

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 407**

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

Synopsis: Pharmacy matters. Conference committee report for ESB 407. Allows a hospital holding a Type II pharmacy permit to offer drugs and devices to certain individuals who work or volunteer at the hospital and their dependents. Allows a pharmacist to supervise not more than six licensed pharmacy technicians or pharmacy technicians in training at any time. (Currently, a pharmacist may supervise not more than four licensed pharmacy technicians or pharmacy technicians in training.) Prohibits the Indiana board of pharmacy from issuing a pharmacy technician certificate to an individual who has been convicted of a felony involving controlled substances. Allows a pharmacist, upon request of the patient, to dispense a 90 day supply of a prescription under specified circumstances. Requires the pharmacist to inform the customer concerning whether the additional drug supply of the prescription is covered under the patient's insurance. Specifies pharmacy audit requirements, including notice procedures and limitations on an initial audit and onsite audits. Requires a period of at least 30 days during which a pharmacy may appeal preliminary audit report findings. Provides for the correction of clerical errors. Requires the health finance commission to study during the 2012 legislative interim: (1) the issue of certain pharmacies and whether any limitation should be placed on the dispensing of a prescription drug by the pharmacies; 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. **(This conference committee report: (1) adds SB 334 concerning the dispensing of a 90 day supply of a prescription in certain circumstances, adding language that requires the pharmacist to notify the prescriber of the change in the quantity filled; (2) removes language concerning the posting of information in a pharmacy for the blind or visually impaired; (3) changes language concerning providing a pharmacy audit report to a pharmacy in a means that allows for an electronic signature to only upon the pharmacy's request; and (4) changes the study by the health finance commission to include retail and community pharmacies in the study of dispensing limitations for pharmacies.)**

Effective: July 1, 2012.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 407 respectfully reports that said two committees have conferred and agreed as follows to wit:

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

- 1 (9) professional staffing requirements for medical care.
- 2 (b) The state department of health shall make an annual inspection
3 of every health facility, health center, or hospital:
- 4 (1) operated by the department; and
5 (2) not accredited by a nationally recognized accrediting
6 organization;
- 7 and report to the commissioner whether that facility, center, or hospital
8 meets the requirements established by the state department of health.
9 Any noncompliance with those requirements must be stated in writing
10 to the commissioner, with a copy to the governor.
- 11 (c) For purposes of IC 4-22-2, the term "directive" as used in this
12 section relates solely to internal policy and procedure not having the
13 force of law.
- 14 (d) For purposes of subsection (a)(6), the department:
- 15 (1) shall return medication that belonged to a Medicaid recipient;
16 and
17 (2) may return other unused medication;
18 to the pharmacy that dispensed the medication if the unused medication
19 meets the requirements of ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)**
20 through ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**.
- 21 (e) The department may establish directives concerning the return
22 of unused medical devices or medical supplies that are used for
23 prescription drug therapy and that meet the requirements of
24 ~~IC 25-26-13-25(k)~~; **IC 25-26-13-25(l)**.
- 25 (f) A pharmacist or pharmacy that enters into an agreement with the
26 department to accept the return of:
- 27 (1) unused medications that meet the requirements of
28 ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)** through
29 ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**; or
30 (2) unused medical devices or medical supplies that are used for
31 prescription drug therapy and that meet the requirements of
32 ~~IC 25-26-13-25(k)~~; **IC 25-26-13-25(l)**;
33 may negotiate with the department a fee for processing the returns.
- 34 SECTION 2. IC 11-12-5-8, AS ADDED BY P.L.174-2011,
35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2012]: Sec. 8. (a) This section applies to the return of:
- 37 (1) unused medications that meet the requirements of
38 ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)** through
39 ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**; and
40 (2) unused medical devices or medical supplies that are used for
41 prescription drug therapy and that meet the requirements of
42 ~~IC 25-26-13-25(k)~~; **IC 25-26-13-25(l)**.
- 43 (b) The county sheriff:
- 44 (1) shall return medication that belonged to a Medicaid recipient;
45 and
46 (2) may return other unused medication;
47 to the pharmacy that dispensed the medication if the unused medication
48 meets the requirements of ~~IC 25-26-13-25(j)(1)~~ **IC 25-26-13-25(k)(1)**
49 through ~~IC 25-26-13-25(j)(6)~~; **IC 25-26-13-25(k)(6)**.
- 50 (c) The county sheriff may return unused medical devices or

