

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1280**

Citations Affected: IC 1-1-2.5; IC 4-3-22; IC 4-21.5-3-1; IC 4-22; IC 8-1-34-24.5; IC 25-26-13; IC 35-48-7-8.1.

Synopsis: Regulatory matters. Conference committee report for EHB 1280. Provides that intrastate commerce in Indiana is not subject to the authority of the United States Congress. Permits certain administrative adjudication notices to be delivered by electronic mail or another method approved by the Indiana Rules of Trial Procedure. Requires the division of government efficiency and financial planning in the office of management and budget to advise and assist state agencies and instrumentalities with the implementation of continuous process improvement techniques. Provides that an agency may solicit comments from members of the public who are likely to be affected by a rule because they are the subject of the potential rulemaking or are likely to benefit from the potential rulemaking. Requires that state documents provided to the public must comply with certain document drafting standards. Requires each unit of local government that receives franchise fees paid to a unit from an entity providing video services to submit to the IURC an annual report on the unit's receipt and use of those franchise fees during the calendar year for which the report is submitted. Consolidates six categories of pharmacy licenses into three categories. **(This conference committee report does the following: (1) Deletes the provisions concerning a cost benefit analysis of rules that are in SEA 311-2012. (2) Deletes the provisions concerning administrative hearing officers and administrative law judges. (3) Adds that intrastate commerce in Indiana is not subject to the authority of the United States Congress. Fixes a conflict with SEA 407-2012)**

Effective: Upon passage; July 1, 2012.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1280 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate 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 1-1-2.5 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2012]:
- 5 **Chapter 2.5. Regulation of Intrastate Commerce**
- 6 **Sec. 1. This chapter applies to all:**
- 7 **(1) goods grown, manufactured, or made; and**
- 8 **(2) services performed;**
- 9 **in Indiana after July 1, 2012.**
- 10 **Sec. 2. The general assembly declares the following:**
- 11 **(1) The Tenth Amendment to the Constitution of the United**
- 12 **States provides that the only powers that the federal**
- 13 **government may exercise are those that have been delegated**
- 14 **to the federal government in the Constitution of the United**
- 15 **States.**
- 16 **(2) The Ninth Amendment to the Constitution of the United**
- 17 **States guarantees to the people rights not enumerated in the**
- 18 **Constitution and reserves to the people of Indiana those**
- 19 **rights.**
- 20 **(3) Under Article I, Section 8, Clause 3 of the Constitution of**
- 21 **the United States, the federal government is empowered to**

1 regulate commerce among the several states.

2 **(4) The power to regulate intrastate commerce is reserved to**
 3 **the states or the people under the Ninth and Tenth**
 4 **Amendments to the Constitution of the United States.**

5 **(5) During the Constitutional Convention, the founders**
 6 **considered a plan that would have authorized the federal**
 7 **government not only to regulate commerce among the several**
 8 **states, but also to regulate any activity having spillover effects**
 9 **across state lines. The founders rejected this latter idea.**

10 **(6) All:**

11 **(A) goods grown, manufactured, or made in Indiana; and**

12 **(B) services performed in Indiana;**

13 **when the goods or services are sold, maintained, and retained**
 14 **in Indiana are not subject to the authority of the Congress of**
 15 **the United States under the constitutional power of Congress**
 16 **to regulate commerce among the several states.**

17 SECTION 2. IC 4-3-22-1.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2012]: **Sec. 1.5. As used in this chapter, "continuous process**
 20 **improvement" means a management methodology that combines**
 21 **tools to improve process speed and reduce waste with data driven**
 22 **project analysis to provide products and services with improved**
 23 **quality at lower cost.**

24 SECTION 3. IC 4-3-22-6, AS ADDED BY P.L.246-2005,
 25 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2012]: **Sec. 6. (a) The division of government efficiency and**
 27 **financial planning is established within the OMB. The director shall**
 28 **appoint, subject to the approval of the governor, a director of the**
 29 **division, who serves at the pleasure of the director of OMB.**

