

FAEGRE BAKER DANIELS

2015 Legislative Wrap-up & Interim Update

Indiana Society of Anesthesiologists



June 3, 2015

The 2015 Indiana General Assembly adjourned shortly before midnight on April 29, bringing an end to a session marked by controversy over the Religious Freedom Restoration Act. From ISA's perspective, the four-month budget session was more notable for measures that failed to pass as opposed to proposals that were enacted into law. Here are two highlights from the 2015 legislative morgue:

- CRNA scope of practice: As in previous years, the Indiana Association of Nurse Anesthetists sought to expand CRNA scope of practice to allow a CRNA to administer anesthesia in a hospital under the direction of and in the immediate presence of a podiatrist. [Senate Bill 167](#) was introduced by Sen. Pat Miller, and [House Bill 1310](#) was filed by Rep. David Frizzell. The language in both bills was similar to the provisions included in the final version of the 2013 AA bill, and would have required a physician to be available to respond immediately and in person to a medical emergency. However, neither measure included language from the 2013 bill that would have required the patient to consent in writing to the administration of anesthesia by a CRNA.

After ISA began working with Sen. Miller on an amendment to SB 167 that would require direction by a physician, IANA dropped its effort to pass the Senate bill and began concentrating its efforts on HB 1310, persuading three additional members of the House Public Health Committee to sign on as co-authors – Rep. Robin Shackelford, Rep. Ron Bacon and Rep. Steve Davisson. Rep. Clere spent time meeting with ISA and other advocates on both sides of the issue, and ultimately declined to grant the bill a hearing. Although the issue of CRNA scope of practice died during the 2015 session, it is expected to reemerge in future session.

- Medical malpractice: Two measures that would have changed Indiana's medical malpractice law also died. As introduced, [Senate Bill 55](#) would have increased the threshold for requiring a patient to submit a claim to the medical review panel from \$15,000 to \$187,000. The measure was amended in committee to change the threshold to \$50,000, and amended again on second reading to change the threshold to \$45,000 until 2020, at which time it would be reset every five years by the Department of Insurance based on CPI data. The second reading amendment also allowed a patient to bypass the medical review panel if the claim was based on the removal of a wrong body part or a foreign object left in the patient's body. Faced with stiff opposition from ISMA, the Indiana Hospital Association and other provider groups, the bill's author, Sen. Brent Steele, amended the legislation a final time to restore the \$15,000 threshold. This last-

ditch effort proved to be insufficient to garner enough votes for passage, and the bill was defeated on a 22-27 vote.

On the House side, Rep. Jerry Torr proposed [House Bill 1043](#), which would have increased the medical malpractice cap from \$1.25 million to \$1.65 million for claims arising after June 30, 2015. The measure also would have increased the maximum potential liability of a qualified health care provider for an occurrence of malpractice from \$250,000 to \$300,000, or \$400,000 if the action against the health care provider results in a final judgment in favor of the patient. HB 1043 was opposed by ISMA and other provider groups, but supported by IHA. The measure passed from committee on a 9-2 vote but was pulled from further action and quietly died. Dr. Alex Choi testified in opposition to both bills on behalf of ISMA and ISA.

Now that the dust is beginning to settle on the session, state lawmakers have begun to turn their attention to unfinished business. Last week, the Legislative Council met at the Statehouse to assign topics to legislative study committees, including a number of issues which could not be resolved during the 2015 session. Leadership of the House and Senate comprise the bipartisan council, which is responsible for managing the business of the General Assembly when the legislature is not in session.

