2015 Health Law Legislative Update
2015 Health Law Legislative Update

November 12, 2015

Presented by
Hannah K. Brown, Esq.
Hall, Render, Killian, Heath & Lyman, P.C.
One American Square, Suite 2000
Indianapolis, Indiana 46282
(317) 977-1451
hbrown@hallrender.com
2015 “Long” Legislative Session

• 2014 general election
  – “Status quo”
  – Supermajorities in both houses
    • Senate: 40-10 (from 37-13)
    • House: 71-29 (from 69-31)
• Adjourn by April 29
• Long budget-writing session
  – Appropriate approx. $30 billion over next two years
Introduced Bills
- House Bills
  - 667
- Senate Bills
  - 570

Bills Becoming Law
- House Bills
  - 139
- Senate Bills
  - 129
- 2 Vetoes by Governor
Today’s Roadmap

• Biennial State Budget
• Medical Malpractice Act
• Primary Care Physician Retention
• Prescribing and Controlled Substances
• Health Care Administration and Policy
• Licensure and Workforce Issues
• State Administration and Regulations
• Public Health
• Mental Health and Addiction
• Infant Mortality Initiatives
• Interim Study Committees and 2016 Session Preview
HB 1001: Biennial State Budget
(Rep. T. Brown)

Highlights of the 2016-17 Budget:

• **Medicaid Forecast**: Fully Funded

• **Family Practice Residency Fund**
  – Expected level at $3.7M for the biennium

• **Newly Established Graduate Medical Education Board, Medical Residency Education Grants**
  – $6M over biennium

• **Primary Care Shortage Area Scholarship**
  – $4M over biennium
HB 1001: Biennial State Budget
(Rep. T. Brown)

Highlights of the 2016-17 Budget:

• Safety PIN Program
  – $12.5M over biennium

• For-Profit Hospital Tax Credit

• Tobacco Use and Cessation Program
  – $5M in both FY 2016 and 2017

• Efforts to Raise the Cigarette Tax (from $0.995 per pack) Stalled
  – HOO$1ERS for a Healthier Indiana Campaign
Medical Malpractice Act

- **SB 55: Medical Malpractice Actions (Steele)**
  - “Direct-access” threshold
  - Would have increased the amount with which a malpractice claim can bypass the medical review panel from $15,000 to $187,000
    - Note: $15,000 threshold has not been raised since 1985
  - Amendment: Added certain categorical exceptions to medical review panel: wrong-site surgery and retention of foreign object

- **HB 1043: Medical Malpractice Caps (Torr)**
  - Current cap: $1.25M (Provider share: $250,000)
  - Proposed to raise cap to $1.65M (Provider share: $300,000)
  - Studied by the Interim Study Committee on Courts and Judiciary this summer
Primary Care Physician Retention

- **HEA 1323: Medical Residency Education Fund (T.Brown)**
  - Establishes the Medical Residency Education Fund for the purpose of expanding medication education
  - Creates the Graduate Medical Education Board to manage funds. Will also provide report to General Assembly by Nov. 1, 2016 on issues relating to residency expansion (cost per resident, economic impact, impact on access to care and financial participation that would be expected of sponsoring institutions)

- **SB 496: Primary Care Physician Loan Forgiveness (Breaux)**
  - Would have increased student loan forgiveness opportunities for physicians who practice in primarily rural areas (up to $25,000 per year)
  - Given budgetary impact, did not pass house of origin
Prescribing and Controlled Substance Issues

• **SEA 168: Access to Controlled Substance Database (Pat Miller)**
  – Allows physicians with temporary medical licenses to access INSPECT

• **SEA 358: Medications (Grooms)**
  – Defines “medication therapy management”
  – Establishes INSPECT oversight committee. Will approve contracts with vendors to administer INSPECT, approve the director of INSPECT, etc.

