Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1284

AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 27-1-3.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one **(1)** or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the NAIC examiner's handbook. The commissioner may also employ such other guidelines or procedures as the commissioner considers appropriate. **The commissioner is not required to issue an examination warrant for a data call.**

(b) Every company or person from whom information is sought, and the officers, directors, and agents of the company or person, must provide to the examiners appointed under subsection (a) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate the examination

and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents within the company's control, to submit to examination or to comply with any reasonable written request of the examiners, or the failure of any company to make a good faith effort to require compliance with such a request, is grounds for:

(1) suspension;

(2) refusal; or

(3) nonrenewal;

of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. The commissioner may proceed to suspend or revoke a license or authority upon the grounds set forth in this subsection under IC 27-1-3-10 or IC 27-1-3-19.

(c) The commissioner and the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to an examination conducted under this chapter. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

(e) This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

SECTION 2. IC 27-1-12-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 40. Except for a policy that conforms to the description in section 37(2) of this chapter, a group life insurance policy may be extended to insure the employees or members, or any class or classes of employees or members, against loss due to the death of their spouses and dependent children, subject to the following:

(1) The premium for the insurance must be paid either from funds contributed by the employer, union, association, or other person to whom the policy has been issued, from funds contributed by

the covered persons, or from both sources of funds. Except as provided in subdivision (2), a policy on which no part of the premium for the spouse's and dependent child's coverage is to be derived from funds contributed by the covered persons must insure all eligible employees or members, or any class or classes of eligible employees or members, with respect to their spouses and dependent children.

(2) An insurer may exclude or limit the coverage on any spouse or dependent child as to whom evidence of individual insurability is not satisfactory to the insurer.

~~(3) The amounts of insurance for any covered spouse or dependent child under the policy may not exceed fifty percent (50%) of the amount of insurance for which the employee or member is insured.~~

SECTION 3. IC 27-8-5-1.5, AS ADDED BY P.L.173-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.5. (a) This section applies to a policy of accident and sickness insurance issued on an individual, a group, a franchise, or a blanket basis, including a policy issued by an assessment company or a fraternal benefit society.

(b) As used in this section, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(c) As used in this section, "grossly inadequate filing" means a policy form filing:

(1) that fails to provide key information, including state specific information, regarding a product, policy, or rate; or

(2) that demonstrates an insufficient understanding of applicable legal requirements.

(d) As used in this section, "policy form" means a policy, a contract, a certificate, a rider, an endorsement, an evidence of coverage, or any amendment that is required by law to be filed with the commissioner for approval before use in Indiana.

(e) As used in this section, "type of insurance" refers to a type of coverage listed on the National Association of Insurance Commissioners Uniform Life, Accident and Health, Annuity and Credit Product Coding Matrix, or a successor document, under the heading "Continuing Care Retirement Communities", "Health", "Long Term Care", or "Medicare Supplement".

(f) Each person having a role in the filing process described in subsection (i) shall act in good faith and with due diligence in the performance of the person's duties.

(g) A policy form may not be issued or delivered in Indiana unless

the policy form has been filed with and approved by the commissioner.

(h) The commissioner shall do the following:

(1) Create a document containing a list of all product filing requirements for each type of insurance, with appropriate citations to the law, administrative rule, or bulletin that specifies the requirement, including the citation for the type of insurance to which the requirement applies.

(2) Make the document described in subdivision (1) available on the department of insurance Internet site.

(3) Update the document described in subdivision (1) at least annually and not more than thirty (30) days following any change in a filing requirement.

(i) The filing process is as follows:

(1) A filer shall submit a policy form filing that:

(A) includes a copy of the document described in subsection (h);

(B) indicates the location within the policy form or supplement that relates to each requirement contained in the document described in subsection (h); and

(C) certifies that the policy form meets all requirements of state law.

(2) The commissioner shall review a policy form filing and, not more than thirty (30) days after the commissioner receives the filing under subdivision (1):

(A) approve the filing; or

(B) provide written notice of a determination:

(i) that deficiencies exist in the filing; or

(ii) that the commissioner disapproves the filing.