1 medical supplies that are used for prescription drug therapy and that
2 meet the requirements of ~~IC 25-26-13-25(k)~~ **IC 25-26-13-25(l)** to a
3 pharmacy or pharmacist.

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

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

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

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

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

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

22 (2) may return other unused medication;
23 to the pharmacy that dispensed the medication.

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

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

32 Type I. A retail permit for a pharmacy that provides
33 pharmaceutical care to the general public by the dispensing of a
34 drug or device.

35 Type II. An institutional permit for hospitals, clinics, health care
36 facilities, sanitariums, nursing homes, or dispensaries that offer
37 pharmaceutical care by dispensing a drug product to an inpatient
38 under a drug order or to an outpatient of the institution under a
39 prescription.

40 Type III. A permit for a pharmacy that is not:

41 (A) open to the general public; or

42 (B) located in an institution listed under a Type II permit;
43 and provides pharmaceutical care to a patient who is located in an
44 institution or in the patient's home.

45 Type IV. A permit for a pharmacy not open to the general public
46 that provides pharmaceutical care by dispensing drugs and
47 devices to patients exclusively through the United States Postal
48 Services or other parcel delivery service.

49 Type V. A permit for a pharmacy that engages exclusively in the
50 preparation and dispensing of diagnostic or therapeutic

1 radioactive drugs.

2 Type VI. A permit for a pharmacy open to the general public that
3 provides pharmaceutical care by engaging in an activity under a
4 Type I or Type III permit. A pharmacy that obtains a Type VI
5 permit may provide services to:

- 6 (A) a home health care patient;
- 7 (B) a long term care facility; or
- 8 (C) a member of the general public.

9 (b) ~~Hospitals~~ **A hospital** holding a Type II permit may offer drugs
10 or devices:

11 (1) to:

- 12 (A) an employee, student, **or volunteer of the hospital;**
- 13 (B) **a retiree who is participating in a retirement, pension,**
- 14 **or benefit program administered by the hospital;**
- 15 (C) **an independent contractor who has an exclusive**
- 16 **relationship with the hospital;**
- 17 (D) **a member of the hospital's governing board;** or
- 18 (E) **a member of the hospital's medical staff; member or their**
- 19 **and**

20 (2) **to dependents of the individuals listed in subdivision (1);**
21 for their own use.

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

25 (d) Hospitals holding a Type II permit may operate remote locations
26 within a reasonable distance of the licensed area, as determined by the
27 board, after:

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

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

33 SECTION 5. IC 25-26-13-18, AS AMENDED BY P.L.1-2009,
34 SECTION 142, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) To be eligible for issuance
36 of a pharmacy permit, an applicant must show to the satisfaction of the
37 board that:

- 38 (1) Persons at the location will engage in the bona fide practice of
39 pharmacy. The application must show the number of hours each
40 week, if any, that the pharmacy will be open to the general public.
- 41 (2) The pharmacy will maintain a sufficient stock of emergency
42 and frequently prescribed drugs and devices as to adequately
43 serve and protect the public health.
- 44 (3) Except as provided in section 19 of this chapter, a registered
45 pharmacist will be in personal attendance and on duty in the
46 licensed premises at all times when the practice of pharmacy is
47 being conducted and that the pharmacist will be responsible for
48 the lawful conduct of the pharmacy.
- 49 (4) ~~One (1) pharmacist will have not more than four (4)~~ Certified
50 pharmacy technicians or pharmacy technicians in training

1 certified under IC 25-26-19 **must practice** under ~~the~~ **a licensed**
 2 pharmacist's immediate and personal supervision at ~~any time~~. **all**
 3 **times. A pharmacist may not supervise more than six (6)**
 4 **pharmacy technicians or pharmacy technicians in training at**
 5 **any time.** As used in this ~~clause~~, **subdivision**, "immediate and
 6 personal supervision" means within reasonable visual and vocal
 7 distance of the pharmacist.

