

# FAEGRE BAKER DANIELS

## 2016 Legislative Update #2

### Indiana Society of Anesthesiologists



*January 17, 2016*

Activity ramped up at the Statehouse during the second week of the 2016 legislative session. Approximately 250 additional bills were released, bringing this year's grand total to 813 bills. To date, no legislation has been introduced to expand CRNA scope of practice. However, Rep. David Frizzell has filed [House Bill 1156](#), which (among other things) would allow dental hygienists to administer nitrous oxide. Similar language passed the House in 2014 but was removed in the Senate by Sen. Pat Miller.

Last week, the Senate Insurance & Financial Institutions Committee heard [Senate Bill 171](#), which was authored by Sen. Vaneta Becker at the request of the Indiana State Medical Association. The bill aims to provide greater transparency to the fees that providers are charged by financial institutions or clearinghouses when they are paid via virtual credit card or any other form of electronic funds transfer. Opponents include the Indiana Bankers' Association and the Indiana Association of Health Plans. Sen. Becker vows to work with all stakeholders on an amendment. The bill will return to the committee this Thursday (1/21/16) for amendment and vote.

Coming up this week, the Senate Judiciary Committee has scheduled a hearing for the Senate GOP's med-mal reform proposal. Among other things, [Senate Bill 152](#) would increase the potential payout from the Patients' Compensation Fund from \$1,250,000 to \$1,650,000, increase a provider's potential liability from \$250,000 to \$450,000, and raise the trigger for the medical review panel from \$15,000 to \$75,000. The bill was originally expected to be heard on January 27 but is now scheduled for January 20.

Also this week, the House Insurance Committee will hear [House Bill 1291](#), authored by Rep. Schaibley. As introduced, the bill would require hospitals and health care providers to provide certain information at no charge when a patient asks for information about the out-of-pocket cost for a prescribed, non-emergency health care service. Similar requirements are imposed on health insurers and HMOs.

Under the bill, the provider could refer the patient to an information resource, such as an Internet web site or an application program, that provides a good faith estimate of the out-of-pocket cost. If the provider does not make a referral or if the patient does not have access to the information resource, the provider is required to provide a verbal, electronic or written (if requested) good faith estimate of the out-of-pocket cost the person will incur, along with notice that the estimate is not binding on the provider and the actual out-of-pocket cost may vary based on the person's medical needs.

Providers are also required to post on their website or in a visible place in their office the provider's policy concerning payment for medically necessary health care services for which a patient does not have coverage by a third party payment source.

Following is a list of bills filed to date of potential interest to ISA, along with brief summaries. Bills that have received legislative action are highlighted in blue. You can read both the bill and its fiscal note by clicking on the link in the bill number. In addition, up-to-date summaries and real-time information about every bill affecting physicians may be found at any time during the legislative session by clicking on this [link](#).

As always, please let me know if you have any questions or need additional information.

**HB 1158 CANNABIS OIL FOR MEDICAL TREATMENT** (GOODIN T) Exempts an individual and a physician from criminal penalties for possession or use of cannabis oil if: (1) the individual is the patient of the physician and has cannabis oil transferred, dispensed, or administered to the individual as part of the individual's treatment by the physician; and (2) the physician who is treating the individual transfers, dispenses, or administers cannabis oil as part of the individual's treatment.

*State Bill Page:* [HB 1158](#)

**HB 1166 EPHEDRINE AND PSEUDOEPHEDRINE SALES** (MCNAMARA W) Changes the amounts of drugs containing ephedrine or pseudoephedrine that a pharmacy or National Precursor Log Exchange (NPLEx) retailer may sell and that a person may purchase without a prescription. Provides that a person who purchases the statutory maximum amount of over-the-counter drugs containing ephedrine or pseudoephedrine may obtain additional drugs containing ephedrine or pseudoephedrine with a valid prescription or order of a practitioner.

*State Bill Page:* [HB 1166](#)

**HB 1226 MEDICAID PROVIDER AUDITS** (BACON R) Sets forth requirements for Medicaid recovery audits of Medicaid providers.

