

# FAEGRE BAKER DANIELS

## 2014 Legislative Update #1

### Indiana Society of Anesthesiologists



*January 19, 2014*

After a one-day delay due to weather on January 6, the 2014 Indiana General Assembly hit the ground running and is moving forward at a frenetic pace. More than 500 bills were released last week, with some set for hearing even before copies were available on the legislature's website. The upcoming week promises to be a whirlwind of activity, as House committees race to complete their work before their chamber's January 28 deadline for committee action, and Senate panels speed toward a January 30 Senate deadline.

There are several issues of interest to ISA moving forward in the legislature. Following is a brief summary.

- **Anesthesiologist assistants**. As you recall, the governor's office asked Sen. Miller to carry legislation this year that would allow health care professionals who practice in an area that is reimbursed by CMS but not recognized in Indiana to practice in this state if they register with the Professional Licensing Agency. The governor's office sought to include AAs among the list of registered professionals. At the direction of the ISA Board following the December meeting, I wrote a letter to the governor's office reaffirming ISA's commitment to work with the governor on legislation that authorizes AA practice in Indiana so long as sufficient patient safety safeguards are included.

Since then, there have been a series of meetings between Sen. Miller and ISA, AAAA, the governor's office, ISMA, the Indiana Hospital Association, and the attorney general's office to discuss how this "one-size-fits-all" registry might work for health care professions as disparate as AAs and social work assistants. During a meeting last week, it became clear that the patient safety concerns with regard to AA practice cannot be adequately addressed within the parameters of a registration statute, and that licensure for AAs was needed. This was acceptable to the governor's office on Tuesday, but then on Wednesday we were informed that the AA licensure language could not go into the governor's bill and that we would need to find another vehicle. After a day of scrambling to work through various procedural rules to find a vehicle for the AA licensure language, we learned late Friday that the governor's office was now okay with including AA licensure in **SB 244**, the registration bill. An amendment was hastily prepared by AAAA's attorney and was further refined over the weekend by the Legislative Services Agency. I've attached a copy.

Sen. Miller plans to hear SB 244 on Wednesday morning and to vote the bill out of committee with the amendment at the same time. As you will see, it delegates most of the authority to determine AA scope and standards of practice to the Medical Licensing Board. It's very bare-

bones at this point, but Sen. Miller acknowledges that the bill is a work in progress and as such, we should be able to add some meat to it after it passes from the Senate and moves to the House, where it will be sponsored by Rep. (Dr.) Tim Brown.

- **Dental hygienists & nitrous oxide**: The House Public Health Committee held two hearings last week on HB 1061, which would expand the scope of practice for dental hygienists to include (among other things) the authority to administer nitrous oxide. I testified in opposition to the bill at the initial hearing on behalf of ISA, citing concerns with the educational requirements. According to the dental hygienists themselves, they are not trained to competency in Indiana in the administration of nitrous oxide because Indiana is one of 22 states that does not permit dental hygienists to administer nitrous oxide. I did express a willingness to work with the dental hygienists on educational requirements, but despite repeated requests, their lobbyist has failed to provide ISA with any information about their training. The bill is still pending in committee. Even if it does pass the House, it faces an uphill battle in the Senate.
- **CRNAs**: HB 1060 would revive the CRNA language from the AA bill that was vetoed last year. Specifically, the legislation would allow a CRNA to administer anesthesia at a hospital under the direction of and in the immediate presence of a podiatrist if a physician is available to respond immediately and in person to a medical emergency and the patient consents in writing to the administration of anesthesia by a CRNA. The bill has not yet been scheduled for a hearing.

Following is a tracking list of bills potentially affecting anesthesiologists. As always, please let me know if you have any questions or need additional information.

**HB 1060 CERTIFIED REGISTERED NURSE ANESTHETISTS (FRIZZELL D)** Certified registered nurse anesthetists. Allows a certified registered nurse anesthetist (CRNA) to administer anesthesia for a podiatrist if specified conditions are met. (Current law allows a CRNA to administer anesthesia under the direction of and in the immediate presence of a physician.)

*Current Status:* 1/7/2014 - First Reading

**HB 1061 DENTAL HYGIENE PRACTICE (FRIZZELL D)** Dental hygiene practice. Allows a dental hygienist to practice under prescriptive supervision in: (1) a dental office if the patient has a current medical history on file and has received a comprehensive oral examination within the previous year; or (2) a setting where a prescription for care has been issued by the dentist within the previous 90 days. (Current law allows a dental hygienist to practice under prescriptive supervision if a dentist has examined the patient and has prescribed the patient care within the previous 45 days.) Removes certain provisions that allow a dental hygienist to practice in specific settings. Allows a dental hygienist to administer nitrous oxide under the direct supervision of a licensed dentist.

