

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1280**

Citations Affected: IC 1-1-2.5; IC 4-3-22; IC 4-21.5-3-1; IC 4-22; IC 8-1-34-24.5; IC 25-26-13; IC 35-48-7-8.1.

Synopsis: Regulatory matters. Conference committee report for EHB 1280. Provides that intrastate commerce in Indiana is not subject to the authority of the United States Congress. 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. Provides that an agency may solicit comments from members of the public who are likely to be affected by a rule because they are the subject of the potential rulemaking or are likely to benefit from the potential rulemaking. Requires that state documents provided to the public must comply with certain document drafting standards. 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. **(This conference committee report does the following: (1) Deletes the provisions concerning a cost benefit analysis of rules that are in SEA 311-2012. (2) Deletes the provisions concerning administrative hearing officers and administrative law judges. (3) Adds that intrastate commerce in Indiana is not subject to the authority of the United States Congress. Fixes a conflict with SEA 407-2012)**

Effective: Upon passage; July 1, 2012.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1280 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 1-1-2.5 IS ADDED TO THE INDIANA CODE AS
3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2012]:
5 **Chapter 2.5. Regulation of Intrastate Commerce**
6 **Sec. 1. This chapter applies to all:**
7 (1) goods grown, manufactured, or made; and
8 (2) services performed;
9 **in Indiana after July 1, 2012.**
10 **Sec. 2. The general assembly declares the following:**
11 (1) The Tenth Amendment to the Constitution of the United
12 States provides that the only powers that the federal
13 government may exercise are those that have been delegated
14 to the federal government in the Constitution of the United
15 States.
16 (2) The Ninth Amendment to the Constitution of the United
17 States guarantees to the people rights not enumerated in the
18 Constitution and reserves to the people of Indiana those
19 rights.
20 (3) Under Article I, Section 8, Clause 3 of the Constitution of
21 the United States, the federal government is empowered to
22 regulate commerce among the several states.

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

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

9 **(6) All:**

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

11 **(B) services performed in Indiana;**

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

16 SECTION 2. IC 4-3-22-1.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2012]: **Sec. 1.5. As used in this chapter, "continuous**
 19 **process improvement" means a management methodology that**
 20 **combines tools to improve process speed and reduce waste with**
 21 **data driven project analysis to provide products and services with**
 22 **improved quality at lower cost.**

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

29 (b) The division shall **do the following:**

30 **(1) Conduct operational and procedural audits of state**
 31 **government.**

32 **(2) Perform financial planning and design and implement**
 33 **efficiency projects. and**

34 **(3) Advise and assist:**

35 **(A) each instrumentality, agency, authority, board,**
 36 **commission, and officer in the executive department of**
 37 **state government; and**

38 **(B) each body corporate and politic established as an**
 39 **instrumentality of the state;**

40 **to identify and implement continuous process improvement in**
 41 **state government.**

42 **(4) Carry out such other responsibilities as may be designated by**
 43 **the director.**

44 SECTION 4. IC 4-21.5-3-1, AS AMENDED BY P.L.6-2012,
 45 SECTION 17, IS AMENDED TO READ AS FOLLOWS
 46 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section applies to:

47 (1) the giving of any notice;

48 (2) the service of any motion, ruling, order, or other filed item; or

49 (3) the filing of any document with the ultimate authority;

50 in an administrative proceeding under this article.

51 (b) Except as provided in subsection (c) or as otherwise provided by

1 law, a person shall serve papers by:

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

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

- 9 (1) The initial notice of a determination under section ~~4, 5, or~~ 6 of
 10 this chapter.
 11 (2) A petition for review of an agency action under section 7 of
 12 this chapter.
 13 (3) A complaint under section 8 of this chapter.

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

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

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

- 31 (1) the county in which the person resides, has a principal place
 32 of business, or has property that is the subject of the proceeding;
 33 or
 34 (2) Marion County, if the place described in subdivision (1) is not
 35 ascertainable or the place described in subdivision (1) is outside
 36 Indiana and the person does not have a resident agent or other
 37 representative of record in Indiana.

