

FAEGRE BAKER DANIELS

2018 Legislative Update #10

Indiana Society of Anesthesiologists



March 20, 2018

The 2018 General Assembly adjourned *sine die* shortly after midnight on March 15, following a chain of unusual events that has been variously described in media reports as “bedlam,” “chaos” and “a total train wreck.”

The first hint of trouble occurred on Tuesday afternoon, when the Senate stopped work in mid-afternoon without taking action on a single conference committee report. Although rumors were swirling of discord within the GOP caucus over the potential replacement for retiring Senate Pro Tem David Long, Wednesday started out as a typical last day, with both chambers working steadily on the 60+ bills pending final action. But by early evening, it became clear that negotiations had broken down on several key bills. This led to a frantic round of last-minute scrambling to replace conferees, obtain signatures on conference committee reports, clear the reports through each chamber’s Rules Committee, and bring the measures to the floor for debate and final passage.

State law requires the biennial short session to adjourn no later than midnight on March 14. The Senate almost made it to finish line, taking final action before midnight on every bill except HB 1315, a controversial measure that, among other things, would have allowed Ball State University to operate Muncie Community Schools. On the House side, however, several critical bills were still bottled up in the Rules Committee, including measures aimed at improving school safety, aligning Indiana law with the recent changes to the federal tax code, and encouraging development of autonomous vehicle technology.

At the urging of GOP legislative leaders, Gov. Eric Holcomb issued an unprecedented order extending the session until 1 a.m. When Senate Democrats questioned the legality of the order, Senate President Pro Tem David Long abruptly gaveled the session to a close. House Speaker Brian Bosma quickly followed suit, bringing a strange and discordant end to an otherwise orderly legislative session.

The chambers had barely emptied when the finger-pointing started. At post-midnight news conferences, Republican leaders in the House and Senate blamed each other for spending too much time in the waning hours of session honoring retiring lawmakers instead of acting on pending legislation. At the same time, GOP leaders in both chambers criticized Democrats, who in turn pointed out that Republicans held super-majorities in both the House and Senate, leaving the Democrats with little control over any aspect of the legislative process.

But as the saying goes, it’s not over until it’s over. Gov. Holcomb announced on Monday that he will call state lawmakers back to Indianapolis in mid-May for a special session to address several of the key issues left unresolved in the wake of the legislative meltdown. Specifically,

the governor wants the legislature to increase funding for school safety by \$5 million per year and allow school corporations to obtain funding advances for school safety equipment and capital purchases. He is also asking lawmakers to adopt legislation to align Indiana's tax code with recent changes in federal law.

Although the governor decides if and when a special session occurs, he has little actual control over what happens once state lawmakers return to the Statehouse. But in light of the special session's price tag of \$30,000 per day, Republican legislative leaders will likely take a cue from the governor and limit the session to a handful of time-sensitive measures.

No date has been set for the special session, but it is expected to occur after the May 8 primary election. This year, 17 state representatives and six state senators are facing primary opponents, which means some lawmakers may return to the Statehouse in mid-May as unexpected lame ducks.

After the special session adjourns, the Legislative Council will meet and determine which topics will be studied during months leading up to the 2019 budget session. Under the General Assembly's rules, legislators can suggest topics for study by either including the suggestion in a bill or by filing a resolution that calls for a study. Potential study topics of interest to ISA include physician non-compete agreements, maintenance of certification, licensure for naturopathic medicine, treatment of chronic pain by physical therapists, nurse licensure compacts, and medical marijuana.

Following are updated summaries of bills on the tracking list that passed both chambers. As always, please let us know if you have any questions or need additional information.

SCOPE OF PRACTICE

HB 1119 PHYSICIAN ORDER FOR SCOPE OF TREATMENT AND CONSENT (KIRCHHOFER C)

- Provides that the definition of "cardiopulmonary resuscitation" (CPR) that applies to a do not resuscitate declaration also applies to a physician order for scope of treatment (POST) form.
- Adds licensed dentists, home health aides, and physician assistants to the definition of "health care provider" for purposes of a POST form.
- Establishes a priority order for who may provide consent if an adult is incapable of providing consent to health care. Provides exceptions to the priority order. Provides that if the individuals at the same priority level disagree as to the health care decisions on behalf of the patient, a majority of the available individuals at the same priority level controls. Provides that if an individual is incapable of consenting to the individual's own health care, the health care provider shall make a reasonable inquiry as to the availability of individuals who are able to provide health care consent.
- Specifies that the POST laws do not create a duty for a person to perform CPR on a declarant if the declarant's POST form indicates the declarant is not to be resuscitated.
- Allows a treating physician, advanced practice nurse, or physician assistant to execute

and exercise certain responsibilities concerning a POST form.