30 **(b) The division shall do the following:**

31 **(1) Conduct operational and procedural audits of state**
 32 **government.**

33 **(2) Perform financial planning and design and implement**
 34 **efficiency projects. and**

35 **(3) Advise and assist:**

36 **(A) each instrumentality, agency, authority, board,**
 37 **commission, and officer in the executive department of**
 38 **state government; and**

39 **(B) each body corporate and politic established as an**
 40 **instrumentality of the state;**

41 **to identify and implement continuous process improvement in**
 42 **state government.**

43 **(4) Carry out such other responsibilities as may be designated by**
 44 **the director.**

45 SECTION 4. IC 4-21.5-3-1, AS AMENDED BY P.L.6-2012,
 46 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 47 UPON PASSAGE]: **Sec. 1. (a) This section applies to:**

48 **(1) the giving of any notice;**

49 **(2) the service of any motion, ruling, order, or other filed item; or**

50 **(3) the filing of any document with the ultimate authority;**

51 **in an administrative proceeding under this article.**

1 (b) Except as provided in subsection (c) or as otherwise provided by
2 law, a person shall serve papers by:

- 3 (1) United States mail;
4 (2) personal service;
5 (3) electronic mail; or
6 (4) any other method approved by the Indiana Rules of Trial
7 Procedure.

8 (c) The following shall be served by United States mail or personal
9 service:

- 10 (1) The initial notice of a determination under section ~~4, 5, or 6~~ of
11 this chapter.
12 (2) A petition for review of an agency action under section 7 of
13 this chapter.
14 (3) A complaint under section 8 of this chapter.

15 (d) The agency shall keep a record of the time, date, and
16 circumstances of the service under subsection (b) or (c).

17 (e) Service shall be made on a person or on the person's counsel or
18 other authorized representative of record in the proceeding. Service on
19 an artificial person or a person incompetent to receive service shall be
20 made on a person allowed to receive service under the rules governing
21 civil actions in the courts. If an ultimate authority consists of more than
22 one (1) individual, service on that ultimate authority must be made on
23 the chairperson or secretary of the ultimate authority. A document to
24 be filed with that ultimate authority must be filed with the chairperson
25 or secretary of the ultimate authority.

26 (f) If the current address of a person is not ascertainable, service
27 shall be mailed to the last known address where the person resides or
28 has a principal place of business. If the identity, address, or existence
29 of a person is not ascertainable, or a law other than a rule allows,
30 service shall be made by a single publication in a newspaper of general
31 circulation in:

- 32 (1) the county in which the person resides, has a principal place
33 of business, or has property that is the subject of the proceeding;
34 or
35 (2) Marion County, if the place described in subdivision (1) is not
36 ascertainable or the place described in subdivision (1) is outside
37 Indiana and the person does not have a resident agent or other
38 representative of record in Indiana.

39 (g) A notice given by publication must include a statement advising
40 a person how the person may receive written notice of the proceedings.

41 (h) The filing of a document with an ultimate authority is complete
42 on the earliest of the following dates that apply to the filing:

- 43 (1) The date on which the document is delivered to the ultimate
44 authority:
45 (A) under subsection (b) or (c); and
46 (B) in compliance with subsection (e).
47 (2) The date of the postmark on the envelope containing the
48 document, if the document is mailed to the ultimate authority by
49 United States mail.
50 (3) The date on which the document is deposited with a private

1 carrier, as shown by a receipt issued by the carrier, if the
2 document is sent to the ultimate authority by private carrier.

