

# SENATE BILL No. 13

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-7-2-1.8; IC 12-13-14-4.5; IC 12-15-35-28.

**Synopsis:** Cash assistance point of service and drug reports. Prohibits the distribution of cash assistance benefits at a point of sale terminal that is located on the premises of an adult entertainment establishment. Requires the drug utilization review board to prepare and submit a preferred drug list report to the select joint commission on Medicaid oversight one time per year. (Current law requires the report twice a year.) (The introduced version of this bill was prepared by the select joint commission on Medicaid oversight.)

**Effective:** July 1, 2012.

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January 4, 2012, read first time and referred to Committee on Health and Provider Services.

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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.

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## SENATE BILL No. 13



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

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

1 SECTION 1. IC 12-7-2-1.8 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2012]: **Sec. 1.8. "Adult entertainment establishment", for**  
4 **purposes of IC 12-13-14-4.5, means a place that provides adult**  
5 **oriented entertainment in which performers disrobe or perform in**  
6 **an unclothed state for entertainment.**

7 SECTION 2. IC 12-13-14-4.5, AS AMENDED BY P.L.91-2006,  
8 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2012]: Sec. 4.5. (a) Except as provided in this section, the  
10 division may distribute cash assistance benefits to a person who is  
11 eligible for assistance under the Title IV-A assistance program though  
12 an automated teller machine or a point of sale terminal that is  
13 connected to the EBT system.

14 (b) The division may approve or deny participation in the EBT  
15 system by a retailer that is not a food retailer.

16 (c) The division may not approve participation by a retailer or  
17 financial institution in the EBT system for distribution of cash



1 assistance under the Title IV-A assistance program through an  
 2 automated teller machine or a point of sale terminal located on the  
 3 premises of any of the following:

4 (1) A horse racing establishment:

5 (A) where the pari-mutuel system of wagering is authorized;  
 6 and

7 (B) for which a permit is required under IC 4-31-5.

8 (2) A satellite facility:

9 (A) where wagering on horse racing is conducted; and

10 (B) for which a license is required under IC 4-31-5.5.

11 (3) An allowable event required to be licensed by the Indiana  
 12 gaming commission under IC 4-32.2.

13 (4) A riverboat or other facility required to be licensed by the  
 14 Indiana gaming commission under IC 4-33.

15 (5) A store or other establishment:

16 (A) where the primary business is the sale of firearms (as  
 17 defined in IC 35-47-1-5); and

18 (B) that sells handguns for which a license to sell handguns is  
 19 required under IC 35-47-2.

20 (6) A store or other establishment where the primary business is  
 21 the sale of alcoholic beverages for which a permit is required  
 22 under IC 7.1-3.

23 **(7) An adult entertainment establishment.**

24 (d) An establishment described in subsection (c)(1) through ~~(e)(6)~~  
 25 **(c)(7)** shall post a sign next to each automated teller machine or point  
 26 of sale terminal located in the establishment informing a potential user  
 27 that the automated teller machine or point of sale terminal may not be  
 28 used to receive cash assistance benefits under the Title IV-A assistance  
 29 program.

30 (e) An:

31 (1) establishment that does not post the sign required under  
 32 subsection (d); or

33 (2) individual who attempts to use an automated teller machine or  
 34 point of sale terminal **with a sign posted as required under**  
 35 **subsection (d)** to access cash assistance benefits under the Title  
 36 IV-A assistance program; ~~in violation of subsection (d);~~

37 commits a Class C misdemeanor.

38 (f) The division shall adopt rules under IC 4-22-2 to carry out this  
 39 section.