A written notice provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h) and must cite the specific requirements not met by the filing. A written notice provided by the commissioner under clause (B)(i) must state the reasons for the commissioner's determination in sufficient detail to enable the filer to bring the policy form into compliance with the requirements not met by the filing.

(3) A filer may resubmit a policy form that:

(A) was determined deficient under subdivision (2) and has been amended to correct the deficiencies; or

(B) was disapproved under subdivision (2) and has been revised.

A policy form resubmitted under this subdivision must meet the

requirements set forth as described in subdivision (1) and must be resubmitted not more than thirty (30) days after the filer receives the commissioner's written notice of deficiency or disapproval. If a policy form is not resubmitted within thirty (30) days after receipt of the written notice, the commissioner's determination regarding the policy form is final.

(4) The commissioner shall review a policy form filing resubmitted under subdivision (3) and, not more than thirty (30) days after the commissioner receives the resubmission:

(A) approve the resubmitted policy form; or

(B) provide written notice that the commissioner disapproves the resubmitted policy form.

A written notice of disapproval provided by the commissioner under clause (B) must be based only on the requirements set forth in the document described in subsection (h), must cite the specific requirements not met by the filing, and must state the reasons for the commissioner's determination in detail. The commissioner's approval or disapproval of a resubmitted policy form under this subdivision is final, except that the commissioner may allow the filer to resubmit a further revised policy form if the filer, in the filer's resubmission under subdivision (3), introduced new provisions or materially modified a substantive provision of the policy form. If the commissioner allows a filer to resubmit a further revised policy form under this subdivision, the filer must resubmit the further revised policy form not more than thirty (30) days after the filer receives notice under clause (B), and the commissioner shall issue a final determination on the further revised policy form not more than thirty (30) days after the commissioner receives the further revised policy form.

(5) If the commissioner disapproves a policy form filing under this subsection, the commissioner shall notify the filer, in writing, of the filer's right to a hearing as described in subsection (m). ~~The~~ **A disapproved** policy form **filing** may not be ~~disapproved~~ **used for a policy of accident and sickness insurance** unless ~~it contains a material error or omission. At any~~ **the disapproval is overturned in a** hearing conducted under this subsection. ~~the commissioner must prove that the policy form contains a material error or omission.~~

(6) If the commissioner does not take any action on a policy form that is filed or resubmitted under this subsection in accordance with any applicable period specified in subdivision (2), (3), or (4), the policy form filing is considered to be

approved.

(j) Except as provided in this subsection, the commissioner may not disapprove a policy form resubmitted under subsection (i)(3) or (i)(4) for a reason other than a reason specified in the original notice of determination under subsection (i)(2)(B). The commissioner may disapprove a resubmitted policy form for a reason other than a reason specified in the original notice of determination under subsection (i)(2) if:

(1) the filer has introduced a new provision in the resubmission;

(2) the filer has materially modified a substantive provision of the policy form in the resubmission;

(3) there has been a change in requirements applying to the policy form; or

(4) there has been reviewer error and the written disapproval fails to state a specific requirement with which the policy form does not comply.

(k) The commissioner may return a grossly inadequate filing to the filer without triggering a deadline set forth in this section.

(l) The commissioner may disapprove a policy form if:

(1) the benefits provided under the policy form are not reasonable in relation to the premium charged; or

(2) the policy form contains provisions that are unjust, unfair, inequitable, misleading, or deceptive, or that encourage misrepresentation of the policy.

(m) Upon disapproval of a filing under this section, the commissioner shall provide written notice to the filer or insurer of the right to a hearing within twenty (20) days of a request for a hearing.

(n) Unless a policy form approved under this chapter contains a material error or omission, the commissioner may not:

(1) retroactively disapprove the policy form; or

(2) examine the filer of the policy form during a routine or targeted market conduct examination for compliance with a policy form filing requirement that was not in existence at the time the policy form was filed.

