

FAEGRE BAKER DANIELS

2016 Legislative Update #3

Indiana Society of Anesthesiologists



January 24, 2016

The 2016 Indiana General Assembly is heading into the final week of committee hearings for bills in their house of origin. Thursday (January 28) is the deadline for adoption of committee reports, and committees in both chambers are expected to put in long hours in the upcoming week.

Although state offices were closed on Monday for the Martin Luther King holiday, state lawmakers packed a lot of activity in the short week. Several bills of interest to ISA were heard in committee, including [House Bill 1291](#), which would require hospitals and other health care providers to provide information to patients about their out-of-pocket costs for prescribed, non-emergency health care services. Similar requirements would be imposed on health insurers. At the hearing, the Indiana Hospital Association and other providers voiced strong concerns with the bill, noting the cost and difficulty of compliance with its specific provisions. Although the bill's author, Rep. Donna Schaibley, is amenable to amendments, no vote was taken on the bill and the measure is likely dead for the session.

On the Senate side, the Senate Insurance & Financial Institutions Committee stripped [Senate Bill 171](#) and replaced the bill's provisions with language sending the issue to a summer study committee. As introduced by Sen. Vaneta Becker on behalf of the Indiana State Medical Association, the bill was intended to provide greater transparency to the fees that providers are charged when they are paid via virtual credit card or any other form of electronic funds transfer.

This week, the Senate Health & Provider Services Committee will hear [Senate Bill 30](#), authored by Sen. Pat Miller. The measure was a product of the Interim Study Committee on Public Health, Behavioral Health and Human Services, which approved the bill's language last summer over the strong objections of the insurance industry. Among other things, SB 30 requires health insurers and HMOs to file quarterly reports with IDOI on the number of denied claims during the quarter.

Also coming up this week, the Senate Judiciary Committee has once again scheduled a hearing for the Senate GOP's med-mal reform proposal. A previous hearing was cancelled at the last minute after the Indiana Trial Lawyers Association balked at payout increases in a proposed compromise. 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.

One bill that appears dead for the session is [House Bill 1156](#), which (among other things) would have permitted dental hygienists to administer nitrous oxide. ISA raised concerns about the nitrous oxide provisions to House Public Health Committee chairman Rep. Cindy Kirchofer. Although the dental hygienists agreed to remove the nitrous oxide language, the bill was not scheduled for a hearing.

Following is a list of bills of potential interest to ISA, along with brief summaries. Bills that are not expected to receive a hearing before Thursday's deadline have been removed from the tracking list. Bills that are scheduled for a hearing in the upcoming week are highlighted in blue. 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 1156 DENTAL HYGIENISTS (FRIZZELL D) Increases from 45 days to 270 days the amount of time a written order for specific dental care is valid under prescriptive supervision. Allows a dental hygienist who meets certain requirements to administer nitrous oxide to individuals. Increases from 14 hours to 19 hours the continuing education that a dental hygienist must receive during a license period. Urges the legislative council to assign the topic of loan forgiveness for dentists and dental hygienists who treat Medicaid patients to an interim committee.

Current Status: 1/7/2016 - Referred to House Public Health

All Bill Status: 1/7/2016 - First Reading

1/7/2016 - Authored By David Frizzell

State Bill Page: [HB 1156](#)

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.

Current Status: 1/25/2016 - House Public Health, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, House Chamber

State Bill Page: [HB 1166](#)

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.

Current Status: 1/25/2016 - House Public Health, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, House Chamber

State Bill Page: [HB 1263](#)

HB 1272 PROFESSIONAL LICENSING MATTERS (ZENT D)

- Requires a practitioner to provide the Indiana professional licensing agency (agency) and the practitioner's specific board 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 practitioner's specific board to conduct random audits of license renewals of practitioners required to take continuing education courses.
- 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.

Current Status: 1/25/2016 - House Bills on Second Reading

All Bill Status: 1/21/2016 - Committee Report amend do pass, adopted

State Bill Page: [HB 1272](#)

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.

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

All Bill Status: 1/12/2016 - First Reading

1/12/2016 - Authored By Steven Davisson

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.

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

All Bill Status: 1/12/2016 - First Reading

1/12/2016 - Authored By Steven Davisson

State Bill Page: [HB 1277](#)

HB 1278 INSPECT PROGRAM (DAVISSON S) Allows a dentist, physician, advanced practice nurse with prescriptive authority, physician assistant, and podiatrist to include an INSPECT program report in a patient's file. Allows an individual who holds a temporary fellowship permit to access the INSPECT program. 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.) Allows a practitioner's agent to check INSPECT program reports on behalf of the practitioner. Allows a patient to access an INSPECT program report that is in the patient's medical file. Requires the boards that regulate health care providers that prescribe or dispense prescription drugs to establish prescribing norms and dispensing guidelines that, if exceeded, justify the unsolicited dissemination of exception reports. Specifies the exception reports that a board's designee may forward to a law enforcement agency or the attorney general for purposes of an investigation.

Current Status: 1/25/2016 - House Bills on Second Reading

All Bill Status: 1/21/2016 - Committee Report amend do pass, adopted

State Bill Page: [HB 1278](#)

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).