Several issues impacting health care providers are slated for review this summer, although the council declined to assign some of the more controversial topics requested by state lawmakers, including physician reimbursement under workers' compensation. Legislative leaders are expected to assign lawmakers to the panels within a few weeks. Committee meetings should get underway shortly thereafter. Here are highlights of the issues that will be studied in the coming months:

- Medical Malpractice Act: The Interim Study Committee on Courts & Judiciary has been charged with reviewing and making recommendations on various issues surrounding Indiana's medical malpractice act, including whether the cap on the damages should be increased and any potential changes or improvements to the medical review panel process that may improve and streamline the process.
- Health Insurance: The Interim Study Committee on Public Health, Behavioral Health & Human Services will review a report from the Indiana Department of Insurance concerning consumer complaints and coverage denials by health insurers and definitions of "experimental treatment" used in health insurance policies.
- Needle exchange: The health study committee will also examine needle distribution and collection programs as part of a comprehensive response to reducing disease transmission due to intravenous drug use.
- Cigarette Tax: The Interim Study Committee on Public Policy will study and make recommendations concerning a possible increase in the cigarette tax to fund public health programs.

Following are detailed summaries of the legislation of interest to ISA enacted in 2015.

HEA 1001 STATE BIENNIAL BUDGET (BROWN T) Among other things:

- **HIP 2.0:** Establishes the Healthy Indiana Plan 2.0.
- Requires the entire annual cigarette tax allocation that is deposited in the HIP Trust Fund (\$112.7 M) to be used to fund the state share of the cost of HIP 2.0 with the exception of the appropriation for the childhood immunization program (\$11.0 M).
- Provides language and a funding mechanism for the phaseout of HIP 2.0 if the federal financial participation rate changes or the Incremental Hospital Assessment Fee (HAF) formula fails to provide sufficient funding to meet expenses.
- Requires the Hospital Assessment Fee Committee to establish a hospital assessment fee formula in an amount sufficient to fund the state share of HIP 2.0 expenses in excess of the available cigarette tax dollars plus \$11.5 M that is designated to be deposited annually for four years into the Phaseout Trust Fund. (The committee is comprised of the Secretary of the Family and Social Services Administration, the State Budget Director, and two members nominated by the Indiana Hospital Association and appointed by the Governor.)
- **Review of Medicaid rates:** Requires the Office of Medicaid Policy and Planning to conduct a review of rates payable under the current Medicaid fee structure and provide recommended rates for the Medicaid fee structure to the Budget Committee and Legislative Council before December 1, 2015.
- **Tax Credit for Certain For-Profit Hospitals-** Establishes a corporate adjusted gross income (AGI) tax credit for acute care for-profit hospitals. The credit equals 10% of the property taxes paid on property used as a hospital. The credit applies to taxable years after December 31, 2015.
Current Status: 5/7/2015 - **SIGNED BY GOVERNOR**
State Bill Page: [HB1001](#)

HEA 1065 USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES (CULVER W)

- Provides that a manufacturer of an investigational drug, biological product, or device may make the drug, biological product, or device available to a patient who meets certain requirements.
- Adds to the requirements concerning experimental or nonconventional medical treatment and the authority to allow a patient to receive an experimental or nonconventional medical treatment if a physician determines that the patient: (1) has been diagnosed with a terminal disease or condition; and (2) does not have comparable or satisfactory treatment options.
- Specifies that a new cause of action is not created.
Current Status: 3/24/2015 - **SIGNED BY GOVERNOR**
State Bill Page: [HB1065](#)

HEA 1145 CIVIL IMMUNITY FOR VOLUNTEER HEALTH CARE PROVIDERS (FRIZZELL D)

- Specifies criteria for civil immunity from liability for certain volunteer health care providers.
- Requires the Indiana professional licensing agency to establish and maintain a health care volunteer registry.
- Provides that an approval of a location where the provision of health care services in which a provider may be immune from civil liability is valid for up to two years.
- Requires a person who meets the criteria for immunity from civil liability to provide a certain records and results of laboratory and imaging based screenings and tests to the patient.
- Allows a person that provides a health care service to provide recommendations for testing. Requires that a person that provides the location where the health care service is provided do so without compensation as a condition of immunity.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1145](#)

HB1183 PHYSICIAN ASSISTANTS (DAVISSON S)