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

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

- 42 (1) The date on which the document is delivered to the ultimate
 43 authority:
 44 (A) under subsection (b) or (c); and
 45 (B) in compliance with subsection (e).
 46 (2) The date of the postmark on the envelope containing the
 47 document, if the document is mailed to the ultimate authority by
 48 United States mail.
 49 (3) The date on which the document is deposited with a private
 50 carrier, as shown by a receipt issued by the carrier, if the
 51 document is sent to the ultimate authority by private carrier.

1 SECTION 5. IC 4-22-2-19.7 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2012]: **Sec. 19.7. An agency, to the extent**
 4 **feasible and permitted by law, shall afford the public a meaningful**
 5 **opportunity to comment on proposed rules through the agency's**
 6 **Internet web site. An agency shall consider providing a comment**
 7 **period that exceeds the minimum required by law.**

8 SECTION 6. IC 4-22-2-22.5 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2012]: **Sec. 22.5. (a) This section applies to a**
 11 **rule that an agency intends to adopt under sections 24 through 36**
 12 **of this chapter.**

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

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

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

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

36 SECTION 7. IC 4-22-2-23, AS AMENDED BY P.L.215-2005,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2012]: **Sec. 23. (a) This section does not apply to rules**
 39 **adopted under IC 4-22-2-37.1.**

40 **(b) At least twenty-eight (28) days before an agency notifies the**
 41 **public of the agency's intention to adopt a rule under section 24 of this**
 42 **chapter, the agency shall notify the public of its intention to adopt a rule**
 43 **by publishing a notice of intent to adopt a rule in the Indiana Register.**
 44 **The publication notice must include an overview of the intent and scope**
 45 **of the proposed rule and the statutory authority for the rule.**

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

48 **(d) In addition to the procedures required by this article, an agency**
 49 **may solicit comments from the public on the need for a rule, the**
 50 **drafting of a rule, or any other subject related to a rulemaking action,**
 51 **including members of the public who are likely to be affected**

1 **because they are the subject of the potential rulemaking or are**
 2 **likely to benefit from the potential rulemaking.** The procedures that
 3 the agency may use include the holding of conferences and the inviting
 4 of written suggestions, facts, arguments, or views.

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

9 SECTION 8. IC 4-22-10 IS ADDED TO THE INDIANA CODE
 10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2012]:

12 **Chapter 10. Document Drafting Standards**

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

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

- 17 (1) is necessary for obtaining any benefit or service
 18 administered or provided by an agency, or for filing taxes
 19 with an agency;
 20 (2) provides information about any state benefit or service; or
 21 (3) explains to the public how to comply with a requirement
 22 an agency administers or enforces.

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

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

30 **Sec. 4. An agency shall use plain writing in every covered**
 31 **document that the agency issues or substantially revises.**

32 **Sec. 5. An agency must be fully in compliance with this chapter**
 33 **after September 30, 2013.**

34 SECTION 9. IC 8-1-34-24.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: **Sec. 24.5. (a) This section applies**
 37 **to any unit that receives franchise fees paid to the unit under:**

- 38 (1) a certificate issued by the commission under this chapter;
 39 or
 40 (2) an unexpired local franchise issued by the unit before July
 41 1, 2006;

42 **with respect to a particular calendar year.**

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

- 49 (1) The amount of franchise fees paid to the unit under the
 50 certificate or local franchise.
 51 (2) The account of the unit into which the franchise fees

