

FAEGRE BAKER DANIELS

2016 Legislative Update #8

Indiana Society of Anesthesiologists



March 6, 2016

The 2016 Indiana General Assembly is headed into the final week of session. Although state lawmakers are not required to complete their work until a week from Monday (March 14), the session is expected to wrap up by Thursday because legislators will be ousted from their hotel rooms as fans swarm to downtown Indianapolis for the men's Big 10 basketball tournament.

Highlights from last week...

The Indiana State Medical Association, Indiana Hospital Association and Indiana Trial Lawyers Association reached an 11th-hour compromise on medical malpractice following three days of frenzied activity that started on Monday morning with an innocuous bill that would have restricted the maximum height of fences.

During a last-minute hearing in the House Judiciary Committee, Senate Bill 28 was stripped of its fence language and the contents were replaced with provisions that would have increased the medical review panel trigger from \$15,000 to \$35,000 and increased the cap on damages from \$1.15 million to \$1.65 million in 2017. The cap would be then be automatically increased in 2019, 2023, 2027 and 2031, until it reached \$2.25 million.

The Indiana State Medical Association and other physician groups were strongly opposed to the automatic increases. Dr. Alex Choi attended the hearing on behalf of ISA and testified in opposition. Concerns were also raised about increasing the trigger for referral to the medical review panel to \$35,000.

As a result of these efforts, the final version of the bill that was approved 90-5 by the House last Wednesday maintains the current \$15,000 trigger and includes only one automatic increase. The Senate is expected to concur with the changes, which is the last legislative action required before the bill moves to the governor's desk.

We'll have a detailed summary in the final report, but key provisions include:

- **Maximum payout:** Increases the maximum payout to \$1.65 million for injuries occurring between July 1, 2017 and June 30, 2019, and to \$1.80 million for injuries occurring after July 30, 2019.
- **Provider's share:** Increases the provider's maximum share from \$250,000 to \$400,000 for injuries occurring between July 1, 2017 and June 30, 2019, and to \$500,000 for injuries occurring after July 30, 2019.

- **Attorney fees:** Caps attorney fees at 32% of the recovered amount
- **Anesthesiologist assistants:** Includes AAs as qualified providers for purposes of individual coverage under the medical malpractice act.

Looking ahead:

The final four days of session will largely be dominated by conference committees and actions on concurrences. Under the legislature's rules, bills that were not amended by the second chamber head directly to the governor's desk. Bills that were amended return to their house of origin, where the bill's author may either agree with the changes and file a motion to concur, or disagree with the changes and file a dissent.

If the motion to concur is adopted, the bill heads to the governor for his signature. If the author files a dissent, however, the bill goes to a conference committee consisting of two members each from the House and Senate who must iron out their differences and present a revised version for final approval by their respective chambers.

Bills on the tracking list still awaiting final legislative action include House Bill 1263 (telemedicine) and Senate Bill 80 (ephedrine and pseudophedrine).

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 professional licensing agency.
- 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: IN CONFERENCE COMMITTEE

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: AWAITING GOVERNOR'S SIGNATURE

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: IN CONFERENCE COMMITTEE

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: AWAITING GOVERNOR'S SIGNATURE

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: AWAITING GOVERNOR'S SIGNATURE

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: 3/3/2016 - Returned to the Senate with amendments

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: AWAITING GOVERNOR'S SIGNATURE

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: IN CONFERENCE COMMITTEE

State Bill Page: [SB 80](#)

SB 162 HOSPITAL IMMUNIZATIONS (MILLER P) Urges the legislative council to refer to an interim study committee topics concerning hospital immunizations.

Current Status: IN CONFERENCE COMMITTEE

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: AWAITING GOVERNOR'S SIGNATURE

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: IN CONFERENCE COMMITTEE

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: AWAITING GOVERNOR'S SIGNATURE

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: IN CONFERENCE COMMITTEE

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: IN CONFERENCE COMMITTEE
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 huSB 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.
Current Status: AWAITING GOVERNOR'S SIGNATURE
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: 3/7/2016 - Concurrences Eligible for Action
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: IN CONFERENCE COMMITTEE
State Bill Page: [SB 364](#)