40 SECTION 3. IC 12-15-35-28, AS AMENDED BY P.L.101-2005,  
 41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2012]: Sec. 28. (a) The board has the following duties:

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- 1 (1) The adoption of rules to carry out this chapter, in accordance  
 2 with the provisions of IC 4-22-2 and subject to any office  
 3 approval that is required by the federal Omnibus Budget  
 4 Reconciliation Act of 1990 under Public Law 101-508 and its  
 5 implementing regulations.
- 6 (2) The implementation of a Medicaid retrospective and  
 7 prospective DUR program as outlined in this chapter, including  
 8 the approval of software programs to be used by the pharmacist  
 9 for prospective DUR and recommendations concerning the  
 10 provisions of the contractual agreement between the state and any  
 11 other entity that will be processing and reviewing Medicaid drug  
 12 claims and profiles for the DUR program under this chapter.
- 13 (3) The development and application of the predetermined criteria  
 14 and standards for appropriate prescribing to be used in  
 15 retrospective and prospective DUR to ensure that such criteria  
 16 and standards for appropriate prescribing are based on the  
 17 compendia and developed with professional input with provisions  
 18 for timely revisions and assessments as necessary.
- 19 (4) The development, selection, application, and assessment of  
 20 interventions for physicians, pharmacists, and patients that are  
 21 educational and not punitive in nature.
- 22 (5) The publication of an annual report that must be subject to  
 23 public comment before issuance to the federal Department of  
 24 Health and Human Services and to the Indiana legislative council  
 25 by December 1 of each year. The report issued to the legislative  
 26 council must be in an electronic format under IC 5-14-6.
- 27 (6) The development of a working agreement for the board to  
 28 clarify the areas of responsibility with related boards or agencies,  
 29 including the following:
- 30 (A) The Indiana board of pharmacy.  
 31 (B) The medical licensing board of Indiana.  
 32 (C) The SURS staff.
- 33 (7) The establishment of a grievance and appeals process for  
 34 physicians or pharmacists under this chapter.
- 35 (8) The publication and dissemination of educational information  
 36 to physicians and pharmacists regarding the board and the DUR  
 37 program, including information on the following:
- 38 (A) Identifying and reducing the frequency of patterns of  
 39 fraud, abuse, gross overuse, or inappropriate or medically  
 40 unnecessary care among physicians, pharmacists, and  
 41 recipients.  
 42 (B) Potential or actual severe or adverse reactions to drugs.

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- 1 (C) Therapeutic appropriateness.  
 2 (D) Overutilization or underutilization.  
 3 (E) Appropriate use of generic drugs.  
 4 (F) Therapeutic duplication.  
 5 (G) Drug-disease contraindications.  
 6 (H) Drug-drug interactions.  
 7 (I) Incorrect drug dosage and duration of drug treatment.  
 8 (J) Drug allergy interactions.  
 9 (K) Clinical abuse and misuse.
- 10 (9) The adoption and implementation of procedures designed to  
 11 ensure the confidentiality of any information collected, stored,  
 12 retrieved, assessed, or analyzed by the board, staff to the board, or  
 13 contractors to the DUR program that identifies individual  
 14 physicians, pharmacists, or recipients.
- 15 (10) The implementation of additional drug utilization review  
 16 with respect to drugs dispensed to residents of nursing facilities  
 17 shall not be required if the nursing facility is in compliance with  
 18 the drug regimen procedures under 410 IAC 16.2-3.1 and 42 CFR  
 19 483.60.
- 20 (11) The research, development, and approval of a preferred drug  
 21 list for:  
 22 (A) Medicaid's fee for service program;  
 23 (B) Medicaid's primary care case management program;  
 24 (C) Medicaid's risk based managed care program, if the office  
 25 provides a prescription drug benefit and subject to IC 12-15-5;  
 26 and  
 27 (D) the children's health insurance program under IC 12-17.6;  
 28 in consultation with the therapeutics committee.
- 29 (12) The approval of the review and maintenance of the preferred  
 30 drug list at least two (2) times per year.
- 31 (13) The preparation and submission of a report concerning the  
 32 preferred drug list at least ~~two (2) times~~ **one (1) time** per year to  
 33 the select joint commission on Medicaid oversight established by  
 34 IC 2-5-26-3.
- 35 (14) The collection of data reflecting prescribing patterns related  
 36 to treatment of children diagnosed with attention deficit disorder  
 37 or attention deficit hyperactivity disorder.
- 38 (15) Advising the Indiana comprehensive health insurance  
 39 association established by IC 27-8-10-2.1 concerning  
 40 implementation of chronic disease management and  
 41 pharmaceutical management programs under IC 27-8-10-3.5.
- 42 (b) The board shall use the clinical expertise of the therapeutics

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1 committee in developing a preferred drug list. The board shall also  
2 consider expert testimony in the development of a preferred drug list.

