

Illinois State Medical Society



*2011 Update on
ISMS Legislative Activity
in the
Illinois General Assembly*

August, 2011

CRIMINAL MATTERS

Health Care Professional Sexual Misconduct – SB 1762, HB 220 and HB 1271 (Sen. Dillard and Reps. Franks and Burns) will, by law, automatically and permanently revoke the license of every health care professional who has been convicted of: (1) committing a sexual criminal act against a patient in the course of patient care or treatment that requires registration under the *Sex Offender Registration Act*, (2) committing a criminal battery against any patient, (3) a forcible felony, or (4) required as part of a criminal sentence to register under the *Sex Offender Registration Act*.

The bill also requires that within 15 business days after receiving notice from the State's Attorney of the filing of criminal charges against the health care worker, the Division of Professional Regulation shall issue an administrative order that the health care worker may only practice with a chaperone during all patient encounters pending the outcome of the criminal proceedings. The chaperone will be required to provide written notice to the health care professionals' patients explaining the Division's order to use a chaperone, but that the notice will include a statement that the health care worker is presumed innocent until proven guilty.

ISMS supported the bills. HBs 220 and 1271 passed both chambers. HB 1271 was signed by the governor and enacted as Public Act 97-0156. SB 1762 remains in the House Rules Committee.

INSURANCE AND THIRD PARTY PAYER ISSUES

Changes to Contracts and Reimbursements - SB 2256 (Sen. Haine) would have prohibited any insurer from changing a health care professional's contract in a manner that would adversely impact reimbursement rates, unless, prior to the effective date, the insurer gives the health care professional with whom the insurer has directly contacted, and who is impacted by the change, at least 60 days written notice of the change. The bill was later amended to remove all of the substantive language and currently remains in the Senate.

Health Alliance Contract - SB 178 (Sen. Frerichs and Rep. Jakobsson) was introduced by central and downstate lawmakers in reaction to the state's refusal in May to renew contracts with Health Alliance and Humana for the state employees' group health plan.

Specifically, the bill transfers certain powers, duties, rights, and responsibilities related to State health plan purchasing from the Department of Healthcare and Family Services to the departments of Central Management Services, Corrections, Human Services, Juvenile Justice, and Veterans' Affairs.

SB 178 authorizes the Commission on Government Forecasting and Accountability (COFGA) to make a formal written determination to disapprove proposed contracts for the provision of group health insurance benefits and specifies that if the Commission disapproves a proposed contract, then that proposed contract may not be finalized unless subsequently approved by a joint resolution of the General Assembly.

The bill provides that if, within 90 days before the start of a fiscal year, the Chief Procurement Officer responsible for awarding group health insurance contracts fails to finalize all written contracts for the provision of group health insurance benefits for the coming fiscal year, then COFGA may direct the Chief Procurement Officer to (1) not finalize any proposed group health insurance contracts, as well as associated requests for proposals, and (2) extend existing contracts for those benefits for a term of two additional years.

ISMS supported SB 178, which passed both chambers with simple majorities. SB 178 was vetoed by the governor.

Health Benefits Exchange – SB 1555 (Sen. Haine and Rep. Mautino), as amended, will create the Illinois Health Benefits Exchange Law. The bill provides that beginning October 1, 2013, and in accordance with the federal Patient Protection and Affordable Care Act, Illinois will establish a health benefits exchange to be known as the Illinois Health Benefits Exchange to help individuals and small employers with no more than 50 employees shop for, select, and enroll in qualified, affordable private health plans.

The bill creates the Illinois Health Benefits Exchange Legislative Study Commission to conduct a study regarding the implementation and establishment of the Illinois Health Benefits Exchange.

The committee, whose members will be appointed by the House and Senate Majority and Minority leaders, will report all findings concerning the implementation and establishment of the Illinois Health Benefits Exchange on (1) the governance and structure of the Exchange, (2) financial sustainability of the Exchange, and (3) stakeholder engagement, including an ongoing role for the Legislative Study Committee or other legislative oversight of the Exchange.

The committee will report its findings with regard to (1) the operating model of the Exchange, (2) the size of the employers to be offered coverage through the Exchange, (3) coverage pools for individuals and businesses within the Exchange, and (4) the development of standards for the coverage of full-time and part-time employees and their dependents. The committee study will also include recommendations concerning prospective action on behalf of the General Assembly as it relates to the establishment of the Exchange in 2011, 2012, 2013 and 2014.

