

# FAEGRE BAKER DANIELS

## 2016 Legislative Update #7

### Indiana Society of Anesthesiologists



*February 27, 2016*

The 2016 Indiana General Assembly is heading into the final stretch. Senate committees wrapped up work on House bills on Thursday, and House committees will complete action on Senate bills on Monday. The remaining eight days of session will then be a flurry of activity as the legislature works feverishly toward a March 10 adjournment deadline.

Although legislative activity dominated the headlines last week, the biggest news for ISA members occurred on Thursday in the governor's office, when Gov. Mike Pence signed the AA rules into law. The rules will become effective in early April.

In the legislative arena, the big news involves potential activity on medical malpractice legislation. On Monday, the House Judiciary Committee is expected to strip the contents of SB 28, a bill addressing the height of fences, and replace the language with revisions to the medical malpractice act.

As of the end of the day yesterday, the major sticking point was the auto-adjustment to a provider's potential liability. ISMA is leading the charge to cap the amount at \$400,000 (up from the current level of \$250,000) with no auto-adjustment. Attached is a letter to members of the House Judiciary Committee from ISA President Dr. Alex Choi outlining ISA's concerns with the auto-adjustment.

If the bill moves forward in a form that is acceptable to ISA, we also hope to include non-controversial provisions that would add anesthesiologist assistants to the list of qualified providers under the medical malpractice act. Although under current law AAs will be covered through their employers, the proposed amendment will enable the Indiana Department of Insurance to establish a separate surcharge for AAs.

Following is a list of bills of potential interest to ISA that are still alive, along with brief summaries. In addition, up-to-date summaries 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 1263 HEALTH INFORMATION; PRESCRIPTIONS AND TELEMEDICINE (KIRCHHOFER C)**

- Requires the secretary of family and social services to provide information concerning the Medicaid program, the healthy Indiana plan, and the children's health insurance program to the legislative services agency upon request for the purposes of doing analysis related to those programs.
- Sets forth requirements that must be met before: (1) a physician; (2) a physician assistant; (3) an advanced practice nurse; or (4) an optometrist; with prescriptive authority may issue a prescription to a patient receiving telemedicine services.
- Specifies jurisdiction for out-of-state providers providing health care services to patients located in Indiana through the use of telemedicine and requires these providers to certify certain information with the secretary of state.
- Provides that certain drugs and devices may not be prescribed through the use of telemedicine.
- Authorizes the medical licensing board to adopt rules establishing guidelines for the practice of telemedicine.

*Current Status:* 2/29/2016 - House Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report amend do pass, adopted  
2/24/2016 - DO PASS AMEND Yeas: 9; Nays: 0

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

**HB 1264 PROVIDER ORGANIZATIONS, AUDITS, AND PEER REVIEW (KIRCHHOFER C)** Requires a provider organization to conduct audits at least quarterly to assess, monitor, and evaluate the quality of patient care. Sets forth requirements of the audits and specifies that the audits are confidential. Adds the following to the definition of "professional health care provider" for purposes of inclusion in the peer review committee statute: (1) a provider organization; (2) an emergency medical technician; (3) an emergency medical responder; and (4) an advanced emergency medical technician.

*Current Status:* 2/29/2016 - House Bills on Third Reading

*Recent Status:* 2/25/2016 - Second reading amended, ordered engrossed  
2/25/2016 - Amendment #2 (Miller Patricia) prevailed; voice vote

*State Bill Page:* [HB 1264](#)

**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.
- Adds certain substances to the definition of "synthetic drugs".
- Makes the small business member of the jobs creation committee a voting member.
- Removes the requirement that the physician assistant's supervisory agreement specify each name or drug classification being delegated to the physician assistant.
- 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:** 2/29/2016 - House Bills on Second Reading

**Recent Status:** 2/25/2016 - Senator Head added as second sponsor  
2/25/2016 - House Bills on Second Reading

**State Bill Page:** [HB 1272](#)

#### **HB 1278 INSPECT PROGRAM (DAVISSON S)**

- Allows a dentist, physician, advanced practice nurse, 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:** 2/23/2016 - Senator Randolph added as cosponsor

**Recent Status:** 2/23/2016 - Third reading passed; Roll Call 211: yeas 49, nays 0  
2/23/2016 - House Bills on Third Reading

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

#### **HB 1347 MENTAL HEALTH MATTERS (KIRCHHOFER C)**

- Requires the office of Medicaid policy and planning to reimburse under the Medicaid program: (1) certain advanced practice nurses for specified Medicaid services; (2) certain graduate and post-graduate degree level students in specified fields who are interning or in a practicum at a community mental health center under the direct supervision of a licensed professional; and (3) licensed clinical addiction counselors who under the clinical supervision of a physician or health service provider in psychology.
- Requires the department of insurance (department), in consultation with the office of the secretary of family and social services, to review, study, and make recommendations concerning the capacity, training, and barriers to health navigators in assisting individuals in obtaining health insurance program coverage. Requires the department to report their findings to the interim study committee on public health, behavioral health, and human services before September 30, 2016.