3 SECTION 5. IC 4-22-2-19.7 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2012]: **Sec. 19.7. An agency, to the extent feasible and permitted
6 by law, shall afford the public a meaningful opportunity to
7 comment on proposed rules through the agency's Internet web site.
8 An agency shall consider providing a comment period that exceeds
9 the minimum required by law.**

10 SECTION 6. IC 4-22-2-22.5 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2012]: **Sec. 22.5. (a) This section applies to a rule that an agency
13 intends to adopt under sections 24 through 36 of this chapter.**

14 **(b) Each agency shall maintain a current rulemaking docket
15 that is indexed.**

16 **(c) A current rulemaking docket must list each pending
17 rulemaking proceeding. The docket must state or contain:**

- 18 **(1) the subject matter of the proposed rule;**
- 19 **(2) notices related to the proposed rule;**
- 20 **(3) how comments may be made;**
- 21 **(4) the time within which comments may be made;**
- 22 **(5) where comments may be inspected;**
- 23 **(6) requests for a public hearing;**
- 24 **(7) appropriate information about a public hearing, if any,
25 including the names of the persons making the request;**
- 26 **(8) a description of relevant scientific and technical findings
27 related to the proposed rule; and**
- 28 **(9) the timetable for action.**

29 **(d) The agency shall maintain the rulemaking docket on the
30 agency's Internet web site. The information must be in an open
31 format that can be easily searched and downloaded. Access to the
32 docket shall, to the extent feasible and permitted by law, provide
33 an opportunity for public comment on the pertinent parts of the
34 rulemaking docket, including relevant scientific and technical
35 findings. Upon request, the agency shall provide a written
36 rulemaking docket.**

37 SECTION 7. IC 4-22-2-23, AS AMENDED BY P.L.215-2005,
38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2012]: **Sec. 23. (a) This section does not apply to rules
40 adopted under IC 4-22-2-37.1.**

41 **(b) At least twenty-eight (28) days before an agency notifies the
42 public of the agency's intention to adopt a rule under section 24 of this
43 chapter, the agency shall notify the public of its intention to adopt a
44 rule by publishing a notice of intent to adopt a rule in the Indiana
45 Register. The publication notice must include an overview of the intent
46 and scope of the proposed rule and the statutory authority for the rule.**

47 **(c) The requirement to publish a notice of intent to adopt a rule
48 under subsection (b) does not apply to rulemaking under IC 13-14-9.**

49 **(d) In addition to the procedures required by this article, an agency
50 may solicit comments from the public on the need for a rule, the
51 drafting of a rule, or any other subject related to a rulemaking action,**

1 including members of the public who are likely to be affected
 2 because they are the subject of the potential rulemaking or are
 3 likely to benefit from the potential rulemaking. The procedures that
 4 the agency may use include the holding of conferences and the inviting
 5 of written suggestions, facts, arguments, or views.

6 (e) The agency shall prepare a written response that contains a
 7 summary of the comments received during any part of the rulemaking
 8 process. The written response is a public document. The agency shall
 9 make the written response available to interested parties upon request.

10 SECTION 8. IC 4-22-10 IS ADDED TO THE INDIANA CODE AS
 11 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 12 1, 2012]:

13 **Chapter 10. Document Drafting Standards**

14 **Sec. 1. As used in this chapter, "agency" has the meaning set**
 15 **forth in IC 4-22-2-3.**

16 **Sec. 2. As used in this chapter, "covered document" means any**
 17 **document that:**

- 18 (1) is necessary for obtaining any benefit or service
- 19 administered or provided by an agency, or for filing taxes
- 20 with an agency;
- 21 (2) provides information about any state benefit or service; or
- 22 (3) explains to the public how to comply with a requirement
- 23 an agency administers or enforces.