Finally, SB 1555 provides that beginning in taxable year 2011, the state of Illinois will make available to each eligible state employee a health savings account program and that the state will deposit \$2,750 annually into an eligible individual's health savings account. The bill requires that a trustee or custodian must use the funds held in a health savings account solely (i) for the purpose of paying the qualified medical expenses of the eligible individual or his or her dependents, (ii) to purchase a health coverage policy, certificate, or contract, or (iii) to pay for health insurance other than a Medicare supplemental policy for those who are Medicare eligible. The bill was signed into law on July 14, 2011 and is Public Act 97-0142.

Health Record Reimbursement - HB 2918 (Rep. Saviano) is an ISMS initiative that amends the Illinois Insurance Code to provide that insurance companies that require the submission of medical records of an applicant, for any reason, shall pay the health care facility or health care practitioner the applicable fees established under the provision of the Code of Civil Procedure

concerning examination of health care records. Amends the Code of Civil Procedure to provide that insurance companies requesting copies of records of an applicant, for any reason, shall pay the health care facility or health care practitioner the applicable fees established by the Code of Civil Procedure under the provision concerning examination of health care records. HB 2918 remains in the House Executive Committee.

Out-of-Network Facility-Based Professionals

- SB 72 - (Sen. Haine and Rep. Greg Harris) was introduced at the request of ISMS to amend a law passed in 2010 affecting the adjudication of insurance claims submitted by non-contracted, hospital-based physicians at contracted hospitals. ISMS maintains that this new law allows insurers to apply significant discounts to the usual and customary fees charged by physicians when providing services to patients on an out-of-network basis.

Amendment #1 to SB 72 would have delayed the effective date of this new law from June 1, 2011, until Jan. 1, 2012. This would have allowed additional time for ISMS, the insurance industry and key legislators to correct the flaws in this new law and provide a level playing field for physicians and insurers to negotiate new contracts.

ISMS was unable to reach agreement with legislators on this matter and SB 72 failed to pass.

- HB 2919 (Rep. Saviano) is an ISMS initiative that specifies that no contract is required to provide services to an insured, enrollee or beneficiary. Provides that when health care services are provided by a nonparticipating health care professional or health care provider, that an insurer, health maintenance organization, independent practice association, or physician hospital organization shall pay for covered services either to a patient directly or to the nonparticipating health care professional or health care provider. HB 2919 remains in House Insurance Committee.

Mental Health Parity - HB 1530 (Rep. Lang and Sen. Delgado) amends the Illinois Insurance Code in the provisions concerning mental and emotional disorders, including substance use disorders, to provide that certain coverage provided under those respective provisions through a group health insurance, or managed care plan, shall be subject to the provisions requirements concerning mental health parity. With ISMS' support, HB 1530 was signed by the governor and enacted as 97-0437.

Psoriasis Treatment - HB 62 (Rep. Lang) amends the Illinois Insurance Code regarding phototherapy treatment for psoriasis. Provides that a physician who prescribes phototherapy to treat an insured patient's psoriasis may determine if, in the physician's opinion, the failure of a patient to undergo the prescribed course of phototherapy treatment would increase the likelihood that the patient will need to be shifted to a more costly course of treatment, and that insurance plans may seek physician certification that such factor exists. Provides that in cases where the physician has made such a determination, no group or individual health insurer shall (i) charge a copayment for a prescribed course of phototherapy treatment that exceeds 50% of the first

phototherapy treatment or (ii) charge copayments for additional phototherapy treatments performed under the same course of treatment. The measure failed to pass the Illinois House.

Recoupments - HB 1193 (Rep. Harris and Sen. Steans) states that no recoupment or offset may be requested or withheld from future payments 18 months or more after the original payment is made, except in cases in which: (1) a court, government administrative agency, other tribunal, or independent third-party arbitrator makes or has made a formal finding of fraud or material misrepresentation; (2) an insurer is acting as a plan administrator for the Comprehensive Health Insurance Plan under the Comprehensive Health Insurance Plan Act; or (3) the provider has already been paid in full by any other payer, third party, or workers' compensation insurer. HB 1193, supported by ISMS, was signed by the governor and enacted as Public Act 97-0556.

