



Reprinted
January 28, 2012

HOUSE BILL No. 1280

DIGEST OF HB 1280 (Updated January 27, 2012 2:39 pm - DI 51)

Citations Affected: IC 1-1; IC 2-5; IC 4-3; IC 4-12; IC 4-21.5; IC 4-22; IC 8-1; IC 25-26; IC 35-48.

Synopsis: Regulatory matters. Provides that intrastate commerce in Indiana is not subject to the authority of the United States Congress. Provides for a retrospective review of agency rules. Imposes a duty on a state agency under certain circumstances to give a person an opportunity to correct an alleged violation of law that is discovered in an inspection. Requires hearing officers and administrative law judges to be attorneys licensed to practice law in Indiana. Permits certain administrative adjudication notices to be delivered by electronic mail or another method approved by the Indiana Rules of Trial Procedure. Requires the division of government efficiency and financial planning in the office of management and budget to advise and assist state agencies and instrumentalities with the implementation of continuous process improvement techniques. Requires agencies to evaluate the benefits and costs of rules, seek alternatives to regulation, establish and publish a rulemaking docket, and encourage public participation in rulemaking proceedings. Requires that state documents provided to the public must be written in plain English. Requires each unit of local government that receives franchise fees paid to a unit from an entity providing video services to submit to the IURC an annual report on the unit's receipt and use of those franchise fees during the calendar year for which the report is submitted. Consolidates six categories of pharmacy licenses into three categories.

Effective: Upon passage; July 1, 2012.

Koch

January 11, 2012, read first time and referred to Committee on Government and Regulatory Reform.
January 23, 2012, amended, reported — Do Pass.
January 27, 2012, read second time, amended, ordered engrossed.

HB 1280—LS 6631/DI 51+



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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

HOUSE BILL No. 1280

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 1-1-2.5 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:

4 **Chapter 2.5. Regulation of Intrastate Commerce**

5 **Sec. 1. This chapter applies to all:**

6 (1) goods grown, manufactured, or made; and

7 (2) services performed;

8 **in Indiana after July 1, 2012.**

9 **Sec. 2. The general assembly declares the following:**

10 (1) The Tenth Amendment to the Constitution of the United
11 States provides that the only powers that the federal
12 government may exercise are those that have been delegated
13 to the federal government in the Constitution of the United
14 States.

15 (2) The Ninth Amendment to the Constitution of the United
16 States guarantees to the people rights not enumerated in the
17 Constitution and reserves to the people of Indiana those

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rights.

(3) Under Article I, Section 8, Clause 3 of the Constitution of the United States, the federal government is empowered to regulate commerce among the several states.

(4) The power to regulate intrastate commerce is reserved to the states or the people under the Ninth and Tenth Amendments to the Constitution of the United States.

(5) During the Constitutional Convention, the founders considered a plan that would have authorized the federal government not only to regulate commerce among the several states, but also to regulate any activity having spillover effects across state lines. The founders rejected this latter idea.

(6) All:

(A) goods grown, manufactured, or made in Indiana; and

(B) services performed in Indiana;

when the goods or services are sold, maintained, and retained in Indiana are not subject to the authority of the Congress of the United States under the constitutional power of Congress to regulate commerce among the several states.

SECTION 2. IC 2-5-18-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.7. As used in this chapter, "retrospective review" means a review of a rule by an agency for any change in the relevance, clarity, and reasonableness of the rule between the time of the rule's initial adoption and the time of the review.**

SECTION 3. IC 2-5-18-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 8. (a) The committee shall receive and may, at its discretion, review a complaint filed by a person regarding a rule or practice of an agency.**

(b) The committee may review an agency rule, an agency practice, or a failure of an agency to adopt a rule.

(c) The committee may recommend that a rule be modified, repealed, or adopted.

(d) When appropriate, the committee shall prepare and arrange for the introduction of a bill to clarify the intent of the general assembly when the general assembly enacted a law or to correct the misapplication of a law by an agency.

(e) Not more than one (1) time in any budget period (as defined in IC 4-12-1-2), the committee may, in writing, direct an agency to undertake a retrospective review of one (1) or more rules.

SECTION 4. IC 2-5-18-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 2012]: **Sec. 12. (a) An agency shall carry out a periodic review of**
 2 **the agency's significant rules under this section.**

3 **(b) A retrospective review under this section is in addition to a**
 4 **review required under section 13 of this chapter or IC 4-22-2.5.**

5 **(c) An agency shall develop a plan to retrospectively review**
 6 **significant rules of the agency to determine the extent to which the**
 7 **rules are outmoded, ineffective, insufficient, or excessively**
 8 **burdensome. An agency shall submit the plan to the office of**
 9 **management and budget with the frequency, on the schedule, and**
 10 **in the form prescribed by the office of management and budget.**

11 **(d) The agency shall publish supporting data regarding the**
 12 **agencies rules on the agency's Internet web site whenever possible**
 13 **in the format specified by the office of management and budget.**

14 **(e) The agency shall adopt the rules necessary or appropriate to**
 15 **modify, streamline, expand, or repeal rules to implement the**
 16 **findings of the retrospective analysis.**

17 SECTION 5. IC 2-5-18-13 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2012]: **Sec. 13. (a) This section applies to an agency if the**
 20 **committee directs the agency to conduct a review under section**
 21 **8(e) of this chapter.**

22 **(b) A retrospective review under this section is in addition to a**
 23 **review required under section 12 of this chapter or IC 4-22-2.5.**

24 **(c) If requested by the committee, an agency shall conduct a**
 25 **retrospective review of the rules described by the committee in the**
 26 **committee's request. In considering:**

27 **(1) the continuing relevance of a rule, the agency shall**
 28 **consider the extent to which the rule may have over time**
 29 **become redundant, inconsistent, or in conflict with:**

30 **(A) the original goals and objectives for which the rule was**
 31 **first proposed; or**

32 **(B) other rules or any underlying federal or state law or**
 33 **regulation that initially served as the basis for the rule;**

34 **(2) the clarity of a rule, the agency shall consider whether the**
 35 **language of the rule:**

36 **(A) has retained its clarity and use of plain and clear**
 37 **English;**

38 **(B) continues to comply with the format, numbering**
 39 **system, standards, and techniques that were developed by**
 40 **the legislative council for the drafting and preparation of**
 41 **rules; and**

42 **(C) could be made less complex or more understandable to**

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the general public; and
(3) the reasonableness of a rule, the agency shall consider whether:
(A) the rule has been reasonably and consistently applied with respect to the public or particular persons; and
(B) less costly or more limited regulatory methods of achieving the original purposes of the rule have become available.

(d) Not more than one (1) year after receiving a request to review a rule, the agency shall submit a report to the committee in an electronic format under IC 5-14-6 and, at the request of the committee, make a presentation regarding the report in a public meeting of the committee. The report must:

- (1) address each of the criteria described in subsection (c);
- (2) identify ways in which the agency proposes to amend the rule; and
- (3) recommend whether the legislative authority for the rule should be retained, repealed, or modified.

