

Indiana State Bar Association

Health Care Legislative & Regulatory Update

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2008 Legislative Session

Overall Bills Introduced

House

402 Bills Filed + 11 House Joint Resolutions

■81 House Bills Enacted

Senate

■368 Bills Filed + 22 Senate Joint Resolutions

■66 Senate Bills Enacted + 1 Senate Joint Resolution

Health-Related Bills Introduced

House

■Public Health Committee – 14 bills

■Insurance Committee – 7 bills

Senate

■Health & Provider Services – 33 bills

■Insurance Committee – 1 bill

Bills that Passed with Applicable Provisions

House Bill 1001 – Property Tax bill

■State assumed all of the hospital care for the indigent (HCI) levy.

■State also assumed \$40M of the Health & Hospital Corporation levy (Marion county).

HB 1140 - Coverage for Orthotic & Prosthetic Devices

■Provides parity for coverage of orthotic & prosthetic devices.

■Mandates coverage since persons are not able to purchase an individual rider for this type of coverage.

■Cost controls include: 1) Two separate examinations by two different physicians, 2) insurer has ability to seek utilization review and 3) insurer can negotiate a discount below the Medicare fee schedule.

■Bill provides that the lifetime limit for prosthetic and orthotic devices is based on a separate cap that is "equal to" the lifetime maximum coverage limitation that applies to other health items and services.

HEA 1171 – Autism Training for EMS Personnel

■Requires certified emergency medical services (EMS) personnel to successfully complete a course of education and training on autism beginning January 1, 2009.

HEA 1172 – Various Professions & Occupations

- Omnibus licensure bill that also contained the Interstate Nurse Licensure Compact and the establishment of a state public umbilical cord blood bank.
 - The Interstate Nurse Licensure Compact language may not result in Indiana being accepted into the compact because it was changed to address some concerns that the Attorney General's Office had with the language.
 - Most states use the State Nursing Board to investigate any alleged complaints regarding a nurse's license.
 - In Indiana, the Attorney General's Office handles the investigation of these complaints and makes a finding to the Indiana State Board of Nursing.
 - Since Indiana statutorily differs in this delegation of duties regarding an investigation of a nurse's license the legislature had to change the compact language.
 - It was agreed that the Attorney General's Office and various legislators would share those concerns with the compact to see what can be worked out for Indiana.
 - Provides the Uniform Emergency Volunteer Health Practitioners Act to provide a procedure for recognizing other states' licenses for health practitioners who volunteer to provide assistance during an emergency requiring significant health care assistance.
 - Requires beginning July 1, 2008, and until June 30, 2009, a home health agency and a personal services agency to obtain an employee's limited criminal history not more than three business days after the date that an employee begins to provide services.
 - Establishes criteria when a nursing home is not required to provide cardiopulmonary resuscitation or other intervention on a patient who has died.
- Removes physician referral requirements to receive acupuncture and specifies training and testing requirements.
- Allows the State Board of Nursing to issue a registered nurse's license to certain applicants.
 - Requires specified examination and registration fees to be used for the rehabilitation of impaired registered nurses and impaired licensed practical nurses.

HEA 1187 – Non-profit corporations

- The main purpose of this legislation was to update Indiana code as it relates to the governance of nonprofit corporations.
- Provides that notice given by a nonprofit corporation (corporation) is fair and reasonable if the corporation provides notice by: (1) communicating in person; (2) mail or other method of delivery; or (3) other electronic means capable of verification.
- Requires a corporation to maintain a notice in a record unless the notice was given orally.
- Establishes when notice is effective.
- Requires a corporation to retain ballots for a certain period.
- Establishes circumstances under which contracts or transactions that involve conflicting interests of members, directors, members of a designated body, or officers are not void or voidable. (Current law establishes the circumstances under which contracts or transactions that involve conflicting interests of directors are not void or voidable.)
- Amends provisions that restrict certain actions by committees of directors.
- Allows: (1) boards of directors; and (2) members present at a committee meeting; to appoint alternate members of a committee.

- Allows corporations to create or authorize the creation of advisory committees.
- Provides that a constituent of a business entity and the business entity are presumed to have agreed to conduct certain actions electronically unless conducting the actions electronically is prohibited by the governing documents of the business entity or an express statement by the business entity.
- Establishes certain guidelines for the use of electronic records or electronic signatures.