24 **The term includes (whether in paper or electronic form) a letter,**
 25 **publication, form, notice, or instruction. The term does not include**
 26 **a rule subject to the format, numbering system, standards, and**
 27 **techniques established under IC 4-22-2-42.**

28 **Sec. 3. As used in this chapter, "plain writing" means writing**
 29 **that is clear, concise, and well-organized, and follows other best**
 30 **practices appropriate to the subject or field and intended audience.**

31 **Sec. 4. An agency shall use plain writing in every covered**
 32 **document that the agency issues or substantially revises.**

33 **Sec. 5. An agency must be fully in compliance with this chapter**
 34 **after September 30, 2013.**

35 SECTION 9. IC 8-1-34-24.5 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: **Sec. 24.5. (a) This section applies to any unit**
 38 **that receives franchise fees paid to the unit under:**

- 39 (1) a certificate issued by the commission under this chapter;
- 40 or
- 41 (2) an unexpired local franchise issued by the unit before July
- 42 1, 2006;

43 **with respect to a particular calendar year.**

44 (b) For each calendar year, beginning with the calendar year
 45 ending December 31, 2012, each unit to which this section applies
 46 shall submit to the commission, on a form or in the manner
 47 prescribed by the commission, a report that includes the following
 48 information for each certificate or local franchise in effect in the
 49 unit during the calendar year for which the report is submitted:

- 50 (1) The amount of franchise fees paid to the unit under the
- 51 certificate or local franchise.

1 **(2) The account of the unit into which the franchise fees**
 2 **identified under subdivision (1) were deposited.**

3 **(3) The purposes for which any franchise fees received by the**
 4 **unit during:**

5 **(A) the calendar year for which the report is submitted; or**

6 **(B) a previous calendar year;**

7 **were used or spent by the unit during the calendar year for**
 8 **which the report is submitted.**

9 **(4) Any other information or data concerning the receipt and**
 10 **use of franchise fees that the commission considers**
 11 **appropriate.**

12 **(c) The commission shall prescribe the form of the report and**
 13 **the process, deadlines, and other requirements for submitting the**
 14 **report required under this section.**

15 **(d) Upon receiving the annual reports required under this**
 16 **section, the commission shall compile and organize the data and**
 17 **information contained in the reports. The commission shall include**
 18 **a summary of the data and information contained in the reports in**
 19 **the commission's annual report on the communications industry**
 20 **provided to the regulatory flexibility committee established by**
 21 **IC 8-1-2.6-4. However, this subsection does not empower the**
 22 **commission to disclose confidential and proprietary business plans**
 23 **and other confidential information without adequate protection of**
 24 **the information. The commission shall exercise all necessary**
 25 **caution to avoid disclosure of confidential information supplied**
 26 **under this section.**

27 **(e) The commission may adopt rules under IC 4-22-2, including**
 28 **emergency rules under IC 4-22-2-37.1, to implement this section.**
 29 **An emergency rule adopted by the commission under**
 30 **IC 4-22-2-37.1 expires on the date a rule that supersedes the**
 31 **emergency rule is adopted by the commission under IC 4-22-2-24**
 32 **through IC 4-22-2-36 and not ninety (90) days after the rule is**
 33 **accepted for filing as provided in IC 4-22-2-37.1(g). However, any**
 34 **emergency rules adopted by the commission under this subsection**
 35 **must take effect by a date that enables a unit subject to this section**
 36 **to comply with this section with respect to the calendar year ending**
 37 **December 31, 2012.**

38 SECTION 10. IC 25-26-13-17, AS AMENDED BY SEA 407-2012,
 39 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2012]: Sec. 17. (a) The board shall establish classes of
 41 pharmacy permits as follows:

42 **Type Category I.** A retail permit for a pharmacy that provides
 43 pharmaceutical care to the general public by the dispensing of a
 44 drug or device.

45 **Type Category II.** An institutional permit for hospitals, clinics,
 46 health care facilities, sanitariums, nursing homes, or dispensaries
 47 that offer pharmaceutical care by dispensing a drug product to an
 48 inpatient under a drug order or to an outpatient of the institution
 49 under a prescription.

50 **Type Category III.** A permit for a pharmacy that is not:

51 **(A) open to the general public; or**

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

4 Type IV: A permit for a pharmacy not open to the general public
 5 that provides pharmaceutical care by dispensing drugs and
 6 devices to patients exclusively through the United States Postal
 7 Services or other parcel delivery service.