SECTION 6. IC 4-3-22-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. As used in this chapter, "continuous process improvement" means a management methodology that combines tools to improve process speed and reduce waste with data driven project analysis to provide products and services with improved quality at lower cost.

SECTION 7. IC 4-3-22-6, AS ADDED BY P.L.246-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The division of government efficiency and financial planning is established within the OMB. The director shall appoint, subject to the approval of the governor, a director of the division, who serves at the pleasure of the director of OMB.

(b) The division shall ~~conduct operational and procedural audits of state government; perform financial planning; design and implement efficiency projects; and carry out such other responsibilities as may be designated by the director.~~ advise and assist:

- (1) each instrumentality, agency, authority, board, commission, and officer in the executive department of state government; and
- (2) each body corporate and politic established as an instrumentality of the state;

to identify and implement continuous process improvement in state government.

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1 SECTION 8. IC 4-12-1-7 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) On or before the first day of
 3 September, in any year that the budget director makes a request under
 4 this chapter, each and every state agency shall prepare and file with the
 5 budget agency on forms designated by ~~it~~ **the budget agency** a written
 6 statement, showing in detail the following:

7 (1) The several amounts actually expended for the administration,
 8 operation, maintenance, and support of such state agency for at
 9 least the two (2) fiscal years which ended immediately preceding
 10 such first day of September, and the several amounts estimated by
 11 such state agency to be actually expended for the fiscal year to
 12 end on June 30 following the next regular session of the general
 13 assembly; and the actual and estimated income of such state
 14 agency for like periods.

15 (2) An estimate of the necessary expenditures of such state
 16 agency for the proposed budget period as specified in the budget
 17 director's request beginning on the first day of July of the calendar
 18 year next succeeding the filing of such statement; such estimates
 19 or requests for appropriations to defray the estimated expenditures
 20 of such department shall be set forth separately for each fiscal
 21 year; and the estimated income of such state agency for like
 22 period.

23 (3) A written statement showing concisely the reasons for all
 24 estimated expenditures and requests for appropriations
 25 contemplated in ~~the preceding~~ subdivision (2), showing
 26 particularly the reason for any requested increase or decrease over
 27 former appropriations.

28 (4) Proposals for expenditures for new projects, special purposes
 29 or objects, construction, additions, building, improvements,
 30 undertakings, or expansion of the work of any state agency
 31 requiring additional expenditures and capital outlays.

32 **(5) Information on the results of cost-reduction projects using
 33 continuous process improvement (as defined in IC 4-3-22-1.5)
 34 in each relevant appropriation request for the agency, and an
 35 explanation of how any savings from the implementation of
 36 these projects have affected the agency's request.**

37 ~~(5)~~ (6) Any other information related to the subject matter of the
 38 preceding subdivisions of this subsection, ~~(a)~~; or otherwise
 39 required to effect the purposes of this chapter, to the extent the
 40 budget agency or budget committee deems such information
 41 necessary or required, including when requested, citations to any
 42 statutes regulating, governing, or providing for continuing annual

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1 appropriations, fees, or other sources of income.

2 (b) The budget agency shall examine such written statements and
 3 review and analyze all of the information, data, estimates, requests for
 4 appropriations and for other authorizations to spend state funds as the
 5 several state agencies have prepared and filed them. As promptly as
 6 possible the budget agency shall complete its examination, review, and
 7 analysis and shall prepare recommendations for a budget report, and
 8 from time to time shall submit these to the budget committee for its
 9 consideration at one **(1)** of ~~its~~ **the budget committee's** meetings.

10 SECTION 9. IC 4-21.5-1-3 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. **(a)** "Agency" means,
 12 **except as provided in subsection (b)**, any officer, board, commission,
 13 department, division, bureau, or committee of state government that is
 14 responsible for any stage of a proceeding under this article. Except as
 15 provided in IC 4-21.5-7, the term does not include the judicial
 16 department of state government, the legislative department of state
 17 government, or a political subdivision.

18 **(b)** "Agency", for purposes of IC 4-21.5-2-7, IC 4-21.5-2-8,
 19 IC 4-21.5-2.5, and IC 4-21.5-2.7, means any officer, board,
 20 commission, department, division, bureau, or committee of state
 21 government in the executive department of state government,
 22 including the administrative department.

23 SECTION 10. IC 4-21.5-1-13 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. **(a)** "Proceeding"
 25 refers, **except as provided in subsection (b)**, to a proceeding under
 26 this article.

27 **(b)** "Proceeding", for purposes of IC 4-21.5-2.7, means any part
 28 of:

- 29 **(1)** a preliminary proceeding required to issue an order after
 30 giving notice of the proposed order to the affected party; or
 31 **(2)** a proceeding conducted to administratively review an
 32 affected person's petition to review an order;

33 including the consideration of related motions.

34 SECTION 11. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2012]: Sec. 7. **Notwithstanding sections 4, 5, and 6 of this chapter,**
 37 **IC 4-21.5-2.5 applies to all agencies in the executive department of**
 38 **state government, including the administrative department.**

39 SECTION 12. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2012]: Sec. 8. **Notwithstanding sections 4, 5, and 6 of this chapter,**
 42 **IC 4-21.5-2.7 applies to all agencies in the executive department of**



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1 state government, including the administrative department.

2 SECTION 13. IC 4-21.5-2.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2012]:

5 **Chapter 2.5. Opportunity to Correct**

6 **Sec. 1. Except as provided in sections 2 and 3 of this chapter,**
7 **this chapter applies to the resolution of an alleged violation of a**
8 **state rule within the jurisdiction of an agency that is discovered in**
9 **an inspection conducted after June 30, 2012.**

10 **Sec. 2. This chapter does not apply if:**

11 (1) the agency conducting the inspection determines that the
12 alleged violation:

13 (A) represents intentional misconduct or an act of fraud by
14 a responsible person or an agent of the responsible person;

15 (B) is not correctable within a reasonable time, as
16 determined by the agency;

17 (C) demonstrates, by a continuing pattern of conduct, a
18 willful disregard by the responsible person of the person's
19 obligation to remedy the violation after the responsible
20 person becomes aware of the violation; or

21 (D) constitutes an immediate risk to:

22 (i) any person;

23 (ii) the public health, safety, or welfare; or

24 (iii) the environment;

25 (2) another statute (including IC 13-30-3) provides a
26 substantially similar procedure for correction of an alleged
27 violation of a rule before the agency:

28 (A) imposes a sanction on a person; or

29 (B) terminates a legal right, duty, privilege, immunity, or
30 other legal interest of a person;

31 (3) application of this chapter to a violation would violate a
32 federal law or regulation;

33 (4) the alleged violation is a violation of an ethics code or
34 another rule governing the conduct of an agency employee or
35 contractor in the procurement or performance of services or
36 the delivery of property to a governmental entity; or

37 (5) the alleged violation was discovered as part of the
38 preparation of a health care licensing and certification survey
39 by the department of health.