*Current Status:* 1/15/2014 - House Public Health, (Bill Scheduled for Hearing);  
**Time & Location:** 1:30 PM, Rm. House Chamber

**HB 1097 IMMUNITY FOR PROVIDING VOLUNTEER HEALTH CARE (FRIZZELL D)** Grants a person licensed to provide health care services immunity from liability for an act or omission relating to the provision of health care if the care was: (1) within the scope of the person's license; and (2) provided voluntarily and without compensation. Specifies that the immunity: (1) is available even if the health care services are provided in a setting other than a medical clinic or health care facility; and (2) is not available if the person committed gross negligence or willful or wanton misconduct.

*Current Status:* 1/9/2014 - Referred to House Judiciary

**HB 1114 LEGEND DRUG PRESCRIPTIONS BY OPTOMETRISTS (DAVISSON S)** Allows optometrists who are certified by the optometry board to administer, dispense, and prescribe certain narcotic drugs, codeine with compounds, and hydrocodone with compounds. Repeals a law concerning drug formulary requirements. Makes conforming changes.

*Current Status:* 1/9/2014 - Referred to House Public Health

**HB 1218 DRUG TREATMENT AND REPORTING (DAVISSON S)** Requires the division of mental health and addiction (division) to establish standards and protocols for opioid treatment programs to do the following: (1) Assess new opioid treatment program patients to determine the most effective but least addictive opioid treatment drugs to start the patient's opioid treatment. (2) Transition appropriate opioid treatment program patients who are receiving methadone for opioid treatment to less addictive opioid treatment drugs. Allows the division to grant a modification or waiver of the standards and protocols for a patient based on an evaluation and the treatment needs of that patient. Requires an opioid treatment program to follow the standards and protocols adopted by the division for each opioid treatment program patient. Provides a list of the drugs that may be used by an opioid treatment program as a less addictive replacement for methadone. Requires the dispenser at an opioid treatment program to transmit certain information to the division. Provides that the information is subject to federal patient confidentiality regulations. Requires the division to report on the information collected. Requires the medical licensing board to adopt rules to establish standards and protocols for the prescribing of methadone

for pain management. Requires that the board of pharmacy (board) adopt a rule requiring a practitioner and opioid treatment program to check the Indiana scheduled prescription electronic collection and tracking program (INSPECT) before initially prescribing a controlled substance to a patient and periodically during the course of treatment that uses a controlled substance. Provides that beginning January 1, 2015, the board shall provide for the modification of the controlled substance prescription monitoring program to: (1) accept prescription drug information; and (2) monitor all prescription drugs; in the same manner as controlled substances. Provides that beginning January 1, 2015, any person who is required by the central repository for controlled substances data law to transmit controlled substance information to the INSPECT program must submit all prescription drug information to the INSPECT program in the same manner as controlled substance information is transmitted. Provides that the prescription drug information is confidential and may not be released to a law enforcement officer or law enforcement agency, except for controlled substances.

**Current Status:** 1/21/2014 - House Public Health, (Bill Scheduled for Hearing);  
**Time & Location:** 10:45 AM, House Chamber

**HB 1258 DISTANCE TREATMENT BY PHYSICIANS (SHACKLEFORD R)** Requires the medical licensing board to adopt emergency rules to establish: (1) a pilot program to allow treatment, including issuing a prescription, without the establishment of an in person patient-physician relationship; and (2) standards and procedures for physicians in the pilot program. Requires the medical licensing board to adopt rules that allow for the treatment, including issuing a prescription, without the establishment of an in person patient-physician relationship by a physician licensed in Indiana whose practice is located in Indiana.

**Current Status:** 1/14/2014 - Referred to House Public Health

**HB 1259 LICENSING OF DIABETES EDUCATORS (SHACKLEFORD R)** Creates the diabetes educators board, and provides for the licensure of diabetes educators. Makes a technical correction.

**Current Status:** 1/14/2014 - Referred to House Public Health

**HB 1309 MEDICAID MATTERS (CLERE E)** Establishes the affordable care committee. Allows the department of state revenue to establish a procedure to set off the earned income credit and the tax refund of certain Medicaid recipients for out-of-pocket expenses owed by the recipient. Modifies Medicaid provider reimbursement to Medicare reimbursement rates for services provided to certain Medicaid recipients. Adds Medicaid rehabilitation option services, chiropractic services, and optometric services to the Indiana check-up plan. Requires the office of Medicaid policy and planning (office) to negotiate with the United States Department of Health and Human Services (HHS) for a Medicaid state plan amendment or Medicaid waiver concerning expansion of Medicaid. Requires the office of the secretary of family and social services to report to the budget committee and the health finance commission if negotiations are unsuccessful. Requires the office to apply to HHS to amend the state Medicaid plan to require cost sharing by a Medicaid recipient who qualifies for Medicaid because the individual is a caregiver. Requires the office to present specified information to the health finance commission (commission) before August 1, 2014. Requires certain state agencies to report to the commission concerning a health insurance exchange in Indiana.