• **Ephedrine and Pseudoephedrine**
  – Multiple bills that would make this OTC drug prescription-only or a Schedule III or IV controlled substance
  – Alternative proposals would create meth offender registry, prohibiting sale of PSE products OTC to registrants
Prescribing and Controlled Substance Issues

- **SEA 534: Rules for Prescribing Controlled Substances** (Grooms)
  - Before March 1, 2016, the licensing boards of PAs, podiatrists, dentists and nurses are required to adopt “complementary” rules to the MLB’s pain management regulations.

- **SEA 464: Mental Health Issues** (Pat Miller)
  - When methadone is prescribed for pain, must indicate this on prescription or order.
  - Limited reimbursement – daily dosage less than 60 milligrams, greater requires prior authorization.
Prescribing and Controlled Substance Issues

• **SB 439: Controlled Substances (Hershman)**
  – Would have required DMHA to adopt opioid prescribing rules for treatment of substance abuse
  – Prohibited prescribing Subutex or Suboxone for treatment of pain, unless provider had federal certification

• **HEA 1184: Controlled Substances (Davisson)**
  – Authorizes optometrists to prescribe Tramadol (Ultram)

• **HEA 1065: Investigational Drugs, Biological Products and Devices (Culver)**
  – “Right to Try Act” – allows terminally ill patients to be eligible for experiential drugs not approved by FDA. Physician, drug manufacturer and hospital (if applicable) must approve patient’s use
Health Care Administration and Policy

- **SEA 293: Medical Peer Review (Pat Miller)**
  - Provides for the use of a peer review committee by an Indiana medical school and allows sharing of peer review information between a medical school peer review committee and another peer review committee

- **HEA 1093: Information Concerning Certain Disabilities (Bacon)**
  - Providers and facilities required to provide information to parents who receive a positive result from a prenatal test for Downs syndrome and other conditions. Information available on ISDH website.
Health Care Administration and Policy

- **HEA 1265: Designation of Caregiver for Patients (Zent)**
  - Caregiver Advise, Record, Enable (CARE) Act requires hospitals to provide each admitted patient with an opportunity to designate a lay caregiver and document the patient’s designation or refusal in the record.
  - Original requirements to give lay caregivers certain aftercare instructions and live demonstrations were amended to recognize unique needs of individuals and professional judgment of hospital personnel involved.
  - Effective Jan. 1, 2016

- **HEA 1268: Health Matters (Clere)**
  - Parity for telemedicine services, including medical and behavioral health exams and treatments, in accordance with in-person coverage.
Price Transparency (See mycareINsight.org)
- HB 1213 (cost of medical procedures) Would have required each hospital and ASC to prepare a list of facility’s average charges for treatment of common procedures/treatments
- HB 1241 (publication of health care charges) Would have required hospitals, ASCs and other entities to make their chargemaster list available on a website. Would have required physicians to make available comparison of physician's current charges and Medicare reimbursement

HB 462: Advertising by Health Care Practitioners (Pat Miller)
- Aimed to prohibit use of deceptive or misleading information in health care advertisements

HB 1494: Firearm Ownership and Medical Records (Judy)
- Would have restricted the collection and disclosure of certain information regarding a patient's ownership or access to a firearm by health care providers
- Aimed to prevent political subdivisions or professional licensing boards from requiring providers to inquire about ownership
Licensure and Workforce Issues

• **HEA 1183: Physician Assistants (Davisson)**
  
  – **Physician chart review**
    
    • Reduces chart review to 25% in Year 1 (50% in Year 1 if prescribing Schedule II), and to be determined by physician in following years
      
      – Chart review schedule restarts if PA changes specialty
    
    • Extends the amount of time that the supervising physician has to complete chart review following the patient encounter to a reasonable amount of time (not more than 10 business days)
  
  – **Removes limitations on the amt. of a controlled substance PA may prescribe**
    
    • Removes one-year practice requirement before prescribing controlled substances (1,800-hour practice requirement remains)
    
    • Permits Schedule III & IV Rxs by PAs/APNs for weight reduction/obesity
    
    • Removes 30-day no-refill limit on Schedule II-V drugs (so long as provided for by supervisory agreement)
  