SECTION 4. IC 27-8-11-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) As used in this section, "dialysis facility" means an outpatient facility in Indiana at which a dialysis treatment provider provides dialysis treatment.**

(b) As used in this section, "contracted dialysis facility" means a dialysis facility that has entered into an agreement with a particular insurer under section 3 of this chapter.

(c) Notwithstanding section 1 of this chapter, as used in this section, "insured" refers only to an insured who requires dialysis treatment.

(d) As used in this section, "insurer" includes the following:

(1) An administrator licensed under IC 27-1-25.

(2) An agent of an insurer.

(e) As used in this section, "non-contracted dialysis facility" means a dialysis facility that has not entered into an agreement with a particular insurer under section 3 of this chapter.

(f) An insurer shall not require an insured, as a condition of coverage or reimbursement, to:

(1) if the nearest dialysis facility is located within thirty (30) miles of the insured's home, travel more than thirty (30) miles from the insured's home to obtain dialysis treatment; or

(2) if the nearest dialysis facility is located more than thirty (30) miles from the insured's home, travel a greater distance than the distance to the nearest dialysis facility to obtain dialysis treatment;

regardless of whether the insured chooses to receive dialysis treatment at a contracted dialysis facility or a non-contracted dialysis facility.

SECTION 5. IC 27-13-1-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. "Dialysis facility" means an outpatient facility in Indiana at which a dialysis treatment provider provides dialysis treatment.**

SECTION 6. IC 27-13-15-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. (a) Notwithstanding IC 27-13-1-12, as used in this section, "enrollee" refers only to an enrollee who requires dialysis treatment.**

(b) As used in this section, "health maintenance organization" includes the following:

(1) A limited service health maintenance organization.

(2) An agent of a health maintenance organization or a limited service health maintenance organization.

(c) A health maintenance organization shall not require an enrollee, as a condition of coverage or reimbursement, to:

(1) if the nearest dialysis facility is located within thirty (30) miles of the enrollee's home, travel more than thirty (30) miles from the enrollee's home to obtain dialysis treatment; or

(2) if the nearest dialysis facility is located more than thirty

(30) miles from the enrollee's home, travel a greater distance than the distance to the nearest dialysis facility to obtain dialysis treatment;

regardless of whether the enrollee chooses to receive dialysis treatment at a dialysis facility that is a participating provider or a dialysis facility that is not a participating provider.

SECTION 7. [EFFECTIVE JULY 1, 2008] **(a) As used in this SECTION, "committee" refers to the interim study committee on dialysis coverage established by subsection (b).**

(b) There is established the interim study committee on dialysis coverage.

(c) The committee consists of the following members:

(1) Four (4) legislators appointed by the president pro tempore of the senate, not more than two (2) of whom may be members of the same political party.

(2) Four (4) legislators appointed by the speaker of the house of representatives, not more than two (2) of whom may be members of the same political party.

(3) The executive director of the Indiana comprehensive health insurance association established by IC 27-8-10-2.1, who shall serve as chairperson of the committee.

(d) The committee shall study issues related to coverage of dialysis treatment under a policy of accident and sickness insurance and a health maintenance organization contract, including:

(1) requirements, as a condition of coverage or reimbursement, for patients to obtain treatment from particular dialysis treatment providers;

(2) costs related to dialysis treatment;

(3) availability, including changes in availability since 2003, of dialysis treatment throughout Indiana;

(4) payment rates, including changes in payment rates since 2003, for dialysis treatment throughout Indiana;

(5) consideration of the items described in subdivisions (1) through (4) as affected by a dialysis treatment provider's participation in provider networks used by accident and sickness insurers and health maintenance organizations; and

(6) additional issues related to coverage of dialysis treatment, as determined by the committee.

(e) The committee shall operate under the policies governing study committees adopted by the legislative council.

(f) The affirmative votes of a majority of the voting members

appointed to the committee are required for the committee to take action on any measure, including final reports.

(g) The committee shall submit a final report to the legislative council in an electronic format under IC 5-14-6 before November 1, 2008.

(h) This SECTION expires December 31, 2008.

SECTION 8. **An emergency is declared for this act.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

C o p y