40 **Sec. 3. This chapter does not limit an agency's authority to issue**
41 **an emergency or a temporary order under IC 4-21.5-4 or another**
42 **law if:**

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1 (1) an emergency exists; or
 2 (2) a statute authorizes the agency to issue a temporary order
 3 or otherwise take immediate agency action.
 4 **Sec. 4. As used in this chapter, "inspection" means:**
 5 (1) visual analysis; or
 6 (2) performance of tests;
 7 undertaken to evaluate the operation, use, or condition of real or
 8 personal property.
 9 **Sec. 5. As used in this chapter, "violation" refers to a violation**
 10 **of a state rule adopted by an agency.**
 11 **Sec. 6. If an inspection discloses a possible violation, the agency**
 12 **shall proceed under:**
 13 (1) section 7 of this chapter; or
 14 (2) first section 7 of this chapter and then section 10 of this
 15 chapter.
 16 **Sec. 7. The agency shall:**
 17 (1) notify the alleged violator in writing that the agency
 18 believes a violation may exist; and
 19 (2) extend an offer in writing to the alleged violator giving the
 20 alleged violator an opportunity to enter into a corrective plan
 21 to correct the alleged violation before the agency imposes a
 22 civil penalty or takes another enforcement action permitted
 23 under section 10 of this chapter or another law.
 24 **Sec. 8. (a) The notice to an alleged violator under section 7 of**
 25 **this chapter must include the following:**
 26 (1) A description of the actions that must be taken to correct
 27 the alleged violation.
 28 (2) The date before which the alleged violator must enter into
 29 a corrective plan with the agency in order to avoid an
 30 enforcement action under section 10 of this chapter or
 31 another law.
 32 (3) A statement that the alleged violator may enter into a
 33 corrective plan without admitting that the violation occurred.
 34 **(b) The agency may condition an offer on a requirement that the**
 35 **alleged violator take one (1) or more actions to protect the safety**
 36 **and property of other persons during the time in which the alleged**
 37 **violator reviews the proposed corrective plan.**
 38 **(c) A corrective plan must require the alleged violator to notify**
 39 **the agency within the time specified in the corrective plan that the**
 40 **violation has been corrected.**
 41 **Sec. 9. The agency shall determine whether an alleged violator**
 42 **has substantially corrected the violation under a corrective plan**

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1 under this chapter and notify the alleged violator as to whether the
2 alleged violator is in substantial compliance with the applicable
3 rule not more than thirty (30) days after the earlier of the date
4 that:

5 (1) the alleged violation must be corrected under the
6 corrective plan; or

7 (2) the alleged violator notifies the agency that the alleged
8 violator has corrected the violation.

9 Sec. 10. If:

10 (1) a corrective plan is not entered into; or

11 (2) an alleged violator fails to substantially correct an alleged
12 violation within the time specified in a corrective plan entered
13 into under this chapter;

14 the agency may issue a corrective order and take any enforcement
15 action authorized by law for the violation.

16 Sec. 11. The following are public records:

17 (1) A corrective plan entered into under this chapter.

18 (2) The results of an inspection under section 9 of this chapter.

19 (3) Any corrective order described in section 10 of this
20 chapter.

21 An agency shall retain the public records described in subdivisions
22 (1) through (3) in accordance with the appropriate retention
23 schedule established under IC 5-15.

24 SECTION 14. IC 4-21.5-2.7 IS ADDED TO THE INDIANA CODE
25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2012]:

27 Chapter 2.7. Qualifications of Administrative Law Judge or
28 Other Hearing Officer

29 Sec. 1. This chapter applies to all agencies notwithstanding any
30 law enacted before April 1, 2012.

31 Sec. 2. This chapter does not apply to the following:

32 (1) The ultimate authority for an agency or a member of the
33 ultimate authority for an agency when the ultimate authority
34 is a panel of individuals.

35 (2) An individual who is hired by an agency as a full-time
36 administrative law judge or other hearing officer before April
37 1, 2012, and is continuously employed by the agency as a
38 full-time administrative law judge or other hearing officer
39 after March 31, 2012.

40 Sec. 3. The administrative law judge or other hearing officer for
41 a proceeding must be an attorney licensed to practice law in
42 Indiana.

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1 **Sec. 4. An agency may not knowingly assign an individual to**
2 **serve alone or with others as an administrative law judge or other**
3 **hearing officer who is subject to disqualification under this**
4 **chapter.**

5 **Sec. 5. If an individual appointed as an administrative law judge**
6 **or other hearing officer believes that the individual is disqualified**
7 **under this chapter from serving as an administrative law judge or**
8 **other hearing officer, the individual shall withdraw as the**
9 **administrative law judge or other hearing officer.**

10 **Sec. 6. Any party to a proceeding may petition for the**
11 **disqualification of an individual serving alone or with others as an**
12 **administrative law judge or other hearing officer upon discovering**
13 **facts establishing grounds for disqualification under this chapter.**
14 **The administrative law judge or other hearing officer assigned to**
15 **the proceeding shall determine whether to grant the petition,**
16 **stating facts and reasons for the determination. If the**
17 **administrative law judge or other hearing officer ruling on the**
18 **disqualification issue is not the ultimate authority for the agency,**
19 **the party petitioning for disqualification may petition the ultimate**
20 **authority in writing for review of the ruling not later than ten (10)**
21 **days after notice of the ruling is served. The ultimate authority**
22 **shall conduct proceedings described by IC 4-21.5-3-28 to review**
23 **the petition and affirm, modify, or dissolve the ruling not later than**
24 **thirty (30) days after the petition is filed. A determination by the**
25 **ultimate authority under this section is a final order subject to**
26 **judicial review under IC 4-21.5-5.**

27 **Sec. 7. If a substitute is required for an administrative law judge**
28 **or other hearing officer who is disqualified or becomes unavailable**
29 **for any other reason, the substitute must be appointed by the**
30 **ultimate authority for the agency. Any action taken by an**
31 **appointed substitute for a disqualified or unavailable**
32 **administrative law judge or other hearing officer is as effective as**
33 **if taken by the administrative law judge or other hearing officer.**

34 **SECTION 15. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011,**
35 **SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
36 **UPON PASSAGE]: Sec. 1. (a) This section applies to:**

- 37 (1) the giving of any notice;
38 (2) the service of any motion, ruling, order, or other filed item; or
39 (3) the filing of any document with the ultimate authority;
40 in an administrative proceeding under this article.