Current Status: 1/27/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); **Time**

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| | | & Location: 8:00 AM, Rm. 431 |
| | <i>State Bill Page:</i> | 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. <i>Current Status:</i> 1/25/2016 - Senate Bills on Second Reading <i>All Bill Status:</i> 1/20/2016 - DO PASS AMEND Yeas: 10; Nays: 1 <i>State Bill Page:</i> SB 41 | |
| SB 80 | PHARMACISTS AND EPHEDRINE (HEAD R) Defines "drug related felony" and 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 the exercise of the pharmacist's professional judgment. 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. <i>Current Status:</i> 1/25/2016 - Senate Bills on Second Reading <i>All Bill Status:</i> 1/21/2016 - Committee Report amend do pass, adopted <i>State Bill Page:</i> 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. Makes conforming amendments. <i>Current Status:</i> 1/25/2016 - Senate Judiciary, (Bill Scheduled for Hearing); Time & Location: 1:30 PM, Rm. 130 <i>State Bill Page:</i> 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. <i>Current Status:</i> 1/27/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); Time & Location: 8:00 AM, Rm. 431 <i>State Bill Page:</i> SB 162 | |

- SB 165 HEALTHY INDIANA PLAN (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.
Current Status: 1/25/2016 - Senate Bills on Third Reading
All Bill Status: 1/19/2016 - Second reading ordered engrossed
1/14/2016 - Committee Report amend do pass, adopted
State Bill Page: [SB 165](#)
- SB 171 INSURANCE PAYMENTS TO PROVIDERS (BECKER V)** Specifies requirements for accident and sickness insurers and health maintenance organizations related to provider claim payment by electronic funds transfer.
Current Status: 1/21/2016 - DO PASS AMEND Yeas: 7; Nays: 0
State Bill Page: [SB 171](#)
- SB 174 CRIMINAL LAW MATTERS (YOUNG R)** 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.
Current Status: 1/21/2016 - Representative Frizzell added as sponsor
All Bill Status: 1/21/2016 - Third reading passed; Roll Call 39: yeas 48, nays 0
1/19/2016 - Second reading ordered engrossed
1/19/2016 - Amendment #1 (Tallian) failed; voice vote
1/19/2016 - Amendment #3 (Tallian) failed; voice vote
1/13/2016 - Committee Report amend do pass, adopted
State Bill Page: [SB 174](#)
- SB 206 FSSA MATTERS (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. Creates an exception for state institutions concerning advanced practice nurses with prescriptive authority acting under a collaborative agreement with a practitioner, requiring that the nurse act under privileges granted by the governing body of the institution.
Current Status: 1/25/2016 - Senate Bills on Second Reading
All Bill Status: 1/21/2016 - Committee Report amend do pass, adopted
State Bill Page: [SB 206](#)
- SB 214 CONTROLLED SUBSTANCES (HERSHMAN B)** Prohibits Medicaid reimbursement for Subutex, Suboxone, or a similar trade name or generic of the drug if the drug was prescribed for the treatment of pain or pain management and the drug is only indicated for addiction treatment. 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. Requires an opioid treatment provider to periodically and randomly test a patient for specified drugs during treatment.
Current Status: 1/25/2016 - Senate Bills on Second Reading
All Bill Status: 1/21/2016 - Committee Report amend do pass, adopted
1/20/2016 - DO PASS AMEND Yeas: 8; Nays: 0
State Bill Page: [SB 214](#)
- SB 297 OPIOID DEPENDENCE TREATMENT (MILLER P)** Requires Medicaid coverage for inpatient detoxification for the treatment of opioid or alcohol dependence. 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 the office of the secretary and the division to develop treatment protocol containing best practice guidelines for the treatment of opiate dependent patients.

Requires an opioid treatment program to provide specified information upon request by the division.

Current Status: 1/25/2016 - Senate Bills on Second Reading

All Bill Status: 1/21/2016 - Committee Report amend do pass, adopted

State Bill Page: [SB 297](#)

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| SB 313 | ABORTION MATTERS (HOLDMAN T) Requires the state department of health to develop certain information concerning perinatal hospice care. Requires physicians to provide information about perinatal hospice care to a pregnant woman who is considering an abortion because the unborn child has been diagnosed with a lethal fetal anomaly. Requires documentation as a matter of informed consent to an abortion that the pregnant woman received the required information about perinatal hospice care. Provides that the medical indication by diagnosis code for the fetus and the mother must be reported on the pregnancy termination form for an early pre-viability termination. Prohibits a person from performing an abortion if the person knows that the pregnant woman is seeking the abortion solely because of: (1) the race, color, national origin, ancestry, or sex of the fetus; or (2) a diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability. Provides for: (1) disciplinary sanctions; and (2) civil liability for wrongful death and medical malpractice; if a person knowingly or intentionally performs a sex selective abortion or an abortion conducted because of a diagnosis or potential diagnosis of Down syndrome or any other disability. Provides that the performance of an abortion solely because of the race, color, sex, disability, national origin, or ancestry of the fetus or a violation of certain statutes protecting the right of conscience regarding abortion is a discriminatory practice for purposes of the civil rights law. Provides for disciplinary action and the revocation of a physician's license if the physician is found to have performed an abortion in violation of the informed consent procedures relating to a pregnant woman's decision to have an abortion or the woman's decision to continue a pregnancy through perinatal hospice care after the unborn child is diagnosed with a lethal fetal anomaly. |
| | Current Status: 1/27/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); Time & Location: 8:00 AM, Rm. 431 |
| | State Bill Page: SB 313 |
| SB 364 | MEDICAID PROVIDER AUDITS (BASSLER E) Sets forth requirements for Medicaid recovery audits of Medicaid providers. |
| | Current Status: 1/27/2016 - Senate Health & Provider Services, (Bill Scheduled for Hearing); Time & Location: 8:00 AM, Rm. 431 |
| | State Bill Page: SB 364 |