HEA 1197 – Data breaches

- Authorizes the Attorney General to initiate a program to educate consumers of risks posed by a security breach.
- Provides, for purposes of the law requiring the disclosure of a breach of the security of a system, that the unauthorized acquisition of a portable electronic device on which personal information is stored does not constitute a breach of the security of a system if the contents of the portable electronic device are encrypted and if the encryption key is not compromised.

HEA 1204 – Public Safety

- Establishes the Emergency Alert System Advisory Committee to: (1) develop, update, and monitor the effectiveness of the state emergency alert system plan; (2) make recommendations concerning the acquisition of appropriate technology and equipment to make the emergency notification system effective on a timely basis in all parts of Indiana; and (3) through the State Police Department, purchase appropriate technology and equipment to equip local primary relaying stations with monitoring equipment.
- Provides that the wireline enhanced emergency telephone system fee applies to interconnected voice over Internet protocol (VoIP) service.
- Provides that after December 31, 2014, a county may not contain more than two PSAPs.
- Provides that a county may have more than two PSAPs if any additional PSAPs are operated by a state educational institution or by an airport authority established for a county having a consolidated city.
- Provides that if, on March 15, 2008, a county does not contain more than one PSAP, an additional PSAP may not be established or operated in the county on or after that date unless the additional PSAP is established and operated by: (1) a state educational institution; (2) an airport authority established for a county having a consolidated city; or (3) the municipality having the largest population in the county or an agency of that municipality.
- Requires each PSAP operator in a county containing more than the authorized number of PSAPs to enter, not later than January 1, 2015, into an interlocal agreement with every other PSAP operator in the county to ensure that the county does not contain more than the authorized number of PSAPs after December 31, 2014.
- Provides that a unit may not adopt an ordinance to increase a wireline enhanced emergency telephone system fee during the period beginning March 15, 2008, and ending at such time that the applicable county has complied with the requirement limiting the number of PSAPs in each county.

HEA 1266 – Priority for Receiving Services Under Medicaid Waivers

- Requires the Office of Medicaid Policy and Planning to apply to the United States Department of Health and Human Services to amend certain waivers to allow specified individuals to be given priority in receiving services under the waiver.
- The waivers that will be amended are: the Developmental Disabilities waiver, the Support Services waiver and the Autism waiver.

HEA 1284 – Insurance

- Prohibits an accident and sickness insurer and a health maintenance organization from requiring a patient to travel a certain distance for dialysis treatment as a condition of coverage or reimbursement.
- Establishes a study committee on dialysis coverage.
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HEA 1288 – Behavior Analysts

- Makes it a Class B misdemeanor if an individual professes to be a certified behavior analyst and the individual does not hold and maintain the certified behavior analyst credentials administered by the Behavior Analyst Certification Board, Inc.

SEA 42 – Human Services

- The Select Joint Commission on Medicaid Oversight will now have the oversight duty of determining whether or not any of managed care organizations that have a contract with the State to provide Medicaid services is performing up to the terms of the contract.
- Requires certain managed care organizations participating in the Medicaid program to: (1) be accredited by the National Committee for Quality Assurance within certain timeframes; and (2) accept electronic claims for payment. Repeals a provision that provided for the expiration of the commission on December 31, 2008.

SEA 143 – Childhood lead poisoning prevention

- Specifies certain requirements for laboratories, the State Department of Health, local health departments, and retail establishments related to childhood lead poisoning prevention.
- Provides for certain actions by the State Department of Health for noncompliance with certain provisions.
- Establishes the childhood lead poisoning prevention fund for outreach and prevention activities.
- Establishes a Lead-Safe Housing Advisory Council to make recommendations related to lead poisoning prevention.
- Requires an interim committee to study issues related to childhood lead poisoning prevention.

SEA 156 – Communicable Disease Rules

- Specifies that the State Department of Health (IDOH) may adopt emergency rules concerning communicable diseases.

SEA 157 – Opioid Treatment Programs

- Requires approval and certification for each location that an opioid treatment program is operated.
- Requires an opioid treatment program to: (1) periodically and randomly test a patient for the use of specified drugs; and (2) take certain actions if the drug test is positive for an illegal drug other than the drug being used for the patient's treatment.
- Requires the Division of Mental Health and Addiction to adopt rules on: (1) standards for operation of an opioid treatment program; (2) a requirement that the opioid treatment facilities submit a current diversion control plan; and (3) fees to be paid by an opioid treatment facility.

