# LEGISLATIVE SERVICES AGENCY
## OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington St., Suite 301
Indianapolis, IN 46204
(317) 233-0696
iga.in.gov

## FISCAL IMPACT STATEMENT

**LS 7238**
**BILL NUMBER:** HB 1405

**NOTE PREPARED:** Apr 27, 2021
**BILL AMENDED:** Apr 22, 2021

**SUBJECT:** Insurance Matters.

**FIRST AUTHOR:** Rep. Carbaugh
**FIRST SPONSOR:** Sen. Zay

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL
X DEDICATED
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Medicaid in Schools:* The bill allows the Office of the Secretary of Family and Social Services (FSSA) to apply for a Medicaid state plan amendment to allow school corporations to seek Medicaid reimbursement for medically necessary, school based Medicaid covered services that are provided under federal or state mandates. It specifies possible services for Medicaid reimbursement, and it adds physical therapy to the list of services for which a school psychologist may refer a student.

*Long Term Care Insurance:* It establishes the long term care insurance partnership program and requires the FSSA to apply before September 1, 2021, for a Medicaid state plan amendment that would:

(1) provide for the establishment of the new long term care insurance partnership program and the discontinuance of the current long term care program; and

(2) ensure that an individual who purchased a qualified long term care policy under the current program will be eligible for an asset disregard even if the current program is discontinued and even though the policy was issued before the date of the state plan amendment, is not tax qualified, and does not meet the standards of Section 6021 the federal Deficit Reduction Act.

It provides that if approval is not given for the state plan amendment, the new long term care insurance partnership program is not established, the FSSA and the Department of Insurance (DOI) shall study ways to improve the affordability and cost effectiveness of the current program.

*Prescription Drug Audit:* The bill requires an audit examining prescription drug cost sharing for the Medicaid program once every three state fiscal years.

*Sheriff Reimbursement:* It provides that the county sheriff may receive reimbursement from a nonincarcerated person's health coverage for providing nonemergency transport of the person to a facility for a mental health

detention.

*Health Records:* The bill requires a provider to provide the health records requested by a patient within 30 days after the date the written request is made, unless the provider seeks an extension of not more than 30 days and informs the patient in writing of the reasons for the extension and the date by which the provider will provide the health records.

*Immunization Passports:* The bill prohibits the state or a local unit from issuing or requiring a COVID-19 "immunization passport" (a document concerning an individual's immunization status).

*State Aggregated Prescription Drug Purchasing Program:* It allows a nonprofit association of cities and towns to participate in the state aggregate prescription drug purchasing program.

*Physical Therapy Licensure Compact*: The bill adopts the physical therapy licensure compact.

*Continuing Education:* The bill provides that if a resident insurance producer completed more than 24 hours of credit in continuing education courses before the effective date of the producer's last license renewal, not more than 12 of the excess hours of credit for those continuing education courses may apply toward satisfaction of the continuing education requirement for the producer's next license renewal, subject to certain restrictions.

*Pharmacy Benefit Manager (PBM):* It prohibits a pharmacy benefit manager (PBM) from:

(1) imposing limits on a pharmacy's access to medication that differ from those existing for a PBM affiliate; or

(2) sharing any covered individual's information, except as permitted by the federal Health Insurance Portability and Accountability Act (HIPAA).

The bill requires a PBM:

(1) to update the PBM's maximum allowable cost list at least every seven days;

(2) to determine that a prescription drug is not obsolete, is generally available for purchase by pharmacies, and is not temporarily unavailable, listed on a drug shortage list, or unable to be lawfully substituted before placing the prescription drug on a maximum allowable cost list.

The bill provides that:

(1) if a PBM approves an appeal concerning maximum allowable cost pricing, the PBM must notify each pharmacy in the PBM's network that the maximum allowable cost for the drug has been adjusted; and

(2) if a PBM denies an appeal, the PBM must provide the reason for the denial and other information, and the appealing pharmacy or other entity may then file a complaint with the DOI.