  – **Physician to PA Ratio**
    
    • Permits a physician to supervise 4 PAs (current law: 2 PAs)
Licensure and Workforce Issues

- **HB 1310 and SB 167: CRNAs**
  - Would have allowed CRNAs to administer anesthesia under the direction and immediate presence of a podiatrist

- **SB 272: Midwife Certification (Kruse)**
  - Would have removed the collaborative practice agreement requirement for certified direct entry midwives

- **HEA 1157: Qualified Dietitians (Bacon)**
  - Permits qualified dietitians to order medically prescribed diets as a component of patient’s treatment regimen
State Administration and Regulations

- **SEA 460: Comprehensive Care Health Facilities (Miller) ✔**
  - The nursing home moratorium, restricts any new comprehensive care beds until June 30, 2018
  - Certain exceptions for facilities under development, counties with occupancy rates above 90% or hospital conversion beds

- **HEA 1019: Common Construction Wage and Public Works (Torr) ✔**
  - Repeals Indiana’s prevailing wage or common construction wage statute

- **HEA 1562: Professional Licensing Matters (Zent) ✔**
  - Requires all licensed or certified professionals who receive a conviction of a misdemeanor or felony to provide written notice of the conviction to the appropriate professional licensing board not later than ninety (90) days after entry of the order or judgment of conviction
State Administration and Regulations

• **SEA 546: Abortion Matters (Messmer)**
  - Redefines term “abortion clinic” in response to federal court ruling finding Indiana unconstitutionally differentiated between physicians’ offices and other health care clinics that provide only non-surgical abortion services

• **SEA 329: Disposition of Aborted Remains (L. Brown)**
  - Requires pregnant women to be informed orally and in writing before an abortion about her options in determining final disposition of remains of aborted fetus and counseling options
  - ISDH adopted emergency rules before July 1, 2015, specifying disposal methods to be used by abortion clinics and health care facilities

• **SB 334: Abortion Prohibition Based on Sex or Disability (Holdman)**
  - Would have prohibited a physician from performing an abortion if physician had knowledge woman was seeking abortion solely because of the sex of fetus or because the fetus has received a potential diagnosis of a disability
Public Health

- **SEA 461: Health Matters (Needle Exchange) (Pat Miller)**
  - Permits operation of needle or syringe exchange programs (SEPs) beyond what was recently authorized in Scott County through Executive Order. Effective immediately, local gov’ts permitted to request a public health emergency declaration by ISDH based on epidemic of Hep C or HIV associated with IV drug use
  - EMS providers may administer blood glucose monitoring tests
  - Requires distribution of information related to HPV vaccine to parents of all children in 6th grade

- **SEA 406: Overdose Intervention Drugs (Merritt)**
  - Permits health care providers w/ prescriptive authority to prescribe or dispense Narcan to person or entity in position to assist individual at risk of experiencing an opioid-related overdose. Grants immunity from civil liability to those who prescribe, dispense, obtain and administer Narcan in compliance with the law
  - Effective upon passage
  - See Attorney General’s Advisory Opinion for guidance
Public Health

• **HEA 1454: Auto-Injectable Epinephrine (Eberhart)**
  - Permits entities to obtain prescriptions for auto-injectable epinephrine for administration to employees, agents and visitors who demonstrate signs or symptoms of life-threatening anaphylaxis

• **SEA 6: Powdered or Crystalline Alcohol (Alting)**
  - Effective immediately, it is a Class B infraction to possess, sell or use powdered or crystalline alcohol (unless used for bona fide research purposes). This comes following recent approval of sale of powdered alcohol by Federal Gov’t

• **SEA 463: Cigarettes and Tobacco Sales (Pat Miller)**
  - In absence of federal regulations, lays framework for regulatory structure
Mental Health and Addiction

- **HEA 1448: Mental Health Drugs and Coverage (Davisson)**
  - Includes inpatient substance abuse detoxification services under Medicaid
  - Authorizes Medicaid to require prior authorization for addictive medication used as medication-assisted treatment for substance abuse
  - Requires information and training to judges, prosecutors and public defenders concerning diversion programs, probationary programs and involuntary commitment