SEA 159 – Third Party Access to Terms of Health Care Contracts

- This bill targets the "silent PPO" issue in which health care providers were finding that the discounts they had negotiated with a particular contractor were then used by an outside third party who wanted access to that same discount but without the provider's knowledge.
- Under the bill, a contractor shall provide the provider at the time of contract negotiations with a list of any PPOs, preferred provider networks, and physician hospital organizations to which the contractor may grant access to the provider's health care services and the discount for those services.
- The contractor must provide an explanation of benefits or remittance advice to the patient identifying the contractual source of the discount.
- The third party is obligated to comply with all the applicable terms of the health care contract.

SEA 164 – Human Services Matters

- Specifies that the Office of Medicaid Policy and Planning (OMPP), a managed care organization that has contracted with the office under the state's Medicaid program, and a person that has contracted with the managed care organization must meet certain requirements concerning clean claim payment and denial of claims.
- Specifies that eligibility for the Children's Health Insurance Program (CHIP) is limited to a child whose family annual income is not more than 300% of the federal income poverty level or the maximum percentage approved by the federal government if the approved percentage is less than 300%.
- Requires the Health Finance Commission to study during the 2008 interim the feasibility and costs of allowing individuals who meet certain requirements to participate in the Indiana check-up plan without state funding for the coverage.

SEA 219 – Lactation Support in the Workplace

- Provides that the state and political subdivisions: (1) shall provide for reasonable paid breaks for an employee to express breast milk for the employee's infant child; (2) must make reasonable efforts to provide a room or other location in close proximity to the work area where the employee can express the employee's breast milk in privacy; and (3) must make reasonable efforts to provide for a refrigerator or other cold storage for keeping breast milk that has been expressed.

- Provides that other employers that employ 25 or more individuals, to the extent reasonably possible, must provide: (1) a private location for an employee to express the employee's breast milk during any period away from the employee's assigned duties; and (2) a refrigerator or other cold storage space, or allow the employee to provide the employee's own portable storage device, for keeping the expressed milk until the end of the employee's work day.
- Provides that, except in case of willful misconduct, gross negligence, or bad faith, an employer is not liable for any harm caused by or arising from: (1) the expressing of an employee's breast milk; or (2) the storage of expressed milk on the employer's premises.

SEA 249 – Emergency Medical Services Commission

- Requires the Emergency Medical Services Commission to adopt rules concerning the triage and transportation protocols for the transportation of trauma patients.

SEA 302 – Professions & Occupations

- Establishes qualifications for a provisional license for physicians.
- Adds a definition of "dispense" to the law concerning controlled substances.
- Provides that a physician assistant who renders care in response to an emergency under the State Emergency Management law is not required to comply with the law requiring supervision by a physician.
- Requires a nonresident pharmacy that dispenses more than 25% of the pharmacy's total prescription volume through the Internet to have certain accreditations and display the accreditation in advertisements.
- Removes specified home medical equipment from the definition of "home medical equipment" and redefines the term as equipment that is prescribed by a health care provider and either: (1) sustains, restores, or supplants a vital bodily function; or (2) is technologically sophisticated and requires individualized adjustment or maintenance.
- Defines "home medical services" to require both the: (1) sale, rental, delivery, or installation of home medical equipment; and (2) installation, maintenance, and instruction in the use of the equipment.
- Two provisions related to advanced practice nurses: 1) Provides that advanced practice nurses with prescriptive authority are subject to certain restrictions regarding drug samples. This addition can now be used to demonstrate to pharmaceutical representatives that advanced practice nurses are able to receive and dispense drug samples 2) Prohibits advanced practice nurses from entering into collaborative practice agreements with physician assistant

SEA 305 – Controlled Substances

- Adds certain controlled substances to the list of schedule I, schedule II, schedule III, schedule IV, and schedule V controlled substances.

