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# SENATE BILL No. 334

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 11-10-3-4; IC 11-12-5-8; IC 16-28-11-4; IC 25-26.

**Synopsis:** Dispensing of prescription drugs. Allows a pharmacist, upon request of the patient, to dispense a 90 day supply of a prescription without notifying the prescriber if the prescription, including refills, allows a pharmacist to dispense at least a 90 day supply.

**Effective:** July 1, 2012.

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January 9, 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. 334



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

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

1 SECTION 1. IC 11-10-3-4, AS AMENDED BY P.L.156-2011,  
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2012]: Sec. 4. (a) The department shall establish directives  
 4 governing:  
 5 (1) medical care to be provided to committed individuals,  
 6 including treatment for mental retardation, alcoholism, and drug  
 7 addiction;  
 8 (2) administration of medical facilities and health centers  
 9 operated by the department;  
 10 (3) medical equipment, supplies, and devices to be available for  
 11 medical care;  
 12 (4) provision of special diets to committed individuals;  
 13 (5) acquisition, storage, handling, distribution, and dispensing of  
 14 all medication and drugs;  
 15 (6) the return of unused medications that meet the requirements  
 16 of ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)** through  
 17 ~~IC 25-26-13-25(j)(6)~~ **IC 25-26-13-25(k)(6)** to the pharmacy that



1 dispensed the medication;

2 (7) training programs and first aid emergency care for committed  
3 individuals and department personnel;

4 (8) medical records of committed individuals; and

5 (9) professional staffing requirements for medical care.

6 (b) The state department of health shall make an annual inspection  
7 of every health facility, health center, or hospital:

8 (1) operated by the department; and

9 (2) not accredited by a nationally recognized accrediting  
10 organization;

11 and report to the commissioner whether that facility, center, or hospital  
12 meets the requirements established by the state department of health.  
13 Any noncompliance with those requirements must be stated in writing  
14 to the commissioner, with a copy to the governor.

15 (c) For purposes of IC 4-22-2, the term "directive" as used in this  
16 section relates solely to internal policy and procedure not having the  
17 force of law.

18 (d) For purposes of subsection (a)(6), the department:

19 (1) shall return medication that belonged to a Medicaid recipient;  
20 and

21 (2) may return other unused medication;

22 to the pharmacy that dispensed the medication if the unused medication  
23 meets the requirements of ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)**  
24 through ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**.

25 (e) The department may establish directives concerning the return  
26 of unused medical devices or medical supplies that are used for  
27 prescription drug therapy and that meet the requirements of  
28 ~~IC 25-26-13-25(k)~~; **IC 25-26-13-25(l)**.

29 (f) A pharmacist or pharmacy that enters into an agreement with the  
30 department to accept the return of:

31 (1) unused medications that meet the requirements of  
32 ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)** through  
33 ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**; or

34 (2) unused medical devices or medical supplies that are used for  
35 prescription drug therapy and that meet the requirements of  
36 ~~IC 25-26-13-25(k)~~; **IC 25-26-13-25(l)**;

37 may negotiate with the department a fee for processing the returns.

38 SECTION 2. IC 11-12-5-8, AS ADDED BY P.L.174-2011,  
39 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2012]: Sec. 8. (a) This section applies to the return of:

41 (1) unused medications that meet the requirements of  
42 ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)** through

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1 ~~IC 25-26-13-25(j)(6); IC 25-26-13-25(k)(6);~~ and  
2 (2) unused medical devices or medical supplies that are used for  
3 prescription drug therapy and that meet the requirements of  
4 ~~IC 25-26-13-25(k); IC 25-26-13-25(l).~~

5 (b) The county sheriff:

- 6 (1) shall return medication that belonged to a Medicaid recipient;
- 7 and
- 8 (2) may return other unused medication;

9 to the pharmacy that dispensed the medication if the unused medication  
10 meets the requirements of ~~IC 25-26-13-25(j)(1) IC 25-26-13-25(k)(1)~~  
11 ~~through IC 25-26-13-25(j)(6); IC 25-26-13-25(k)(6).~~

12 (c) The county sheriff may return unused medical devices or  
13 medical supplies that are used for prescription drug therapy and that  
14 meet the requirements of ~~IC 25-26-13-25(k) IC 25-26-13-25(l)~~ to a  
15 pharmacy or pharmacist.