**Current Status:** 2/29/2016 - House Bills on Second Reading

**Recent Status:** 2/25/2016 - House Bills on Second Reading  
2/23/2016 - House Bills on Second Reading

**State Bill Page:** [HB 1347](#)

#### **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.

- Provides for certain grievance related notice to be provided upon request.
- Requires the commissioner of insurance to analyze certain complaints received by the department and report a pattern of complaints to the legislative council.

*Current Status:* 2/29/2016 - Senate Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report do pass, adopted  
2/24/2016 - DO PASS Yeas: 8; Nays: 0

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

**SB 41 PHARMACY BENEFITS (LONG D)** Requires a state employee health plan, an accident and sickness insurer, and a health maintenance organization to make available a procedure for a covered individual's use in requesting an exception to a step therapy protocol used by the state employee health plan, accident and sickness insurer, or health maintenance organization with respect to coverage for certain prescription drugs, including time frames for a determination concerning an exception and reasons for granting an exception.

*Current Status:* 2/29/2016 - Senate Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report amend do pass, adopted  
2/24/2016 - DO PASS AMEND Yeas: 11; Nays: 0

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

**SB 80 EPHEDRINE AND PSEUDOEPHEDRINE (HEAD R)**

- Requires the Indiana board of pharmacy (board) to adopt emergency rules that are effective July 1, 2016, concerning: (1) professional determinations made; and (2) a relationship on record with the pharmacy; concerning the sale of ephedrine or pseudoephedrine.
- Requires the board to: (1) review professional determinations made; and (2) discipline a pharmacist who violates a rule concerning a professional determination made; concerning the sale of ephedrine or pseudoephedrine.
- Allows the board, in consultation with the state police, to declare a product to be an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine.
- Specifies that a person who is denied the sale of a nonprescription product containing pseudoephedrine or ephedrine is not prohibited from obtaining pseudoephedrine or ephedrine pursuant to a prescription.
- Provides that a pharmacist or pharmacy technician may determine that the purchaser has a relationship on record with the pharmacy, in compliance with rules adopted by the board.
- 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.
- Provides that a purchaser who has a relationship on record with the pharmacy may purchase pseudoephedrine or ephedrine.
- Allows the pharmacist to provide certain pseudoephedrine or ephedrine products to a purchaser who does not have a relationship on record with the pharmacy or for whom the pharmacist has made a professional judgment that there is not a medical or pharmaceutical need.
- Adds ephedrine and pseudoephedrine to the definition of "controlled substance" for purposes of the Indiana scheduled prescription electronic collection and tracking (INSPECT) program.

*Current Status:* 2/29/2016 - Senate Bills on Third Reading

*Recent Status:* 2/25/2016 - Amendment #1 (Pelath) failed; Roll Call 241: yeas 31, nays 59  
2/25/2016 - Second reading ordered engrossed

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

**SB 162 HOSPITAL EMPLOYEE IMMUNIZATIONS (MILLER P)**

- Requires a hospital, beginning January 1, 2017, to administer or make available to be administered certain immunizations to hospital employees or contractors who routinely have direct contact with a patient of the hospital.
- Allows a hospital to elect to annually administer or make available certain immunizations to health care professionals, other employees, and contractors. Provides for exceptions.
- Requires a hospital to administer or make influenza immunizations available certain times during the year.
- Allows a hospital to establish a process for determining whether the tenets of the religion relied upon for an exemption prohibit the individual from receiving the immunization.
- Authorizes a hospital, if the hospital has a written policy in place before the individual's failure to receive the immunization, to: (1) make as a condition of employment or a contract an individual having an immunization; and (2) terminate an employee or contractor for not obtaining the immunization if the employee or contractor does not qualify for an exemption.
- Provides for immunity for the hospital.