- **HEA 1269: Health Matters (Clere)**
  - School corporations permitted to enter into MOU with a mental health care provider or CMHC for purpose of referring students for mental health services
  - DOC and county sheriffs may now act as inmate’s Medicaid authorized representative and apply for Medicaid on behalf of inmate, ensuring coverage upon release
Infant Mortality Initiatives

- **HEA 1004: Safety PIN Grant Program (Sullivan)**
  - Creates the Safety Protecting Indiana’s Newborns (PIN) Grant Program
  - Providers eligible for grants to address various contributing factors to infant mortality. Preference given to proposals that seek to:
    - Decrease smoking rates of pregnant women and fathers
    - Incentivize pregnant women and fathers to obtain prenatal care
    - Improve access and coordination through outreach and follow-up
    - Address issue of infant mortality on a regional basis
Infant Mortality Initiatives

• HEA 1016: Newborn Safety Incubators (Cox)
  – Would have permitted use of newborn safety incubators in Indiana (also called baby drop boxes, baby hatches or foundling wheels)
  – Would have established ISDH licensure process for installers of incubators and penalties for misuse
  – After lengthy consideration, ISDH will study and submit recommendations to the General Assembly prior to start of 2016 Legislative Session

• HB 1180: Endangering an Unborn Child (Karickhoff)
  – Criminalizes drug use by pregnant women
Interim Study Committees

• Legislative Council
  – Met on May 28, 2015
  – 140 proposed topics submitted – about 40 selected

• Courts and Judiciary:
  • Medical Malpractice Act, including whether the cap on damages should be increased and any potential improvements to the medical review panel process that may improve and streamline the process
    – No Final Recommendations made.
Interim Study Committees

• **Public Policy** – a study on smoking issues:
  – Whether smoking should be prohibited in bars, casinos and private clubs and its fiscal impact (Recommendation: No amendments to smoking ban law re: bars, casinos, and private clubs.)
  – Whether e-cigarettes should be defined as tobacco products and subject to ban
  – E-cigarette taxation
  – The fiscal impact of an increase in the cigarette tax
  – Possible funding sources for tobacco use prevention and cessation programs
  – The impact of the tobacco tax on smoking rates and healthy living ratings relative to other states
  – The impact of smoking upon families and pregnancy
  – The costs incurred by the state as a result of smoking during pregnancy and smoking within families
  – The fiscal impact of changing existing laws regarding cigarette tax distribution
Interim Study Committees

- Public Health, Behavioral Health and Human Services:
  - DOI to report on consumer complaint process, including:
    - Definitions of “investigatory,” “experimental” or similar terms used for denials of claims
    - Claims data for previous three years
    - Review of data regarding denials
  - Committee recommended development of DOI website concerning internal and external consumer grievances for accident and sickness insurance policies. The website’s address must be provided upon policy issuance and renewal and with any notice of claim denial.
Preview of 2016

• 2016 “short” legislative session
  – November 17, 2015 – Organization Day
  – January 11, 2016: First Day of Session

• Priority Issues:
  – RFRA & LGBT protections
    • Proposals to add sexual orientation and gender identity to civil rights code.
  – Transportation and infrastructure funding
    • Possible increase to the tobacco tax.
Preview of 2016

• Other Expected Legislation Affecting Health Care
  – Medical Malpractice legislation
    • Increase to the damage caps.
  – Telehealth
    • Remove physician prescribing barriers and broaden telemedicine/telehealth definitions.
  – INSPECT
    • Mandatory checks by prescribers and pharmacists.
  – Health Care Price Transparency
    • Requirements on health care providers and insurers to make certain pricing information available to patients.
Please visit the Hall Render Blog at http://blogs.hallrender.com/ or visit http://www.hallrender.com/contact/sign_up_resources/ to sign up to receive Hall Render alerts on topics related to health care law.

Hannah K. Brown, Esq.  
(317) 977-1451  
hbrown@hallrender.com