8 (5) The pharmacy will be located separate and apart from any area
 9 containing merchandise not offered for sale under the pharmacy
 10 permit. The pharmacy will:

11 (A) be stationary;

12 (B) be sufficiently secure, either through electronic or physical
 13 means, or a combination of both, to protect the products
 14 contained in the pharmacy and to detect and deter entry during
 15 those times when the pharmacy is closed;

16 (C) be well lighted and ventilated with clean and sanitary
 17 surroundings;

18 (D) be equipped with a sink with hot and cold running water
 19 or some means for heating water, a proper sewage outlet, and
 20 refrigeration;

21 (E) have a prescription filling area of sufficient size to permit
 22 the practice of pharmacy as practiced at that particular
 23 pharmacy; and

24 (F) have such additional fixtures, facilities, and equipment as
 25 the board requires to enable it to operate properly as a
 26 pharmacy in compliance with federal and state laws and
 27 regulations governing pharmacies.

28 (b) Prior to opening a pharmacy after receipt of a pharmacy permit,
 29 the permit holder shall submit the premises to a qualifying inspection
 30 by a representative of the board and shall present a physical inventory
 31 of the drug and all other items in the inventory on the premises.

32 (c) At all times, the wholesale value of the drug inventory on the
 33 licensed items must be at least ten percent (10%) of the wholesale
 34 value of the items in the licensed area.

35 SECTION 6. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
 38 written or electronic format, shall be numbered and maintained in
 39 numerical and chronological order, or in a manner approved by the
 40 board and accessible for at least two (2) years in the pharmacy. A
 41 prescription transmitted from a practitioner by means of
 42 communication other than writing must immediately be reduced to
 43 writing or recorded in an electronic format by the pharmacist. The files
 44 shall be open for inspection to any member of the board or its duly
 45 authorized agent or representative.

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

50 (1) may transmit the prescription information between the

1 prescribing practitioner and the pharmacy;
2 (2) may archive copies of the electronic information related to the
3 transmissions as necessary for auditing and security purposes; and
4 (3) must maintain patient privacy and confidentiality of all
5 archived information as required by applicable state and federal
6 laws.

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

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

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

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

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

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

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

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

29 (A) originally filled at the pharmacy where the request for a
30 refill is received and the prescription has not been transferred
31 for refills to another pharmacy at any time; or

32 (B) filled at or transferred to another location of the same
33 pharmacy or its affiliate owned by the same parent corporation
34 if the pharmacy filling the prescription has full access to
35 prescription and patient profile information that is
36 simultaneously and continuously updated on the parent
37 corporation's information system.

38 (5) The drug is prescribed for continuous and uninterrupted use
39 and the pharmacist determines that the drug is being taken
40 properly in accordance with IC 25-26-16.

41 (6) The pharmacist shall document the following information
42 regarding the refill:

43 (A) The information required for any refill dispensed under
44 subsection (e).

45 (B) The dates and times that the pharmacist attempted to
46 contact the prescribing practitioner or the practitioner's
47 designee for consultation and authorization of the prescription
48 refill.

49 (C) The fact that the pharmacist dispensed the refill without
50 the authorization of a licensed practitioner.

1 (7) The pharmacist notifies the original prescribing practitioner
2 of the refill and the reason for the refill by the practitioner's next
3 business day after the refill has been made by the pharmacist.

