

FAEGRE BAKER DANIELS

2016 Legislative Wrap-up

Indiana Society of Anesthesiologists



March 25, 2016

With a stroke of the pen, Governor Mike Pence put the finishing touches on the work of the 2016 Indiana General Assembly late yesterday when he joined female elected officials to sign a bill that changes the formerly all-male pronouns in the laws governing statewide officeholders to gender-neutral terms.

HEA 1173 was the last of 215 bills adopted during the 10-week short session to be signed into law by the governor. Yesterday was the final day for Governor Pence to take action on 2016 legislation, and it was a busy one, as the governor vetoed two bills and approved 38 measures, including SEA 28 (medical malpractice).

This week also marked a major milestone for ISA as the last steps required to implement anesthesiologist assistant licensure finally fell into place. On Wednesday, the final AA rule was published in the Indiana Register. It will go into effect later this month. Yesterday afternoon, the Medical Licensing Board approved the application for AA licensure, which will be posted on the MLB's website in the near future. And the governor's approval of SEA 28 late yesterday means that AAs will be individually qualified for coverage under Indiana's medical malpractice act.

Following are summaries of bills enacted into law this year that potentially impact anesthesiologists. More significant, however, is what didn't pass.

For the first time in several years, the Indiana Association of Nurse Anesthetists did not push to expand their scope of practice. However, IANA did amp up their presence at the Statehouse, holding a first-ever CRNA advocacy day and also joining with a coalition of advanced practice nurses to host a luncheon for legislators. Based on this increased activity, it appears that IANA is laying the groundwork for 2017, when the Senate Health & Provider Services Committee will no longer be chaired by retiring Sen. Pat Miller and bills expanding non-physician scope of practice are expected to receive a warmer reception.

In the weeks ahead, state lawmakers will be spending most of their time in their districts preparing for the May primary. But by June, they'll be returning to the Statehouse for the work of interim study committees. This year, lawmakers have suggested 108 different topics for study over the summer by the bipartisan panels, including whether the legislature should authorize Indiana to enter into a multistate nurse licensure compact, a vehicle used in other states by CRNAs to expand scope of practice. The Legislative Council will meet in late May to sort through these suggestions and decide which ones merit further study this year. We'll send out another update after the topics are set.

HB 1263 HEALTH INFORMATION; TELEMEDICINE (KIRCHHOFER C)

Data requests: Requires FSSA to provide information to the Legislative Services Agency concerning the Medicaid program, the Healthy Indiana plan, and the children's health insurance program. Prohibits LSA from using the information for any purpose other than estimating the fiscal impact of proposed legislation, preparing program evaluation reports, and forecasting enrollment and costs of the program.

Telemedicine:

- 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.
- Provides that a controlled substance, an abortion inducing drug, or an ophthalmic device may not be prescribed through the use of telemedicine.
- 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 and entities that employ or contract with these providers to certify certain information with the Indiana Professional Licensing Agency. Authorizes PLA to adopt policies and rules concerning the required certification.
- Authorizes the Medical Licensing Board to adopt rules establishing guidelines for the practice of telemedicine. Prohibits the adoption of rules from delaying the implementation of telemedicine.

State Bill Page: [HB 1263](#)

HB 1272 PROFESSIONAL LICENSING MATTERS (ZENT D) Among other things:

- 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.

State Bill Page: [HB 1272](#)

HB 1278 INSPECT PROGRAM (DAVISSON S) Among other things:

- 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.

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 FSSA, 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.

State Bill Page: [HB 1347](#)

SB 28 MEDICAL MALPRACTICE (STEELE B)

- Increases the amount of recoverable damages for injury or death to a patient. Increases health care provider liability limits.
- Defines "final nonappealable judgment."
- Specifies that claims from the patient's compensation fund must be paid not later than 60 days after the issuance of a court approved settlement or final nonappealable judgment. Increases amounts paid to: (1) health care provider members; and (2) the chairman; of the medical review panel.
- Provides that attorney fees may not exceed 32% of the total recovery.
- Adds anesthesiologist assistants to the definition of health care providers for purposes of the law concerning medical malpractice.

State Bill Page: [SB 28](#)

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.

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.

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.

State Bill Page: [SB 80](#)

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.

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.

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.

State Bill Page: [SB 174](#)

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.

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.

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.

State Bill Page: [SB 297](#)

SB 364 **MEDICAID PROVIDER AUDIT WORK GROUP** (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 office to submit the work group's findings and any statutory recommendations to legislative council before December 1, 2016.

State Bill Page: [SB 364](#)