3 (c) In researching and developing a preferred drug list under  
4 subsection (a)(11), the board shall do the following:

- 5 (1) Use literature abstracting technology.  
6 (2) Use commonly accepted guidance principles of disease  
7 management.  
8 (3) Develop therapeutic classifications for the preferred drug list.  
9 (4) Give primary consideration to the clinical efficacy or  
10 appropriateness of a particular drug in treating a specific medical  
11 condition.  
12 (5) Include in any cost effectiveness considerations the cost  
13 implications of other components of the state's Medicaid program  
14 and other state funded programs.

15 (d) Prior authorization is required for coverage under a program  
16 described in subsection (a)(11) of a drug that is not included on the  
17 preferred drug list.

18 (e) The board shall determine whether to include a single source  
19 covered outpatient drug that is newly approved by the federal Food and  
20 Drug Administration on the preferred drug list not later than sixty (60)  
21 days after the date on which the manufacturer notifies the board in  
22 writing of the drug's approval. However, if the board determines that  
23 there is inadequate information about the drug available to the board  
24 to make a determination, the board may have an additional sixty (60)  
25 days to make a determination from the date that the board receives  
26 adequate information to perform the board's review. Prior authorization  
27 may not be automatically required for a single source drug that is newly  
28 approved by the federal Food and Drug Administration, and that is:

- 29 (1) in a therapeutic classification:  
30 (A) that has not been reviewed by the board; and  
31 (B) for which prior authorization is not required; or  
32 (2) the sole drug in a new therapeutic classification that has not  
33 been reviewed by the board.

34 (f) The board may not exclude a drug from the preferred drug list  
35 based solely on price.

36 (g) The following requirements apply to a preferred drug list  
37 developed under subsection (a)(11):

- 38 (1) Except as provided by IC 12-15-35.5-3(b) and  
39 IC 12-15-35.5-3(c), the office or the board may require prior  
40 authorization for a drug that is included on the preferred drug list  
41 under the following circumstances:  
42 (A) To override a prospective drug utilization review alert.

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- 1 (B) To permit reimbursement for a medically necessary brand  
 2 name drug that is subject to generic substitution under  
 3 IC 16-42-22-10.  
 4 (C) To prevent fraud, abuse, waste, overutilization, or  
 5 inappropriate utilization.  
 6 (D) To permit implementation of a disease management  
 7 program.  
 8 (E) To implement other initiatives permitted by state or federal  
 9 law.  
 10 (2) All drugs described in IC 12-15-35.5-3(b) must be included on  
 11 the preferred drug list.  
 12 (3) The office may add a drug that has been approved by the  
 13 federal Food and Drug Administration to the preferred drug list  
 14 without prior approval from the board.  
 15 (4) The board may add a drug that has been approved by the  
 16 federal Food and Drug Administration to the preferred drug list.  
 17 (h) At least ~~two (2)~~ **times one (1) time** each year, the board shall  
 18 provide a report to the select joint commission on Medicaid oversight  
 19 established by IC 2-5-26-3. The report must contain the following  
 20 information:  
 21 (1) The cost of administering the preferred drug list.  
 22 (2) Any increase in Medicaid physician, laboratory, or hospital  
 23 costs or in other state funded programs as a result of the preferred  
 24 drug list.  
 25 (3) The impact of the preferred drug list on the ability of a  
 26 Medicaid recipient to obtain prescription drugs.  
 27 (4) The number of times prior authorization was requested, and  
 28 the number of times prior authorization was:  
 29 (A) approved; and  
 30 (B) disapproved.  
 31 (i) The board shall provide the first report required under subsection  
 32 (h) not later than six (6) months after the board submits an initial  
 33 preferred drug list to the office.

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