8 Type V: A permit for a pharmacy that engages exclusively in the
 9 preparation and dispensing of diagnostic or therapeutic
 10 radioactive drugs.

11 Type VI: A permit for a pharmacy open to the general public that
 12 provides pharmaceutical care by engaging in an activity under a
 13 Type I or Type III permit. A pharmacy that obtains a Type VI
 14 permit may provide services to:

15 (A) a home health care patient;

16 (B) a long term care facility; or

17 (C) a member of the general public that provides closed
 18 door, central fill, mail order, or other processing
 19 operations that are not open to the general public but
 20 include:

21 (A) traditional pharmacy functions; or

22 (B) nontraditional pharmacy functions, such as infusion,
 23 nuclear pharmacy, or sterile compounding.

24 (b) The board may approve a remote or mobile location for
 25 Category I, II, or III permits. Pharmacy practice in a mobile or
 26 remote location may include, but is not limited to, telepharmacy,
 27 automated dispensing, or delivery of cognitive services.

28 (b) (c) A hospital or hospital system holding a Type Category II
 29 permit may offer drugs or devices:

30 (1) to:

31 (A) an employee, student, or volunteer of the hospital or
 32 hospital system;

33 (B) a retiree who is participating in a retirement, pension, or
 34 benefit program administered by the hospital or hospital
 35 system;

36 (C) an independent contractor who has an exclusive
 37 relationship with the hospital or hospital system;

38 (D) a member of the hospital's or hospital system's governing
 39 board; or

40 (E) a member of the hospital's or hospital system's medical
 41 staff; and

42 (2) to dependents of the individuals listed in subdivision (1);

43 for their own use.

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

47 (d) Hospitals holding a Type Category II permit may operate
 48 remote locations within a reasonable distance of the licensed area, as
 49 determined by the board, after:

50 (1) filing an application on a form prepared by the board;

51 (2) having each location inspected by the board; and

1 (3) obtaining approval from the board.

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

4 **(f) After June 30, 2012, a person with:**

5 **(1) a Type I permit shall be treated as holding a Category I**
6 **permit;**

7 **(2) a Type II permit shall be treated as holding a Category II**
8 **permit; and**

9 **(3) a Type III, IV, V, or VI permit shall be treated as holding**
10 **a Category III permit.**

11 **The change in the name of the permit does not change the**
12 **expiration date of the permit.**

13 **(g) After June 30, 2012, a reference in any rule or other**
14 **document to:**

15 **(1) a Type I permit shall be treated as a reference to a**
16 **Category I permit;**

17 **(2) a Type II permit shall be treated as a reference to a**
18 **Category II permit; or**

19 **(3) a Type III, IV, V, or VI permit shall be treated as a**
20 **reference to a Category III permit.**

21 SECTION 11. IC 25-26-13-19 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) A pharmacy
23 holding a ~~Type~~ **Category I** or ~~Type VI~~ **Category III** permit may be
24 open to the general public without a pharmacist on duty if the following
25 conditions are met:

26 (1) Approval is obtained from the board.

27 (2) All legend drugs and other merchandise that can only be
28 dispensed by a pharmacist are securely locked or secured by a
29 alternative system approved by the board when the pharmacist is
30 absent.

31 (3) During the pharmacist's absence, a sign at least twenty (20)
32 inches by thirty (30) inches is prominently displayed in the
33 prescription department stating: "Prescription Department Closed,
34 No Pharmacist on Duty".

35 (4) Only a pharmacist has access to the secured area.

36 (b) The board may revoke or limit a pharmacy's privilege under this
37 section after a hearing under IC 4-21.5-3.