Single Payer System - SB 1915 (Sen. Noland) would have created the Single-Payer Health and Universal Care System Act. Under the proposal, the Department of Insurance and the Department of Healthcare and Family Services would examine the feasibility of creating and implementing a state run universal health care access plan.

ISMS opposed the bill, which failed to get called in committee.

Workers' Compensation Reforms

- SB 1349 (Sen. McCarter), SB 1422 (Sen. Radogno) and Amendment 1 to HB 2602 (Rep. Reis) would have:
 - 1) Changed causation standards necessary to qualify for benefits under workers' compensation;
 - 2) Reduced the medical fee schedule by 30%;
 - 3) Removed an injured worker's right to choose his or her physician and hospital;
 - 4) Required physicians to use AMA treatment guidelines when determining the extent of disability;
 - 5) Allowed employers to impose unreasonable utilization review standards; and
 - 6) Interfered with the physician-patient relationship by providing a waiver of employee privacy for the employer to obtain information the employer deems necessary when making the case to deny care.

ISMS strongly opposed these bills. SB 1349 was called for a vote on the Senate floor and failed with a vote of 25 yeas, 6 nays and 28 presents. SB 1422 and Amendment 1 to HB 2602 did not receive any further consideration.

- Amendments to HB 1698 (Rep. Bradley and Sen. Raoul) were introduced during the very last days of the session and were supported by the City of Chicago and many other municipalities, the Illinois Retail Merchants Association, the Illinois Manufacturers' Association and the Chicagoland Chamber of Commerce. The bill also had the full support of Senate President John Cullerton, Senate Minority Leader Christine Radogno, House Speaker Michael Madigan, Governor Patrick Quinn and Mayor Rahm Emanuel.

As amended, HB 1698 will:

- 1) Cut the amounts set out in the Medical Fee Schedule by 30%;
- 2) Reduce the number of geographic fee schedules from 29 to 14 for hospital services and from 29 to four for services rendered by physicians and other health care professionals;
- 3) Set the reimbursement rates for implants (e.g. prosthetics, pacemakers) at 25% of the charge to the healthcare provider;
- 4) Bring Ambulatory Surgical Treatment Facilities (ASTF's) into the fee schedule;
- 5) Bring dental and prescriptions filled outside a pharmacy into the fee schedule;
- 6) Provides that out-of-state treatment will be reimbursed at the lesser of that state's fee schedule or the fee schedule in the region where the employee lives;
- 7) Allows employers to set up preferred provider programs for workers' compensation medical treatment (similar to a "PPO" for other types of health care). The program's network must include an adequate number and type of physicians or other providers to treat common injuries and must be approved by the Department of Insurance. The legislation provides that, for employers who do not create preferred provider programs for workers' compensation medical care, the employee may continue to select two physicians at the employer's expense. However, if an employer has created a preferred provider program, the employee may "opt out" of the network and select one doctor of his or her choosing.
- 8) Change utilization review by:
 - a. requiring it to be performed in accordance with nationally recognized treatment guidelines and evidence-based medicine;
 - b. requiring health care professionals to submit to the review;
 - c. allows the employer and employee to be held harmless of cost if the health care professional does not reasonably comply with the review;
 - d. allows an employer to deny payment or refuse to authorize payment on the grounds that the extent and scope of treatment is excessive and unnecessary in accordance with a utilization review;
 - e. requires the employee, in cases where payment has been denied, to show that a variance from the standards of care used in the utilization review are reasonably required to cure or relieve the effects of his injury; and

- f. requires the health care professional responsible for the utilization review to be available for deposition in person or by electronic means.

Despite strong opposition from ISMS and the Illinois Hospital Association, HB 1698, as amended, passed the General Assembly in the last few hours of the spring session. It has been signed into law.

LICENSURE

Asian Bodywork Therapy Act - SB 1627 (Sen. Steans) would have licensed Asian bodywork therapists. These therapists would have been allowed to practice Chinese medicine and provide techniques and treatments meant to treat human ailments. ISMS opposed this bill, which remains in committee.

Community Midwife Legalization - HB 1665 (Rep. Gabel) would create the Home Birth Integration Act and allows community midwives to provide obstetrical care at the home by preventing emergency personnel and facilities from reporting them to the appropriate state agencies for practicing medicine without a license. This measure to de-criminalize lay midwifery and require transfer protocols failed to gain traction in the General Assembly due to ISMS' opposition. The bill was not called by the sponsor for a full vote in the Illinois House of Representatives.