16 (d) A pharmacist or pharmacy that enters into an agreement with the  
17 county sheriff to accept the return of:

- 18 (1) unused medications that meet the requirements of  
19 ~~IC 25-26-13-25(j)(1) IC 25-26-13-25(k)(1)~~ through  
20 ~~IC 25-26-13-25(j)(6); IC 25-26-13-25(k)(6);~~ or
- 21 (2) unused medical devices or medical supplies that are used for  
22 prescription drug therapy and that meet the requirements of  
23 ~~IC 25-26-13-25(k); IC 25-26-13-25(l);~~

24 may negotiate with the county sheriff a fee for processing the returns.

25 SECTION 3. IC 16-28-11-4, AS AMENDED BY P.L.174-2011,  
26 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2012]: Sec. 4. (a) A health facility, county jail under  
28 IC 11-12-5-8, or department of correction facility under IC 11-10-3-4  
29 that possesses unused medication that meets the requirements of  
30 ~~IC 25-26-13-25(j)(1) IC 25-26-13-25(k)(1)~~ through  
31 ~~IC 25-26-13-25(j)(6); IC 25-26-13-25(k)(6);~~

- 32 (1) shall return medication that belonged to a Medicaid recipient;
- 33 and
- 34 (2) may return other unused medication;

35 to the pharmacy that dispensed the medication.

36 (b) An entity participating in a program under IC 25-26-23 may  
37 return unused medication to the pharmacy that dispensed the  
38 medication if the board of pharmacy adopts a rule allowing this  
39 procedure under IC 25-26-23-2.

40 SECTION 4. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,  
41 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in

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

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

13 (1) may transmit the prescription information between the  
 14 prescribing practitioner and the pharmacy;

15 (2) may archive copies of the electronic information related to the  
 16 transmissions as necessary for auditing and security purposes; and

17 (3) must maintain patient privacy and confidentiality of all  
 18 archived information as required by applicable state and federal  
 19 laws.

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

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

31 (1) The pharmacist has made every reasonable effort to contact  
 32 the original prescribing practitioner or the practitioner's designee  
 33 for consultation and authorization of the prescription refill.

34 (2) The pharmacist believes that, under the circumstances, failure  
 35 to provide a refill would be seriously detrimental to the patient's  
 36 health.

37 (3) The original prescription authorized a refill but a refill would  
 38 otherwise be invalid for either of the following reasons:

39 (A) All of the authorized refills have been dispensed.

40 (B) The prescription has expired under subsection ~~(g)~~: **(h)**.

41 (4) The prescription for which the patient requests the refill was:

42 (A) originally filled at the pharmacy where the request for a

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

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1 A pharmacist may not refill a prescription under this subsection if the  
 2 practitioner has designated on the prescription form the words "No  
 3 Emergency Refill".

4 (e) When refilling a prescription, the refill record shall include:

- 5 (1) the date of the refill;  
 6 (2) the quantity dispensed if other than the original quantity; and  
 7 (3) the dispenser's identity on:  
 8 (A) the original prescription form; or  
 9 (B) another board approved, uniformly maintained, readily  
 10 retrievable record.

11 (f) The original prescription form or the other board approved  
 12 record described in subsection (e) must indicate by the number of the  
 13 original prescription the following information:

- 14 (1) The name and dosage form of the drug.  
 15 (2) The date of each refill.  
 16 (3) The quantity dispensed.  
 17 (4) The identity of the pharmacist who dispensed the refill.  
 18 (5) The total number of refills for that prescription.

