

FAEGRE BAKER DANIELS

2015 Legislative Update

Indiana Society of Anesthesiologists



March 1, 2015

The House and Senate wrapped up work on their own bills last week, thus marking the halfway point for the 2015 "long" session of the Indiana General Assembly. Any bill that did not clear its house of origin is now considered "dead," although its contents may be inserted into a surviving bill through mid-April. Of the 1,237 measures introduced this session, 842 have died, leaving approximately one-third (395 bills) alive for further consideration.

The mortality rate for bills on ISA's tracking list is somewhat higher, at 50%. So far, 24 of the 48 bills we were tracking for ISA in January are now dead. Some of the more noteworthy bills to die include:

- **Supervision of CRNAs by podiatrists**: Both **House Bill 1310** and **Senate Bill 167** died in their respective chambers without receiving a hearing. The identical bills would have allowed a CRNA to administer anesthesia in a hospital under the direction of and in the immediate presence of a podiatrist, provided that a physician is available to respond immediately and in person to a medical emergency.
- **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.

Following are summaries of bills of potential interest to ISA survived the first half of session and are now eligible for consideration in the second chamber. As always, please let me know if you have any questions or need additional information.

SCOPE OF PRACTICE

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. Removes the 30 day limitation on the amount of a controlled substance a physician assistant may prescribe.
- 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 a reasonable time which is appropriate for the maintenance of quality medical care.
- Reduces the number of physician assistant charts that a physician must review.
- Requires 50% of patient records for a Schedule II prescription that a physician assistant, with less than a year of authority to prescribe Schedule II controlled substances, writes must be reviewed by the physician.
- Provides that a physician may supervise four physician assistants at the same time.
- Allows a physician assistant and certain 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: 2/24/2015 - Referred to committee on Health and Provider Services

State Bill Page: [HB1183](#)

HB1548 MIDWIVES (LEHE D)

- Removes the requirement that a direct entry midwife (midwife) have a collaborative agreement with a physician requiring that the midwife's client have a consulting physician.
- Requires a client to be examined by a physician who is qualified in obstetrics and gynecology at certain times during the pregnancy unless the client refuses and meets certain conditions.
- Extends the date: (1) by which a midwife is required to submit certain information to obtain an exemption from certain certification requirements; (2) relating to restrictions of use of the title "certified direct entry midwife"; and (3) after which practicing midwifery without a certificate is a felony.
- Requires certain information to be included in a midwife's disclosure form, client's records, and emergency plan.
- Requires a client's medical records that are prepared by the client's physician be provided to the midwife.

- Repeals certain provisions concerning physician collaboration.
Current Status: 2/25/2015 - Senator Miller, Pat added as sponsor
Recent Status: 2/25/2015 - Third reading passed; Roll Call 261: yeas 77, nays 19
State Bill Page: [HB1548](#)

MEDICAL MALPRACTICE

HB1145 CIVIL IMMUNITY FOR VOLUNTEER HEALTH CARE PROVIDERS (FRIZZELL D)

- Specifies criteria for civil immunity from liability for certain volunteer health care providers.
- Requires the professional licensing agency to establish and maintain: (1) a process for the approval of locations at which volunteer health care services may be provided; and (2) 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 record and results of laboratory and imaging based screenings and tests to the patient.

Current Status: 2/24/2015 - Senator Miller, Pete added as third sponsor

Recent Status: 2/24/2015 - Senator Miller, Pat added as sponsor

2/24/2015 - Senator Raatz added as second sponsor

State Bill Page: [HB1145](#)

MISCELLANEOUS MEDICAL

HB1065 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 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. Makes a technical correction.

Current Status: 3/4/2015 - Senate Health and Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, Rm. 431

State Bill Page: [HB1065](#)

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: 2/24/2015 - Referred to Senate Judiciary

State Bill Page: [HB1184](#)

HB1303 REGISTRY OF CERTIFIED PROFESSIONS (MCMILLIN J) Establishes a procedure for individuals and existing licensing boards to apply to the professional licensing agency to allow qualified individuals to become state certified and be placed on the electronic registry of professions. Prohibits an individual who is not state certified from using the title "state

certified".

Current Status: 2/24/2015 - Referred to Senate Commerce & Technology

Recent Status: 2/24/2015 - First Reading

2/17/2015 - Senator Miller, Pat added as sponsor

State Bill Page: [HB1303](#)

HB1323 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. Specifies uses of money from the medical residency education fund. Establishes the graduate medical education 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; and (3) provide startup funding for entities that wish to establish a residency program.

Current Status: 2/25/2015 - Referred to Senate Appropriations

Recent Status: 2/25/2015 - First Reading

2/24/2015 - Referred to the Senate

State Bill Page: [HB1323](#)

HB1351 AGENCY RULEMAKING AND POLICYMAKING (WOLKINS D) Provides that an agency's statutory authority to regulate and implement programs does not include rulemaking or policymaking authority that is not based upon a federal requirement or that exceeds the authority granted to a federal or state agency under federal statutory authority. Provides an exception that rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon: (1) the general authority of an agency, subject to limits in the grant of the authority and upon the subject matter; or (2) the power to adopt emergency rules. Requires the legislative services agency (LSA) to review proposed and adopted agency rules, guidelines, standards or other policies. Provides that it is not the intent of the general assembly to have the findings or opinions of the LSA regarding legislative intent or an agency's legal authority to be: (1) used as evidence in any investigation or proceeding; or (2) imputed to the general assembly. Makes changes to the statute requiring distribution of agency statements.