*State Bill Page:* [HB 1226](#)

**HB 1251 PROVIDER CONTRACTING** (FORESTAL D) Specifies requirements for state employee plans, accident and sickness insurers, and health maintenance organizations related to use of contracted health care providers, referrals to and use of noncontracted health care providers, payment amounts, information provided to covered individuals, and independent review of determinations related to claims for services provided by contracted or noncontracted providers. Makes conforming amendments.

*State Bill Page:* [HB 1251](#)

**HB 1263 PRESCRIPTIONS AND TELEMEDICINE** (KIRCHHOFER C) Sets forth requirements that must be met before a prescriber may prescribe medicine to a patient receiving telemedicine services.

*State Bill Page:* [HB 1263](#)

**HB 1272 PROFESSIONAL LICENSING MATTERS** (ZENT D) Requires a practitioner to provide the Indiana professional licensing agency (agency) with certain information concerning continuing education. (Current law requires a practitioner to provide the information to a specific board.) Allows an individual who holds a professional or occupational license and is called to active duty to fulfill all continuing education requirements through distance learning. Allows the agency to conduct random audits of license renewals of practitioners required to take continuing education courses. Adds certain substances to the definition of "synthetic drugs". Provides that an employee of the agency must keep information concerning a complaint regarding a regulated occupation confidential unless disclosure is required under law, required for the advancement of an investigation, or made to a law enforcement agency that has jurisdiction or is reasonably believed to have jurisdiction over a person or matter involved in the complaint.

	<b>Current Status:</b> 1/20/2016 - House Public Health, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 3:30 PM, House Chamber
	<b>State Bill Page:</b> <a href="#">HB 1272</a>

**HB 1276 DISPENSING WITHOUT A PRESCRIPTION (DAVISSON S)** Allows a pharmacist who meets certain requirements to furnish specified tobacco cessation products and immunization drugs or devices to individuals who are at least 18 years of age without a prescription or drug order. Provides that a third party contract or other agreement that restricts a pharmacist from practicing any legally allowed duty or action is void.

**State Bill Page:** [HB 1276](#)

**HB 1277 PRESCRIPTION SYNCHRONIZATION (DAVISSON S)** Requires that a health insurance policy and a health maintenance organization contract that provide coverage for prescription medications must use a daily cost sharing rate and provide for synchronized refill schedule coordination for chronic prescription medications.

**State Bill Page:** [HB 1277](#)

**HB 1278 INSPECT PROGRAM (DAVISSON S)** Requires a dentist, physician, advanced practice nurse, physician assistant, and podiatrist to check the INSPECT program before prescribing or issuing a refill for a Schedule II controlled substance or a Schedule III controlled substance except in certain circumstances. Requires a pharmacist who is aware of certain circumstances to check the INSPECT program before dispensing a Schedule II controlled substance or a Schedule III controlled substance. Allows a county coroner conducting a medical investigation of the cause of death to access the INSPECT program. Makes certain changes to the immunity granted to practitioners who use the INSPECT program. (Current law extends immunity to both practitioners who use and do not use the INSPECT program.) Requires boards that regulate health care providers that prescribe or dispense prescription drugs to establish prescribing norms and dispensing guidelines that, if violated, justify the unsolicited dissemination of exception reports. Provides that the exception reports may only be forwarded for an investigation by a law enforcement agency or the attorney general. Makes a technical correction.

**State Bill Page:** [HB 1278](#)

**HB 1282 RIGHT TO JURY IN CERTAIN ADMINISTRATIVE PROCEEDINGS (BORDERS B)** Provides that a person seeking judicial review of the final revocation of a professional license has the right to a jury trial.

**State Bill Page:** [HB 1282](#)

**HB 1284 MEDICAL CANNABIS (ERRINGTON S)** Defines "qualifying patient", and permits a qualifying patient to use medical cannabis under certain circumstances. Requires the state department of health to adopt rules before July 1, 2017, concerning the use, distribution, cultivation, production, and testing of medical cannabis. Provides limited reciprocity for holders of nonresident medical cannabis cards. Provides immunity for physicians who recommend the medical use of cannabis. Makes conforming amendments.