*Current Status:* 2/29/2016 - Senate Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report amend do pass, adopted  
2/24/2016 - DO PASS AMEND Yeas: 8; Nays: 3

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

**SB 163 DEPARTMENT OF HEALTH MATTERS (MILLER P)**

- Allows the state department of health (state department) to use information from the cancer registry to conduct an investigation into the incidence of cancer diagnosis in a geographic region and to share the information with a local health department if certain conditions are met.
- Allows a local child fatality team to investigate the death of a child whose death occurred in the area served by the local child fatality review team. Requires that a report must be submitted to the state child fatality review coordinator before July 1 each year.
- Requires the state department to study the costs and benefits of implementing a data base for maintaining health care consents and specifies requirements of the study. Requires the state department to report its findings from the study to the legislative council before October 1, 2016.

*Current Status:* 2/23/2016 - Third reading passed; Roll Call 226: yeas 99, nays 0

*Recent Status:* 2/23/2016 - Senate Bills on Third Reading  
2/22/2016 - Second reading ordered engrossed

*State Bill Page:* [SB 163](#)

**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:* 2/29/2016 - Senate Bills on Third Reading

*Recent Status:* 2/25/2016 - Senate Bills on Third Reading  
2/23/2016 - Senate Bills on Third Reading

*State Bill Page:* [SB 165](#)

**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:* 2/29/2016 - Senate Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report amend do pass, adopted

*State Bill Page:* [SB 174](#)

**SB 206 FSSA MATTERS (MILLER P)** Among other things:

- 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.
- Allows the office of Medicaid policy and planning to allow the use of a limited criminal history check for certain providers under the Medicaid program.
- Adds a representative of the Indiana Academy of Physician Assistants to the Medicaid advisory committee.
- 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 governing body of the institution.

*Current Status:* 2/25/2016 - Returned to the Senate with amendments

*Recent Status:* 2/25/2016 - Third reading passed; Roll Call 247: yeas 92, nays 0  
2/25/2016 - Senate Bills on Third Reading

*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 office of the secretary and the division of mental health and addiction to develop a treatment protocol containing best practice guidelines for the treatment of opiate dependent patients to be used by certain office based opioid treatment providers. Requires the office of the secretary to recommend certain best practice guidelines to: (1) the professional licensing agency; (2) the office of Medicaid policy and planning (office); and (3) a managed care organization that has contracted with the office.

*Current Status:* 2/29/2016 - Senate Bills on Second Reading

*Recent Status:* 2/25/2016 - Committee Report amend do pass, adopted  
2/24/2016 - DO PASS AMEND Yeas: 10; Nays: 0

*State Bill Page:* [SB 214](#)

**SB 219 EXPEDITED LICENSES FOR MILITARY SPOUSES (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.

*Current Status:* 2/23/2016 - Returned to the Senate without amendments

*Recent Status:* 2/22/2016 - Third reading passed; Roll Call 205: yeas 95, nays 0  
2/22/2016 - Senate Bills on Third Reading

*State Bill Page:* [SB 219](#)

**SB 297 OPIOID DEPENDENCE TREATMENT (MILLER P)** Requires Medicaid coverage for inpatient detoxification for the treatment of opioid or alcohol dependence. 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 a treatment protocol containing best practice guidelines for the treatment of opiate dependent patients to be used by certain office based opioid treatment providers. Requires an opioid treatment program to provide specified information upon request by the division. Urges the legislative council to assign a study committee the topic of patient access to and provider reimbursement for federally approved medication assisted treatment in the Medicaid program.

**Current Status:** 2/23/2016 - Third reading passed; Roll Call 231: yeas 99, nays 0

**Recent Status:** 2/23/2016 - Senate Bills on Third Reading  
2/22/2016 - Second reading ordered engrossed

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

**SB 364**

**MEDICAID PROVIDER AUDIT AND HEALTH SURVEY WORK GROUPS** (BASSLER E) Requires the office of Medicaid policy and planning (office) to establish a work group to discuss the policies and procedures used in Medicaid provider audits. Requires the state department of health (state department) to establish a work group to discuss and establish policies and procedures for allowing a provider that is the subject of a survey to review, discuss, and mediate the survey results before the survey is finalized. Requires the office and the state department to submit the work group's findings and any statutory recommendations to legislative council before December 1, 2016.

**Current Status:** 2/25/2016 - Senate dissented from House Amendments

**Recent Status:** 2/25/2016 - House Conferees appointed Bacon and Bauer  
2/25/2016 - House Advisors appointed Baird and Brown C

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