making any false or misleading statement as to the
- 6 dividends or share of surplus previously paid on similar
- 7 policies;
- 8 (C) making any misleading representation or any
- 9 misrepresentation as to the financial condition of any insurer,
- 10 or as to the legal reserve system upon which any life insurer
- 11 operates;
- 12 (D) using any name or title of any policy or class of policies
- 13 misrepresenting the true nature thereof; or
- 14 (E) making any misrepresentation to any policyholder insured
- 15 in any company for the purpose of inducing or tending to
- 16 induce such policyholder to lapse, forfeit, or surrender the
- 17 policyholder's insurance.
- 18 (2) Making, publishing, disseminating, circulating, or placing
- 19 before the public, or causing, directly or indirectly, to be made,
- 20 published, disseminated, circulated, or placed before the public,
- 21 in a newspaper, magazine, or other publication, or in the form of
- 22 a notice, circular, pamphlet, letter, or poster, or over any radio or
- 23 television station, or in any other way, an advertisement,
- 24 announcement, or statement containing any assertion,
- 25 representation, or statement with respect to any person in the
- 26 conduct of the person's insurance business, which is untrue,
- 27 deceptive, or misleading.
- 28 (3) Making, publishing, disseminating, or circulating, directly or
- 29 indirectly, or aiding, abetting, or encouraging the making,
- 30 publishing, disseminating, or circulating of any oral or written
- 31 statement or any pamphlet, circular, article, or literature which is
- 32 false, or maliciously critical of or derogatory to the financial
- 33 condition of an insurer, and which is calculated to injure any
- 34 person engaged in the business of insurance.
- 35 (4) Entering into any agreement to commit, or individually or by
- 36 a concerted action committing any act of boycott, coercion, or
- 37 intimidation resulting or tending to result in unreasonable
- 38 restraint of, or a monopoly in, the business of insurance.

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

15 (6) Issuing or delivering or permitting agents, officers, or
16 employees to issue or deliver, agency company stock or other
17 capital stock, or benefit certificates or shares in any common law
18 corporation, or securities or any special or advisory board
19 contracts or other contracts of any kind promising returns and
20 profits as an inducement to insurance.

21 (7) Making or permitting any of the following:

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

31 (B) Unfair discrimination between individuals of the same
32 class involving essentially the same hazards in the amount of
33 premium, policy fees, assessments, or rates charged or made
34 for any policy or contract of accident or health insurance or in
35 the benefits payable thereunder, or in any of the terms or
36 conditions of such contract, or in any other manner whatever.
37 However, in determining the class, consideration may be given
38 to the nature of the risk, the plan of insurance, the actual or

1 expected expense of conducting the business, or any other
2 relevant factor.

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

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

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

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

18 However, nothing contained in clause (C) shall be construed to
19 apply to any of the kinds of insurance referred to in clauses (A)
20 and (B) nor to reinsurance in relation to such kinds of insurance.
21 Nothing in clause (A), (B), or (C) shall be construed as making or
22 permitting any excessive, inadequate, or unfairly discriminatory
23 charge or rate or any charge or rate determined by the department
24 or commissioner to meet the requirements of any other insurance
25 rate regulatory law of this state.

26 (8) Except as otherwise expressly provided by law, knowingly
27 permitting or offering to make or making any contract or policy
28 of insurance of any kind or kinds whatsoever, including but not in
29 limitation, life annuities, or agreement as to such contract or
30 policy other than as plainly expressed in such contract or policy
31 issued thereon, or paying or allowing, or giving or offering to pay,
32 allow, or give, directly or indirectly, as inducement to such
33 insurance, or annuity, any rebate of premiums payable on the
34 contract, or any special favor or advantage in the dividends,
35 savings, or other benefits thereon, or any valuable consideration
36 or inducement whatever not specified in the contract or policy; or
37 giving, or selling, or purchasing or offering to give, sell, or
38 purchase as inducement to such insurance or annuity or in

1 connection therewith, any stocks, bonds, or other securities of any
2 insurance company or other corporation, association, limited
3 liability company, or partnership, or any dividends, savings, or
4 profits accrued thereon, or anything of value whatsoever not
5 specified in the contract. Nothing in this subdivision and
6 subdivision (7) shall be construed as including within the
7 definition of discrimination or rebates any of the following
8 practices:

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

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

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

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

35 (9) Requiring, as a condition precedent to loaning money upon the
36 security of a mortgage upon real property, that the owner of the
37 property to whom the money is to be loaned negotiate any policy
38 of insurance covering such real property through a particular

1 insurance producer or broker or brokers. However, this
2 subdivision shall not prevent the exercise by any lender of the
3 lender's right to approve or disapprove of the insurance company
4 selected by the borrower to underwrite the insurance.

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

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

22 (12) Requiring as a condition precedent to the sale of real or
23 personal property under any contract of sale, conditional sales
24 contract, or other similar instrument or upon the security of a
25 chattel mortgage, that the buyer of such property negotiate any
26 policy of insurance covering such property through a particular
27 insurance company, insurance producer, or broker or brokers.
28 However, this subdivision shall not prevent the exercise by any
29 seller of such property or the one making a loan thereon of the
30 right to approve or disapprove of the insurance company selected
31 by the buyer to underwrite the insurance.

