



Reprinted
February 27, 2018

ENGROSSED SENATE BILL No. 369

DIGEST OF SB 369 (Updated February 26, 2018 7:42 pm - DI 102)

Citations Affected: IC 22-3.

Synopsis: Workers' compensation drug formulary. Except during a medical emergency, prohibits workers' compensation and occupational disease compensation reimbursement for drugs specified in the ODG Workers' Compensation Drug Formulary Appendix A published by MCG Health as "N" drugs. Permits a prescribing physician to request to prescribe an "N" drug. Provides that, if the employer approves the request, the prescribing physician may prescribe the "N" drug. Provides that, if the employer does not approve the request, the employer shall: (1) shall send the request to a third party that is certified by the Utilization Review Accreditation Commission to make a determination
(Continued next page)

Effective: July 1, 2018.

Head, Boots, Walker, Delph, Merritt, Kruse, Raatz

(HOUSE SPONSORS — LEHMAN, COOK)

January 4, 2018, read first time and referred to Committee on Pensions and Labor.
February 1, 2018, amended, reported favorably — Do Pass.
February 5, 2018, read second time, amended, ordered engrossed.
February 6, 2018, engrossed. Technical correction pursuant to Rule 35(c). Read third time, passed. Yeas 42, nays 6.
February 7, 2018, re-engrossed.

HOUSE ACTION

February 12, 2018, read first time and referred to Committee on Employment, Labor and Pensions.
February 20, 2018, reported — Do Pass.
February 26, 2018, read second time, amended, ordered engrossed.

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Digest Continued

concerning the request; and (2) notify the prescribing physician and the employee of the third party's determination not more than five business days after receiving the request. Provides that, if the third party's determination is to deny the request, the employer shall notify the prescribing physician and the employee, and the employee may apply to the worker's compensation board for a final determination concerning the third party's determination. Provides that, if the employer fails to notify the physician and the employee of the third party's determination, the prescribing physician's request is considered approved, and reimbursement of the "N" drug is authorized.

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Reprinted
February 27, 2018

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 369

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

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

- 1 SECTION 1. IC 22-3-3-4.7 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2018]: **Sec. 4.7. (a) As used in this section, "formulary" refers to**
4 **the Official Disability Guidelines (ODG) Workers' Compensation**
5 **Drug Formulary Appendix A published by MCG Health.**
6 **(b) As used in this section, "medical emergency" means the**
7 **sudden onset of a medical condition manifested by acute symptoms**
8 **of sufficient severity, including severe pain, that in the absence of**
9 **immediate medical attention could reasonably be expected to result**
10 **in:**
11 **(1) serious jeopardy to the employee's health or bodily**
12 **functions; or**
13 **(2) serious dysfunction of a body part or organ.**
14 **(c) Beginning January 1, 2019, reimbursement is not permitted**
15 **for a claim for payment for a drug that:**
16 **(1) is prescribed for use by an employee who files a notice of**
17 **injury under this chapter; and**

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1 (2) according to the formulary, is an "N" drug.
 2 However, if the employee begins use of the "N" drug before July
 3 1, 2018, and the use continues after January 1, 2019,
 4 reimbursement is permitted for the "N" drug until January 1,
 5 2020.

6 (d) If a prescribing physician submits to an employer a request
 7 to permit use of an "N" drug described in subsection (c), including
 8 the prescribing physician's reason for requesting use of an "N"
 9 drug, and the employer approves the request, the prescribing
 10 physician may prescribe the "N" drug for use by the injured
 11 employee.

12 (e) If the employer does not approve the prescribing physician's
 13 request under subsection (d) to permit use of an "N" drug, the
 14 employer shall:

15 (1) send the request to a third party that is certified by the
 16 Utilization Review Accreditation Commission to make a
 17 determination concerning the request; and

18 (2) notify the prescribing physician and the injured employee
 19 of the third party's determination not more than five (5)
 20 business days after receiving the request.

21 (f) If an employer fails to provide the notice required by
 22 subsection (e)(2), the prescribing physician's request under
 23 subsection (d) is considered approved, and reimbursement of the
 24 "N" drug prescribed for use by the injured employee is authorized.

25 (g) If the third party's determination under subsection (e) is to
 26 deny the prescribing physician's request to permit the use of an
 27 "N" drug:

28 (1) the employer shall notify the prescribing physician and the
 29 injured employee; and

30 (2) the injured employee may apply to the worker's
 31 compensation board for a final determination concerning the
 32 third party's determination under subsection (e).

33 (h) Notwithstanding subsections (c) through (f), during a
 34 medical emergency, an employee shall receive a drug prescribed
 35 for the employee even if the drug is an "N" drug according to the
 36 formulary.