**Current Status:** 1/15/2014 - Referred to House Public Health

**HB 1357 UNIFORM PRIOR AUTHORIZATION FORM (BROWN C)** Requires the department of

insurance to develop a uniform prior authorization form for prescription drug coverage. Allows a prescribing provider to use, and requires an insurer or health maintenance organization that requires prior authorization of prescription drug coverage to accept, a completed uniform prior authorization form. Provides that if an insurer or health maintenance organization fails to accept the prior authorization form, or fails to respond within two business days after receiving the form, the request is considered to have been granted.

*Current Status:* 1/15/2014 - Referred to House Insurance

**HB 1406 APPLICATION OF FEDERAL AFFORDABLE CARE ACT (HARMAN T)** Prohibits state action related to enforcement or implementation of the federal Patient Protection and Affordable Care Act (PPACA). Requires the attorney general to file a civil action for injunctive relief in certain circumstances. Requires a tax deduction for taxpayers paying a penalty in relation to PPACA. Repeals a provision concerning application for a state innovation waiver under PPACA.

*Current Status:* 1/16/2014 - Referred to House Ways and Means

**SB 31 PROFESSIONS AND OCCUPATIONS (TOMES J)** Reorganization of certain licensing provisions. Provides for the reorganization of 12 Indiana Code sections containing frequently amended lists of professions and entities subject to professional licensing under IC 25-1. Makes no substantive change. Transfers the lists contained in each of these sections to corresponding chapters in a new IC 25 article. Sets forth the boilerplate language to be used when amending or adding a provision under the new structure. Updates affected internal references and cross-references. Removes obsolete references to entities not licensed by the professional licensing agency. Makes technical corrections. (The introduced version of this bill was prepared by the code revision commission.)

*Current Status:* 1/21/2014 - Senate Bills on Third Reading

**SB 44 ELECTRONIC HEALTH DATA WORK GROUP (BREAUX J)** Requires the state department of health and the office of the secretary of family and social services to establish a work group to study uniform access to electronic health data by health providers. (The introduced version of this bill was prepared by the health finance commission.)

*Current Status:* 1/16/2014 - Referred to the house

**SB 56 MEDICAL MALPRACTICE PATIENT'S COMPENSATION FUND (PAUL A)** Requires claims for payment from the medical malpractice patient's compensation fund to be computed and paid every three months instead of every six months.

*Current Status:* 1/21/2014 - Senate Bills on Second Reading

**SB 142 ADMINISTRATION OF MEDICAID (MILLER P)** Designates the office of the secretary of family and social services as the single state agency for the administration of the Medicaid program and removes the designation from the office of Medicaid policy and planning. Repeals provisions referring to the office of Medicaid policy and planning as the single state agency for administering, developing, and coordinating Medicaid.

*Current Status:* 1/22/2014 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

**SB 192 IMMUNITY FOR HEALTH CARE VOLUNTEERS (MILLER P)** Provides that a licensed health care worker who provides voluntary health care services in a setting other than a

medical clinic or health care facility is immune from civil liability. Provides that the person is not immune from civil liability if the damages resulted from the person's gross negligence or willful misconduct.

*Current Status:* 1/9/2014 - Referred to Senate Civil Law

**SB 194 HEALTH CARE PROFESSIONAL CULTURAL TRAINING (BREAUX J)** Requires an individual seeking licensure in a health care profession to complete cultural competency training.

*Current Status:* 1/9/2014 - Referred to Senate Health and Provider Services

**SB 219 PHYSICIAN ORDER FOR SCOPE OF TREATMENT (HOLDMAN T)** Requires an individual's treating physician to evaluate an individual's mental capacity before a physician order for scope of treatment (POST) form may be executed. Specifies that the first POST form executed by an individual is effective for six months but may be renewed with no expiration.

*Current Status:* 1/9/2014 - Referred to Senate Health and Provider Services

**SB 233 PHARMACY TECHNICIANS (GROOMS R)** Changes pharmacy technician certification to licensure. Adds a high school graduation, high school equivalency certificate, or state general educational development requirement for pharmacy technician licensure. Specifies education and training requirements. Requires passage of a specified certification examination beginning July 1, 2015. Specifies that individuals with certificates who are in good standing will be considered to have licensure.

*Current Status:* 1/9/2014 - Referred to Senate Health and Provider Services

**SB 243 EPHEDRINE AND PSEUDOEPHEDRINE (GLICK S)** Provides that materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine are schedule III controlled substances that may be dispensed only by prescription. Repeals: (1) the law allowing the dispensing of ephedrine and pseudoephedrine without a prescription subject to certain restrictions; and (2) provisions related to that law.