The bill also allows a contracted pharmacy or pharmacy services administrative organization to file a complaint with the DOI if it believes that its contract with a PBM contains an unlawful contractual provision. It provides that a PBM's violation of these requirements or prohibitions is an unfair or deceptive act or practice in the business of insurance.

*340B Drug Reimbursement:* The bill also prohibits the inclusion of certain provisions in a contract between a PBM and an entity authorized to participate in the federal 340B Drug Pricing Program, with certain exceptions.

*Notices:* It amends code sections requiring an insurer to "deliver" or "provide" certain notices within a certain time period to make those sections provide instead that the insurer is required to "mail" the notices. It also

provides that if a party procures a policy of insurance through an online platform:

(1) the party affirmatively consents to have all notices and other documents related to the policy delivered to the party electronically; and

(2) other statutory prerequisites to the electronic delivery of notices do not apply.

*Auto Service Contracts:* The bill provides that a merchant or other seller that acts as an agent for purposes of the sale of an auto service contract is not a person contractually obligated under the service contract by virtue of acting as the seller.

*Rebates:* It provides, as an exception to the general prohibition against rebates, that:

(1) an insurer, an employee of an insurer, or a producer may offer and give gifts of limited value in connection with marketing of insurance and may conduct a drawing for prizes of limited value;

(2) an insurer, through its employees, affiliates, insurance producers, or third-party representatives, may provide, for free or at a discount, products or services that relate to or are provided in conjunction with a policy and are exclusively intended to educate about, assess, monitor, control, or prevent risk of loss;

(3) a person holding an insurance license may offer or provide, for free or for less than fair market value, services that are at least tangentially related to an insurance contract but are not contingent upon the purchase of insurance, subject to certain conditions.

*Auto Insurance Policy Termination:* It amends the law requiring an insurer to provide 10 days' advance notice to the insurance producer who procured an automobile policy when the insurer intends to cancel or not to renew the policy to make the law applicable only if the insurance producer who procured the policy was an independent insurance producer.

*Reports:* The bill requires the Indiana State Department of Health (ISDH), in consultation with the DOI, the FSSA, and the Indiana Board of Pharmacy, to submit to the Legislative Council a report concerning:

(1) best practice guidelines in providing specialty drugs in a manner that ensures the patient's safety; and

(2) information concerning any adverse events affecting the safety of patients resulting from the specialty drug protocols of a health carrier or hospital.

It requires the Legislative Services Agency (LSA) to conduct a study of market concentration in Indiana in the health insurance industry, the hospital industry, and five other industries and to present the findings of the study to the combined Interim Study Committees on Financial Institutions and Insurance and Public Health, Behavioral Health, and Human Services, the Legislative Council, and the Governor before December 31, 2022.

**Effective Date:** Upon passage; July 1, 2021; January 1, 2022.

**Explanation of State Expenditures:** *340B Drug Reimbursement:* The state share of managed care entity (MCE) Medicaid reimbursement will increase for drug purchases from 340B covered entities and their contract pharmacies. The impact is indeterminate, yet could be significant. [The FSSA makes capitation (per member per month) payments to MCEs for health care services delivered to MCE plan members, who represent about two-thirds of Medicaid enrollees. Capitation payments are based on estimated use of pharmaceuticals, equipment, and services among many other factors, including some factors that may have downward pressure on the capitation payment amount. Future capitation payments will incorporate the changes under the bill, but may not reflect a net change in the rate.]

The state Medicaid program employs PBMs to manage MCE covered individuals. 340B entities receive revenue from the difference between the discount price at which they purchase prescription drugs and the reimbursement received from 340B patients with third party payers. The revenue from this difference is used for the purposes of the 340B program. Additionally, 340B entities may contract with outside pharmacies to fill 340B prescriptions for 340B patients, with any excess coming back to the 340B entity. [Uninsured 340B patients may pay the acquisition cost or the program may provide prescription medication.]

