



Reprinted
February 1, 2012

SENATE BILL No. 334

DIGEST OF SB 334 (Updated January 31, 2012 2:08 pm - DI 104)

Citations Affected: IC 11-10; IC 11-12; IC 16-28; IC 25-26; noncode.

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. Does not allow the additional dispensing: (1) until the patient has completed an initial 30 day supply of the drug therapy; (2) for a controlled substance; or (3) if the prescriber indicates on the prescription that the quantity of the prescription may not be changed. Requires the pharmacist to inform the customer concerning whether the additional drug supply of the prescription is covered under the patient's insurance. Requires the health finance commission to study during the 2012 legislative interim: (1) the issue of mail order and Internet based pharmacies and whether any limitation that should be placed on the dispensing of a prescription drug by a mail order or Internet based pharmacy; and (2) specified health insurance plans and the number of covered people with copayments, coinsurance amounts, and out-of-pocket costs incurred for prescription drugs that exceed specified amounts for the coverage.

Effective: July 1, 2012.

Grooms, Buck, Rogers

January 9, 2012, read first time and referred to Committee on Health and Provider Services.

January 26, 2012, amended, reported favorably — Do Pass.

January 31, 2012, read second time, amended, ordered engrossed.

SB 334—LS 6527/DI 104+



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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.

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

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- 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) This subsection does not apply:**

- 20 **(1) unless a patient requests a prescription drug supply of**
 21 **more than thirty (30) days;**
 22 **(2) to the dispensing of a controlled substance (as defined in**
 23 **IC 35-48-1-9); or**
 24 **(3) if a prescriber indicates on the prescription that the**
 25 **quantity of the prescription may not be changed.**

26 **A pharmacist may dispense, upon request of the patient, personal**
 27 **or legal representative of the patient, or guardian of the patient,**
 28 **not more than a ninety (90) day supply of medication without**
 29 **notifying the prescriber if the patient has completed an initial**
 30 **thirty (30) day supply of the drug therapy and the prescription,**
 31 **including any refills, allows a pharmacist to dispense at least a**
 32 **ninety (90) day supply of the medication. However, a pharmacist**
 33 **must comply with state and federal laws and regulations**
 34 **concerning the dispensing limitations concerning a prescription**
 35 **drug. The pharmacist shall inform the customer concerning**
 36 **whether the additional supply of the prescription will be covered**
 37 **under the patient's insurance, if applicable.**

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

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



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1 ~~(j)~~ **(j)** A pharmacist may not knowingly dispense a prescription after
2 the demise of the patient.

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

6 (1) was dispensed to an individual:

7 (A) residing in an institutional facility (as defined in 856
8 IAC 1-28.1-1(6));

9 (B) in a hospice program under IC 16-25; or

10 (C) in a county jail or department of correction facility;

11 (2) was properly stored and securely maintained according to
12 sound pharmacy practices;

13 (3) is returned unopened and:

14 (A) was dispensed in the manufacturer's original:

15 (i) bulk, multiple dose container with an unbroken tamper
16 resistant seal; or

17 (ii) unit dose package; or

18 (B) was packaged by the dispensing pharmacy in a:

19 (i) multiple dose blister container; or

20 (ii) unit dose package;

21 (4) was dispensed by the same pharmacy as the pharmacy
22 accepting the return;

23 (5) is not expired; and

24 (6) is not a controlled substance (as defined in IC 35-48-1-9),
25 unless the pharmacy holds a Type II permit (as described in
26 section 17 of this chapter).

27 ~~(l)~~ **(l)** A pharmacist or a pharmacy shall not resell, reuse, or
28 redistribute medical devices or medical supplies used for prescription
29 drug therapy that have been returned to the pharmacy after being
30 dispensed unless the medical devices or medical supplies:

31 (1) were dispensed to an individual in a county jail or department
32 of correction facility;

33 (2) are not expired; and

34 (3) are returned unopened and in the original sealed packaging.

35 ~~(m)~~ **(m)** A pharmacist may use the pharmacist's professional
36 judgment as to whether to accept medication for return under this
37 section.

38 ~~(n)~~ **(n)** A pharmacist who violates subsection (d) commits a Class
39 A infraction.

40 SECTION 5. IC 25-26-20-4, AS AMENDED BY P.L.204-2005,
41 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2012]: Sec. 4. (a) Except as provided in subsections (b) and

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1 (c), unadulterated drugs that meet the requirements set forth in
 2 ~~IC 25-26-13-25(j)~~ **IC 25-26-13-25(k)** may be donated without a
 3 prescription or drug order to the regional drug repository program by
 4 the following:

- 5 (1) A pharmacist or pharmacy.
 6 (2) A wholesale drug distributor.
 7 (3) A hospital licensed under IC 16-21.
 8 (4) A health care facility (as defined in IC 16-18-2-161).
 9 (5) A hospice.
 10 (6) A practitioner.

11 (b) An unadulterated drug that:

- 12 (1) was returned under IC 25-26-13-25; and
 13 (2) was prescribed for a Medicaid recipient;

14 may not be donated under this section unless the Medicaid program has
 15 been credited for the product cost of the drug as provided in policies
 16 under the Medicaid program.

17 (c) A controlled drug may not be donated under this section.