37 SECTION 2. IC 22-3-7-17.6 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2018]: **Sec. 17.6. (a) As used in this section, "formulary" refers**
 40 **to the Official Disability Guidelines (ODG) Workers'**
 41 **Compensation Drug Formulary Appendix A published by MCG**
 42 **Health.**



1 (b) As used in this section, "medical emergency" means the
2 sudden onset of a medical condition manifested by acute symptoms
3 of sufficient severity, including severe pain, that in the absence of
4 immediate medical attention could reasonably be expected to result
5 in:

6 (1) serious jeopardy to the employee's health or bodily
7 functions; or

8 (2) serious dysfunction of a body part or organ.

9 (c) Beginning January 1, 2019, reimbursement is not permitted
10 for a claim for payment for a drug that:

11 (1) is prescribed for use by an employee who files a notice of
12 occupational disease under this chapter; and

13 (2) according to the formulary, is an "N" drug.

14 However, if the employee begins use of the "N" drug before July
15 1, 2018, and the use continues after January 1, 2019,
16 reimbursement is permitted for the "N" drug until January 1,
17 2020.

18 (d) If a prescribing physician submits to an employer a request
19 to permit use of an "N" drug described in subsection (c), including
20 the prescribing physician's reason for requesting use of an "N"
21 drug, and the employer approves the request, the prescribing
22 physician may prescribe the "N" drug for use by the disabled
23 employee.

24 (e) If the employer does not approve the prescribing physician's
25 request under subsection (d) to permit use of an "N" drug, the
26 employer shall:

27 (1) send the request to a third party that is certified by the
28 Utilization Review Accreditation Commission to make a
29 determination concerning the request; and

30 (2) notify the prescribing physician and the disabled employee
31 of the third party's determination not more than five (5)
32 business days after receiving the request.

33 (f) If an employer fails to provide the notice required by
34 subsection (e)(2), the prescribing physician's request under
35 subsection (d) is considered approved, and reimbursement of the
36 "N" drug prescribed for use by the disabled employee is
37 authorized.

38 (g) If the third party's determination under subsection (e) is to
39 deny the prescribing physician's request to permit the use of an
40 "N" drug:

41 (1) the employer shall notify the prescribing physician and the
42 disabled employee; and



1 **(2) the disabled employee may apply to the worker's**
2 **compensation board for a final determination concerning the**
3 **third party's determination under subsection (e).**
4 **(h) Notwithstanding subsections (c) through (f), during a**
5 **medical emergency, an employee shall receive a drug prescribed**
6 **for the employee even if the drug is an "N" drug according to the**
7 **formulary.**



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 369, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 12, begin a new paragraph and insert:

"SECTION 1. IC 22-3-3-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 4.7. (a) This section does not apply to immediate emergency medical care required in a life-threatening situation.**

(b) As used in this section, "formulary" refers to".

Page 3, delete lines 15 through 42, begin a new paragraph and insert:

"(c) Beginning January 1, 2019, reimbursement is not permitted for a claim for payment for a drug that:

(1) is prescribed for use by an employee who files a notice of injury under this chapter; and

(2) according to the formulary, is an "N" drug.

(d) If a prescribing physician submits to an employer a request to permit use of an "N" drug described in subsection (c), including the prescribing physician's reason for requesting use of an "N" drug, and the employer approves the request, the prescribing physician may prescribe the "N" drug for use by the injured employee.

(e) If the employer does not approve the prescribing physician's request under subsection (d) to permit use of an "N" drug, the employer shall:

(1) send the request to a third party that is certified by the Utilization Review Accreditation Commission to make a determination concerning the request; and

(2) notify the prescribing physician of the third party's determination not more than five (5) business days after receiving the request.

(f) If the third party's determination under subsection (e) is to deny the prescribing physician's request to permit the use of an "N" drug, the prescribing physician shall notify the injured employee who may apply to the worker's compensation board for a final determination concerning the third party's determination under subsection (e).

SECTION 2. IC 22-3-7-17.6 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 17.6. (a) This section does not apply to immediate emergency medical care required in a life-threatening situation.**

(b) As used in this section, "formulary" refers to the Official Disability Guidelines (ODG) Workers' Compensation Drug Formulary Appendix A published by MCG Health.

(c) Beginning January 1, 2019, reimbursement is not permitted for a claim for payment for a drug that:

(1) is prescribed for use by an employee who files a notice of occupational disease under this chapter; and

(2) according to the formulary, is an "N" drug.

(d) If a prescribing physician submits to an employer a request to permit use of an "N" drug described in subsection (c), including the prescribing physician's reason for requesting use of an "N" drug, and the employer approves the request, the prescribing physician may prescribe the "N" drug for use by the disabled employee.

(e) If the employer does not approve the prescribing physician's request under subsection (d) to permit use of an "N" drug, the employer shall:

(1) send the request to a third party that is certified by the Utilization Review Accreditation Commission to make a determination concerning the request; and

(2) notify the prescribing physician of the third party's determination not more than five (5) business days after receiving the request.