**State Bill Page:** [HB 1284](#)

**HB 1291 ACCESS TO HEALTH CARE COST INFORMATION (SCHAIBLEY D)** Requires health care providers and health plans to provide to covered individuals and patients certain information concerning the cost of health care services. Requires health care providers to publish a payment policy for medically necessary health care services not covered by a third party payment source.

	<b>Current Status:</b> 1/20/2016 - House Insurance, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 10:30 AM, Rm. 156-B
	<b>State Bill Page:</b> <a href="#">HB 1291</a>

**HB 1297 FIREARM OWNERSHIP AND MEDICAL RECORDS (JUDY C)** Prohibits a practitioner or medical

records custodian from disclosing certain information relating to a patient's ownership of a firearm. Prohibits a political subdivision or the board regulating a practitioner from requiring the practitioner to: (1) inquire whether a patient owns a firearm; (2) document in a patient's medical record whether the patient owns a firearm; or (3) notify any governmental entity of the patient's identification solely on the basis of the patient's ownership of a firearm.

*Current Status:* 1/12/2016 - Coauthored by Representatives Lucas, VanNatter and Morris

*State Bill Page:* [HB 1297](#)

**HB 1335 VIDEO RECORDINGS OF SURGERIES** (GOODIN T) Requires specified health care facilities to provide the option to patients to video record certain surgical procedures. Sets forth certain requirements. Requires: (1) a state employee health plan; (2) Medicaid; (3) a policy of accident and sickness insurance; and (4) a health maintenance organization; to provide coverage for the video recording of a surgical procedure. Authorizes the state department of health to: (1) inspect a facility's video recording equipment at least once every four months; (2) adopt rules concerning the video recording of surgical procedures by facilities; and (3) assess fines for certain violations.

*Current Status:* 1/12/2016 - Referred to House Public Health

*State Bill Page:* [HB 1335](#)

**HB 1371 PHARMACY BENEFITS** (DAVISSON S) Requires a state employee plan, health insurer, and health maintenance organization to perform certain activities with respect to a maximum allowable cost list used for prescription drug reimbursement, including: (1) compilation and updating of the list; and (2) pharmacy appeals.

*Current Status:* 1/12/2016 - Referred to House Insurance

*State Bill Page:* [HB 1371](#)

**SB 30 ACCIDENT AND SICKNESS INSURANCE CLAIM DENIALS** (MILLER P) Requires the department of insurance to develop, post, and maintain on the department's Internet web site information concerning internal and external grievances for accident and sickness insurance policies and health maintenance organization contracts. Requires certain information to be provided by accident and sickness insurers and health maintenance organizations to each insured and covered individual when an accident and sickness policy or a health maintenance organization contract is issued or renewed, or a claim for services is denied. Requires insurers and health maintenance organizations to file quarterly reports with the commissioner of insurance on the number of denied claims during the quarter. (The introduced version of this bill was prepared by the interim study committee on public health, behavioral health, and human services).

*State Bill Page:* [SB 30](#)

**SB 41 PHARMACY BENEFITS** (LONG D) Specifies requirements for the establishment and use of a prescription drug step therapy protocol by a state employee health plan, an accident and sickness insurer, or a health maintenance organization.

*Current Status:* 1/20/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*State Bill Page:* [SB 41](#)

**SB 72 MEDICAL RESEARCH CONTROLLED SUBSTANCES** (LEISING J) Provides that a physician who has obtained approval from certain entities to obtain, administer, and dispense or prescribe a controlled substance is immune from criminal liability for the possession or distribution of the controlled substance. Provides that an ultimate user who possesses or uses a controlled substance from that prescribing or dispensing physician is immune from criminal liability for the possession or use of the controlled substance. Provides certain exceptions. (The introduced version of this bill was prepared by the interim study committee on agriculture and natural resources.)