- 1 identified under subdivision (1) were deposited.
- 2 (3) The purposes for which any franchise fees received by the
- 3 unit during:
- 4 (A) the calendar year for which the report is submitted; or
- 5 (B) a previous calendar year;
- 6 were used or spent by the unit during the calendar year for
- 7 which the report is submitted.
- 8 (4) Any other information or data concerning the receipt and
- 9 use of franchise fees that the commission considers
- 10 appropriate.
- 11 (c) The commission shall prescribe the form of the report and
- 12 the process, deadlines, and other requirements for submitting the
- 13 report required under this section.
- 14 (d) Upon receiving the annual reports required under this
- 15 section, the commission shall compile and organize the data and
- 16 information contained in the reports. The commission shall include
- 17 a summary of the data and information contained in the reports in
- 18 the commission's annual report on the communications industry
- 19 provided to the regulatory flexibility committee established by
- 20 IC 8-1-2.6-4. However, this subsection does not empower the
- 21 commission to disclose confidential and proprietary business plans
- 22 and other confidential information without adequate protection of
- 23 the information. The commission shall exercise all necessary
- 24 caution to avoid disclosure of confidential information supplied
- 25 under this section.
- 26 (e) The commission may adopt rules under IC 4-22-2, including
- 27 emergency rules under IC 4-22-2-37.1, to implement this section.
- 28 An emergency rule adopted by the commission under
- 29 IC 4-22-2-37.1 expires on the date a rule that supersedes the
- 30 emergency rule is adopted by the commission under IC 4-22-2-24
- 31 through IC 4-22-2-36 and not ninety (90) days after the rule is
- 32 accepted for filing as provided in IC 4-22-2-37.1(g). However, any
- 33 emergency rules adopted by the commission under this subsection
- 34 must take effect by a date that enables a unit subject to this section
- 35 to comply with this section with respect to the calendar year ending
- 36 December 31, 2012.
- 37 SECTION 10. IC 25-26-13-17, AS AMENDED BY SEA 407-2012,
- 38 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 39 JULY 1, 2012]: Sec. 17. (a) The board shall establish classes of
- 40 pharmacy permits as follows:
- 41 ~~Type Category I.~~ A retail permit for a pharmacy that provides
- 42 pharmaceutical care to the general public by the dispensing of a
- 43 drug or device.
- 44 ~~Type Category II.~~ An institutional permit for hospitals, clinics,
- 45 health care facilities, sanitariums, nursing homes, or dispensaries
- 46 that offer pharmaceutical care by dispensing a drug product to an
- 47 inpatient under a drug order or to an outpatient of the institution
- 48 under a prescription.
- 49 ~~Type Category III.~~ A permit for a pharmacy that is not:
- 50 (A) open to the general public; or
- 51 (B) located in an institution listed under a Type H permit;

- 1 and provides pharmaceutical care to a patient who is located in an
 2 institution or in the patient's home.
- 3 Type IV: A permit for a pharmacy not open to the general public
 4 that provides pharmaceutical care by dispensing drugs and devices
 5 to patients exclusively through the United States Postal Services
 6 or other parcel delivery service.
- 7 Type V: A permit for a pharmacy that engages exclusively in the
 8 preparation and dispensing of diagnostic or therapeutic radioactive
 9 drugs.
- 10 Type VI: A permit for a pharmacy open to the general public that
 11 provides pharmaceutical care by engaging in an activity under a
 12 Type I or Type III permit. A pharmacy that obtains a Type VI
 13 permit may provide services to:
- 14 (A) a home health care patient;
 15 (B) a long term care facility; or
 16 (C) a member of the general public that provides closed
 17 door, central fill, mail order, or other processing
 18 operations that are not open to the general public but
 19 include:
- 20 (A) traditional pharmacy functions; or
 21 (B) nontraditional pharmacy functions, such as infusion,
 22 nuclear pharmacy, or sterile compounding.
- 23 (b) **The board may approve a remote or mobile location for**
 24 **Category I, II, or III permits. Pharmacy practice in a mobile or**
 25 **remote location may include, but is not limited to, telepharmacy,**
 26 **automated dispensing, or delivery of cognitive services.**
- 27 (c) A hospital or hospital system holding a Type Category II
 28 permit may offer drugs or devices:
- 29 (1) to:
- 30 (A) an employee, student, or volunteer of the hospital or
 31 hospital system;
 32 (B) a retiree who is participating in a retirement, pension, or
 33 benefit program administered by the hospital or hospital
 34 system;
 35 (C) an independent contractor who has an exclusive
 36 relationship with the hospital or hospital system;
 37 (D) a member of the hospital's or hospital system's governing
 38 board; or
 39 (E) a member of the hospital's or hospital system's medical
 40 staff; and
- 41 (2) to dependents of the individuals listed in subdivision (1);
 42 for their own use.
- 43 (e) **Nothing in this section prohibits a pharmacy holding a permit**
 44 **other than a Type IV permit from delivering drugs or devices through**
 45 **mail, parcel delivery, or hand delivery.**
- 46 (d) Hospitals holding a Type Category II permit may operate
 47 remote locations within a reasonable distance of the licensed area, as
 48 determined by the board, after:
- 49 (1) filing an application on a form prepared by the board;
 50 (2) having each location inspected by the board; and
 51 (3) obtaining approval from the board.