- Allows a physician assistant who is delegated authority to prescribe a controlled substance after practicing for at least 1,800 hours. (Current law allows a physician assistant to be delegated to prescribe a controlled substance after practicing for one year after graduating from a physician assistant program and practicing for at least 1,800 hours.)
- Removes requirement that supervising physician must delegate prescribing authority by the name of the drug or drug classification.
- Specifies that a physician assistant may refill a prescription as allowed for in the physician assistant's supervisory agreement.
- Provides that a pharmacist may not require the supervising agreement or a cosignature to fill a prescription written by a physician assistant.
- Removes requirement that patient encounters must be reviewed within 72 hours and provides that a physician must review physician assistant charts within ten business days and within a reasonable time that is appropriate for the maintenance of quality medical care. Reduces the percentage of physician assistant charts that a physician must review based on the year of practice by the physician assistant. Specifies patient record review by a physician for Schedule II prescription that a physician assistant with less than a year of authority to prescribe Schedule II controlled substances dispenses or prescribes.
- Provides that a physician may supervise four physician assistants at the same time.
- Allows physician assistants and advanced practice nurses to treat a patient with a Schedule III or Schedule IV controlled substance for weight reduction or to control obesity if certain conditions are met.

Current Status: 5/4/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1183](#)

HB1184 CONTROLLED SUBSTANCES (DAVISSON S) Authorizes optometrists who meet certain requirements to prescribe Tramadol. Adds Tramadol as a schedule IV controlled substance. Includes hydrocodone combination products as schedule II controlled substances. Removes dihydrocodeinone from the schedule III controlled substance list.

Current Status: 4/23/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1184](#)

HEA 1269 HEALTH & INSURANCE MATTERS (CLERE E) Among other things:

- Midwives: Extends the date: (1) by which a midwife is required to submit certain information to obtain an exemption from certain certification requirements; and (2) after which practicing midwifery without a certificate is a felony. Amends the midwife birth certification requirements. Provides immunity for a physician who signs a collaborative agreement with a certified direct entry midwife except in cases of gross negligence or reckless conduct. Provides immunity for a health care provider that employs a physician who signs or has signed a collaborative agreement with a certified direct entry midwife for certain acts or omissions.
- Telemedicine: Provides for coverage of telemedicine services under a policy of accident and sickness insurance and a health maintenance contract. Prohibits a health care provider from being required to obtain a separate additional written health care consent for the provision of telemedicine services.
- Study of insurance claim denials: Requires the department of insurance to report certain information before October 1, 2015, to the public health, behavioral health, and human services interim study committee concerning: (1) the department's accident and sickness insurance complaint process; (2) certain definitions in accident and sickness insurance policies; and (3) certain claims data and analysis concerning claim denials for procedures deemed investigatory or experimental.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1269](#)

HEA 1303 STATE REGISTRATION OF PRIVATELY CERTIFIED INDIVIDUALS (MCMILLIN J)

- Establishes a 3-year pilot project under which individuals who practice a certain occupation that is not a regulated profession under Indiana law can become "state registered" and be listed as practitioners of their occupation on the electronic registry of professions.
- Provides that an individual may not be state registered in connection with any health care occupation.

Current Status: 5/6/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1303](#)

HEA 1323 MEDICAL RESIDENCY EDUCATION (BROWN T)

- Establishes the medical residency education fund for the purpose of expanding medical education in Indiana by funding new residency program slots at licensed hospitals.
- Establishes the graduate medical education board (board) in order to: (1) provide

funding for residents not funded by the federal Centers for Medicare and Medicaid Services; (2) provide technical assistance for entities that wish to establish a residency program; (3) fund infrastructure costs for an expansion of graduate medical education; and (4) provide startup funding for entities that wish to establish a residency program.