4 (8) Any pharmacist initiated refill under this subsection may not
5 be for more than the minimum amount necessary to supply the
6 patient through the prescribing practitioner's next business day.
7 However, a pharmacist may dispense a drug in an amount greater
8 than the minimum amount necessary to supply the patient through
9 the prescribing practitioner's next business day if:

10 (A) the drug is packaged in a form that requires the pharmacist
11 to dispense the drug in a quantity greater than the minimum
12 amount necessary to supply the patient through the prescribing
13 practitioner's next business day; or

14 (B) the pharmacist documents in the patient's record the
15 amount of the drug dispensed and a compelling reason for
16 dispensing the drug in a quantity greater than the minimum
17 amount necessary to supply the patient through the prescribing
18 practitioner's next business day.

19 (9) Not more than one (1) pharmacist initiated refill is dispensed
20 under this subsection for a single prescription.

21 (10) The drug prescribed is not a controlled substance.

22 A pharmacist may not refill a prescription under this subsection if the
23 practitioner has designated on the prescription form the words "No
24 Emergency Refill".

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

26 (1) the date of the refill;

27 (2) the quantity dispensed if other than the original quantity; and

28 (3) the dispenser's identity on:

29 (A) the original prescription form; or

30 (B) another board approved, uniformly maintained, readily
31 retrievable record.

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

35 (1) The name and dosage form of the drug.

36 (2) The date of each refill.

37 (3) The quantity dispensed.

38 (4) The identity of the pharmacist who dispensed the refill.

39 (5) The total number of refills for that prescription.

40 **(g) This subsection does not apply:**

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

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

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

47 **A pharmacist may dispense, upon request of the patient, personal**
48 **or legal representative of the patient, or guardian of the patient,**
49 **not more than a ninety (90) day supply of medication if the patient**
50 **has completed an initial thirty (30) day supply of the drug therapy**
51 **and the prescription, including any refills, allows a pharmacist to**

1 **dispense at least a ninety (90) day supply of the medication.**
 2 **However, a pharmacist shall notify the prescriber of the change in**
 3 **the quantity filled and must comply with state and federal laws and**
 4 **regulations concerning the dispensing limitations concerning a**
 5 **prescription drug. The pharmacist shall inform the customer**
 6 **concerning whether the additional supply of the prescription will**
 7 **be covered under the patient's insurance, if applicable.**

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

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

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

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

18 (1) was dispensed to an individual:

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

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

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

23 (2) was properly stored and securely maintained according to
 24 sound pharmacy practices;

25 (3) is returned unopened and:

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

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

29 (ii) unit dose package; or

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

31 (i) multiple dose blister container; or

32 (ii) unit dose package;

33 (4) was dispensed by the same pharmacy as the pharmacy
 34 accepting the return;

35 (5) is not expired; and

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

39 ~~(k)~~ **(l)** A pharmacist or a pharmacy shall not resell, reuse, or
 40 redistribute medical devices or medical supplies used for prescription
 41 drug therapy that have been returned to the pharmacy after being
 42 dispensed unless the medical devices or medical supplies:

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

45 (2) are not expired; and

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

47 ~~(l)~~ **(m)** A pharmacist may use the pharmacist's professional
 48 judgment as to whether to accept medication for return under this
 49 section.

50 ~~(m)~~ **(n)** A pharmacist who violates subsection (d) commits a Class

1 A infraction.

2 SECTION 7. IC 25-26-19-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The board shall
4 issue a pharmacy technician certificate to an individual who:

5 (1) applies to the board in the form and manner prescribed by the
6 board;

7 (2) is at least eighteen (18) years of age;

8 (3) has not been convicted of:

9 (A) a crime that has a direct bearing upon the individual's
10 ability to practice competently; or

11 (B) a felony involving controlled substances;

12 (4) is not in violation of this chapter or rules adopted by the board
13 under section 4 of this chapter;

14 (5) has paid the fee set by the board under section 4 of this
15 chapter; and

16 (6) has completed a program of education and training approved
17 by the board or has passed a certification examination offered by
18 a nationally recognized certification body approved by the board.

19 (b) For good cause, the board may waive the age requirement under
20 subsection (a)(2).