38 SECTION 12. IC 25-26-13-20, AS AMENDED BY P.L.98-2006,
39 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2012]: Sec. 20. (a) A person desiring to open, establish,
41 operate, or maintain a pharmacy shall apply to the board for a
42 pharmacy permit on a form provided by the board. The applicant shall
43 set forth:

44 (1) the name and occupation of the persons desiring the permit;

45 (2) the location, including street address and city, of the
46 pharmacy;

47 (3) the name of the pharmacist who will qualify the pharmacy by
48 being responsible to the board for the legal operation of the
49 pharmacy under the permit; and

50 (4) such other information as the board may require.

51 (b) If the applicant desires to open, establish, operate, or maintain

1 more than one (1) pharmacy, ~~he~~ **the applicant** must file a separate
2 application for each. Each pharmacy must be qualified by a different
3 pharmacist.

4 (c) The board shall permit a pharmacist to serve as a qualifying
5 pharmacist for more than one (1) pharmacy holding a ~~Type~~ **Category**
6 ~~II~~ pharmacy permit upon the holder of the ~~Type~~ **Category** II permit
7 showing circumstances establishing that:

8 (1) the permit holder has made a reasonable effort, without
9 success, to obtain a qualifying pharmacist who is not serving as
10 a qualifying pharmacist at another ~~Type~~ **Category** II pharmacy;
11 and

12 (2) the single pharmacist could effectively fulfill all duties and
13 responsibilities of the qualifying pharmacist at both locations.

14 (d) The board shall grant or deny an application for a permit not
15 later than one hundred twenty (120) days after the application and any
16 additional information required by the board are submitted.

17 (e) The board may not issue a pharmacy permit to a person who
18 desires to operate the pharmacy out of a residence.

19 SECTION 13. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,
20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
22 written or electronic format, shall be numbered and maintained in
23 numerical and chronological order, or in a manner approved by the
24 board and accessible for at least two (2) years in the pharmacy. A
25 prescription transmitted from a practitioner by means of
26 communication other than writing must immediately be reduced to
27 writing or recorded in an electronic format by the pharmacist. The files
28 shall be open for inspection to any member of the board or ~~its~~ **the**
29 **board's** duly authorized agent or representative.

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

34 (1) may transmit the prescription information between the
35 prescribing practitioner and the pharmacy;

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

38 (3) must maintain patient privacy and confidentiality of all
39 archived information as required by applicable state and federal
40 laws.

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

46 (d) A prescription for any drug, the label of which bears either the
47 legend, "Caution: Federal law prohibits dispensing without
48 prescription" or "Rx Only", may be refilled by a pharmacist one (1)
49 time without the written, electronically transmitted, or oral
50 authorization of a licensed practitioner if all of the following conditions

- 1 are met:
- 2 (1) The pharmacist has made every reasonable effort to contact
- 3 the original prescribing practitioner or the practitioner's designee
- 4 for consultation and authorization of the prescription refill.
- 5 (2) The pharmacist believes that, under the circumstances, failure
- 6 to provide a refill would be seriously detrimental to the patient's
- 7 health.
- 8 (3) The original prescription authorized a refill but a refill would
- 9 otherwise be invalid for either of the following reasons:
- 10 (A) All of the authorized refills have been dispensed.
- 11 (B) The prescription has expired under subsection (g).
- 12 (4) The prescription for which the patient requests the refill was:
- 13 (A) originally filled at the pharmacy where the request for a
- 14 refill is received and the prescription has not been transferred
- 15 for refills to another pharmacy at any time; or
- 16 (B) filled at or transferred to another location of the same
- 17 pharmacy or its affiliate owned by the same parent corporation
- 18 if the pharmacy filling the prescription has full access to
- 19 prescription and patient profile information that is
- 20 simultaneously and continuously updated on the parent
- 21 corporation's information system.
- 22 (5) The drug is prescribed for continuous and uninterrupted use
- 23 and the pharmacist determines that the drug is being taken
- 24 properly in accordance with IC 25-26-16.
- 25 (6) The pharmacist shall document the following information
- 26 regarding the refill:
- 27 (A) The information required for any refill dispensed under
- 28 subsection (e).
- 29 (B) The dates and times that the pharmacist attempted to
- 30 contact the prescribing practitioner or the practitioner's
- 31 designee for consultation and authorization of the prescription
- 32 refill.
- 33 (C) The fact that the pharmacist dispensed the refill without
- 34 the authorization of a licensed practitioner.
- 35 (7) The pharmacist notifies the original prescribing practitioner
- 36 of the refill and the reason for the refill by the practitioner's next
- 37 business day after the refill has been made by the pharmacist.
- 38 (8) Any pharmacist initiated refill under this subsection may not
- 39 be for more than the minimum amount necessary to supply the
- 40 patient through the prescribing practitioner's next business day.
- 41 However, a pharmacist may dispense a drug in an amount greater
- 42 than the minimum amount necessary to supply the patient through
- 43 the prescribing practitioner's next business day if:
- 44 (A) the drug is packaged in a form that requires the pharmacist
- 45 to dispense the drug in a quantity greater than the minimum
- 46 amount necessary to supply the patient through the prescribing
- 47 practitioner's next business day; or
- 48 (B) the pharmacist documents in the patient's record the
- 49 amount of the drug dispensed and a compelling reason for
- 50 dispensing the drug in a quantity greater than the minimum