41 (b) Except as provided in subsection (c) or as otherwise provided by
42 law, a person shall serve papers by:

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- 1 (1) United States mail;
- 2 (2) personal service;
- 3 (3) electronic mail; or
- 4 (4) any other method approved by the Indiana Rules of Trial
- 5 Procedure.
- 6 (c) The following shall be served by United States mail or personal
- 7 service:
- 8 (1) The initial notice of a determination under section ~~4, 5, or 6~~ of
- 9 this chapter.
- 10 (2) A petition for review of an agency action under section 7 of
- 11 this chapter.
- 12 (3) A complaint under section 8 of this chapter.
- 13 (d) The agency shall keep a record of the time, date, and
- 14 circumstances of the service under subsection (b) or (c).
- 15 (e) Service shall be made on a person or on the person's counsel or
- 16 other authorized representative of record in the proceeding. Service on
- 17 an artificial person or a person incompetent to receive service shall be
- 18 made on a person allowed to receive service under the rules governing
- 19 civil actions in the courts. If an ultimate authority consists of more than
- 20 one (1) individual, service on that ultimate authority must be made on
- 21 the chairperson or secretary of the ultimate authority. A document to
- 22 be filed with that ultimate authority must be filed with the chairperson
- 23 or secretary of the ultimate authority.
- 24 (f) If the current address of a person is not ascertainable, service
- 25 shall be mailed to the last known address where the person resides or
- 26 has a principal place of business. If the identity, address, or existence
- 27 of a person is not ascertainable, or a law other than a rule allows,
- 28 service shall be made by a single publication in a newspaper of general
- 29 circulation in:
- 30 (1) the county in which the person resides, has a principal place
- 31 of business, or has property that is the subject of the proceeding;
- 32 or
- 33 (2) Marion County, if the place described in subdivision (1) is not
- 34 ascertainable or the place described in subdivision (1) is outside
- 35 Indiana and the person does not have a resident agent or other
- 36 representative of record in Indiana.
- 37 (g) A notice given by publication must include a statement advising
- 38 a person how the person may receive written notice of the proceedings.
- 39 (h) The filing of a document with an ultimate authority is
- 40 complete on the earliest of the following dates that apply to the
- 41 filing:
- 42 (1) The date on which the document is delivered to the ultimate

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- 1 authority under subsection (b), (c), or (e).
- 2 (2) The date of the postmark on the envelope containing the
- 3 document, if the document is mailed to the ultimate authority by
- 4 United States mail.
- 5 (3) The date on which the document is deposited with a private
- 6 carrier, as shown by a receipt issued by the carrier, if the
- 7 document is sent to the ultimate authority by private carrier.

8 SECTION 16. IC 4-21.5-3-9 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) Except to the
 10 extent that a statute other than this article limits an agency's discretion
 11 to select an administrative law judge, the ultimate authority for an
 12 agency may:

- 13 (1) act as an administrative law judge;
- 14 (2) designate one (1) or more members of the ultimate authority
 15 (if the ultimate authority is a panel of individuals) to act as an
 16 administrative law judge; or
- 17 (3) designate one (1) or more other individuals, not necessarily
 18 employees of the agency, to act as an administrative law judge.

19 A designation under subdivision (2) or (3) may be made in advance of
 20 the commencement of any particular proceeding for a generally
 21 described class of proceedings or may be made for a particular
 22 proceeding. A general designation may provide procedures for the
 23 assignment of designated individuals to particular proceedings.

24 **(b) This subsection does not apply to an individual who is hired**
 25 **by an agency as a full-time administrative law judge before April**
 26 **1, 2012, and is continuously employed by the agency as a full-time**
 27 **administrative law judge after March 31, 2012. An individual**
 28 **designated under subsection (a)(3) must be an attorney licensed to**
 29 **practice law in Indiana.**

30 ~~(b)~~ (c) An agency may not knowingly assign an individual to serve
 31 alone or with others as an administrative law judge who is subject to
 32 disqualification under this chapter.

33 ~~(c)~~ (d) If the judge believes that the judge's impartiality might
 34 reasonably be questioned, or believes that the judge's personal bias,
 35 prejudice, or knowledge of a disputed evidentiary fact might influence
 36 the decision, an individual assigned to serve alone or with others as an
 37 administrative law judge shall:

- 38 (1) withdraw as the administrative law judge; or
- 39 (2) inform the parties of the potential basis for disqualification,
 40 place a brief statement of this basis on the record of the
 41 proceeding, and allow the parties an opportunity to petition for
 42 disqualification under subsection ~~(d)~~: (e).

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1 ~~(d)~~ **(e)** Any party to a proceeding may petition for the
 2 disqualification of an individual serving alone or with others as an
 3 administrative law judge upon discovering facts establishing grounds
 4 for disqualification under this chapter. The administrative law judge
 5 assigned to the proceeding shall determine whether to grant the
 6 petition, stating facts and reasons for the determination. If the
 7 administrative law judge ruling on the disqualification issue is not the
 8 ultimate authority for the agency, the party petitioning for
 9 disqualification may petition the ultimate authority in writing for
 10 review of the ruling within ten (10) days after notice of the ruling is
 11 served. The ultimate authority shall conduct proceedings described by
 12 section 28 of this chapter to review the petition and affirm, modify, or
 13 dissolve the ruling within thirty (30) days after the petition is filed. A
 14 determination by the ultimate authority under this subsection is a final
 15 order subject to judicial review under IC 4-21.5-5.

16 ~~(e)~~ **(f)** If a substitute is required for an administrative law judge who
 17 is disqualified or becomes unavailable for any other reason, the
 18 substitute must be appointed in accordance with subsection (a).

19 ~~(f)~~ **(g)** Any action taken by a duly appointed substitute for a
 20 disqualified or unavailable administrative law judge is as effective as
 21 if taken by the latter.

22 SECTION 17. IC 4-22-2-19.5 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19.5. (a) To the extent
 24 possible, a rule adopted under this article or under IC 13-14-9.5 shall
 25 comply with the following:

- 26 (1) Minimize the expenses **and other burdens** to:
 - 27 (A) regulated entities that are required to comply with the rule;
 - 28 (B) persons who pay taxes or pay fees for government services
 - 29 affected by the rule; and
 - 30 (C) consumers of products and services of regulated entities
 - 31 affected by the rule;
- 32 **taking into account, among other things and to the extent**
- 33 **practicable, the costs of cumulative rules of the same and**
- 34 **other agencies.**
- 35 (2) Achieve the regulatory goal in the least restrictive manner.
- 36 (3) Avoid duplicating standards found in state or federal laws.
- 37 (4) Be written for ease of comprehension.
- 38 (5) Have practicable enforcement.
- 39 **(6) To the extent feasible, specify performance objectives**
- 40 **rather than a specific behavior or manner of compliance that**
- 41 **regulated entities must adopt.**
- 42 **(7) Be based on a reasoned determination that the rule's**

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benefits justify the rule's costs (recognizing that some benefits and costs are difficult to quantify).

(b) To the extent possible, an agency shall do the following:

(1) To the extent permitted by law, identify and assess available alternatives to direct regulation, including providing:

(A) economic incentives to encourage the desired behavior; or

(B) information upon which choices can be made by the public.

(2) When relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity).

Regulatory approaches that comply with this subsection include warnings, appropriate default rules, and disclosure requirements, as well as provision of information to the public in a form that is clear and intelligible.

(c) In applying the principles under subsections (a) and (b), each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.

(d) In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote coordination, simplification, and harmonization of rules among agencies. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

~~(b)~~ (e) Subsection (a), ~~does~~ (b), (c), and (d) do not apply to a rule that must be adopted in a certain form to comply with federal law.