- Permits a representative to revoke a POST form if the declarant is incapable of making health care decisions and the representative acts: (1) in good faith; and (2) in accordance with the qualified person's intentions, if known, or in the qualified person's best interests, if the intentions are not known.
- Allows a POST document that was executed in another state and that meets certain conditions to be honored in Indiana. Requires the state department of health to maintain on the department's Internet web site a list of, or a link to the Internet web sites of, other states that may honor an Indiana POST form.

All Bill Status: 3/13/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [HB 1119](#)

HB 1130 PROFESSIONAL LICENSING AGENCY MATTERS (ZENT D) Among other things:

- Removes provisions that: (1) permit a student in medical school to take the medical licensure examination; and (2) concern grading examinations and how often the exam is administered.
- Changes a reference to a postgraduate training program that allows a permit to be issued to a foreign medical graduate.
- Requires a physician to make a personal appearance before the medical licensing board to establish the physician's work history if the physician has been inactive for more than three years. (Current law requires an appearance if the inactivity period is more than four years.)

All Bill Status: SENT TO GOVERNOR

State Bill Page: [HB 1130](#)

HB 1317 HEALTH MATTERS (CLERE E)

- Urges the legislative council to assign to an appropriate interim study committee the task of studying the impact that joining the nurse licensure compact would have on the delivery of nursing services to residents of Indiana.
- Provides that a pharmacy or pharmacist have a right to provide individuals with information concerning the individual's cost share for a prescription drug. States that a pharmacy or pharmacist cannot be proscribed by a third party administrator, a health insurer, or a health maintenance organization from discussing the information or from selling to the individual a more affordable alternative. Prohibits a copayment for a drug under the state employee health plan, an accident and sickness insurance policy, or a health maintenance organization contract from exceeding the amount payable to the pharmacy for the drug under an agreement with the pharmacy.

Current Status: SENT TO GOVERNOR

State Bill Page: [HB 1317](#)

HB 1384 CHIROPRACTORS (BEUMER G) Among other things:

- Revises the scope of practice to provide that except for the treatment of infectious and endocrine diseases or atypical or abnormal histology, a chiropractor may diagnose and treat injuries, conditions, and disorders through the following:
 - Chiropractic adjustment or manipulation

- Supportive procedure therapies
 - The use of solid filiform needles to treat neuromusculoskeletal pain and dysfunction (dry needling)
 - Except for the use of ionizing radiation therapy or radionics, the use of x-rays, diagnostic imaging, or other diagnostic tests
- Requires that an applicant for a license to practice chiropractic must complete at least 90 semester hours of education after June 30, 2021.
 - Allows a chiropractor to perform certain acts and functions to the extent the chiropractor was taught the procedure in an accredited chiropractic college or university or an approved postgraduate program.

Current Status: SENT TO GOVERNOR

State Bill Page: [HB 1384](#)

SB 223 INFORMATION PROVIDED BY HEALTH PRACTITIONERS (HEAD R)

- Requires specified licensed health practitioners to provide certain information related to the practitioner's work, including the practitioner's work with Medicaid patients, when renewing the practitioner's professional license online.
- Requires the Indiana professional licensing agency to: (1) compile the information collected into an annual report; (2) post a copy of the report on the agency's Internet web site; and (3) submit the report to the office of Medicaid policy and planning, the department of workforce development, the commission on improving the status of children, the legislative council, and the office of the attorney general.
- Specifies notice requirements for network health care providers that make referrals via telephone to out-of-network health care providers.

Current Status: 3/16/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [SB 223](#)

SB 410 ADVANCED PRACTICE REGISTERED NURSES (CHARBONNEAU E) Changes "advanced practice nurse" references to "advanced practice registered nurse". Requires the Indiana state board of nursing to adopt rules concerning educational and certification requirements that an advanced practice registered nurse must meet to prescribe legend drugs.