*State Contracted PBMs* - In addition to the 340B provisions, the bill includes several other provisions that prohibit certain practices by PBMs, establish new administrative procedures for PBMs to follow, and limit drugs that can be included on a PBM's maximum allowable cost list. An increase in PBM administrative costs or reimbursement paid by PBMs to pharmacies as a result of the bill could influence the state's contracts and subcontracts with PBMs under the Medicaid and state employee health plans. Any increase in General Fund or dedicated fund expenditures for pharmacy benefits under these plans would depend on contract specifics and administrative decisions. The bill also requires PBMs to fulfill their contractual duties in good faith and in observance of commercial standards of fair dealings and disclose conflicts of interest.

The bill also requires the DOI to establish a process for complaints filed by pharmacies relating to reimbursement appeals denied by PBMs or other unfair contractual provisions. Additionally, the violations of the bill's requirements by PBMs would be actionable as unfair or deceptive acts in the business of insurance. Agency workload could increase to investigate complaints and provide adjudicative proceedings. If existing resource levels are insufficient for full implementation, the additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Prescription Drug Audit:* The bill's required audits of prescription drug cost sharing in the Medicaid program represents an additional workload or expenditure on the State Board of Accounts (SBOA) outside of the agency's routine administrative functions. The SBOA has reported that an outside contractor with healthcare expertise would likely need to be hired to complete the audit described by the bill every three fiscal years. If an outside auditor is contracted, the cost will likely be significant depending on the SBOA request for proposal and subsequent negotiation. Recent contracts between SBOA and outside auditors for specialized audits had annual costs between $700,000 and $900,000.

*Physical Therapy Licensure Compact:* Joining the Compact is expected to require additional workload and resources for the Professional Licensing Agency (PLA) and the Board of Physical Therapy (IBPT) that extend beyond routine administrative functions. The total estimated costs for CY 2022 are between $12,700 and $19,500. These costs are expected to be split between FY 2022 and FY 2023, but could potentially be incurred entirely in FY 2022 (aside from delegate travel and ongoing administrative costs) depending on how quickly PLA is able to implement the Compact. Additional expenditures could occur to the extent that PLA determines the bill's requirement for PLA to furnish a uniform data set to the Compact Commission necessitates additional database customization work.

Ongoing costs relating to administering the Compact are estimated at approximately $2,700 annually, including costs for travel reimbursement for one IBPT member who is appointed to serve as Indiana's Compact Commission Delegate. The bill could also require Indiana to contribute an annual assessment fee levied by the Commission; however, no such fee has been levied at this time. Additionally, IBPT and the Attorney General's Office could experience a increase in workload and costs for investigatory and disciplinary procedures to the extent that complaints are made against out-of-state practitioners practicing

in Indiana or Indiana licensees practicing in other member states. The state would be required to pay any witness fees and travel expenses necessary to summon witnesses from other member states for hearings held by IBPT. The volume of such complaints and disciplinary actions is expected to be minimal.

*Medicaid in Schools:* Any additional Medicaid reimbursements for the expanded types of services covered under the bill would be budget-neutral at the state level as state law requires school corporations to bear the nonfederal share of Medicaid reimbursements for school-based services. This is typically enforced by deducting an offsetting amount from a school corporation's state tuition support, equal to the nonfederal share of the school corporation's Medicaid reimbursements. The bill specifies that these services must be medically necessary and currently covered under the Medicaid State Plan, and provided by a licensed and qualified practitioner. The bill also allows for medically necessary, Medicaid-covered nursing services to be made reimbursable in school settings.