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

- 1 (A) Insurance issued to credit unions or members of credit
2 unions in connection with the purchase of shares in such credit
3 unions.
- 4 (B) Insurance employed as a means of guaranteeing the
5 performance of goods and designed to benefit the purchasers
6 or users of such goods.
- 7 (C) Title insurance.
- 8 (D) Insurance written in connection with an indebtedness and
9 intended as a means of repaying such indebtedness in the
10 event of the death or disability of the insured.
- 11 (E) Insurance provided by or through motorists service clubs
12 or associations.
- 13 (F) Insurance that is provided to the purchaser or holder of an
14 air transportation ticket and that:
- 15 (i) insures against death or nonfatal injury that occurs during
16 the flight to which the ticket relates;
- 17 (ii) insures against personal injury or property damage that
18 occurs during travel to or from the airport in a common
19 carrier immediately before or after the flight;
- 20 (iii) insures against baggage loss during the flight to which
21 the ticket relates; or
- 22 (iv) insures against a flight cancellation to which the ticket
23 relates.
- 24 (14) Refusing, because of the for-profit status of a hospital or
25 medical facility, to make payments otherwise required to be made
26 under a contract or policy of insurance for charges incurred by an
27 insured in such a for-profit hospital or other for-profit medical
28 facility licensed by the state department of health.
- 29 (15) Refusing to insure an individual, refusing to continue to issue
30 insurance to an individual, limiting the amount, extent, or kind of
31 coverage available to an individual, or charging an individual a
32 different rate for the same coverage, solely because of that
33 individual's blindness or partial blindness, except where the
34 refusal, limitation, or rate differential is based on sound actuarial
35 principles or is related to actual or reasonably anticipated
36 experience.
- 37 (16) Committing or performing, with such frequency as to
38 indicate a general practice, unfair claim settlement practices (as

- 1 defined in section 4.5 of this chapter).
- 2 (17) Between policy renewal dates, unilaterally canceling an
- 3 individual's coverage under an individual or group health
- 4 insurance policy solely because of the individual's medical or
- 5 physical condition.
- 6 (18) Using a policy form or rider that would permit a cancellation
- 7 of coverage as described in subdivision (17).
- 8 (19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1
- 9 concerning motor vehicle insurance rates.
- 10 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 11 to interest rate guarantees.
- 12 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 13 coverage for victims of abuse.
- 14 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 15 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 16 insurance producers.
- 17 (24) Violating IC 27-1-38 concerning depository institutions.
- 18 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
- 19 the resolution of an appealed grievance decision.
- 20 (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) (expired
- 21 July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1,
- 22 2007, and repealed).
- 23 (27) Violating IC 27-2-21 concerning use of credit information.
- 24 (28) Violating IC 27-4-9-3 concerning recommendations to
- 25 consumers.
- 26 (29) Engaging in dishonest or predatory insurance practices in
- 27 marketing or sales of insurance to members of the United States
- 28 Armed Forces as:
- 29 (A) described in the federal Military Personnel Financial
- 30 Services Protection Act, P.L.109-290; or
- 31 (B) defined in rules adopted under subsection (b).
- 32 (30) Violating IC 27-8-19.8-20.1 concerning stranger originated
- 33 life insurance.
- 34 **(31) Violating IC 27-8-11-4.7 or IC 27-13-34-15.2 concerning**
- 35 **contracts for dental services.**
- 36 (b) Except with respect to federal insurance programs under
- 37 Subchapter III of Chapter 19 of Title 38 of the United States Code, the
- 38 commissioner may, consistent with the federal Military Personnel

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

3 (1) define; and
4 (2) while the members are on a United States military installation
5 or elsewhere in Indiana, protect members of the United States
6 Armed Forces from;
7 dishonest or predatory insurance practices."

8 Page 19, between lines 5 and 6, begin a new paragraph and insert:

9 "SECTION 21. IC 27-8-11-4.7 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2011]: **Sec. 4.7. (a) As used in this section,**
12 **"covered services" means health care services for which any**
13 **reimbursement is available under an insured's policy, regardless**
14 **of whether the actual reimbursement is contractually limited by a**
15 **deductible, copayment, coinsurance, waiting period, annual or**
16 **lifetime maximum, frequency limitation, alternative benefit**
17 **payment, or any other limitation.**

18 **(b) An insurer may not, under an agreement under section 3 of**
19 **this chapter, require a dentist to accept an amount set by the**
20 **insurer as payment for health care services provided to an insured**
21 **unless the health care services are covered services under the**
22 **insured's policy.**

23 **(c) An insurer may not provide merely de minimis**
24 **reimbursement or coverage in an effort to avoid the requirements**
25 **of this section.**

26 **(d) This section does not apply to a discount medical card**
27 **program provider agreement regulated under IC 27-17.**

28 **(e) A violation of this section is an unfair and deceptive act in**
29 **the business of insurance under IC 27-4-1-4.**

30 SECTION 22. IC 27-13-34-15.2 IS ADDED TO THE INDIANA
31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2011]: **Sec. 15.2. (a) As used in this section,**
33 **"covered services" means limited health services for which any**
34 **coverage is available under an enrollee's individual contract or**
35 **group contract, regardless of whether the actual coverage is**
36 **contractually limited by a deductible, copayment, coinsurance,**
37 **waiting period, annual or lifetime maximum, frequency limitation,**
38 **alternative benefit payment, or any other limitation.**

1 **(b) A limited service health maintenance organization may not,**
2 **under a contract described in section 15 of this chapter, require a**
3 **dentist to accept an amount set by the limited service health**
4 **maintenance organization as payment for limited health services**
5 **provided to an enrollee unless the limited health services are**
6 **covered services under the enrollee's individual contract or group**
7 **contract.**

8 **(c) A limited service health maintenance organization may not**
9 **provide merely de minimis reimbursement or coverage in an effort**
10 **to avoid the requirements of this section.**

11 **(d) This section does not apply to a discount medical card**
12 **program provider agreement regulated under IC 27-17.**

13 **(e) A violation of this section is an unfair and deceptive act in**
14 **the business of insurance under IC 27-4-1-4."**

15 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1273 as printed March 9, 2011.)

and when so amended that said bill do pass.

Committee Vote: Yeas 6, Nays 0.

Miller

Chairperson