Current Status: 2/24/2015 - Referred to committee on Tax and Fiscal Policy

Recent Status: 2/24/2015 - First Reading

2/17/2015 - Referred to the Senate

State Bill Page: [HB1351](#)

HB1401 MEDICAID FRAUD (WASHBURNE 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: 2/24/2015 - Referred to Senate Corrections & Criminal Law

Recent Status: 2/24/2015 - First Reading

2/17/2015 - Senator Young, M. added as sponsor

State Bill Page: [HB1401](#)

HB1454 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: 2/24/2015 - Referred to committee on Health and Provider Services

Recent Status: 2/24/2015 - First Reading
1/27/2015 - Representative Mishler added as cosponsor

State Bill Page: [HB1454](#)

HB1562 PROFESSIONAL LICENSING MATTERS (ZENT D) Among other things:

- Requires individuals who hold professional licenses issued by the professional licensing agency (agency) to notify the professional licensing board (board) of any criminal convictions not later than 90 days after the entry of an order or judgment.
- Allows the agency to delay issuing a license renewal for up to 120 days. (Current law allows up to 90 days.)
- Adds "hydrocodone combination products" to the list of schedule II controlled substances.
- Adds "tramadol" to the list of schedule IV controlled substances.

Current Status: 2/24/2015 - Senator Brown L added as sponsor

Recent Status: 2/24/2015 - Third reading passed; Roll Call 252: yeas 95, nays 0
2/24/2015 - House Bills on Third Reading

State Bill Page: [HB1562](#)

SB123 CENTERS FOR MEDICAL EDUCATION (BECKER V) Revises the law setting forth the locations and names for centers for comprehensive medical education.

Current Status: 2/3/2015 - Referred to House

Recent Status: 1/29/2015 - Representatives McNamara and Riecken added as cosponsor
1/29/2015 - Representative Sullivan added as sponsor

State Bill Page: [SB123](#)

SB168 ACCESS TO 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: 2/3/2015 - Referred to House

Recent Status: 1/26/2015 - Representatives Kirchofer and Brown, C. added as cosponsor
1/26/2015 - Representative Clere added as sponsor

State Bill Page: [SB168](#)

SB293 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: 2/3/2015 - Referred to House

Recent Status: 1/29/2015 - Representative Brown, C. added as cosponsor
1/29/2015 - Representative Clere added as sponsor

SB294 **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: 2/24/2015 - Senator Randolph added as coauthor

Recent Status: 2/24/2015 - Representative Brown, C. added as cosponsor
2/24/2015 - Representative Brown, T. added as sponsor

State Bill Page: [SB294](#)

SB358 **MEDICATION THERAPY MANAGEMENT (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". Includes advanced practice nurses and physician assistants in the definition of "direct supervision" for the purposes of consulting with a pharmacist on certain drug regimen protocols.

Current Status: 2/2/2015 - Representatives Clere and Stemler added as cosponsor

Recent Status: 2/2/2015 - Representative Davisson added as sponsor
2/2/2015 - Third reading passed; Roll Call 71: yeas 44, nays 0

State Bill Page: [SB358](#)

SB406 **OVERDOSE INTERVENTION DRUGS (MERRITT J)**

- Allows specified health care professionals with prescriptive authority to dispense or write a prescription 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 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.
- Requires a pharmacy that fills a prescription for an overdose intervention drug to report certain information to the INSPECT program.
- Includes naloxone to be reported to the INSPECT program.

- Requires certain ambulances and emergency medical services vehicles to be equipped with an overdose intervention drug. Provides for civil and criminal immunity.

Current Status: 2/16/2015 - Referred to House

Recent Status: 2/10/2015 - Senator Randolph added as coauthor
2/10/2015 - Representative Ziemke added as cosponsor

State Bill Page: [SB406](#)

SB439 CONTROLLED SUBSTANCES (HERSHMAN B)

- Limits Medicaid reimbursement for Subutex and Suboxone or a similar trade name or generic of the drug when the drug was prescribed for the treatment of pain management to only if the drug was prescribed by a physician who meets certain requirements.
- Allows for the office of Medicaid policy and planning to require prior authorization for these drugs when being prescribed for substance abuse treatment as determined by the board or when being prescribed for more than six months.
- Requires the division of mental health and addiction to adopt rules concerning: (1) opioid treatment by an opioid treatment provider; (2) take home opioid treatment medications; (3) clinical standards for tapering of a patient, relapse, and overdose prevention; and (4) specified standards and protocols for an opioid treatment provider.
- Requires an opioid treatment provider to periodically and randomly test a patient for specified drugs during treatment.