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

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

4 (1) a Type I permit shall be treated as holding a Category I
5 permit;

6 (2) a Type II permit shall be treated as holding a Category II
7 permit; and

8 (3) a Type III, IV, V, or VI permit shall be treated as holding
9 a Category III permit.

10 The change in the name of the permit does not change the
11 expiration date of the permit.

12 (g) After June 30, 2012, a reference in any rule or other
13 document to:

14 (1) a Type I permit shall be treated as a reference to a
15 Category I permit;

16 (2) a Type II permit shall be treated as a reference to a
17 Category II permit; or

18 (3) a Type III, IV, V, or VI permit shall be treated as a
19 reference to a Category III permit.

20 SECTION 11. IC 25-26-13-19 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) A pharmacy
22 holding a ~~Type~~ **Category I** or ~~Type VI~~ **Category III** permit may be
23 open to the general public without a pharmacist on duty if the following
24 conditions are met:

25 (1) Approval is obtained from the board.

26 (2) All legend drugs and other merchandise that can only be
27 dispensed by a pharmacist are securely locked or secured by an
28 alternative system approved by the board when the pharmacist is
29 absent.

30 (3) During the pharmacist's absence, a sign at least twenty (20)
31 inches by thirty (30) inches is prominently displayed in the
32 prescription department stating: "Prescription Department Closed,
33 No Pharmacist on Duty".

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

35 (b) The board may revoke or limit a pharmacy's privilege under this
36 section after a hearing under IC 4-21.5-3.

37 SECTION 12. IC 25-26-13-20, AS AMENDED BY P.L.98-2006,
38 SECTION 10, IS AMENDED TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2012]: Sec. 20. (a) A person desiring to open,
40 establish, operate, or maintain a pharmacy shall apply to the board for
41 a pharmacy permit on a form provided by the board. The applicant shall
42 set forth:

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

44 (2) the location, including street address and city, of the
45 pharmacy;

46 (3) the name of the pharmacist who will qualify the pharmacy by
47 being responsible to the board for the legal operation of the
48 pharmacy under the permit; and

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

50 (b) If the applicant desires to open, establish, operate, or maintain
51 more than one (1) pharmacy, ~~he~~ **the applicant** must file a separate

1 application for each. Each pharmacy must be qualified by a different
2 pharmacist.

3 (c) The board shall permit a pharmacist to serve as a qualifying
4 pharmacist for more than one (1) pharmacy holding a ~~Type~~ **Category**
5 **II** pharmacy permit upon the holder of the ~~Type~~ **Category** **II** permit
6 showing circumstances establishing that:

- 7 (1) the permit holder has made a reasonable effort, without
8 success, to obtain a qualifying pharmacist who is not serving as a
9 qualifying pharmacist at another ~~Type~~ **Category** **II** pharmacy; and
- 10 (2) the single pharmacist could effectively fulfill all duties and
11 responsibilities of the qualifying pharmacist at both locations.

12 (d) The board shall grant or deny an application for a permit not later
13 than one hundred twenty (120) days after the application and any
14 additional information required by the board are submitted.

15 (e) The board may not issue a pharmacy permit to a person who
16 desires to operate the pharmacy out of a residence.

17 SECTION 13. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,
18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
20 written or electronic format, shall be numbered and maintained in
21 numerical and chronological order, or in a manner approved by the
22 board and accessible for at least two (2) years in the pharmacy. A
23 prescription transmitted from a practitioner by means of communication
24 other than writing must immediately be reduced to writing or recorded
25 in an electronic format by the pharmacist. The files shall be open for
26 inspection to any member of the board or ~~its~~ **the board's** duly
27 authorized agent or representative.

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

- 32 (1) may transmit the prescription information between the
33 prescribing practitioner and the pharmacy;
- 34 (2) may archive copies of the electronic information related to the
35 transmissions as necessary for auditing and security purposes; and
- 36 (3) must maintain patient privacy and confidentiality of all
37 archived information as required by applicable state and federal
38 laws.