21 SECTION 8. IC 25-26-20-4, AS AMENDED BY P.L.204-2005,
22 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2012]: Sec. 4. (a) Except as provided in subsections (b) and
24 (c), unadulterated drugs that meet the requirements set forth in
25 ~~IC 25-26-13-25(j)~~ IC 25-26-13-25(k) may be donated without a
26 prescription or drug order to the regional drug repository program by
27 the following:

28 (1) A pharmacist or pharmacy.

29 (2) A wholesale drug distributor.

30 (3) A hospital licensed under IC 16-21.

31 (4) A health care facility (as defined in IC 16-18-2-161).

32 (5) A hospice.

33 (6) A practitioner.

34 (b) An unadulterated drug that:

35 (1) was returned under IC 25-26-13-25; and

36 (2) was prescribed for a Medicaid recipient;

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

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

41 SECTION 9. IC 25-26-22-4.2 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS
43 [EFFECTIVE JULY 1, 2012]: Sec. 4.2. (a) A third party payer may
44 cause an onsite audit to occur at a particular pharmacy location
45 not more than one (1) time per calendar year.

46 (b) A company that conducts an audit for a third party payer
47 may conduct an onsite audit at a particular pharmacy location not
48 more than one (1) time per calendar year for each third party
49 payer. However, if the audit results in a finding of a particular
50 problem at the pharmacy, the auditor may return within the
51 calendar year to determine ongoing compliance.

1 SECTION 10. IC 25-26-22-5, AS ADDED BY P.L.7-2009,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 5. An auditor conducting an audit shall comply
4 with all of the following:

5 (1) The contract under which the audit is performed must provide
6 a description of audit procedures that will be followed.

7 (2) For an onsite audit conducted at a pharmacy's location, the
8 auditor that conducts the audit shall provide written notice to the
9 pharmacy at least two (2) weeks before the initial onsite audit is
10 performed for each audit cycle.

11 (3) The auditor shall not interfere with the delivery of pharmacist
12 services to a patient and shall use every effort to minimize
13 inconvenience and disruption to pharmacy operations during the
14 audit. This subdivision does not prohibit audits during normal
15 business hours of the pharmacy.

16 (4) If the audit requires use of clinical or professional judgment,
17 the audit must be conducted by or in consultation with a licensed
18 pharmacist.

19 (5) The auditor shall allow the use of written or otherwise
20 transmitted hospital, physician, or other health practitioner
21 records to validate a pharmacy record with respect to a
22 prescription for a legend drug.

23 (6) The auditor shall perform the audit according to the same
24 standards and parameters that the auditor uses to audit all other
25 similarly situated pharmacies on behalf of the third party payer.

26 (7) The period covered by the audit must not exceed twenty-four
27 (24) months after the date on which the claim that is the subject
28 of the audit was submitted to or adjudicated by the third party
29 payer, and the pharmacy must be permitted to resubmit
30 electronically any claims disputed by the audit. This subdivision
31 does not limit the period for audits under the Medicaid program
32 that are conducted due to a federal requirement.

33 (8) The audit must not be initiated or scheduled during the first
34 ~~five (5)~~ **seven (7)** calendar days of any month without the
35 voluntary consent of the pharmacy. The consent may not be
36 mandated by a contract or any other means.

37 (9) Payment to the onsite auditor for conducting the audit must
38 not be based on a percentage of any amount recovered as a result
39 of the audit.

40 **(10) Within twenty-four (24) hours of receiving the notice of**
41 **an audit, a pharmacy may reschedule the audit to a date not**
42 **more than fourteen (14) days after the date proposed by the**
43 **auditor. However, if the auditor is unable to reschedule within**
44 **the fourteen (14) day period, the auditor shall select and**
45 **reschedule the audit for a date after the fourteen (14) day**
46 **period.**

47 **(11) This subdivision does not apply to an audit conducted by**
48 **the Medicaid program. If a clerical error is identified by the**
49 **auditor during the course of an audit, the auditor shall allow**
50 **the pharmacy to obtain a prescription that corrects the**
51 **clerical error from the prescribing physician. However, if the**

1 **clerical error results in an overpayment to the pharmacy, the**
 2 **overpayment may be recouped by the third party payer.**

3 SECTION 11. IC 25-26-22-6, AS ADDED BY P.L.7-2009,
 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2012]: Sec. 6. **(a) This section does not apply to an audit**
 6 **conducted by the Medicaid, Medicare, or any other federal**
 7 **program.**

8 **(b)** Following an audit, the auditor shall provide to the pharmacy
 9 written audit reports as follows:

10 (1) The auditor shall deliver a preliminary audit report to the
 11 pharmacy not later than ninety (90) days after the audit is
 12 concluded.