*Current Status:* 1/9/2014 - Referred to Senate Corrections & Criminal Law  
Corrections & Criminal Law

**SB 244 HEALTH CARE PROFESSIONAL REGISTRY (MILLER P)** Requires the professional licensing agency to create and maintain a health care professional registry for health care professionals who meet certain qualifications.

*Current Status:* 1/22/2014 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

**SB 285 INSULIN AND TRAMADOL. (GROOMS R)** Adds insulin to the definition of "legend drug". Provides that insulin may be sold for retail sale by a pharmacy only to an individual who possesses a prescription from certain practitioners. Designates Tramadol (Ultram) as a schedule III controlled substance.

*Current Status:* 1/22/2014 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

**SB 290 MEDICAL DEBT COLLECTION PROCEDURES. (TALLIAN K)** Defines "medical collection case" and prohibits the collection of prejudgment interest in a medical collection case. Permits the defendant in a medical collection case filed in small claims court to remove the

case to a circuit or superior court. Makes the statute of limitations in a medical collection case two years. (Under current law, the statute of limitations is six years.) Permits a person named as a defendant in multiple medical collection cases in the same county to consolidate them into one case. Provides that separate medical collection cases may be consolidated in a small claims court if each separate ...

**Current Status:** 1/29/2014 - Senate Judiciary, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 130

**SB 294** **WORKER'S COMPENSATION (BOOTS P)** Changes the worker's compensation and occupational diseases compensation law by providing that: (1) a medical service provider may not be reimbursed for more than one office visit for each repackaged legend drug prescribed; (2) the maximum period during which a medical service provider that is not a retail or mail order pharmacy may receive reimbursement for a repackaged legend drug begins on the date of the injury or disablement and ends at the beginning of the eighth day after the date of the injury or disablement; (3) the pecuniary liability of an employer or an employer's insurance carrier for a ...

**Current Status:** 1/22/2014 - Senate Pensions and Labor, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 233

**SB 346** **MEDICATION THERAPY MANAGEMENT AND MEDICAID (GROOMS R)** Allows for pharmacist reimbursement for medication therapy management services provided to certain Medicaid recipients beginning July 1, 2015. Sets forth requirements that a pharmacist must meet in order to receive Medicaid reimbursement for medication therapy management services. Requires the secretary of the office of family and social services (secretary) to establish a medication therapy management advisory committee. Requires the secretary to determine any Medicaid cost savings and improvement in patient quality of care by providing these services and report the secretary's findings to the general assembly not later than June 30, 2017.

**Current Status:** 1/14/2014 - Referred to Senate Health and Provider Services

**SB 369** **IMPLEMENTATION OF FEDERAL AFFORDABLE CARE ACT (TALLIAN K)** Expands Medicaid coverage for specified individuals. Requires the department of insurance to create a state health benefit exchange in Indiana. Requires the legislative services agency to prepare legislation for introduction in the 2015 legislative session to make necessary changes to statutes affected by this act.

**Current Status:** 1/14/2014 - Referred to Senate Appropriations

**SB 370** **PAYMENT OF INSURANCE PREMIUMS UNDER MEDICAID (TALLIAN K)** Requires the office of the secretary of family and social services to apply for a Medicaid state plan amendment or a demonstration waiver to allow the office of the secretary to purchase for certain individuals coverage by a qualified health plan through the health benefit exchange operated in Indiana.

**Current Status:** 1/14/2014 - Referred to Senate Appropriations

**SB 380** **MALPRACTICE LIMITATIONS (WALTZ B)** Raises the aggregate damages that may be obtained for the death of an adult person from \$300,000 to \$1,250,000. Requires the health finance commission to study during the 2014 legislative interim: (1) whether additional training for health facility employees is needed and the funding mechanism to provide the training; and (2) whether additional oversight and regulation of health facilities are necessary for the safety of health facility residents.

*Current Status:* 1/14/2014 - Referred to Senate Judiciary

**SB 406**    **MEDICAID FALSE CLAIMS** (MISHLER R) Makes certain procedural changes to the false claims act and Medicaid false claims act to remove inconsistencies and comply with federal law.

*Current Status:* 1/22/2014 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

**SB 421**    **PROFESSIONAL LICENSING MATTERS** (HEAD R) Provides that certain applications for a professional license may not be denied if the applicant was charged or convicted of a criminal offense two years prior to the date of application. Makes an exception for denial for certain crimes. Replaces the regulated occupations evaluation committee with the jobs creation committee. Provides that the funds from certain professions may be used by that profession's board to pay for the administration expenses of the profession. Removes the 1,500 hours of course work that must be offered by a beauty culture school and provides that the school must meet the requirements set by ...

*Current Status:* 1/23/2014 - Senate Commerce, Economic Development & Technology, (Bill Scheduled for Hearing); **Time & Location:** 10:00 AM, Rm. 130