Current Status: 3/16/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [SB 410](#)

SB 419 PROFESSIONAL AND OCCUPATIONAL LICENSES (DORIOT B)

- Provides that a unit does not have the power to license, register, or certify a person to practice the person's profession or occupation within the unit if the occupation or profession is subject to licensure, registration, or certification under the Indiana Code.
- Provides that this prohibition does not apply to: (1) registration for particular projects for the alteration, construction, demolition, or repair of a building or other work on real property required under an ordinance or rule adopted under local government law; (2) the ability to revoke, suspend, or impose additional conditions on a permit or registration previously given if the person holding the permit or registered has performed substandard work or has otherwise violated any condition of the permit or registration; or (3) when the unit determines the establishment and enforcement of health and safety standards for the occupation or profession is appropriate and

necessary to protect the public.

- Provides that an agency or political subdivision may require verification of an individual's eligibility for a professional or occupational license, by requiring the individual to verify under penalty of perjury that the individual is: (1) authorized by the federal government to work in the United States; and (2) executing the verification only for the purpose of applying for a professional or occupational license issued by the state agency or political subdivision. Provides that an individual who is authorized by the federal government to work in the United States is eligible for a professional or occupational license issued by a state agency or political subdivision if the individual meets all the requirements, other than the requirement under 8 USC 1621(a), to obtain or renew the professional or occupational license.

Current Status: SENT TO GOVERNOR

State Bill Page: [SB 419](#)

INSURANCE & MEDICAID

HB 1143 PRIOR AUTHORIZATION FOR HEALTH CARE SERVICES (SCHAIBLEY D) Specifies requirements for prior authorization of health plan coverage and claim payment, including provisions requiring electronic transmission of prior authorization requests and responses or, in certain circumstances, use of a standard prior authorization form established by the department of insurance.

Current Status: 3/14/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [HB 1143](#)

HB 1007 EXPANDING MENTAL HEALTH ACCESS (KIRCHHOFER C) Among other things:

- Requires the office of Medicaid policy and planning to implement a centralized credentials verification organization and credentialing process.
- Provides for temporary permits to certain individuals who are pursuing required clinical supervisory hours needed for licensure. Provides that the temporary permits are not renewable.
- Requires: (1) an accident and sickness insurer; and (2) a health maintenance organization; to provide provisional credentialing to a provider for which a credentialing determination is not completed in at least 30 days if certain requirements are met.

Current Status: SENT TO GOVERNOR

State Bill Page: [HB 1007](#)

OPIOIDS

SB 221 INSPECT PROGRAM (HOUCHIN E)

- Allows a dispenser of ephedrine, pseudoephedrine, or a controlled substance to transmit certain information to the INSPECT program by any electronic method that meets specifications prescribed by the state board of pharmacy (board).

- Provides that, to the extent considered appropriate by the board, the INSPECT data base must be interoperable with other similar registries operated by federal and state governments.
- Requires the following practitioners to obtain information about a patient from the data base before prescribing an opioid or benzodiazepine to the patient: (1) A practitioner who has had the information from the data base integrated into the patient's electronic health records. (2) Beginning January 1, 2019, a practitioner who provides services to the patient in the emergency department of a hospital or a pain management clinic. (3) Beginning January 1, 2020, a practitioner who provides services to the patient in a hospital. (4) Beginning January 1, 2021, all practitioners.
- Provides that beginning January 1, 2019, a practitioner who is permitted to distribute, dispense, prescribe, conduct research with respect to, or administer ephedrine, pseudoephedrine, or a controlled substance in the course of the practitioner's professional practice or research must be certified to receive information from the INSPECT program.
- Allows a practitioner to request a waiver from the requirement of checking the data base before prescribing an opioid or benzodiazepine if the practitioner does not have access to the Internet at the practitioner's place of business.
- Requires the Indiana state board of pharmacy to: (1) establish a process for a practitioner to request a waiver; (2) determine whether to grant a practitioner's request for a waiver; and (3) issue a waiver when the board determines a waiver is warranted.

All Bill Status: SENT TO GOVERNOR

State Bill Page: [SB 221](#)

SB 225 CONTINUING EDUCATION REQUIREMENTS (HEAD R) Establishes continuing education requirements for licensed health care practitioners who apply for a controlled substances registration. Provides that the continuing education requirements expire July 1, 2025.

All Bill Status: 3/13/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [SB 225](#)

MISCELLANEOUS

SB 230 SUICIDE PREVENTION (HEAD R) Among other things, provides that the division of mental health and addiction is responsible for the development and provision of a research based training program for health care providers concerning suicide assessment, training, and management that is: (1) demonstrated to be an effective or promising program; and (2) recommended by the Indiana Suicide Prevention Network Advisory Council.

All Bill Status: 3/13/2018 - **SIGNED BY GOVERNOR**

State Bill Page: [SB 230](#)