(f) If the third party's determination under subsection (e) is to deny the prescribing physician's request to permit the use of an "N" drug, the prescribing physician shall notify the disabled employee who may apply to the worker's compensation board for a final determination concerning the third party's determination under subsection (e)."

Delete page 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 369 as introduced.)

BOOTS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 369 be amended to read as follows:

Page 2, line 13, delete "drug," and insert "**drug:**

(1)".

Page 2, line 14, delete "employee who" and insert "**employee; and**

(2) the injured employee".

Page 3, line 4, delete "drug," and insert "**drug:**

(1)".

Page 3, line 5, delete "employee who" and insert "**employee; and**

(2) the disabled employee".

(Reference is to SB 369 as printed February 2, 2018.)

HEAD

 SENATE MOTION

Madam President: I move that Senate Bill 369 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Page 1, line 3, delete "This section does not apply to immediate".

Page 1, delete line 4.

Page 1, line 5, delete "(b)".

Page 1, run in lines 3 through 5.

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"(b) As used in this section, "medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in:

(1) serious jeopardy to the employee's health or bodily functions; or

(2) serious dysfunction of a body part or organ."

Page 2, between lines 16 and 17, begin a new paragraph and insert:

"(g) Notwithstanding subsections (c) through (f), during a medical emergency, an employee shall receive a drug prescribed for the employee even if the drug is an "N" drug according to the

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formulary."

Page 2, line 19, delete "This section does not apply to immediate".

Page 2, delete line 20.

Page 2, line 21, delete "(b)".

Page 2, run in lines 19 through 21.

Page 2, between lines 23 and 24, begin a new paragraph and insert:

"(b) As used in this section, "medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in:

(1) serious jeopardy to the employee's health or bodily functions; or

(2) serious dysfunction of a body part or organ."

Page 3, after line 7, begin a new paragraph and insert:

"(g) Notwithstanding subsections (c) through (f), during a medical emergency, an employee shall receive a drug prescribed for the employee even if the drug is an "N" drug according to the formulary."

(Reference is to SB 369 as printed February 2, 2018.)

HEAD

SENATE MOTION

Madam President: I move that Senate Bill 369 be amended to read as follows:

Page 2, line 13, delete "drug," and insert "**drug:**

(1)".

Page 2, line 13, delete "prescribing physician" and insert "**employer**".

Page 2, line 13, after "notify" insert "**the prescribing physician and**".

Page 2, line 14, delete "employee who" and insert "**employee; and (2) the injured employee**".

Page 3, line 4, delete "drug," and insert "**drug:**

(1)".

Page 3, line 4, delete "prescribing physician" and insert "**employer**".

Page 3, line 4, after "notify" insert "**the prescribing physician**".

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and".

Page 3, line 5, delete "employee who" and insert "**employee; and (2) the disabled employee**".

(Reference is to SB 369 as printed February 2, 2018.)

TALLIAN

SENATE MOTION

Madam President: I move that Senate Bill 369 be amended to read as follows:

Page 2, line 8, after "physician" insert "**and the injured employee**".

Page 2, between lines 10 and 11, begin a new paragraph and insert:

"(f) If an employer fails to provide the notice required by subsection (e)(2), the prescribing physician's request under subsection (d) is considered approved, and reimbursement of the "N" drug prescribed for use by the injured employee is authorized."

Page 2, line 11, delete "(f)" and insert "**(g)**".

Page 2, line 41, after "physician" insert "**and the disabled employee**".

Page 3, between lines 1 and 2, begin a new paragraph and insert:

"(f) If an employer fails to provide the notice required by subsection (e)(2), the prescribing physician's request under subsection (d) is considered approved, and reimbursement of the "N" drug prescribed for use by the disabled employee is authorized."

Page 3, line 2, delete "(f)" and insert "**(g)**".

(Reference is to SB 369 as printed February 2, 2018.)

TALLIAN



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure reports that pursuant to Senate Rule 35(c), the following technical corrections are to be made to Engrossed Senate Bill 369.

Page 2, line 29, delete "(g)" and insert "(h)".

Page 3, line 38, delete "(g)" and insert "(h)".

LONG

(Reference is to ESB 369 as reprinted February 6, 2018.)

COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 369, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 369 as printed February 7, 2018.)

VANNATTER

Committee Vote: Yeas 9, Nays 3

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 369 be amended to read as follows:

Page 2, between lines 1 and 2, begin a new line blocked left and insert:

"However, if the employee begins use of the "N" drug before July 1, 2018, and the use continues after January 1, 2019, reimbursement is permitted for the "N" drug until January 1, 2020."

Page 3, between lines 9 and 10, begin a new line blocked left and insert:

"However, if the employee begins use of the "N" drug before July



1, 2018, and the use continues after January 1, 2019, reimbursement is permitted for the "N" drug until January 1, 2020."

(Reference is to ESB 369 as printed February 20, 2018.)

LEHMAN