18 **SECTION 6. [EFFECTIVE JULY 1, 2012] (a) As used in this**
 19 **SECTION, "commission" refers to the health finance commission**
 20 **established by IC 2-5-23-3.**

21 **(b) During the 2012 legislative interim, the commission shall**
 22 **study the issue of mail order and Internet based pharmacies (as**
 23 **defined in IC 25-26-18-1) and any limitations that should be placed**
 24 **in statute concerning the amount of a prescription drug that may**
 25 **be dispensed by a mail order or Internet pharmacy.**

26 **(c) The commission shall make findings and recommendations**
 27 **concerning the following:**

28 **(1) The number of individuals covered under a state employee**
 29 **health plan with a copayment, a coinsurance amount, or other**
 30 **out-of-pocket costs for prescription drugs that exceed:**

31 **(A) two hundred dollars (\$200) for a one (1) month supply**
 32 **of a single prescription drug; or**

33 **(B) five hundred dollars (\$500) for a one (1) month supply**
 34 **of more than one (1) prescription drug.**

35 **(2) The number of individuals covered under a policy of**
 36 **accident and sickness insurance with a copayment, a**
 37 **coinsurance amount, or other out-of-pocket costs for**
 38 **prescription drugs that exceed:**

39 **(A) two hundred dollars (\$200) for a one (1) month supply**
 40 **of a single prescription drug; or**

41 **(B) five hundred (\$500) for a one (1) month supply of more**
 42 **than one (1) prescription drug.**



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- 1 **(3) The number of individuals covered under a health**
- 2 **maintenance organization contract with a copayment, a**
- 3 **coinsurance amount, or other out-of-pocket costs for**
- 4 **prescription drugs that exceed:**
- 5 **(A) two hundred dollars (\$200) for a one (1) month supply**
- 6 **of a single prescription drug; or**
- 7 **(B) five hundred (\$500) for a one (1) month supply of more**
- 8 **than one (1) prescription drug.**
- 9 **(4) The number of individuals who may become eligible for**
- 10 **Medicaid as a result of copayments, coinsurance amounts, or**
- 11 **other out-of-pocket costs for prescription drugs as described**
- 12 **in this section.**
- 13 **(d) The state personnel department and the Indiana department**
- 14 **of insurance shall assist the commission in obtaining the**
- 15 **information necessary under subsection (c).**
- 16 **(e) This SECTION expires December 31, 2012.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 334, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 19, after "(g)" insert "**This subsection does not apply:**

(1) unless a patient requests a prescription drug supply of more than thirty (30) days;

(2) to the dispensing of a controlled substance (as defined in IC 35-48-1-9); or

(3) if a prescriber indicates on the prescription that the quantity of the prescription may not be changed."

Page 6, line 19, delete "may," and insert "**may dispense,**".

Page 6, line 19, after "the" delete ".".

Page 6, line 20, delete "(1) patient;" and insert "**patient,**".

Page 6, line 21, delete "(2)".

Page 6, line 21, delete "patient;" and insert "**patient,**".

Page 6, line 22, delete "(3)".

Page 6, line 22, delete "patient;" and insert "**patient,**".

Page 6, run in lines 19 through 23.

Page 6, line 23, delete "dispense".

Page 6, line 24, after "if" insert "**the patient has completed an initial thirty (30) day supply of the drug therapy and**".

Page 6, line 28, after "drug." insert "**The pharmacist shall inform the customer concerning whether the additional supply of the prescription will be covered under the patient's insurance, if applicable.**".

Page 8, after line 8, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE JULY 1, 2012] (a) **As used in this SECTION, "commission" refers to the health finance commission established by IC 2-5-23-3.**

(b) **During the 2012 legislative interim, the commission shall study the issue of mail order and Internet based pharmacies (as defined in IC 25-26-18-1) and any limitations that should be placed in statute concerning the amount of a prescription drug that may be dispensed by a mail order or Internet pharmacy.**

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(c) This SECTION expires December 31, 2012."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 334 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 334 be amended to read as follows:

Page 8, line 26, after "(c)" insert "**The commission shall make findings and recommendations concerning the following:**

(1) The number of individuals covered under a state employee health plan with a copayment, a coinsurance amount, or other out-of-pocket costs for prescription drugs that exceed:

(A) two hundred dollars (\$200) for a one (1) month supply of a single prescription drug; or

(B) five hundred dollars (\$500) for a one (1) month supply of more than one (1) prescription drug.

(2) The number of individuals covered under a policy of accident and sickness insurance with a copayment, a coinsurance amount, or other out-of-pocket costs for prescription drugs that exceed:

(A) two hundred dollars (\$200) for a one (1) month supply of a single prescription drug; or

(B) five hundred (\$500) for a one (1) month supply of more than one (1) prescription drug.

(3) The number of individuals covered under a health maintenance organization contract with a copayment, a coinsurance amount, or other out-of-pocket costs for prescription drugs that exceed:

(A) two hundred dollars (\$200) for a one (1) month supply of a single prescription drug; or

(B) five hundred (\$500) for a one (1) month supply of more than one (1) prescription drug.

(4) The number of individuals who may become eligible for Medicaid as a result of copayments, coinsurance amounts, or other out-of-pocket costs for prescription drugs as described

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in this section.

(d) The state personnel department and the Indiana department of insurance shall assist the commission in obtaining the information necessary under subsection (c).

(e)".

(Reference is to SB 334 as printed January 27, 2012.)

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