- Provides that a recipient of a medical education residence grant or money from the graduate medical education fund must agree to provide matching funds equal to at least 25% of the money provided.
- Allows the board to require an entity receiving a grant for infrastructure expenses to financially participate in the expenses in an amount not to exceed 25% of the infrastructure expenses.
- Requires the board to prepare and submit a report to the general assembly before November 1, 2016, concerning recommendations for the expansion of graduate medical education in Indiana.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1323](#)

HB1401 MEDICAID FRAUD (WASHBURN T) Expands the crime of Medicaid fraud to include knowingly or intentionally making, uttering, presenting, or causing to be presented to the Medicaid program a Medicaid claim that is materially false or misleading.

Current Status: 4/23/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1401](#)

HEA 1448 MENTAL HEALTH DRUGS AND COVERAGE (DAVISSON S) Among other things: Includes inpatient substance abuse detoxification services as a Medicaid service. Authorizes the office of Medicaid policy and planning to require prior authorization for addictive medication used as medication assisted treatment for substance abuse.

Current Status: 5/4/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1448](#)

HEA 1454 AUTO-INJECTABLE EPINEPHRINE (EBERHART S)

- Allows a health care provider with prescriptive authority to prescribe auto-injectable epinephrine to a business, association, or governmental entity (entity) or an entity's branch office.
- Sets requirements for certain individuals employed by an entity to fill, store, and administer auto-injectable epinephrine.
- Provides civil immunity for: (1) a certain entity's employees in the administration of auto-injectable epinephrine; and (2) health care providers in the prescribing of auto-injectable epinephrine and in the training of employees in the administration of auto-injectable epinephrine.

Current Status: 4/23/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1454](#)

HEA 1562 PROFESSIONAL LICENSING MATTERS. (ZENT D)

- Requires an individual who holds a professional license or certificate and who is

convicted of a misdemeanor or felony to provide written notice of the conviction to the appropriate professional licensing board not later than 90 days after entry of the order or judgment of conviction.

- Provides that a mandatory notice to a license holder of the upcoming expiration of the license holder's license must be sent at least 90 days (instead of 60 days) before the expiration date.
- Allows the professional licensing agency (agency) to delay issuing a license renewal for up to 120 days for purposes of investigation. (Current law allows a delay of up to 90 days.)

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [HB1562](#)

SEA 33 **WORKER'S COMPENSATION (BOOTS P)** Urges the legislative council to assign to an interim study committee for the 2015 interim period the topic of worker's compensation reimbursement to all providers of worker's compensation related claims outside of hospitals, including the study of a common baseline of the providers' Medicare reimbursement rate plus a reimbursement above the Medicare level, seeking fair reimbursement.

Current Status: 5/7/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB33](#)

SEA 123 **HIGHER EDUCATION (BECKER V)** Revises the law setting forth the locations and names for centers for comprehensive medical education.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB123](#)

SEA 168 **CONTROLLED SUBSTANCE DATA BASE (MILLER P)** Permits physicians who hold a temporary medical license to have access to confidential information in the Indiana scheduled prescription electronic collection and tracking (INSPECT) program.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB168](#)

SEA 293 **MEDICAL PEER REVIEW (MILLER P)** Provides for use of a peer review committee by a medical school located in Indiana. Allows sharing of peer review information between a medical school peer review committee and another peer review committee.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB293](#)

SEA 294 **LEGEND DRUG INVESTIGATIONS (MILLER P)** Provides that certain laws concerning obtaining a legend drug or the validity of a prescription or drug order do not apply to actions of a person, practitioner, or pharmaceutical manufacturer performed in an investigation of a pharmaceutical manufacturer's legend drug that is suspected of being counterfeited, adulterated, or misbranded. Requires a pharmaceutical manufacturer that collects drug samples during an investigation to maintain records of the drug samples and to make the records available to certain law enforcement agencies. Prohibits a person from owning or operating a store, facility, or other place of business in Indiana where: (1) prescriptions are accepted to be filled; or (2) prescription drugs or devices are ordered,

offered or advertised for sale, or paid for; unless the person has a pharmacy permit. Excludes mail order and Internet based pharmacies to the extent that they are allowed to operate under state law.

