



January 30, 2004

SENATE BILL No. 163

DIGEST OF SB 163 (Updated January 28, 2004 1:06 pm - DI 110)

Citations Affected: IC 27-4; IC 27-8; IC 27-13; noncode.

Synopsis: Health provider reimbursement contracts. Prohibits certain provisions in health provider reimbursement agreements.

Effective: July 1, 2004.

Miller, Simpson

January 6, 2004, read first time and referred to Committee on Health and Provider Services.
January 29, 2004, reported favorably — Do Pass.

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SB 163—LS 6284/DI 97+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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SENATE BILL No. 163

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

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

1 SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.178-2003,
2 SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND
3 AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED
4 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
5 2004]: Sec. 4. The following are hereby defined as unfair methods of
6 competition and unfair and deceptive acts and practices in the business
7 of insurance:

- 8 (1) Making, issuing, circulating, or causing to be made, issued, or
9 circulated, any estimate, illustration, circular, or statement:
 - 10 (A) misrepresenting the terms of any policy issued or to be
11 issued or the benefits or advantages promised thereby or the
12 dividends or share of the surplus to be received thereon;
 - 13 (B) making any false or misleading statement as to the
14 dividends or share of surplus previously paid on similar
15 policies;
 - 16 (C) making any misleading representation or any
17 misrepresentation as to the financial condition of any insurer,

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1 or as to the legal reserve system upon which any life insurer
2 operates;
3 (D) using any name or title of any policy or class of policies
4 misrepresenting the true nature thereof; or
5 (E) making any misrepresentation to any policyholder insured
6 in any company for the purpose of inducing or tending to
7 induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the*
8 *policyholder's* insurance.
9 (2) Making, publishing, disseminating, circulating, or placing
10 before the public, or causing, directly or indirectly, to be made,
11 published, disseminated, circulated, or placed before the public,
12 in a newspaper, magazine, or other publication, or in the form of
13 a notice, circular, pamphlet, letter, or poster, or over any radio or
14 television station, or in any other way, an advertisement,
15 announcement, or statement containing any assertion,
16 representation, or statement with respect to any person in the
17 conduct of ~~his~~ *the person's* insurance business, which is untrue,
18 deceptive, or misleading.
19 (3) Making, publishing, disseminating, or circulating, directly or
20 indirectly, or aiding, abetting, or encouraging the making,
21 publishing, disseminating, or circulating of any oral or written
22 statement or any pamphlet, circular, article, or literature which is
23 false, or maliciously critical of or derogatory to the financial
24 condition of an insurer, and which is calculated to injure any
25 person engaged in the business of insurance.
26 (4) Entering into any agreement to commit, or individually or by
27 a concerted action committing any act of boycott, coercion, or
28 intimidation resulting or tending to result in unreasonable
29 restraint of, or a monopoly in, the business of insurance.
30 (5) Filing with any supervisory or other public official, or making,
31 publishing, disseminating, circulating, or delivering to any person,
32 or placing before the public, or causing directly or indirectly, to
33 be made, published, disseminated, circulated, delivered to any
34 person, or placed before the public, any false statement of
35 financial condition of an insurer with intent to deceive. Making
36 any false entry in any book, report, or statement of any insurer
37 with intent to deceive any agent or examiner lawfully appointed
38 to examine into its condition or into any of its affairs, or any
39 public official to which such insurer is required by law to report,
40 or which has authority by law to examine into its condition or into
41 any of its affairs, or, with like intent, willfully omitting to make a
42 true entry of any material fact pertaining to the business of such

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insurer in any book, report, or statement of such insurer.
(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
(7) Making or permitting any of the following:
(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.
(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.
(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:
(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

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1 However, nothing contained in clause (C) shall be construed to
2 apply to any of the kinds of insurance referred to in clauses (A)
3 and (B) nor to reinsurance in relation to such kinds of insurance.
4 Nothing in clause (A), (B), or (C) shall be construed as making or
5 permitting any excessive, inadequate, or unfairly discriminatory
6 charge or rate or any charge or rate determined by the department
7 or commissioner to meet the requirements of any other insurance
8 rate regulatory law of this state.