(f) Each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's rulemaking actions.

SECTION 18. IC 4-22-2-19.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 19.7. To the extent feasible and consistent with law, rules that an agency intends to adopt under**

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1 sections 24 through 36 of this chapter shall be based on the open
 2 exchange of information and perspectives among state and local
 3 officials, experts with relevant disciplines, affected stakeholders in
 4 the private sector, and the public as a whole. An agency, to the
 5 extent feasible and permitted by law, shall afford the public a
 6 meaningful opportunity to comment through the Internet on
 7 proposed rules. An agency shall consider providing a comment
 8 period that exceeds the minimum required by law.

9 SECTION 19. IC 4-22-2-22.5 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2012]: Sec. 22.5. (a) This section applies to a
 12 rule that an agency intends to adopt under sections 24 through 36
 13 of this chapter.

14 (b) Each agency shall maintain a current rulemaking docket
 15 that is indexed.

16 (c) A current rulemaking docket must list each pending
 17 rulemaking proceeding. The docket must state or contain:

- 18 (1) the subject matter of the proposed rule;
- 19 (2) notices related to the proposed rule;
- 20 (3) how comments may be made;
- 21 (4) the time within which comments may be made;
- 22 (5) where comments may be inspected;
- 23 (6) requests for a public hearing;
- 24 (7) appropriate information about a public hearing, if any,
 25 including the names of the persons making the request;
- 26 (8) a description of relevant scientific and technical findings
 27 related to the proposed rule; and
- 28 (9) the timetable for action.

29 (d) The agency shall maintain the rulemaking docket on the
 30 agency's Internet web site. The information must be in an open
 31 format that can be easily searched and downloaded. Access to the
 32 docket shall, to the extent feasible and permitted by law, provide
 33 an opportunity for public comment on the pertinent parts of the
 34 rulemaking docket, including relevant scientific and technical
 35 findings. Upon request, the agency shall provide a written
 36 rulemaking docket.

37 SECTION 20. IC 4-22-2-23, AS AMENDED BY P.L.215-2005,
 38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2012]: Sec. 23. (a) This section does not apply to rules
 40 adopted under IC 4-22-2-37.1.

41 (b) At least twenty-eight (28) days before an agency notifies the
 42 public of the agency's intention to adopt a rule under section 24 of this

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1 chapter, the agency shall notify the public of its intention to adopt a
2 rule by publishing a notice of intent to adopt a rule in the Indiana
3 Register. The publication notice must include an overview of the intent
4 and scope of the proposed rule and the statutory authority for the rule.

5 (c) The requirement to publish a notice of intent to adopt a rule
6 under subsection (b) does not apply to rulemaking under IC 13-14-9.

7 (d) In addition to the procedures required by this article, an agency
8 ~~may~~ **shall** solicit comments from the public on the need for a rule, the
9 drafting of a rule, or any other subject related to a rulemaking action,
10 **including members of the public who are likely to be affected**
11 **because they are the subject of the potential rulemaking or are**
12 **likely to benefit from the potential rulemaking.** The procedures that
13 the agency may use include the holding of conferences and the inviting
14 of written suggestions, facts, arguments, or views.

15 (e) The agency shall prepare a written response that contains a
16 summary of the comments received during any part of the rulemaking
17 process. The written response is a public document. The agency shall
18 make the written response available to interested parties upon request.

19 SECTION 21. IC 4-22-10 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2012]:

22 **Chapter 10. Document Drafting Standards**

23 **Sec. 1. As used in this chapter, "agency" has the meaning set**
24 **forth in IC 4-22-2-3.**

25 **Sec. 2. As used in this chapter, "covered document" means any**
26 **document that:**

- 27 (1) is necessary for obtaining any benefit or service
- 28 administered or provided by an agency, or for filing taxes
- 29 with an agency;
- 30 (2) provides information about any state benefit or service; or
- 31 (3) explains to the public how to comply with a requirement
- 32 an agency administers or enforces.

33 **The term includes (whether in paper or electronic form) a letter,**
34 **publication, form, notice, or instruction. The term does not include**
35 **a rule subject to the format, numbering system, standards, and**
36 **techniques established under IC 4-22-2-42.**

37 **Sec. 3. As used in this chapter, "plain writing" means writing**
38 **that is clear, concise, and well-organized, and follows other best**
39 **practices appropriate to the subject or field and intended audience.**

40 **Sec. 4. (a) The office of management and budget must be fully**
41 **in compliance with this section after September 30, 2012.**

42 **(b) The director of the office of management and budget shall**

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1 develop and issue guidance on implementing the requirements of
2 this chapter. The director may designate a lead agency, and may
3 use interagency working groups to assist, in developing and issuing
4 the guidance. Before issuance of guidance under this section,
5 agencies may follow:

6 (1) the writing guidelines developed by the Plain Language
7 Action and Information Network; or

8 (2) guidance provided by the head of the agency that is
9 consistent with the guidelines referred to in subdivision (1).

10 Sec. 5. (a) An agency must be fully in compliance with this
11 section after December 31, 2012.

12 (b) The head of each agency shall do the following:

13 (1) Designate one (1) or more senior officials within the
14 agency to oversee the agency's implementation of this chapter.

15 (2) Communicate the requirements of this chapter to
16 employees of the agency.

17 (3) Train employees of the agency in plain writing.

18 (4) Establish a process for overseeing the ongoing compliance
19 of the agency with the requirements of this chapter.

20 (5) Designate one (1) or more employees of the agency to be
21 the contact to receive and respond to public comments on
22 agency implementation of this chapter.

23 Sec. 6. (a) An agency must be fully in compliance with this
24 section after March 31, 2013.

25 (b) An agency shall use plain writing in every covered document
26 that the agency issues or substantially revises.

27 Sec. 7. (a) An agency must be fully in compliance with this
28 section after September 30, 2013.

29 (b) The head of each agency shall annually submit to the
30 legislative council in an electronic format under IC 5-14-6 a report
31 on agency compliance with the requirements of this chapter.

32 Sec. 8. An action or omission under this chapter or related to
33 guidance implementing this chapter is not subject to judicial
34 review.

35 SECTION 22. IC 8-1-34-24.5 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE UPON PASSAGE]: Sec. 24.5. (a) This section applies

38 to any unit that receives franchise fees paid to the unit under:

39 (1) a certificate issued by the commission under this chapter;
40 or

41 (2) an unexpired local franchise issued by the unit before July
42 1, 2006;

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with respect to a particular calendar year.

(b) For each calendar year, beginning with the calendar year ending December 31, 2012, each unit to which this section applies shall submit to the commission, on a form or in the manner prescribed by the commission, a report that includes the following information for each certificate or local franchise in effect in the unit during the calendar year for which the report is submitted:

- (1) The amount of franchise fees paid to the unit under the certificate or local franchise.
- (2) The account of the local unit into which the franchise fees identified under subdivision (1) were deposited.
- (3) The purposes for which any franchise fees received by the unit during:
 - (A) the calendar year for which the report is submitted; or
 - (B) a previous calendar year;
 were used or spent by the unit during the calendar year for which the report is submitted.
- (4) Any other information or data concerning the receipt and use of franchise fees that the commission considers appropriate.