SEA 315 – Aging and Long-Term Care Services

- Provides that a person who has made certain asset transfers is not eligible for residential care assistance.
- FSSA will work with stakeholders and providers of long-term care services in the drafting and adoption of rules to implement: (1) a screening and counseling program for individuals seeking long term care services; (2) a process of prior approval for certain individuals seeking admission to a nursing facility; and (3) the annual review of Medicaid rates.
- Prohibits the State Department of Health from approving the certification of new or converted comprehensive care beds for participation in the Medicaid program until July 1, 2011, unless the state comprehensive care bed occupancy rate is more than 95% in health facilities.
- Allows for an exception for replacement beds and continuing care retirement communities under development if specified requirements are met.

SEA 350 – Community Mental Health Centers

- Requires a county (other than Marion County) to transfer money to the Division of Mental Health and Addiction (Division) to satisfy the non-federal share of medical assistance payments to community mental health centers for: (1) certain administrative services; and (2) community mental health rehabilitation services; in a specified time frame.
- Permits the Health and Hospital Corporation of Marion County to make payments to the Division for the operation of a community mental health center.
- Requires the Division to ensure that the non-federal share of funding received from a county is applied only for a county's designated community mental health center.
- Specifies the manner in which the division may distribute certain excess state funds.
- Provides that the county levy for community mental health services is allocated to: (1) the Division of Mental Health and Addiction for operational expenses of community mental health centers; and (2) the community mental health centers.
- Provides that the provisions of the bill are applicable only to the extent that: (1) the congressional moratorium on the implementation of certain rules by the U.S. Secretary of Health and Human Services is not extended; and (2) the restricted rules are implemented.

Bills That Died

- Assignment of Benefits (HB 1055)
- Payments in Lieu of Taxes (PILOTS) (HB 1281)
- Home Health Agency Expenditures (HB 1287)
- Dispensing of Drugs by Pharmacists (SB 3)
- Information Preceding an Abortion (SB 146)
- Coroner and deputy coroner training (SB 149)
- Statewide smoking ban in public places (HB 1057)
- Warning to pregnant women of tobacco use (SB 221)
- Immigration bill as it relates to hospitals and other health-related employers, losing of business license. (SB 335)
- Local unit contracts for imported drugs (SB 251)
- Order of priority for health care decisions (SB 181)

Health Care Issues for Study During Interim

- Establishes a study committee on dialysis coverage.
- Requires an interim committee to study issues related to childhood lead poisoning prevention.
- Requires the Health Finance Commission to study during the 2008 interim the feasibility and costs of allowing individuals who meet certain requirements to participate in the Indiana check-up plan without state funding for the coverage.
- Requires the Emergency Medical Services Commission to adopt rules concerning the triage and transportation protocols for the transportation of trauma patients.
- Requires the Health Finance Commission to address domestic violence programs.
- Establishes the Emergency Alert System Advisory Committee to: (1) develop, update, and monitor the effectiveness of the state emergency alert system plan; (2) make recommendations concerning the acquisition of appropriate technology and equipment to make the emergency notification system effective on a timely basis in all parts of Indiana; and (3) through the State Police Department, purchase appropriate technology and equipment to equip local primary relaying stations with monitoring equipment.
- Requires the Regulatory Flexibility Committee to study the appropriate mechanisms for funding both wireline and wireless enhanced emergency telephone systems in Indiana and committee to submit a report on any recommendations to the legislative council not later than December 1, 2008.

Potential Rulemakings of Interest

- Requires the Office of the Secretary of Family and Social Services to form a nonprofit corporation to establish and operate an umbilical cord blood bank.
- Requires the nonprofit corporation to establish an umbilical cord blood donation initiative to promote public awareness concerning the medical benefits of umbilical cord blood.
- Establishes the Interstate Nurse Licensure Compact beginning July 1, 2009.
- Requires the Division of Mental Health and Addiction (Division) to adopt rules on: (1) standards for operation of an opioid treatment program; (2) a requirement that the opioid treatment facilities submit a current diversion control plan; and (3) fees to be paid by an opioid treatment facility.
- Requires the adoption of rules to implement: (1) a screening and counseling program for individuals seeking long term care services; (2) a process of prior approval for certain individuals seeking admission to a nursing facility; and (3) the annual review of Medicaid rates.

If you are interested in reviewing a bill further, the website address is <http://www.in.gov/legislative>. Click on “Bills and Resolutions” and from there you can enter the bill number.