9 (8) Except as otherwise expressly provided by law, knowingly
10 permitting or offering to make or making any contract or policy
11 of insurance of any kind or kinds whatsoever, including but not in
12 limitation, life annuities, or agreement as to such contract or
13 policy other than as plainly expressed in such contract or policy
14 issued thereon, or paying or allowing, or giving or offering to pay,
15 allow, or give, directly or indirectly, as inducement to such
16 insurance, or annuity, any rebate of premiums payable on the
17 contract, or any special favor or advantage in the dividends,
18 savings, or other benefits thereon, or any valuable consideration
19 or inducement whatever not specified in the contract or policy; or
20 giving, or selling, or purchasing or offering to give, sell, or
21 purchase as inducement to such insurance or annuity or in
22 connection therewith, any stocks, bonds, or other securities of any
23 insurance company or other corporation, association, limited
24 liability company, or partnership, or any dividends, savings, or
25 profits accrued thereon, or anything of value whatsoever not
26 specified in the contract. Nothing in this subdivision and
27 subdivision (7) shall be construed as including within the
28 definition of discrimination or rebates any of the following
29 practices:

30 (A) Paying bonuses to policyholders or otherwise abating their
31 premiums in whole or in part out of surplus accumulated from
32 nonparticipating insurance, so long as any such bonuses or
33 abatements of premiums are fair and equitable to policyholders
34 and for the best interests of the company and its policyholders.

35 (B) In the case of life insurance policies issued on the
36 industrial debit plan, making allowance to policyholders who
37 have continuously for a specified period made premium
38 payments directly to an office of the insurer in an amount
39 which fairly represents the saving in collection expense.

40 (C) Readjustment of the rate of premium for a group insurance
41 policy based on the loss or expense experience thereunder, at
42 the end of the first year or of any subsequent year of insurance

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- 1 thereunder, which may be made retroactive only for such
2 policy year.
- 3 (D) Paying by an insurer or ~~agent~~ *insurance producer* thereof
4 duly licensed as such under the laws of ~~this state~~ **Indiana** of
5 money, commission, or brokerage, or giving or allowing by an
6 insurer or such licensed ~~agent~~ *insurance producer* thereof
7 anything of value, for or on account of the solicitation or
8 negotiation of policies or other contracts of any kind or kinds,
9 to a broker, ~~agent~~, ~~an insurance producer~~, or a solicitor duly
10 licensed under the laws of this state, but such broker, ~~agent~~,
11 ~~insurance producer~~, or solicitor receiving such consideration
12 shall not pay, give, or allow credit for such consideration as
13 received in whole or in part, directly or indirectly, to the
14 insured by way of rebate.
- 15 (9) Requiring, as a condition precedent to loaning money upon the
16 security of a mortgage upon real property, that the owner of the
17 property to whom the money is to be loaned negotiate any policy
18 of insurance covering such real property through a particular
19 insurance ~~agent~~ *producer* or broker or brokers. However, this
20 subdivision shall not prevent the exercise by any lender of ~~its or~~
21 ~~his~~ *the lender's* right to approve or disapprove of the insurance
22 company selected by the borrower to underwrite the insurance.
- 23 (10) Entering into any contract, combination in the form of a trust
24 or otherwise, or conspiracy in restraint of commerce in the
25 business of insurance.
- 26 (11) Monopolizing or attempting to monopolize or combining or
27 conspiring with any other person or persons to monopolize any
28 part of commerce in the business of insurance. However,
29 participation as a member, director, or officer in the activities of
30 any nonprofit organization of ~~agents~~ *insurance producers* or other
31 workers in the insurance business shall not be interpreted, in
32 itself, to constitute a combination in restraint of trade or as
33 combining to create a monopoly as provided in this subdivision
34 and subdivision (10). The enumeration in this chapter of specific
35 unfair methods of competition and unfair or deceptive acts and
36 practices in the business of insurance is not exclusive or
37 restrictive or intended to limit the powers of the commissioner or
38 department or of any court of review under section 8 of this
39 chapter.
- 40 (12) Requiring as a condition precedent to the sale of real or
41 personal property under any contract of sale, conditional sales
42 contract, or other similar instrument or upon the security of a