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

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

- 50 (1) The pharmacist has made every reasonable effort to contact the
51 original prescribing practitioner or the practitioner's designee for

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

- 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 record
 13 described in subsection (e) must indicate by the number of the original
 14 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 the
 26 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:
 43 (i) multiple dose blister container; or
 44 (ii) unit dose package;
 45 (4) was dispensed by the same pharmacy as the pharmacy
 46 accepting the return;
 47 (5) is not expired; and
 48 (6) is not a controlled substance (as defined in IC 35-48-1-9),
 49 unless the pharmacy holds a ~~Type~~ **Category II** permit (as
 50 described in section 17 of this chapter).
- 51 (k) A pharmacist or a pharmacy shall not resell, reuse, or redistribute

1 medical devices or medical supplies used for prescription drug therapy
 2 that have been returned to the pharmacy after being dispensed unless
 3 the medical devices or medical supplies:

- 4 (1) were dispensed to an individual in a county jail or department
 5 of correction facility;
- 6 (2) are not expired; and
- 7 (3) are returned unopened and in the original sealed packaging.

8 (l) A pharmacist may use the pharmacist's professional judgment as
 9 to whether to accept medication for return under this section.

10 (m) A pharmacist who violates subsection (d) commits a Class A
 11 infraction.

12 SECTION 14. IC 35-48-7-8.1, AS AMENDED BY P.L.42-2011,
 13 SECTION 76, IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2012]: Sec. 8.1. (a) The board shall provide for
 15 a controlled substance prescription monitoring program that includes
 16 the following components:

17 (1) Each time a controlled substance designated by the board
 18 under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the
 19 dispenser shall transmit to the INSPECT program the following
 20 information:

- 21 (A) The controlled substance recipient's name.
- 22 (B) The controlled substance recipient's or the recipient
 23 representative's identification number or the identification
 24 number or phrase designated by the INSPECT program.
- 25 (C) The controlled substance recipient's date of birth.
- 26 (D) The national drug code number of the controlled substance
 27 dispensed.
- 28 (E) The date the controlled substance is dispensed.
- 29 (F) The quantity of the controlled substance dispensed.
- 30 (G) The number of days of supply dispensed.
- 31 (H) The dispenser's United States Drug Enforcement Agency
 32 registration number.
- 33 (I) The prescriber's United States Drug Enforcement Agency
 34 registration number.
- 35 (J) An indication as to whether the prescription was
 36 transmitted to the pharmacist orally or in writing.
- 37 (K) Other data required by the board.

38 (2) The information required to be transmitted under this section
 39 must be transmitted not more than seven (7) days after the date on
 40 which a controlled substance is dispensed.

41 (3) A dispenser shall transmit the information required under this
 42 section by:

- 43 (A) uploading to the INSPECT web site;
- 44 (B) a computer diskette; or
- 45 (C) a CD-ROM disk;

46 that meets specifications prescribed by the board.

47 (4) The board may require that prescriptions for controlled
 48 substances be written on a one (1) part form that cannot be
 49 duplicated. However, the board may not apply such a requirement
 50 to prescriptions filled at a pharmacy with a ~~Type~~ **Category II**
 51 permit (as described in IC 25-26-13-17) and operated by a

1 hospital licensed under IC 16-21, or prescriptions ordered for and
2 dispensed to bona fide enrolled patients in facilities licensed under
3 IC 16-28. The board may not require multiple copy prescription
4 forms for any prescriptions written. The board may not require
5 different prescription forms for any individual drug or group of
6 drugs. Prescription forms required under this subdivision must be
7 approved by the Indiana board of pharmacy established by
8 IC 25-26-13-3.

9 (5) The costs of the program.

10 (b) This subsection applies only to a retail pharmacy. A pharmacist,
11 pharmacy technician, or person authorized by a pharmacist to dispense
12 a controlled substance may not dispense a controlled substance to a
13 person who is not personally known to the pharmacist, pharmacy
14 technician, or person authorized by a pharmacist to dispense a
15 controlled substance unless the person taking possession of the
16 controlled substance provides documented proof of the person's
17 identification to the pharmacist, pharmacy technician, or person
18 authorized by a pharmacist to dispense a controlled substance.

19 **SECTION 15. An emergency is declared for this act.**

(Reference is to EHB 1280 as reprinted February 28, 2012.)

Conference Committee Report
on
Engrossed House Bill 1280

Signed by:

Representative Koch
Chairperson

Senator Hershman

Representative Torr

Senator Steele

House Conferees

Senate Conferees