*State Bill Page:* [SB 72](#)

**SB 80 PHARMACISTS AND EPHEDRINE** (HEAD R) Defines "drug related felony", and requires courts to

report drug related felonies to the state police department. Requires the state police department to report drug related felonies to NPLeX so that NPLeX can generate a stop sale alert to prevent individuals with drug related felonies from purchasing ephedrine or pseudoephedrine. Provides that the offense of possession of a precursor by a methamphetamine offender (which prohibits the possession of pseudoephedrine or ephedrine without a prescription by persons convicted of certain offenses) applies to a person who has been convicted of a drug related felony. Allows a pharmacist to deny the sale of ephedrine or pseudoephedrine on the basis of the pharmacist's professional judgment, and provides the pharmacist with civil immunity for making such a denial. Allows the Indiana board of pharmacy to: (1) adopt rules regarding professional determinations made; (2) review professional determinations made; and (3) discipline a pharmacist for a professional determination made; concerning refusal to sell ephedrine or pseudoephedrine.

**Current Status:** 1/19/2016 - Senate Corrections & Criminal Law, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 130

**State Bill Page:** [SB 80](#)

**SB 152 MEDICAL MALPRACTICE (STEELE B)**

- Increases the maximum amount recoverable for an injury or a death of a patient in a medical malpractice action from \$1,250,000 to \$1,650,000 after December 31, 2016.
- Increases the maximum amount recoverable from a health care provider in a medical malpractice action from \$250,000 to \$450,000 after December 31, 2016.
- Requires the insurance commissioner to increase these maximum amounts based on percentage increases of the Consumer Price Index (CPI): (1) beginning January 1, 2019, if there was an overall CPI percentage increase for calendar years 2016, 2017, and 2018; and (2) on January 1 every four calendar years thereafter based on an overall CPI percentage increase for the preceding four calendar years, if there was an overall percentage increase in the CPI during the preceding four calendar years.
- Allows a patient to commence a medical malpractice action without submitting a complaint to a medical review panel if the patient seeks damages in an amount not greater than \$75,000. (Current law states the amount must be not greater than \$15,000.)
- Provides that the cost of a periodic payments agreement expended by a health care provider must exceed: (1) \$187,000 for an occurrence of medical malpractice that occurs before January 1, 2017; and (2) 75% of the maximum amount a health care provider is responsible for for an occurrence of medical malpractice that occurs after December 31, 2016.
- Provides that a party, attorney, or panelist who fails to act as required under the medical malpractice law is subject to mandate and appropriate sanctions, including: (1) entry of a default judgment as to liability; and (2) allowing a case to be commenced in a court without presenting the case to a medical review panel.
- Amends the amount of attorney's fees a plaintiff's attorney may recover in a medical malpractice action.

**Current Status:** 1/20/2016 - Senate Judiciary, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 130

**State Bill Page:** [SB 152](#)

**SB 162 HOSPITAL EMPLOYEE IMMUNIZATIONS (MILLER P)** Requires a hospital to administer or make available to be administered certain immunizations to hospital employees upon the employee's consent. Provides for exceptions.