13 (2) The auditor shall provide with the preliminary audit report a
 14 written appeal procedure for the pharmacy to follow if the
 15 pharmacy desires to appeal a finding contained in the preliminary
 16 audit report. **The written appeal procedure must provide for a**
 17 **period of at least thirty (30) days after the pharmacy receives**
 18 **the preliminary audit report during which the pharmacy may**
 19 **file an appeal of findings contained in the preliminary audit**
 20 **report.**

21 (3) The auditor shall deliver a final audit report to the pharmacy
 22 not later than one hundred twenty (120) days after:

23 (A) the preliminary audit report is received by the pharmacy;

24 or

25 (B) if an appeal is filed, a final appeal determination is made;
 26 whichever is later.

27 (4) Each audit report must be signed by the auditor and a
 28 pharmacist participating in the audit.

29 (5) The auditor shall provide a copy of the final audit report to the
 30 third party payer.

31 **(c) If requested by the pharmacy, the auditor shall provide the**
 32 **audit report under this section to the pharmacy by a means that**
 33 **allows signature confirmation, including an electronic signature (as**
 34 **defined by IC 25-26-13-2). If the audit report is sent by electronic**
 35 **mail, any other verification system may be used, provided that the**
 36 **receipt is acknowledged by the pharmacy.**

37 SECTION 12. IC 25-26-22-9, AS ADDED BY P.L.7-2009,
 38 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2012]: Sec. 9. **(a) This section does not apply to an audit**
 40 **conducted by the Medicaid, Medicare, or any other federal**
 41 **program.**

42 **(a)** A final audit report must first be distributed **(b)** Before
 43 recoupment of funds may be made based on an audit finding of
 44 overpayment or underpayment:

45 **(1) a final audit report must be distributed; and**

46 **(2) except when an audit finds that fraud, willful**
 47 **misrepresentation, or alleged serious abuse has occurred, at**
 48 **least thirty (30) days must elapse after the date on which the**
 49 **final audit report is distributed before the recoupment of**
 50 **funds exceeding ten thousand dollars (\$10,000).**

51 **(b)** Except for audits conducted under the Medicaid program; **(c)**

1 Interest on funds described in subsection ~~(a)~~ (b) does not accrue during
2 the audit period.

3 SECTION 13. [EFFECTIVE JULY 1, 2012] (a) As used in this
4 SECTION, "commission" refers to the health finance commission
5 established by IC 2-5-23-3.

6 (b) During the 2012 legislative interim, the commission shall
7 study:

8 (1) retail pharmacies;

9 (2) community pharmacies; and

10 (3) mail order or Internet based pharmacies (as defined in
11 IC 25-26-18-1);

12 and any limitations that should be placed in statute concerning the
13 amount of a prescription drug that may be dispensed by the
14 pharmacies.

15 (c) The commission shall make findings and recommendations
16 concerning the following:

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

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

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

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

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

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

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

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

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

40 (4) The number of individuals who may become eligible for
41 Medicaid as a result of copayments, coinsurance amounts, or
42 other out-of-pocket costs for prescription drugs as described
43 in this SECTION.

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

47 (e) This SECTION expires December 31, 2012.

(Reference is to ESB 407 as reprinted March 1, 2012.)

Conference Committee Report
on
Engrossed Senate Bill 407

Signed by:

Senator Grooms
Chairperson

Representative Davisson

Senator Breaux

Representative Welch

Senate Conferees

House Conferees