*Health Records:* ISDH may receive more complaints concerning records release by shortening the time for release by 30 days, with a 30-day extension in certain circumstances. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

*Workload Increases and Reports:* The bill increases the workload of the FSSA to apply for Medicaid state plan amendments (SPA) concerning long term care insurance and coverage of school provided services. FSSA will work with DOI to implement a new long term care insurance program or study long term care insurance if the SPA is not federally approved. The DOI will adopt rules, modify its database concerning continuing education, and may also have additional administrative oversight concerning violations of the bill's requirements for PBM contracts. The rebate exemptions and notice will have minimal impact on the DOI's workload. In addition, the bill will add to the workload of the FSSA, DOI, and ISDH and the Board of Pharmacy to prepare a report on specialty drugs. [The DOI is funded through a dedicated agency fund and the federal government reimburses certain Medicaid administrative expenses at 50% of the expenditure.]

The bill also requires the LSA to conduct or commission a health industry market concentration study. This multifaceted evaluation is to be completed by December 31, 2022. The LSA will need to enter into a contract with a consulting firm to meet this requirement, due to the scope of necessary data that may be required. Recent contracts for similar projects prepared by consultants are estimated to cost $250,000.

*Long Term Care Insurance Partnership:* An individual who purchases a qualifying policy receives asset protection in terms of Medicaid eligibility and estate recovery, impacting Medicaid enrollment and reimbursement in future years. The bill adds a new long term care partnership product with pricing requirements based on the age of the individual at the time of purchase. The existing program protects $1 of assets for each dollar of benefit received or total asset protection with a minimum $140,000 policy value and a 5% inflation rate. Of existing policies issued, 81% protect the individual's total assets.

*Continuing Education:* The DOI uses a third-party system to track continuing education and licensed producers are able to view their continuing education compliance status and the continuing education hours applied. Software enhancements are provided by the system contractor usually at no added cost.

*State Aggregated Prescription Drug Purchasing Program:* Additional purchases through the state program for members of a association of cities and towns are unlikely to impact the program.[The AIM Medical Trust indicates it provides insurance to 4,200 local employees who already qualify for purchases through the program; the bill will allow coverage of the Trust's staff.]

**Explanation of State Revenues:** *Health Records Request:* If health providers fail to provide records within the 30-day period required in the bill, the ISDH may impose a fine of up to $5,000, which is deposited in the state General Fund.

*Increased Premiums:* If more policies are issued as a result of certain types of rebates being offered, premium revenue could increase. Any increase in insurance company premiums will increase General Fund revenue from either insurance premium tax collections or Adjusted Gross Income (AGI) tax collections.

*Rebate Information:* A policyholder may have causes of action if an insurer fails to provide the annual report or if point of sale information is not provided. A civil costs fee of $100 would be assessed when a civil case is filed. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A portion of the fee revenue is transferred to the Indiana Bar Foundation, and one fee is deposited into the State User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

*Physical Therapy Licensure Compact:* The bill could result in fewer out-of-state physical therapists and physical therapist assistants applying for and renewing licensure through IBPT. However, the Compact authorizes member states to charge a fee for granting compact privileges to a practitioner from a remote state. Therefore, the bill's impact on license fee revenue is partially dependent on whether IBPT adopts a compact fee that differs from current license fees ($100 biennially for both physical therapists and physical therapist assistants). In addition to the fees that IBPT may charge, the Compact Commission currently charges its own $45 fee for applicants applying for compact privileges in any member state. This could effectively increase the total costs for practitioners seeking license recognition in Indiana if IBPT adopts a compact privilege fee approximately equal to the current biennial license fee. Some out-of-state practitioners may pay their compact privilege renewal fees more or less frequently than IBPT licensees because compact privileges expire on the same date that a practitioner's home-state license expires, rather than on a cycle established by IBPT. [There are currently 29 states that have adopted the compact, and an additional 8 states with pending legislation. The Commission was formally established in June 2017.]

