

# FAEGRE BAKER DANIELS

## 2015 Legislative Update

### Indiana Society of Anesthesiologists



**March 29, 2015**

The upcoming week is going to be unusually hectic, as lawmakers scramble to meet committee deadlines while tackling two of the most politically contentious issues to be debated at the Statehouse in recent years. In the wake of the political firestorm that followed last week's signing of [SB 101](#), the Religious Freedom Restoration Act, Gov. Mike Pence has pledged to introduce legislation in the upcoming week that would "clarify" the measure. Also next week, the Senate will hear [HB 1019](#), another Pence-backed bill that would repeal the common construction wage. Similar legislation introduced in 1995 drew such large crowds of union protesters that Statehouse officials became concerned about the structural integrity of the building. Although Statehouse administrators have tightened the rules regarding rallies, the hearing on HB 1019 will likely draw large throngs of supporters and opponents, and distract from other legislative matters.

The following bills on ISA's tracking list are set for hearing this week. Additional hearings may be posted as the week progresses:

- **HB 1183** (Physician Assistants – AMEND & VOTE ONLY)
- **HB 1548** (Midwives – AMEND & VOTE ONLY)
- **HB 1269** (Telemedicine)
- **HB 1303** (Registry of certified professions)
- **SB 33** (Worker's compensation)
- **SB 293** (Medical peer review)

#### **Summary of last week's activity**

The Medical Licensing Board voted unanimously to formally initiate rulemaking on the AA rules. A draft of the rule will now be reviewed by the Office of Management & Budget for its fiscal impact. After the OMB review is completed, a Notice of Intent to Promulgate a Rule will be published in the *Indiana Register*. Interested parties will have will then at least four weeks to submit comments, afterwhich time the proposed rule will be published and set for hearing.

Also last week, **SB 534** (rules for prescribing controlled substances) passed the House unanimously. The bill imposes a deadline of March 1, 2016 for the licensing boards governing physician assistants, podiatrists, dentists and advanced practice nurses to adopt standards and protocols for the prescribing of controlled substances. These rules must complement the standards and protocols adopted by the Medical Licensing Board for physicians.

The following bills on ISA's tracking list passed committee last week without any amendments:

- **HB 1401** (Medicaid fraud)
- **HB 1613** (FSSA matters)
- **SB 294** (Legend drug investigations)

The following bills were amended and approved by committee last week:

- **HB 1145** (Civil immunity for volunteer health care providers)
- **HB 1562** (Professional licensing matters)
- **SB 358** (INSPECT program; Medication therapy management)
- **SB 464** (Mental health issues)

Following are summaries of the above bills, along with other bills of potential interest to ISA that survived the first half of session and now eligible for consideration in the second chamber. A "real-time" version of the tracking list may be found online by clicking [here](#). As always, please let us 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:* 4/1/2015 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*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:* 4/1/2015 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*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 medical licensing board 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 certain records and results of laboratory and imaging based screenings and tests to the patient.
- Requires that a person that provides the location where the health care service is provided do so without compensation as a condition of immunity.
- Allows a person that provides a health care service to provide recommendations for testing.

*Current Status:* 3/26/2015 - House Bills on Second Reading

*Recent Status:* 3/24/2015 - Committee Report amend do pass, adopted

3/23/2015 - COMMITTEE STATUS: DO PASS AMEND Yeas: 7; Nays: 0

*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 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](#)

### 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:* 3/23/2015 - Signed by the Speaker

*Recent Status:* 3/17/2015 - Third reading passed; Roll Call 304: yeas 50, nays 0

*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:* 4/2/2015 - Senate Commerce & Technology, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, 233

*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:* 3/26/2015 - Senator Kenley added as second sponsor

*Recent Status:* 3/26/2015 - Senate Appropriations, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*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

*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:* 3/26/2015 - Committee Report do pass, adopted

*Recent Status:* 3/24/2015 - COMMITTEE STATUS: DO PASS Yeas: 8; Nays: 0  
3/24/2015 - Senate Corrections & Criminal Law, (Bill Scheduled for Hearing); **Time & Location:** 10:00 AM, Rm. 130

*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:* 3/23/2015 - Signed by the Speaker

*Recent Status:* 3/17/2015 - Senator Randolph added as cosponsor  
3/17/2015 - Third reading passed; Roll Call 307: yeas 50, nays 0

*State Bill Page:* [HB1454](#)

**HB1562 PROFESSIONAL LICENSING MATTERS (ZENT D)**

- Requires that terminated pregnancy reports be filed electronically.
- Requires an individual who holds a professional license or certificate issued by the professional licensing agency (agency) and who is convicted of a misdemeanor or felony to notify the professional licensing board in writing of the conviction not later than 90 days after the entry of the order or judgment of conviction.