- 1 amount necessary to supply the patient through the prescribing
 2 practitioner's next business day.
- 3 (9) Not more than one (1) pharmacist initiated refill is dispensed
 4 under this subsection for a single prescription.
- 5 (10) The drug prescribed is not a controlled substance.
- 6 A pharmacist may not refill a prescription under this subsection if the
 7 practitioner has designated on the prescription form the words "No
 8 Emergency Refill".
- 9 (e) When refilling a prescription, the refill record shall include:
 10 (1) the date of the refill;
 11 (2) the quantity dispensed if other than the original quantity; and
 12 (3) the dispenser's identity on:
 13 (A) the original prescription form; or
 14 (B) another board approved, uniformly maintained, readily
 15 retrievable record.
- 16 (f) The original prescription form or the other board approved
 17 record described in subsection (e) must indicate by the number of the
 18 original prescription the following information:
 19 (1) The name and dosage form of the drug.
 20 (2) The date of each refill.
 21 (3) The quantity dispensed.
 22 (4) The identity of the pharmacist who dispensed the refill.
 23 (5) The total number of refills for that prescription.
- 24 (g) A prescription is valid for not more than one (1) year after the
 25 original date of issue.
- 26 (h) A pharmacist may not knowingly dispense a prescription after
 27 the demise of the practitioner, unless in the pharmacist's professional
 28 judgment it is in the best interest of the patient's health.
- 29 (i) A pharmacist may not knowingly dispense a prescription after
 30 the demise of the patient.
- 31 (j) A pharmacist or a pharmacy shall not resell, reuse, or redistribute
 32 a medication that is returned to the pharmacy after being dispensed
 33 unless the medication:
 34 (1) was dispensed to an individual:
 35 (A) residing in an institutional facility (as defined in 856
 36 IAC 1-28.1-1(6));
 37 (B) in a hospice program under IC 16-25; or
 38 (C) in a county jail or department of correction facility;
 39 (2) was properly stored and securely maintained according to
 40 sound pharmacy practices;
 41 (3) is returned unopened and:
 42 (A) was dispensed in the manufacturer's original:
 43 (i) bulk, multiple dose container with an unbroken tamper
 44 resistant seal; or
 45 (ii) unit dose package; or
 46 (B) was packaged by the dispensing pharmacy in a:
 47 (i) multiple dose blister container; or
 48 (ii) unit dose package;
 49 (4) was dispensed by the same pharmacy as the pharmacy
 50 accepting the return;