Current Status: 2/19/2015 - Referred to House

Recent Status: 2/17/2015 - Representative Brown, T. added as sponsor
2/17/2015 - Third reading passed; Roll Call 176: yeas 50, nays 0

State Bill Page: [SB439](#)

SB462 ADVERTISING BY HEALTH CARE PRACTITIONERS (MILLER P) Specifies certain information to be included beginning January 1, 2016, in health care advertisements by a health care practitioner. Sets forth requirements that must be met in order for a physician to use the term "board certified".

Current Status: 2/2/2015 - Representatives Davisson, Kirchhofer and Brown, C. added as cosponsor

Recent Status: 2/2/2015 - Representative Zent added as sponsor
2/2/2015 - Third reading passed; Roll Call 74: yeas 44, nays 0

State Bill Page: [SB462](#)

SB534 RULES FOR PRESCRIBING CONTROLLED SUBSTANCES (GROOMS R) 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: 2/17/2015 - Senator Randolph added as coauthor

Recent Status: 2/17/2015 - Representatives Clere and Stemler added as cosponsor
2/17/2015 - Representative Davisson added as sponsor
State Bill Page: [SB534](#)

HB1269 TELEMEDICINE (CLERE E)

Provides for coverage of telemedicine services under a policy of accident and sickness insurance and a health maintenance contract.

Current Status: 2/24/2015 - Senator Stoops added as cosponsor
Recent Status: 2/24/2015 - Senator Young, M. added as third sponsor
2/24/2015 - Senator Miller, Pat added as sponsor
State Bill Page: [HB1269](#)

HB1472 VARIOUS TAX MATTERS (NEGELE S) Among other things: Amends the sales tax exemption for medical equipment, supplies, and devices to: (1) restate the application of the sales tax exemption for medical equipment, supplies, and devices; and (2) provide a sales tax exemption for food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist. Amends the sales tax exemption for drugs, insulin, oxygen, blood, or blood plasma to restate the application of the sales tax exemption. Repeals the sales tax exemption for food and food ingredients prescribed as medically necessary by a physician. Amends the definition of "research and development activities" for purposes of the sales tax exemption for research and development equipment and property.

Current Status: 2/25/2015 - Referred to committee on Tax and Fiscal Policy
Recent Status: 2/25/2015 - First Reading
2/24/2015 - Referred to the Senate
State Bill Page: [HB1472](#)

SB438 STATE AND LOCAL TAX ISSUES (HERSHMAN B) Among other things: Amends the sales tax exemption for medical equipment, supplies, and devices to: (1) restate the application of the sales tax exemption for medical equipment, supplies, and devices; and (2) provide a sales tax exemption for food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist. Amends the sales tax exemption for drugs, insulin, oxygen, blood, or blood plasma to restate the application of the sales tax exemption. Repeals the sales tax exemption for food and food ingredients prescribed as medically necessary by a physician. Amends the definition of "research and development activities" for purposes of the sales tax exemption for research and development equipment and property.

Current Status: 2/19/2015 - Referred to House
Recent Status: 2/17/2015 - Senator Holdman added as second author
2/17/2015 - Representative Brown, T. added as sponsor
State Bill Page: [SB438](#)

SB464 MENTAL HEALTH ISSUES (MILLER P)

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

- Provides that addictions counseling, inpatient detoxification, 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.
- Includes inpatient substance abuse detoxification services as a Medicaid service. Requires the office of Medicaid policy and planning to: (1) provide Medicaid coverage for the treatment of opioid or alcohol dependence that includes counseling services and drug treatment when medically indicated; (2) develop quality measures and reporting to ensure a managed care organization's compliance with the coverage; and (3) 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 program if: (1) the programs are run by a hospital 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. Requires the division to report to the general assembly before July 1, 2018, specified information concerning any new facilities.
- Requires a prescriber who is prescribing methadone for the treatment of pain or pain management to indicate this treatment on the prescription or order.
- Establishes the mental health and addiction forensic treatment services account within the statutes governing the division, rather than the statutes governing corrections (under current law). Provides that the division may use money in the account to fund grants and vouchers that are provided to the following for mental health and addiction forensic treatment services: (1) Community corrections programs. (2) Court administered programs. (3) Probation programs. (4) Community mental health centers. (5) Certified mental health or addiction providers.
- Specifies that an individual is eligible for such mental health and addiction forensic treatment services if the individual meets certain criteria and if reimbursement for the service is not available to the individual under a health insurance policy, a health maintenance organization contract, the Medicaid program, or the Medicare program or any other federal assistance program. Requires the division to survey individuals receiving services.
- Requires the division to work jointly with the department of workforce development to coordinate employment and training services for individuals receiving services.

Current Status: 2/24/2015 - Senator Raatz added as coauthor

Recent Status: 2/24/2015 - Senator Randolph added as coauthor

2/24/2015 - Representatives Brown, T., Davisson and Brown, C. added as cosponsor

State Bill Page: [SB464](#)