Current Status: 4/23/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB294](#)

SEA 358 MEDICATIONS (GROOMS R)

- Defines "medication therapy management" for the purposes of the regulation of pharmacies and pharmacists. Adds the provision of medication therapy management to the definition of "the practice of pharmacy".
- Establishes the INSPECT oversight committee. Provides the committee's approval for the board to execute a contract with a vendor to administer the INSPECT program. Requires approval from the chairperson of the board of pharmacy to hire a director of the INSPECT program.

Current Status: 4/30/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB358](#)

SEA 406 OVERDOSE INTERVENTION DRUGS (MERRITT J)

- Allows specified health care professionals with prescriptive authority to dispense, write a prescription, or prepare a standing order for an overdose intervention drug without examining the individual to whom it may be administered if specified conditions are met.
- Allows for an individual who is a person at risk, a family member, friend, or other individual or entity in a position to assist another individual who, there is reason to believe, is at risk of experiencing an opioid-related overdose, to obtain and administer an overdose intervention drug if certain conditions are met.
- Provides for civil immunity.

Current Status: 4/17/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB406](#)

SB461 HEALTH MATTERS (MILLER P) Among other things:

- Authorizes the state health commissioner to declare a public health emergency.
- Sets forth conditions in which a local health department, a municipality, a county, or a nonprofit organization may operate a syringe exchange program and expires the authorization of a program July 1, 2019.
- Urges the legislative council to, during the 2015 interim, assign to a joint committee the topic of needle and syringe exchange programs and a review of the appropriate criminal penalties for certain drug offenses.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB461](#)

SEA 464 MENTAL HEALTH ISSUES (MILLER P) Among other things:

- Specifies limitations for reimbursement for methadone by: (1) the state employee health plan; (2) Medicaid; (3) certain policies of accident and sickness insurance; and (4) certain health maintenance organization contracts; if the drug is prescribed

for the treatment of pain. Requires a prescriber who is prescribing methadone for the treatment of pain or pain management to indicate this treatment on the prescription or order. Places restrictions on coverage under a health insurance policy and a health maintenance organization contract for methadone used in pain management.

- Provides that addiction counseling, inpatient detoxification, case management, daily living skills, and long acting, nonaddictive medication may be required to treat opioid or alcohol addiction as a condition of parole, probation, community corrections, pretrial diversion, or participation in a problem solving court.
- Requires the office of Medicaid policy and planning to: (1) develop quality measures and reporting to ensure a managed care organization's compliance with the coverage; and (2) report the clinical use of certain medications to the mental health Medicaid quality advisory committee.
- Requires coverage under the Indiana check-up plan of nonaddictive medication assistance treatment drugs prescribed for the treatment of substance abuse.
- Authorizes the division of mental health and addiction (division) to approve before June 30, 2018, not more than five new opioid treatment programs if: (1) the programs are run by a hospital, a specified institution, or a certified community mental health center; and (2) the division determines that there is a need for a new opioid treatment program in the proposed location.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB464](#)

SEA 465 HUMAN SERVICES AND HEALTH MATTERS (MILLER P) Among other things, removes language that prohibited certain Medicaid copayment for services.

Current Status: 5/5/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB465](#)

SEA 534 RULES FOR PRESCRIBING CONTROLLED SUBSTANCES (GROOMS R)

- Requires the medical licensing board to adopt standards and protocols for the prescribing of controlled substances, including the use of abuse deterrent formulations.
- Requires, before March 1, 2016, the following boards to adopt rules concerning the prescribing of opioid controlled substances for pain management treatment: (1) the medical licensing board, concerning physician assistants; (2) the board of podiatric medicine, concerning podiatrists; (3) the state board of dentistry, concerning dentists; and (4) the Indiana state board of nursing, concerning advanced practice nurses. Requires each board to report before December 31, 2015, to the legislative council with a status report on the board's efforts to adopt the required rules.

Current Status: 4/23/2015 - **SIGNED BY GOVERNOR**

State Bill Page: [SB534](#)