**Current Status:** 1/20/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

**State Bill Page:** [SB 162](#)

<b>SB 165</b>	<b>HEALTHY INDIANA PLAN</b> (MILLER P) Repeals the prior healthy Indiana plan statutes and makes revisions to the currently operating healthy Indiana plan. Repeals statutes governing the high risk Indiana check-up plan. <i>Current Status:</i> 1/19/2016 - Senate Bills on Second Reading <i>All Bill Status:</i> 1/14/2016 - Committee Report amend do pass, adopted <i>State Bill Page:</i> <a href="#">SB 165</a>
<b>SB 171</b>	<b>INSURANCE PAYMENTS TO PROVIDERS</b> (BECKER V) Specifies requirements for accident and sickness insurers and health maintenance organizations related to provider claim payment by electronic funds transfer. <i>Current Status:</i> 1/21/2016 - Senate Insurance & Financial Institutions, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 9:00 AM, Rm. 130 <i>State Bill Page:</i> <a href="#">SB 171</a>
<b>SB 174</b>	<b>CRIMINAL LAW MATTERS</b> (YOUNG R) Provides that a person who, with intent to: (1) defraud; or (2) induce compliance with the person's instructions, orders, or requests; falsely represents that the person is a public servant, commits impersonation of a public servant, a Class A misdemeanor. Creates the offense of dealing in a controlled substance by a practitioner, and enhances the offense if the offenses causes the death of another person. <i>Current Status:</i> 1/19/2016 - Senate Bills on Second Reading <i>All Bill Status:</i> 1/13/2016 - Committee Report amend do pass, adopted <i>State Bill Page:</i> <a href="#">SB 174</a>
<b>SB 193</b>	<b>CONSENT TO HEALTH CARE</b> (CRIDER M) Establishes an order of priority for individuals authorized to give consent to health care of another individual, including a person who has demonstrated special care for the individual. Allows a health care provider to determine the individual's health care in the case of more than one individual asserting authority or disagreement among those asserting authority. Makes a conforming amendment. <i>State Bill Page:</i> <a href="#">SB 193</a>
<b>SB 206</b>	<b>FSSA MATTERS</b> (MILLER P) Allows the secretary of family and social services (secretary) to delegate appointment authorities, the issuance of certain orders, and other acts to carry out the functions of the divisions to an individual. Authorizes the secretary to adopt rules concerning the implementation and administration of the early education grant pilot program. Changes references from intermediate care facility for the mentally retarded to intermediate care facility for individuals with intellectual disabilities. Creates an exception for state institutions concerning advanced practice nurses acting under a collaborative agreement with a practitioner, requiring that the nurse act under privileges granted by the medical staff of the institution. <i>Current Status:</i> 1/20/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 9:00 AM, Rm. 431 <i>State Bill Page:</i> <a href="#">SB 206</a>
<b>SB 209</b>	<b>MEDICAL MARIJUANA</b> (TALLIAN K) Establishes a medical marijuana program (program) and permits caregivers and patients who have received a physician recommendation to possess a certain quantity of marijuana for treatment of certain medical conditions. Establishes the department of marijuana enforcement (DOME) as a state agency to oversee the program, and creates the DOME advisory committee to review the effectiveness of the program and to consider recommendations from DOME. Authorizes DOME to grant research licenses to research facilities with a physical presence in Indiana. Repeals the controlled substance excise tax and the marijuana eradication program. Makes conforming amendments. <i>State Bill Page:</i> <a href="#">SB 209</a>
<b>SB 214</b>	<b>CONTROLLED SUBSTANCES</b> (HERSHMAN B)

	<ul style="list-style-type: none"> <li>Limits Medicaid reimbursement for Subutex and Suboxone or a similar trade name or generic of the drug if the drug was prescribed for the treatment of pain or pain management, unless the drug was prescribed by a physician who meets certain requirements. Permits the office of Medicaid policy and planning to require prior authorization for these drugs when being prescribed for substance abuse treatment or as determined by the drug utilization review board or when being prescribed for more than six months.</li> <li>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: (A) tapering of a patient on and off an opioid treatment medication; (B) relapse; and (C) overdose prevention; and (4) specified standards and protocols for an opioid treatment provider.</li> <li>Requires an opioid treatment provider to periodically and randomly test a patient for specified drugs during treatment.</li> </ul>
	<p><b>Current Status:</b> 1/20/2016 - Senate Health &amp; Provider Services, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 9:00 AM, Rm. 431</p>
	<p><b>State Bill Page:</b> <a href="#">SB 214</a></p>

<b>SB 219</b>	<p><b>EXPEDITED LICENSES FOR MILITARY SPOUSES</b> (GLICK S) Requires certain profession and occupation boards (boards) to adopt rules that establish procedures to expedite the issuance or renewal of a license, certificate, registration, or permit to a military spouse whose husband and or wife is assigned to a duty station in Indiana. Repeals superseded provisions that allowed (but did not require) the boards to adopt expedited issuance and renewal rules. Provides that any rules adopted under the repealed statutes remain effective until the board adopts a rule that supersedes the original rule in whole or in part.</p>
	<p><b>Current Status:</b> 1/21/2016 - Senate Commerce &amp; Technology, (Bill Scheduled for Hearing); <b>Time &amp; Location:</b> 9:00 AM, Rm. 233</p>
	<p><b>State Bill Page:</b> <a href="#">SB 219</a></p>