Direct Entry Midwife Licensure - HB 2940 (Rep. Gabel) would license direct entry midwives. The bill would create the Illinois Midwifery Board and set forth provisions concerning qualifications, grounds for disciplinary action, and administrative procedures. Due to significant opposition from ISMS, the sponsor chose not to call HB 2940 in the House Human Services Committee.

Definition of "Chiropractic Physician" - SB 1843 (Sen. Martinez and Rep. Phelps) as originally introduced would have provided chiropractors the authority to prescribe. ISMS opposed the language and amended it to clarify that while chiropractors are prohibited from prescribing drugs, they are not prohibited from giving advice on using non-prescription drugs, nor are they prohibited from administering atmospheric oxygen.

ISMS was neutral on the bill as amended, which was signed by the governor and enacted as 97-0462.

Disciplinary Procedure - HB 1476 (Rep. Flowers and Sen. Delgado), as amended, provides that the Department of Professional Regulation shall disclose the status of the Medical Disciplinary Board's review of a specific report or complaint to the individual or entity who filed the original report or complaint (rather than any person). The bill was signed by the governor and enacted as 97-0449.

Independent Practice/Prescribing Authority for APNs

- SB 1616 (Steans) and HB 1682 (Gabel) would have removed the written collaborative agreement requirement in the Illinois Nurse Practice Act, thus granting advanced practice nurses (APNs) independent practice with full prescriptive authority.

ISMS opposed these bills, which failed to get called in committee.

- SB 2255 (Sen. Haine and Rep. Feigenholtz) as introduced, would have provided full prescriptive authority to advanced practice nurses (APNs). ISMS amended the bill to provide that a collaborating physician or podiatrist may delegate authority to an APN or physician assistant (PA) to prescribe any Schedule II controlled substances, if they increase their education in pharmacology and obtain a valid mid-level controlled substance license. Schedule II substances to be delivered by injection or other route of administration may not be delegated.

APNs working in a hospital, hospital affiliate or ASTC who are granted authority to prescribe Schedule II drugs will be able to complete discharge prescriptions provided the prescription is in the name of the APN and in the name of either the attending or discharging physician.

ISMS supported the bill as amended. The bill was signed by the governor and enacted as 97-0358.

Interventional Pain Medicine – SB 140 (Sen. Martinez) would have defined "interventional pain medicine," "interventional techniques," and other related terms. The bill, an initiative of the Illinois Society of Anesthesiologists, would have prohibited a health care professional from practicing or offering interventional techniques for pain medicine, unless that professional is a physician licensed to practice medicine in all its branches. It also would have prohibited interventional techniques from being delegated. It did permit the performance of noninvasive or nonsurgical procedures by a licensed chiropractic physician or licensed physical therapist in accordance with the law, or the performance of nonsurgical pain care and treatment authorized by the statutory scope of practice for other licensed health care workers or delegated by a physician licensed to practice medicine in all its branches.

ISMS supported this bill, but due to strong opposition from the Illinois Hospital Association and most allied health care professional groups, the bill failed to advance out of committee.

Medical Practice Act

- HB 214 (Rep. Reitz) and SB 1388 (Sen. Frerichs) – is ISMS legislation and would have extended the sunset date of the *Medical Practice Act* 10 years to Jan. 1, 2021. The bills would have also re-enacted many changes to the Act that were in the 2005 medical liability law, which was, in part, found unconstitutional. The bills would have:

- 1) Re-enacted 2005 changes regarding the makeup of the Medical Disciplinary Board from nine members to 11 members. The bills would have required all members to be voting members. One member licensed and possessing degree of doctor of chiropractic. Four members must be members of the public who are not engaged in any way as providers of health care. One member must be a physician licensed to practice in Illinois in osteopathy.
- 2) Re-enacted 2005 changes that increase the number of medical coordinators to assist the Medical Disciplinary Board members in their investigations of physicians.
- 3) Re-enacted 2005 changes that give the Department of Professional and Financial Regulation (IDFPR) a greater ability to investigate physicians. The number of investigators would be increased from one full-time investigator per 5,000 physicians to at least one full-time investigator per 2,500 physicians, plus additional investigators at the discretion of the Director.
- 4) Added a mandate that the Complaint Committee consider “any recommendation made by the Department” in considering whether or not to prosecute a complaint.
- 5) Changed the criminal background to expand fingerprinting background checks from applicants from out-of-state physicians seeking licensure by endorsement to all new licensees and new permit applications. Renewal applicants and temporary license applicants are exempt from fingerprinting background checks.
- 6) Expanded the current mandate that state attorneys report physicians found guilty of a felony to also require reporting of a physician found guilty of a class A misdemeanor for an act or conduct similar to an act or conduct that would constitute grounds for discipline under Section 22 of the Act. The state’s attorneys’ reports would be required within five days of a conviction.
- 7) Re-enacted 2005 changes that allow for the sharing of disciplinary information and investigative reports with law enforcement agencies and that if requested by the IDFPR, plaintiff’s attorney must provide copies of records related to a mandatory report of a settlement, judgment or verdict.
- 8) Re-enacted the physician profile language to establish profiles that include, but are not limited to, disciplinary actions, criminal convictions, judgments, awards and verdicts and hospital disciplines.

This language was included in a separate bill, HB 105 (Rep. Flowers and Sen. Delgado), which was signed into law and enacted as Public Act 97-0280. This legislation will require physicians to post profiles that include the full name of the physician, any criminal convictions for felonies and Class A misdemeanors, any Department disciplinary action within the most recent five years, name of medical schools attended and date of attendance and graduation, specialty board certification,

the number of years in practice and locations, the name of hospital where physician has privileges, and other requirements.

- 9) Changed physician delegation to clarify that delegation may be by any means including oral, written or electronic.

While both bills were assigned to committee, neither were called for a vote.

- SB 1540 (Sen. Martinez) and HB 3352 (Rep. Reitz), are initiatives of the Illinois Department of Professional and Financial Regulation (IDPFR). As introduced, SB 1540 and HB 3352 would extend the *Medical Practice Act* 10 years to Dec. 31, 2021.

The bills would re-enact the physician profiling language and medical discipline language from Public Act 94-677 – the medical liability reform law that was declared unconstitutional in 2009 – and added language making it easier to suspend and revoke a license of a physician who is charged with and/or convicted of a sex crime. Finally, the two bills would have also doubled the licensure fees for physicians and reduced the licensure cycle from three years to two years.

ISMS opposed the increases in fees and the changes to the licensure cycle.

SB 1540, as amended by Senate Committee Amendment #1, is in a form that can be supported by ISMS. However, it is expected that IDPFR will continue to seek fee increases and other changes that ISMS will find to be objectionable.

HB 3352 was never called for a vote in committee, and SB 1540, as amended, is currently on 2nd Reading in the Senate. It is expected that this issue will be called during the legislature's fall veto session.

Naturopath Licensure - HB 3350 (Rep. Reitz) would license naturopaths and allow them to practice medicine without receiving appropriate medical training. HB 3350 defines naturopaths as primary care physicians and would grant them limited prescriptive authority, allow them to provide obstetrical care and perform "minor office procedures." Naturopaths are currently not licensed in Illinois, but wish to present themselves to the public as medical doctors. ISMS opposed HB 3350 and it was not called for a vote by the sponsor.

Nursing Home Authentications - SB 1248 (Sen. Frerichs and Rep. Jakobsson) amends the Nursing Home Care Act and clarifies that all physicians' orders and plans for treatment will have the authentication of the physician. Defines "authentication" to mean either an original written signature or an electronic signature system that allows for the verification of a signer's credentials and that a stamp signature, with or without initials, is not sufficient.

ISMS supported this bill, which passed both chambers and was signed into law as Public Act 97-0179.

Optometric Prescribing - HB 1494 (Rep. Reitz and Sen. Crotty) represents a negotiated agreement between the Illinois Optometric Association and the Illinois Association of Ophthalmology. The bill amends the *Illinois Optometric Practice Act of 1987* to add anti-dry eye agents and agents for the treatment of hypotrichosis to be included in the definition of "ocular pharmaceutical agents." Provides that the Optometric Board may add a pharmaceutical agent approved by the FDA or class of agents for the purpose of the diagnosis or treatment of conditions of the eye and adnexa after consideration of the agent's systemic effects, side effects, and the use of the agent within the practice of optometry. Provides that the Board shall consider requests for additional agents and make recommendations within 90 days after the receipt of the request. Provides that within 45 days after the Board's approval of a pharmaceutical agent or class of agents, the Department shall promulgate rules necessary to allow for the prescribing or administering of the pharmaceutical agent or class of agents.