19 **(g) A pharmacist may, upon request of the:**

- 20 **(1) patient;**  
 21 **(2) personal or legal representative of the patient; or**  
 22 **(3) guardian of the patient;**

23 **dispense not more than a ninety (90) day supply of medication**  
 24 **without notifying the prescriber if the prescription, including any**  
 25 **refills, allows a pharmacist to dispense at least a ninety (90) day**  
 26 **supply of the medication. However, a pharmacist must comply with**  
 27 **state and federal laws and regulations concerning the dispensing**  
 28 **limitations concerning a prescription drug.**

29 ~~(g)~~ **(h)** A prescription is valid for not more than one (1) year after  
 30 the original date of issue.

31 ~~(h)~~ **(i)** A pharmacist may not knowingly dispense a prescription after  
 32 the demise of the practitioner, unless in the pharmacist's professional  
 33 judgment it is in the best interest of the patient's health.

34 ~~(i)~~ **(j)** A pharmacist may not knowingly dispense a prescription after  
 35 the demise of the patient.

36 ~~(j)~~ **(k)** A pharmacist or a pharmacy shall not resell, reuse, or  
 37 redistribute a medication that is returned to the pharmacy after being  
 38 dispensed unless the medication:

- 39 (1) was dispensed to an individual:  
 40 (A) residing in an institutional facility (as defined in 856  
 41 IAC 1-28.1-1(6));  
 42 (B) in a hospice program under IC 16-25; or

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- 1 (C) in a county jail or department of correction facility;  
 2 (2) was properly stored and securely maintained according to  
 3 sound pharmacy practices;  
 4 (3) is returned unopened and:  
 5 (A) was dispensed in the manufacturer's original:  
 6 (i) bulk, multiple dose container with an unbroken tamper  
 7 resistant seal; or  
 8 (ii) unit dose package; or  
 9 (B) was packaged by the dispensing pharmacy in a:  
 10 (i) multiple dose blister container; or  
 11 (ii) unit dose package;  
 12 (4) was dispensed by the same pharmacy as the pharmacy  
 13 accepting the return;  
 14 (5) is not expired; and  
 15 (6) is not a controlled substance (as defined in IC 35-48-1-9),  
 16 unless the pharmacy holds a Type II permit (as described in  
 17 section 17 of this chapter).
- 18 ~~(k)~~ **(l)** A pharmacist or a pharmacy shall not resell, reuse, or  
 19 redistribute medical devices or medical supplies used for prescription  
 20 drug therapy that have been returned to the pharmacy after being  
 21 dispensed unless the medical devices or medical supplies:  
 22 (1) were dispensed to an individual in a county jail or department  
 23 of correction facility;  
 24 (2) are not expired; and  
 25 (3) are returned unopened and in the original sealed packaging.
- 26 ~~(j)~~ **(m)** A pharmacist may use the pharmacist's professional  
 27 judgment as to whether to accept medication for return under this  
 28 section.
- 29 ~~(m)~~ **(n)** A pharmacist who violates subsection (d) commits a Class  
 30 A infraction.
- 31 SECTION 5. IC 25-26-20-4, AS AMENDED BY P.L.204-2005,  
 32 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2012]: Sec. 4. (a) Except as provided in subsections (b) and  
 34 (c), unadulterated drugs that meet the requirements set forth in  
 35 ~~IC 25-26-13-25(j)~~ **IC 25-26-13-25(k)** may be donated without a  
 36 prescription or drug order to the regional drug repository program by  
 37 the following:  
 38 (1) A pharmacist or pharmacy.  
 39 (2) A wholesale drug distributor.  
 40 (3) A hospital licensed under IC 16-21.  
 41 (4) A health care facility (as defined in IC 16-18-2-161).  
 42 (5) A hospice.

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- 1           (6) A practitioner.
- 2           (b) An unadulterated drug that:
- 3               (1) was returned under IC 25-26-13-25; and
- 4               (2) was prescribed for a Medicaid recipient;
- 5           may not be donated under this section unless the Medicaid program has
- 6           been credited for the product cost of the drug as provided in policies
- 7           under the Medicaid program.
- 8           (c) A controlled drug may not be donated under this section.

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