(c) The commission shall prescribe the form of the report and the process, deadlines, and other requirements for submitting the report required under this section.

(d) Upon receiving the annual reports required under this section, the commission shall compile and organize the data and information contained in the reports. The commission shall include a summary of the data and information contained in the reports in the commission's annual report on the communications industry provided to the regulatory flexibility committee established by IC 8-1-2.6-4. However, this subsection does not empower the commission to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this section.

(e) The commission may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36. However, any emergency rules adopted by the commission under this subsection must take effect by a date

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1 that enables a unit subject to this section to comply with this
 2 section with respect to the calendar year ending December 31,
 3 2012.

4 SECTION 23. IC 25-26-13-17, AS AMENDED BY P.L.98-2006,
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2012]: Sec. 17. (a) The board shall establish classes of
 7 pharmacy permits as follows:

8 **Type Category I.** A retail permit for a pharmacy that provides
 9 pharmaceutical care to the general public by the dispensing of a
 10 drug or device.

11 **Type Category II.** An institutional permit for hospitals, clinics,
 12 health care facilities, sanitariums, nursing homes, or dispensaries
 13 that offer pharmaceutical care by dispensing a drug product to an
 14 inpatient under a drug order or to an outpatient of the institution
 15 under a prescription.

16 **Type Category III.** A permit for a pharmacy that is not:

17 (A) open to the general public; or

18 (B) located in an institution listed under a Type H permit;

19 and provides pharmaceutical care to a patient who is located in an
 20 institution or in the patient's home.

21 **Type IV.** A permit for a pharmacy not open to the general public
 22 that provides pharmaceutical care by dispensing drugs and
 23 devices to patients exclusively through the United States Postal
 24 Services or other parcel delivery service.

25 **Type V.** A permit for a pharmacy that engages exclusively in the
 26 preparation and dispensing of diagnostic or therapeutic
 27 radioactive drugs.

28 **Type VI.** A permit for a pharmacy open to the general public that
 29 provides pharmaceutical care by engaging in an activity under a
 30 Type I or Type III permit. A pharmacy that obtains a Type VI
 31 permit may provide services to:

32 (A) a home health care patient;

33 (B) a long term care facility; or

34 (C) a member of the general public that provides closed
 35 door, central fill, mail order, or other processing
 36 operations that are not open to the general public but
 37 include:

38 (A) traditional pharmacy functions; or

39 (B) nontraditional pharmacy functions, such as infusion,
 40 nuclear pharmacy, or sterile compounding.

41 (b) The board may approve a remote or mobile location for
 42 Category I, II, or III permits. Pharmacy practice in a mobile or

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1 **remote location may include, but is not limited to, telepharmacy,**
 2 **automated dispensing, or delivery of cognitive services.**

3 **(b) (c) Hospitals and hospital systems** holding a **Type Category II**
 4 permit may offer drugs or devices to an employee, student, or medical
 5 staff member or their dependents for their own use.

6 **(c) Nothing in this section prohibits a pharmacy holding a permit**
 7 **other than a Type IV permit from delivering drugs or devices through**
 8 **mail, parcel delivery, or hand delivery.**

9 **(d) Hospitals holding a Type Category II permit may operate**
 10 **remote locations within a reasonable distance of the licensed area, as**
 11 **determined by the board, after:**

- 12 (1) filing an application on a form prepared by the board;
- 13 (2) having each location inspected by the board; and
- 14 (3) obtaining approval from the board.

15 **(e) Any applicable rule governing the practice of pharmacy in**
 16 **Indiana shall apply to all permits under this section.**

17 **(f) After June 30, 2012, a person with:**

- 18 **(1) a Type I permit shall be treated as holding a Category I**
 19 **permit;**
- 20 **(2) a Type II permit shall be treated as holding a Category II**
 21 **permit; and**
- 22 **(3) a Type III, IV, V, or VI permit shall be treated as holding**
 23 **a Category III permit.**

24 **The change in the name of the permit does not change the**
 25 **expiration date of the permit.**

26 **(g) After June 30, 2012, a reference in any rule or other**
 27 **document to:**

- 28 **(1) a Type I permit shall be treated as a reference to a**
 29 **Category I permit;**
- 30 **(2) a Type II permit shall be treated as a reference to a**
 31 **Category II permit; or**
- 32 **(3) a Type III, IV, V, or VI permit shall be treated as a**
 33 **reference to a Category III permit.**

34 **SECTION 24. IC 25-26-13-19 IS AMENDED TO READ AS**
 35 **FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) A pharmacy**
 36 **holding a Type Category I or Type VI Category III permit may be**
 37 **open to the general public without a pharmacist on duty if the following**
 38 **conditions are met:**

- 39 (1) Approval is obtained from the board.
- 40 (2) All legend drugs and other merchandise that can only be
 41 dispensed by a pharmacist are securely locked or secured by an
 42 alternative system approved by the board when the pharmacist is



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1 absent.

2 (3) During the pharmacist's absence, a sign at least twenty (20)

3 inches by thirty (30) inches is prominently displayed in the

4 prescription department stating: "Prescription Department Closed,

5 No Pharmacist on Duty".

6 (4) Only a pharmacist has access to the secured area.

7 (b) The board may revoke or limit a pharmacy's privilege under this

8 section after a hearing under IC 4-21.5-3.

9 SECTION 25. IC 25-26-13-20, AS AMENDED BY P.L.98-2006,

10 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

11 JULY 1, 2012]: Sec. 20. (a) A person desiring to open, establish,

12 operate, or maintain a pharmacy shall apply to the board for a

13 pharmacy permit on a form provided by the board. The applicant shall

14 set forth:

15 (1) the name and occupation of the persons desiring the permit;

16 (2) the location, including street address and city, of the

17 pharmacy;

18 (3) the name of the pharmacist who will qualify the pharmacy by

19 being responsible to the board for the legal operation of the

20 pharmacy under the permit; and

21 (4) such other information as the board may require.

22 (b) If the applicant desires to open, establish, operate, or maintain

23 more than one (1) pharmacy, ~~he~~ **the applicant** must file a separate

24 application for each. Each pharmacy must be qualified by a different

25 pharmacist.

26 (c) The board shall permit a pharmacist to serve as a qualifying

27 pharmacist for more than one (1) pharmacy holding a ~~Type Category~~

28 **Type Category** II pharmacy permit upon the holder of the ~~Type Category~~

29 **Type Category** II permit showing circumstances establishing that:

30 (1) the permit holder has made a reasonable effort, without

31 success, to obtain a qualifying pharmacist who is not serving as

32 a qualifying pharmacist at another ~~Type Category~~ **Type Category** II pharmacy;

33 and

34 (2) the single pharmacist could effectively fulfill all duties and

35 responsibilities of the qualifying pharmacist at both locations.