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1 chattel mortgage, that the buyer of such property negotiate any
 2 policy of insurance covering such property through a particular
 3 insurance company, ~~agent,~~ *insurance producer*, or broker or
 4 brokers. However, this subdivision shall not prevent the exercise
 5 by any seller of such property or the one making a loan thereon of
 6 ~~his, her, or its~~ the right to approve or disapprove of the insurance
 7 company selected by the buyer to underwrite the insurance.
 8 (13) Issuing, offering, or participating in a plan to issue or offer,
 9 any policy or certificate of insurance of any kind or character as
 10 an inducement to the purchase of any property, real, personal, or
 11 mixed, or services of any kind, where a charge to the insured is
 12 not made for and on account of such policy or certificate of
 13 insurance. However, this subdivision shall not apply to any of the
 14 following:
 15 (A) Insurance issued to credit unions or members of credit
 16 unions in connection with the purchase of shares in such credit
 17 unions.
 18 (B) Insurance employed as a means of guaranteeing the
 19 performance of goods and designed to benefit the purchasers
 20 or users of such goods.
 21 (C) Title insurance.
 22 (D) Insurance written in connection with an indebtedness and
 23 intended as a means of repaying such indebtedness in the
 24 event of the death or disability of the insured.
 25 (E) Insurance provided by or through motorists service clubs
 26 or associations.
 27 (F) Insurance that is provided to the purchaser or holder of an
 28 air transportation ticket and that:
 29 (i) insures against death or nonfatal injury that occurs during
 30 the flight to which the ticket relates;
 31 (ii) insures against personal injury or property damage that
 32 occurs during travel to or from the airport in a common
 33 carrier immediately before or after the flight;
 34 (iii) insures against baggage loss during the flight to which
 35 the ticket relates; or
 36 (iv) insures against a flight cancellation to which the ticket
 37 relates.
 38 (14) Refusing, because of the for-profit status of a hospital or
 39 medical facility, to make payments otherwise required to be made
 40 under a contract or policy of insurance for charges incurred by an
 41 insured in such a for-profit hospital or other for-profit medical
 42 facility licensed by the state department of health.

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- 1 (15) Refusing to insure an individual, refusing to continue to issue
 2 insurance to an individual, limiting the amount, extent, or kind of
 3 coverage available to an individual, or charging an individual a
 4 different rate for the same coverage, solely because of that
 5 individual's blindness or partial blindness, except where the
 6 refusal, limitation, or rate differential is based on sound actuarial
 7 principles or is related to actual or reasonably anticipated
 8 experience.
- 9 (16) Committing or performing, with such frequency as to
 10 indicate a general practice, unfair claim settlement practices (as
 11 defined in section 4.5 of this chapter).
- 12 (17) Between policy renewal dates, unilaterally canceling an
 13 individual's coverage under an individual or group health
 14 insurance policy solely because of the individual's medical or
 15 physical condition.
- 16 (18) Using a policy form or rider that would permit a cancellation
 17 of coverage as described in subdivision (17).
- 18 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 19 vehicle insurance rates.
- 20 (20) Violating IC 27-8-21-2 concerning advertisements referring
 21 to interest rate guarantees.
- 22 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 23 coverage for victims of abuse.
- 24 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 25 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 26 insurance producers.
- 27 (24) Violating IC 27-1-38 concerning depository institutions.
- 28 *(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning*
 29 *the resolution of an appealed grievance decision.*
- 30 ~~(25)~~ **(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or**
 31 **IC 27-8-5-19.2.**
- 32 ~~(25)~~ **(27) Violating IC 27-2-21 concerning use of credit**
 33 **information.**
- 34 **(28) Violating IC 27-8-11-7 or IC 27-13-15-4 concerning**
 35 **provider reimbursement.**
- 36 SECTION 2. IC 27-8-11-7 IS ADDED TO THE INDIANA CODE
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 38 1, 2004]: **Sec. 7. (a) An agreement between an insurer and a**
 39 **provider under this chapter may not contain a provision that**
 40 **requires the provider to offer to the insurer a reimbursement rate**
 41 **that is equal to or lower than the lowest reimbursement rate that**
 42 **the provider offers to another insurer.**

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(b) A violation of this section by an insurer is an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 3. IC 27-13-15-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4. (a) A contract between a health maintenance organization and a participating provider may not contain a provision that requires the participating provider to offer to the health maintenance organization a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the participating provider offers to another health maintenance organization.**

(b) A violation of this section by a health maintenance organization is an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 4. [EFFECTIVE JULY 1, 2004] **(a) IC 27-8-11-7, as added by this act, applies to an agreement between an insurer and a provider that is entered into, amended, or renewed after June 30, 2004.**

(b) IC 27-13-15-4, as added by this act, applies to a contract between a health maintenance organization and a participating provider that is entered into, amended, or renewed after June 30, 2004.

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SENATE MOTION

Madam President: I move that Senator Simpson be added as second author of Senate Bill 163.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 163, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 163 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 7, Nays 1.

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