These rules will be reviewed by the Joint Committee on Administrative Rules (JCAR) and physician groups, including ISMS and the Illinois Association of Ophthalmology, will support or oppose those rules.

The bill was signed by the governor and enacted as Public Act 97-0170.

Pharmacist Prescribing - HB 2028 (Rep. Reitz) would amend the *Pharmacy Practice Act* to give extensive prescriptive authority to "pharmacist clinicians." ISMS opposed the bill and it was not called for a vote.

Surgical Assistants and Technologists - SB 1749 (Sen. Crotty) would create a registration system for surgical assistants and surgical technologists and establishes criteria that assistants and technologists must meet before they can be registered.

ISMS was neutral on the bill, which is being held on 3rd Reading in the Senate.

MEDICAL LIABILITY REFORM

SB 1887 (Sen. Dillard) and HB 2887 (Rep. Tracy) is ISMS legislation and would have reenacted many of the provisions from Public Act 94-677 (the medical liability reform law of 2005), with the exception of caps on awards for non-economic damages and the Sorry Works! program. Specifically, SB 1887 and HB 2887 would have:

- 1) Strengthened the affidavit of merit by requiring the disclosure of the consulting physician's name and that the physician be an expert in the area of medicine that is the subject of the lawsuit;
- 2) Limited 90-day extensions for filing the affidavit and written report to situations where the affiant was unable to obtain consultation because the consultation could not be obtained before the statute of limitations expired;
- 3) Allowed the use of annuities for the payment of portions of the award for medical costs;

- 4) Increased the standards for expert witnesses by requiring them to be board certified or board eligible in the same specialty as the defendant. The expert would also have to devote a majority of time to the practice of medicine, teaching or research. Retired experts would have to be current with continuing education requirements;
- 5) Extended Good Samaritan immunity to retired physicians providing free care;
- 6) Allowed a free medical clinic to receive reimbursement from the Department of Public Aid, provided the reimbursements would only be used to pay overhead expense of operating the clinic and not to provide compensation to the health care professional receiving civil immunity;
- 7) Provided that the interest rate on judgments would be automatically increased or decreased by a percentage equal to the percentage change in the consumer price index during the preceding 12 months (currently, the 9% interest rate is not annually indexed); and
- 8) Delayed the accrual of interest in certain cases where a federal Medicare lien may exist against the judgment by providing that in such cases, the interest would be computed from the day after the federal Medicare program provides confirmation of any lien against the judgment rather than from the day the judgment is entered.

Both bills have yet to advance.

Health Courts - HB 3166 (Rep. Connelly) is an ISMS initiative that creates health courts in Illinois. The bill establishes the Illinois Health Courts Commission and provides that the Commission shall adopt rules to create an alternative dispute resolution method that provides: (1) After the occurrence of an adverse health care event, the health care professional or physician involved must notify the patient or the patient's family; (2) within 30 days after the discovery of the adverse event, that the patient has a right to seek compensation; following this, the patient may submit a claim; (3) the health care professional or physician must notify the health court commission of the claim and provide a compensability determination to the patient within 60 days; (4) if the event is compensable, the health care professional or provider must make an offer based upon a schedule of damages created by the Commission by rule; (5) a patient may appeal that compensation decision to the Commission; (6) the patient may appeal a decision to not compensate the patient for the claim, which is reviewed by an arbitrator, de novo, at a hearing at which the health care professional or provider and the patient may present evidence, including expert testimony; and (7) the arbitrator's decision may be appealed to the appellate court. HB 3166 remains in the House Judiciary I Committee.

Professional Liability Insurance Regulation - SB 2402 (Sen. Raoul) and HB 1669 (Rep. Lang) would re-enact only the provisions of Public Act 94-677 – the medical liability reform law of 2005 - that would regulate malpractice insurance companies. It would not have re-enacted any of the tort related provisions.

ISMS opposed these bills, which were not called for a vote in committee.