**SB 231**     **IMMUNIZATIONS PROVIDED BY PHARMACISTS** (GROOMS R) Adds the following immunizations to the list of immunizations that pharmacists may administer if certain conditions are met: (1) Measles, mumps, and rubella. (2) Varicella. (3) Hepatitis A. (4) Hepatitis B. (5) Haemophilus influenzae type b (Hib).  
**State Bill Page:** [SB 231](#)

**SB 237**     **PSEUDOEPHEDRINE AND EPHEDRINE** (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 statute allowing the dispensing of ephedrine and pseudoephedrine without a prescription subject to certain restrictions; and (2) provisions related to that statute. Requires pharmacies and certain retailers that sell ephedrine, pseudoephedrine, or drugs that contain ephedrine or pseudoephedrine before July 1, 2016, to continue to maintain an electronic or written log of such sales through June 30, 2018.  
**State Bill Page:** [SB 237](#)

**SB 258**     **CANNABIDIOL FOR THE TREATMENT OF EPILEPSY** (TOMES J) Provides that certain prohibitions against granting a license to a grower or handler of industrial hemp do not apply to growers and manufacturers that process cannabidiol (CBD) and meet certain requirements. Requires the state seed commissioner to establish testing standards for CBD. Establishes requirements for facilities and manufacturers that manufacture or process CBD. Allows CBD that is manufactured and tested in Indiana to be used by certain physicians, patients, and caregivers. Establishes a CBD registry for certain physicians, patients, and caregivers for the use of CBD from hemp in the treatment of a child with intractable epilepsy. Establishes a pilot study registry for physicians interested in studying the use of CBD in the treatment of intractable epilepsy. Requires the state department of health to develop and maintain both registries. Provides civil, criminal, and administrative immunity for: (1) physicians in the

use of CBD in the treatment of intractable epilepsy; (2) certain growers of industrial hemp; and (3) facilities and manufacturers of CBD; if certain requirements are met. Exempts caregivers and patients from criminal penalties for possession or use of CBD if the caregivers and patients are registered with the state department and are using the CBD for the patient and in the manner approved for registration. Encourages state educational institutions to research the use of CBD in the treatment of intractable epilepsy.

*State Bill Page:* [SB 258](#)

**SB 273** **STUDY OF DRUG PRICING AND ACCESS** (BREAUX J) Urges the legislative council to assign to an interim study committee a study of prescription drug pricing and access to specialty prescription drugs. Requires submission of a report and recommendations to the legislative council.

*State Bill Page:* [SB 273](#)

**SB 297** **OPIOID DEPENDENCE TREATMENT** (MILLER P)

- Requires Medicaid coverage for inpatient detoxification for the treatment of opioid or alcohol dependence. Allows the mental health Medicaid quality advisory committee to make recommendations to the office of Medicaid policy and planning (office) concerning the development of a treatment protocol containing best practice guidelines for the treatment of opiate dependent patients.
- Limits Medicaid reimbursement for certain drugs prescribed for the treatment of pain.
- Specifies that the healthy Indiana plan includes coverage of counseling services for substance abuse treatment.
- Adds requirements for an opioid treatment program to meet in order to operate in Indiana.
- Requires the division of mental health and addiction (division) to adopt specified administrative rules concerning opioid treatment by an opioid treatment provider. Requires an opioid treatment program to provide specified information upon request by the division.

*Current Status:* 1/20/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 431

*State Bill Page:* [SB 297](#)

**SB 364** **MEDICAID PROVIDER AUDITS** (BASSLER E) Sets forth requirements for Medicaid recovery audits of Medicaid providers.

*State Bill Page:* [SB 364](#)