**Explanation of Local Expenditures:** *Medicaid in Schools:* Subject to federal approval of the SPA, school corporations may increase spending on school-based health services covered by Medicaid. School corporations would be responsible for the nonfederal share of Medicaid costs (34% for most services in FFY 2021). However, additional Medicaid billing among school corporations is expected to result in a net reduction in overall expenditures at the local level, as additional federal reimbursement could replace school spending on IEP/IFSP and other mandated services (e.g., 504 plan or individualized health plan services).

As of FY 2020, about 45% of Indiana school corporations were billing Medicaid for IEP/IFSP services. Overall growth in Medicaid spending would depend on the number of additional school corporations that begin billing Medicaid, the number of students receiving billable services, the types of services provided, and rates paid to providers. The addition of physical therapy to the list of services that a student may be referred to by a school psychologist may increase Medicaid expenditures for IEP services as well.

*Transport Billing:* Local units may have increased costs to bill and collect payment from a third-party for transportation of an individual to emergency detention when the facility is more than 30 miles away. Subject to the health insurance policies and the requirements of the Indiana Medicaid state plan, the impact is expected to be minimal. [A person in emergency detention is not in the custody of the sheriff and a judicial officer must endorse the application for detention.]

**Explanation of Local Revenues:** *Medicaid in Schools:* Subject to federal approval of the SPA, school corporations may receive additional federal reimbursements (66% of most service costs in FFY 2021) for school-based health services covered by Medicaid. Potential reimbursements would vary widely across school corporations, depending on the number of students on an IEP/IFSP and the types of additional services billed as a result of this bill. In FY 2019, school corporations billing Medicaid for IEP/IFSP services received a median reimbursement of $145 per student enrolled in special education. If school corporations that are not currently billing Medicaid begin doing so, they could be expected to draw down annual federal reimbursements ranging between $3,000 and $221,000 for IEP/IFSP services (with the average school corporation receiving approximately $40,000). Additional reimbursements for non-IEP/IFSP services that would be made newly billable are currently indeterminable.

It is expected that some school corporations that are not currently billing Medicaid may be incentivized to do so by the bill's removal of restrictions on physical therapy referrals and by federal approval for a wider range of reimbursable school-based services. If 40% to 60% of non-billing school corporations begin billing Medicaid, total additional reimbursements statewide would be estimated between $2.8 M and $4.1 M per year for IEP/IFSP services. The nonfederal share is estimated between $945,000 and $1.4 M.

*Transport Billing:* The bill may increase revenue to a county general fund when a sheriff's office transports an individual who is being detained for 72 hours.

*Rebate Information:* If additional civil actions occur and court fees are collected, local governments would receive additional revenue from both a portion of the civil costs fee and other fees that would be collected.

**State Agencies Affected:** FSSA; DOI; ISDH; SBOA; AOS; Professional Licensing Agency; Board of Physical Therapists; Attorney General; Department of Education.

**Local Agencies Affected:** Trial courts, city and town courts, school corporations.

**Information Sources:** Clair Szpara, email, LSA inquiry and IDOI responses, November 11, 2020; Amy Kent, email, Fiscal on HB 1405, January 29, 2021; Clair Szpara, email, HB1405 information, February 9, 2021;

Medicaid in Schools. State Medicaid Director Letter *RE: Medicaid Payment for Services Provided without Charge (Free Care)*, December 15, 2014; Indiana Department of Education, *Medicaid Reimbursements for IEP Services*, SFY 2020; Indiana Department of Education, *Medicaid Billing Guidebook*, 2017; OFMA Survey of School Corporations Regarding Medicaid Billing, 2020 Legislative Interim.

PT Compact, http://ptcompact.org/; PLA, Search and Verify Tool; OFMA Professional Licensing Cost Estimator; Legislative Services Agency, Indiana Handbook of Taxes, Revenues, and Appropriations, Fiscal Year 2020.

**Fiscal Analyst:** Karen Rossen, 317-234-2106; Bill Brumbach, 317-232-9559; Adam White, 317-234-1360.