- 1 (5) is not expired; and
 2 (6) is not a controlled substance (as defined in IC 35-48-1-9),
 3 unless the pharmacy holds a ~~Type~~ **Category II** permit (as
 4 described in section 17 of this chapter).
- 5 (k) A pharmacist or a pharmacy shall not resell, reuse, or
 6 redistribute medical devices or medical supplies used for prescription
 7 drug therapy that have been returned to the pharmacy after being
 8 dispensed unless the medical devices or medical supplies:
 9 (1) were dispensed to an individual in a county jail or department
 10 of correction facility;
 11 (2) are not expired; and
 12 (3) are returned unopened and in the original sealed packaging.
- 13 (l) A pharmacist may use the pharmacist's professional judgment as
 14 to whether to accept medication for return under this section.
- 15 (m) A pharmacist who violates subsection (d) commits a Class A
 16 infraction.
- 17 SECTION 14. IC 35-48-7-8.1, AS AMENDED BY P.L.42-2011,
 18 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2012]: Sec. 8.1. (a) The board shall provide for a controlled
 20 substance prescription monitoring program that includes the following
 21 components:
 22 (1) Each time a controlled substance designated by the board
 23 under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the
 24 dispenser shall transmit to the INSPECT program the following
 25 information:
 26 (A) The controlled substance recipient's name.
 27 (B) The controlled substance recipient's or the recipient
 28 representative's identification number or the identification
 29 number or phrase designated by the INSPECT program.
 30 (C) The controlled substance recipient's date of birth.
 31 (D) The national drug code number of the controlled substance
 32 dispensed.
 33 (E) The date the controlled substance is dispensed.
 34 (F) The quantity of the controlled substance dispensed.
 35 (G) The number of days of supply dispensed.
 36 (H) The dispenser's United States Drug Enforcement Agency
 37 registration number.
 38 (I) The prescriber's United States Drug Enforcement Agency
 39 registration number.
 40 (J) An indication as to whether the prescription was
 41 transmitted to the pharmacist orally or in writing.
 42 (K) Other data required by the board.
- 43 (2) The information required to be transmitted under this section
 44 must be transmitted not more than seven (7) days after the date on
 45 which a controlled substance is dispensed.
- 46 (3) A dispenser shall transmit the information required under this
 47 section by:
 48 (A) uploading to the INSPECT web site;
 49 (B) a computer diskette; or
 50 (C) a CD-ROM disk;

1 that meets specifications prescribed by the board.

2 (4) The board may require that prescriptions for controlled
3 substances be written on a one (1) part form that cannot be
4 duplicated. However, the board may not apply such a requirement
5 to prescriptions filled at a pharmacy with a ~~Type~~ **Category II**
6 permit (as described in IC 25-26-13-17) and operated by a
7 hospital licensed under IC 16-21, or prescriptions ordered for and
8 dispensed to bona fide enrolled patients in facilities licensed
9 under IC 16-28. The board may not require multiple copy
10 prescription forms for any prescriptions written. The board may
11 not require different prescription forms for any individual drug or
12 group of drugs. Prescription forms required under this subdivision
13 must be approved by the Indiana board of pharmacy established
14 by IC 25-26-13-3.

15 (5) The costs of the program.

16 (b) This subsection applies only to a retail pharmacy. A pharmacist,
17 pharmacy technician, or person authorized by a pharmacist to dispense
18 a controlled substance may not dispense a controlled substance to a
19 person who is not personally known to the pharmacist, pharmacy
20 technician, or person authorized by a pharmacist to dispense a
21 controlled substance unless the person taking possession of the
22 controlled substance provides documented proof of the person's
23 identification to the pharmacist, pharmacy technician, or person
24 authorized by a pharmacist to dispense a controlled substance.

25 **SECTION 15. An emergency is declared for this act.**

(Reference is to EHB 1280 as reprinted February 28, 2012.)

Conference Committee Report
on
Engrossed House Bill 1280

Signed by:

Representative Koch
Chairperson

Senator Hershman

Representative Torr

Senator Steele

House Conferees

Senate Conferees