36 (d) The board shall grant or deny an application for a permit not

37 later than one hundred twenty (120) days after the application and any

38 additional information required by the board are submitted.

39 (e) The board may not issue a pharmacy permit to a person who

40 desires to operate the pharmacy out of a residence.

41 SECTION 26. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,

42 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
 2 written or electronic format, shall be numbered and maintained in
 3 numerical and chronological order, or in a manner approved by the
 4 board and accessible for at least two (2) years in the pharmacy. A
 5 prescription transmitted from a practitioner by means of
 6 communication other than writing must immediately be reduced to
 7 writing or recorded in an electronic format by the pharmacist. The files
 8 shall be open for inspection to any member of the board or ~~its~~ **the**
 9 **board's** duly authorized agent or representative.

10 (b) A prescription may be electronically transmitted from the
 11 practitioner by computer or another electronic device to a pharmacy
 12 that is licensed under this article or any other state or territory. An
 13 electronic data intermediary that is approved by the board:

- 14 (1) may transmit the prescription information between the
- 15 prescribing practitioner and the pharmacy;
- 16 (2) may archive copies of the electronic information related to the
- 17 transmissions as necessary for auditing and security purposes; and
- 18 (3) must maintain patient privacy and confidentiality of all
- 19 archived information as required by applicable state and federal
- 20 laws.

21 (c) Except as provided in subsection (d), a prescription for any drug,
 22 the label of which bears either the legend, "Caution: Federal law
 23 prohibits dispensing without prescription" or "Rx Only", may not be
 24 refilled without written, electronically transmitted, or oral authorization
 25 of a licensed practitioner.

26 (d) A prescription for any drug, the label of which bears either the
 27 legend, "Caution: Federal law prohibits dispensing without
 28 prescription" or "Rx Only", may be refilled by a pharmacist one (1)
 29 time without the written, electronically transmitted, or oral
 30 authorization of a licensed practitioner if all of the following conditions
 31 are met:

- 32 (1) The pharmacist has made every reasonable effort to contact
- 33 the original prescribing practitioner or the practitioner's designee
- 34 for consultation and authorization of the prescription refill.
- 35 (2) The pharmacist believes that, under the circumstances, failure
- 36 to provide a refill would be seriously detrimental to the patient's
- 37 health.
- 38 (3) The original prescription authorized a refill but a refill would
- 39 otherwise be invalid for either of the following reasons:
- 40 (A) All of the authorized refills have been dispensed.
- 41 (B) The prescription has expired under subsection (g).
- 42 (4) The prescription for which the patient requests the refill was:



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- 1 (A) originally filled at the pharmacy where the request for a
- 2 refill is received and the prescription has not been transferred
- 3 for refills to another pharmacy at any time; or
- 4 (B) filled at or transferred to another location of the same
- 5 pharmacy or its affiliate owned by the same parent corporation
- 6 if the pharmacy filling the prescription has full access to
- 7 prescription and patient profile information that is
- 8 simultaneously and continuously updated on the parent
- 9 corporation's information system.
- 10 (5) The drug is prescribed for continuous and uninterrupted use
- 11 and the pharmacist determines that the drug is being taken
- 12 properly in accordance with IC 25-26-16.
- 13 (6) The pharmacist shall document the following information
- 14 regarding the refill:
- 15 (A) The information required for any refill dispensed under
- 16 subsection (e).
- 17 (B) The dates and times that the pharmacist attempted to
- 18 contact the prescribing practitioner or the practitioner's
- 19 designee for consultation and authorization of the prescription
- 20 refill.
- 21 (C) The fact that the pharmacist dispensed the refill without
- 22 the authorization of a licensed practitioner.
- 23 (7) The pharmacist notifies the original prescribing practitioner
- 24 of the refill and the reason for the refill by the practitioner's next
- 25 business day after the refill has been made by the pharmacist.
- 26 (8) Any pharmacist initiated refill under this subsection may not
- 27 be for more than the minimum amount necessary to supply the
- 28 patient through the prescribing practitioner's next business day.
- 29 However, a pharmacist may dispense a drug in an amount greater
- 30 than the minimum amount necessary to supply the patient through
- 31 the prescribing practitioner's next business day if:
- 32 (A) the drug is packaged in a form that requires the pharmacist
- 33 to dispense the drug in a quantity greater than the minimum
- 34 amount necessary to supply the patient through the prescribing
- 35 practitioner's next business day; or
- 36 (B) the pharmacist documents in the patient's record the
- 37 amount of the drug dispensed and a compelling reason for
- 38 dispensing the drug in a quantity greater than the minimum
- 39 amount necessary to supply the patient through the prescribing
- 40 practitioner's next business day.
- 41 (9) Not more than one (1) pharmacist initiated refill is dispensed
- 42 under this subsection for a single prescription.

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- 1 (10) The drug prescribed is not a controlled substance.
 2 A pharmacist may not refill a prescription under this subsection if the
 3 practitioner has designated on the prescription form the words "No
 4 Emergency Refill".
- 5 (e) When refilling a prescription, the refill record shall include:
 6 (1) the date of the refill;
 7 (2) the quantity dispensed if other than the original quantity; and
 8 (3) the dispenser's identity on:
 9 (A) the original prescription form; or
 10 (B) another board approved, uniformly maintained, readily
 11 retrievable record.
- 12 (f) The original prescription form or the other board approved
 13 record described in subsection (e) must indicate by the number of the
 14 original prescription the following information:
 15 (1) The name and dosage form of the drug.
 16 (2) The date of each refill.
 17 (3) The quantity dispensed.
 18 (4) The identity of the pharmacist who dispensed the refill.
 19 (5) The total number of refills for that prescription.
- 20 (g) A prescription is valid for not more than one (1) year after the
 21 original date of issue.
- 22 (h) A pharmacist may not knowingly dispense a prescription after
 23 the demise of the practitioner, unless in the pharmacist's professional
 24 judgment it is in the best interest of the patient's health.
- 25 (i) A pharmacist may not knowingly dispense a prescription after
 26 the demise of the patient.
- 27 (j) A pharmacist or a pharmacy shall not resell, reuse, or redistribute
 28 a medication that is returned to the pharmacy after being dispensed
 29 unless the medication:
 30 (1) was dispensed to an individual:
 31 (A) residing in an institutional facility (as defined in 856
 32 IAC 1-28.1-1(6));
 33 (B) in a hospice program under IC 16-25; or
 34 (C) in a county jail or department of correction facility;
 35 (2) was properly stored and securely maintained according to
 36 sound pharmacy practices;
 37 (3) is returned unopened and:
 38 (A) was dispensed in the manufacturer's original:
 39 (i) bulk, multiple dose container with an unbroken tamper
 40 resistant seal; or
 41 (ii) unit dose package; or
 42 (B) was packaged by the dispensing pharmacy in a:

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- 1 (i) multiple dose blister container; or
- 2 (ii) unit dose package;
- 3 (4) was dispensed by the same pharmacy as the pharmacy
- 4 accepting the return;
- 5 (5) is not expired; and
- 6 (6) is not a controlled substance (as defined in IC 35-48-1-9),
- 7 unless the pharmacy holds a ~~Type~~ **Category II** permit (as
- 8 described in section 17 of this chapter).
- 9 (k) A pharmacist or a pharmacy shall not resell, reuse, or
- 10 redistribute medical devices or medical supplies used for prescription
- 11 drug therapy that have been returned to the pharmacy after being
- 12 dispensed unless the medical devices or medical supplies:
- 13 (1) were dispensed to an individual in a county jail or department
- 14 of correction facility;
- 15 (2) are not expired; and
- 16 (3) are returned unopened and in the original sealed packaging.
- 17 (l) A pharmacist may use the pharmacist's professional judgment as
- 18 to whether to accept medication for return under this section.
- 19 (m) A pharmacist who violates subsection (d) commits a Class A
- 20 infraction.
- 21 SECTION 27. IC 35-48-7-8.1, AS AMENDED BY P.L.42-2011,
- 22 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 23 JULY 1, 2012]: Sec. 8.1. (a) The board shall provide for a controlled
- 24 substance prescription monitoring program that includes the following
- 25 components:
- 26 (1) Each time a controlled substance designated by the board
- 27 under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the
- 28 dispenser shall transmit to the INSPECT program the following
- 29 information:
- 30 (A) The controlled substance recipient's name.
- 31 (B) The controlled substance recipient's or the recipient
- 32 representative's identification number or the identification
- 33 number or phrase designated by the INSPECT program.
- 34 (C) The controlled substance recipient's date of birth.
- 35 (D) The national drug code number of the controlled substance
- 36 dispensed.
- 37 (E) The date the controlled substance is dispensed.
- 38 (F) The quantity of the controlled substance dispensed.
- 39 (G) The number of days of supply dispensed.
- 40 (H) The dispenser's United States Drug Enforcement Agency
- 41 registration number.
- 42 (I) The prescriber's United States Drug Enforcement Agency

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1 registration number.
 2 (J) An indication as to whether the prescription was
 3 transmitted to the pharmacist orally or in writing.
 4 (K) Other data required by the board.
 5 (2) The information required to be transmitted under this section
 6 must be transmitted not more than seven (7) days after the date on
 7 which a controlled substance is dispensed.
 8 (3) A dispenser shall transmit the information required under this
 9 section by:
 10 (A) uploading to the INSPECT web site;
 11 (B) a computer diskette; or
 12 (C) a CD-ROM disk;
 13 that meets specifications prescribed by the board.
 14 (4) The board may require that prescriptions for controlled
 15 substances be written on a one (1) part form that cannot be
 16 duplicated. However, the board may not apply such a requirement
 17 to prescriptions filled at a pharmacy with a ~~Type~~ **Category II**
 18 permit (as described in IC 25-26-13-17) and operated by a
 19 hospital licensed under IC 16-21, or prescriptions ordered for and
 20 dispensed to bona fide enrolled patients in facilities licensed
 21 under IC 16-28. The board may not require multiple copy
 22 prescription forms for any prescriptions written. The board may
 23 not require different prescription forms for any individual drug or
 24 group of drugs. Prescription forms required under this subdivision
 25 must be approved by the Indiana board of pharmacy established
 26 by IC 25-26-13-3.
 27 (5) The costs of the program.
 28 (b) This subsection applies only to a retail pharmacy. A pharmacist,
 29 pharmacy technician, or person authorized by a pharmacist to dispense
 30 a controlled substance may not dispense a controlled substance to a
 31 person who is not personally known to the pharmacist, pharmacy
 32 technician, or person authorized by a pharmacist to dispense a
 33 controlled substance unless the person taking possession of the
 34 controlled substance provides documented proof of the person's
 35 identification to the pharmacist, pharmacy technician, or person
 36 authorized by a pharmacist to dispense a controlled substance.
 37 **SECTION 28. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1280, 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 19, line 8, delete "do not include customer-facing activities" and insert "**are not open to the general public**".

Page 19, between lines 12 and 13, begin a new paragraph and insert:

"(b) The board may approve a remote or mobile location for Category I, II, or III permits. Pharmacy practice in a mobile or remote location may include, but is not limited to, telepharmacy, automated dispensing, or delivery of cognitive services."

Page 19, line 13, strike "(b)" and insert "(c)".

Page 19, line 13, after "Hospitals" insert "**and hospital systems**".

Page 19, line 16, strike "(c) Nothing in this section prohibits a pharmacy holding a".

Page 19, line 16, delete "Category".

Page 19, line 17, delete "I or Category II".

Page 19, line 17, strike "permit".

Page 19, line 17, strike "from delivering".

Page 19, strike line 18.

and when so amended that said bill do pass.

(Reference is to HB 1280 as introduced.)

MAHAN, Chair

Committee Vote: yeas 8, nays 3.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 7, line 27, delete "2011." and insert "**2012.**".

Page 10, line 7, after "the" insert "**following:**

(1) The".

Page 10, between lines 9 and 10, begin a new line block indented and insert:

"(2) An individual who is hired by an agency as a full-time administrative law judge or other hearing officer before April 1, 2012, and is continuously employed by the agency as a

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full-time administrative law judge or other hearing officer after March 31, 2012."

Page 11, line 20, after "(b)" insert **"This subsection does not apply to an individual who is hired by an agency as a full-time administrative law judge before April 1, 2012, and is continuously employed by the agency as a full-time administrative law judge after March 31, 2012."**

Page 12, delete lines 14 through 34.
Re-number all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 7, line 27, delete "2011." and insert **"2012."**
Page 8, line 29, delete "investigation" and insert **"inspection"**.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 4, line 22, delete "(commonly".
Page 4, line 23, delete "referred to as lean six sigma)".
Page 4, line 24, after "speed" delete "," and insert **"and"**.
Page 4, line 24, delete "waste, and incorporate requirements" and insert **"waste"**.

Page 4, delete lines 27 through 42, begin a new paragraph and insert:

"SECTION 7. IC 4-3-22-6, AS ADDED BY P.L.246-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The division of government efficiency and financial planning is established within the OMB. The director shall appoint, subject to the approval of the governor, a director of the



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division, who serves at the pleasure of the director of OMB.

(b) The division shall ~~conduct operational and procedural audits of state government, perform financial planning, design and implement efficiency projects, and carry out such other responsibilities as may be designated by the director.~~ **advise and assist:**

(1) each instrumentality, agency, authority, board, commission, and officer in the executive department of state government; and

(2) each body corporate and politic established as an instrumentality of the state;

to identify and implement continuous process improvement in state government."

Page 5, delete lines 1 through 18.

Re-number all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 11, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 15. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section ~~4, 5, or 6~~ of

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this chapter.

(2) A petition for review of an agency action under section 7 of this chapter.

(3) A complaint under section 8 of this chapter.

(d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

(1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or

(2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(g) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (b), (c), or (e).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

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(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.".
Renumber all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 24, delete lines 34 through 42.

Page 25, delete lines 1 through 28.

Renumber all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

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