- Allows the agency to delay issuing a license renewal for up to 120 days. (Current law allows a delay of up to 90 days.)
- Creates a civil penalty for failure to complete or timely transmit a pregnancy termination form.

*Current Status:* 3/26/2015 - Committee Report amend do pass, adopted

*Recent Status:* 3/26/2015 - Senate Commerce & Technology, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 233

*State Bill Page:* [HB1562](#)

**SB123 HIGHER EDUCATION (BECKER V)** Permits the board of trustees of a state educational institution that has a research intensive campus to directly hold equity in a private entity under certain conditions. Revises the law setting forth the locations and names for centers for comprehensive medical education. Permits a public benefit corporation to merge with a state educational institution, without court approval, if the public benefit corporation is controlled by the state educational institution.

*Current Status:* 3/30/2015 - Senate Bills on Third Reading

*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:* 3/2/2015 - Referred to House Public Health

*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:* 3/30/2015 - House Public Health, (Bill Scheduled for Hearing); **Time & Location:** 10:30 AM, House Chamber

*State Bill Page:* [SB293](#)

**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:* 3/30/2015 - Senate Bills on Second Reading

*Recent Status:* 3/26/2015 - Representatives Clere and Davisson added as cosponsor  
3/26/2015 - Committee Report do pass, adopted

*State Bill Page:* [SB294](#)

**SB358 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".
- 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.
- 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.
- Provides that if a dispenser's pharmacy is closed the day following a dispensing, the information required to be sent to the INSPECT program must be transmitted by the end of the next business day.
- Amends the definition of "medication assistance" in the administrative code for purposes of the rules concerning home health agencies.

*Current Status:* 3/30/2015 - Senate Bills on Second Reading

*Recent Status:* 3/26/2015 - Committee Report amend do pass, adopted

3/25/2015 - House Public Health, (Bill Scheduled for Hearing); **Time &**

**Location:** 3:30 PM, House Chamber

*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:* 3/23/2015 - Representative Brown, C. added as cosponsor

*Recent Status:* 3/23/2015 - Representative Macer added as cosponsor

3/23/2015 - Rule 105.1 suspended

*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:* 3/3/2015 - Referred to House Public Health

*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:* 3/3/2015 - Referred to House Public Health

*State Bill Page:* [SB462](#)

**SB534 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:* 3/24/2015 - Third reading passed; Roll Call 327: yeas 97, nays 0

*State Bill Page:* [SB534](#)

**HB1269 TELEMEDICINE (CLERE E)**  
Among other things, provides for coverage of telemedicine services under a policy of accident and sickness insurance and a health maintenance contract.

*Current Status:* 4/1/2015 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*State Bill Page:* [HB1269](#)

**HB1448 MENTAL HEALTH DRUGS AND COVERAGE (DAVISSON S)** Includes inpatient substance abuse detoxification services as a Medicaid service. Prohibits the office of Medicaid policy and planning from requiring prior authorization for a drug that is a nonaddictive medication assistance treatment drug being prescribed for the treatment of substance abuse.

*Current Status:* 2/24/2015 - Referred to committee on Health and Provider Services

**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](#)

**SB33 WORKER'S COMPENSATION (BOOTS P)** Adds an ambulatory outpatient surgical center to the definition of "medical service facility" under the worker's compensation law. Provides that payment for an implant to an ambulatory outpatient surgical center that is not otherwise reimbursed for the implant is equal to 125% of the implant's cost as evidenced by the invoice amount.

*Current Status:* 3/31/2015 - House Employment, Labor and Pensions, (Bill Scheduled for Hearing); **Time & Location:** 8:30 AM, Rm. 156-A

*Recent Status:* 3/17/2015 - House Employment, Labor and Pensions, (Bill Scheduled for Hearing); **Time & Location:** 8:30 AM, Rm. 156-A

*State Bill Page:* [SB33](#)

**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:* 3/16/2015 - House Ways and Means, (Bill Scheduled for Hearing);

**Time & Location:** 10:30 AM, Rm. 404

*Recent Status:* 3/3/2015 - Referred to House Ways and Means

3/3/2015 - First Reading

*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, addiction 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 certain services and treatment; (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 programs 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. Allows the division to use money in the account as a state match under the Medicaid rehabilitation program and the Primary Health Coordination Program. Requires the division to provide an education and training program concerning involuntary commitment and medication assisted treatment. 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 and develop demographic research on individuals receiving services.
- Makes addiction psychiatrists eligible for the loan forgiveness program.
- Places restrictions on coverage under a health insurance policy and a health maintenance organization contract for methadone used in pain management.

**Current Status:** 3/30/2015 - Senate Bills on Second Reading

**Recent Status:** 3/26/2015 - Committee Report amend do pass, adopted  
3/25/2015 - House Public Health, (Bill Scheduled for Hearing); **Time &**

**Location:** 3:30 PM, House Chamber

**State Bill Page:** [SB464](#)