MEDICAL RECORDS AND PRACTICE

Advance Directives - HB 3134 (Rep. Feigenholtz and Sen. Raoul) concerns advance directive information. It changes the name of the Do Not Resuscitate form to The Department of Public Health Uniform DNR Advance Directive. This legislation creates a means of allowing physicians and healthcare workers to honor patients' wishes for how much care and the types of care they wish to receive in different situations including end-of-life. It requires that the form meet the minimum requirements to nationally be considered a physician's orders for life-sustaining treatment form, or POLST. HB 3134 was signed by the governor and enacted as Public Act 97-0382.

Coroner Fees - HB 1268 (Rep. Brady) would require that the coroner waive the fee for a copy of an autopsy report if the copy is requested by a physician who provided the coroner with a copy of the decedent's medical records free of charge. HB 1268 remains in the Counties & Townships Committee.

Controlled Substance Act Rewrite –

- HB 2917 (Rep. Currie and Sen. Harmon) comprehensively rewrites the Illinois *Controlled Substances Act*. Makes numerous changes relating to the scheduling, prescribing and dispensing of controlled substances. Permits an authorized prescriber to issue electronic prescriptions for Schedule II through V controlled substances, if done in accordance with federal rules. Makes changes relating to the Prescription Monitoring Program; combines the Schedule II and Schedule III through V monitoring programs into a single program. Defines and prohibits medication shopping and pharmacy shopping. ISMS participated in this rewrite process and supported the measure, which was signed by the governor and enacted as Public Act 97-0334.
- HB 1528 (Rep. Lang and Sen. Steans) is an initiative of ISMS that provides that a prescriber who is otherwise authorized to prescribe controlled substances in Illinois may issue an electronic prescription for Schedule II, III, IV, and V controlled substances if done in accordance with federal rules for electronic prescriptions for controlled substances. Provides that physicians may issue multiple prescriptions (three sequential 30-day supplies) for the same Schedule II controlled substance authorizing up to a 90-day supply. This language was also included in the comprehensive rewrite of the Illinois Controlled Substances Act (HB 2917) that passed both houses. For that reason, HB 1528 was not considered by the Senate.

Deceased Patients - SB 1694 (Sen. Wilhelmi and Rep. Brady) would have allowed a spouse, adult child, parent, or sibling of the deceased to request and be given copies of the deceased patient's records provided there is no legally authorized personal representative for a deceased patient, the deceased had not appointed an agent under a power of attorney for health care, and the deceased had not specifically objected to disclosure in writing.

ISMS supported the bill, which remains in the House.

Electronic Health Records - HB 1425 (Rep. Currie and Sen. Trotter) creates the Electronic Health Record Incentive Fund to capture federal moneys meant to encourage the use of electronic health records. Provides for disbursements to qualifying health care providers. HB 1425, supported by ISMS, was signed by the governor and enacted as Public Act 97-0169.

Health Care Services Liens - HB 3206 (Rep. Thapedi) includes insurer reimbursement claims under the *Health Care Services Lien Act*, which provides that the total of all liens shall not exceed 40 percent of a verdict, judgment, or settlement, reducing a health care provider's ability to recover monies under the Act. ISMS opposed the bill and the sponsor chose not to move forward with the initiative.

Physician Due Process - HB 3021 (Rep. Schmitz) amends the *Hospital Licensing Act* and aims to increase physician due process in the hospital setting. In a provision concerning a medical staff member's right to request a fair hearing, deletes language that provides that the hearing panel shall have independent authority to recommend action to the hospital governing board. Provides instead that the hearing panel shall have independent authority to preside over the fair hearing, consider evidence and testimony presented at the hearing, and issue a finding and decision on the matter. Provides that the fair hearing panel may uphold, rescind, modify, amend, or otherwise alter the original adverse decision issued against a medical staff member. HB 3021, an initiative of ISMS, failed to advance.

Power of Attorney – SB 1877 (Sen. Wilhelmi and Rep. Mathias) addresses a problem with last year's rewrite of the power of attorney act, which changed the law so that when a power of attorney for health care is signed by a patient, the agent automatically has authority to review health care records.

Physician ethicists and hospital ethics committees oppose this change because it significantly hampers attempts to get patients to sign powers of attorney for health care, as patients are more comfortable designating an agent who can only act after the patient lacks decision-making capacity.

SB 1887 will reverse this change and revert back to the power going into effect upon an event or time the patient designates in the form.

This bill was supported by ISMS, the Illinois Hospital Association and the Illinois State Bar Association. It passed both chambers and was signed into law by the governor.

PUBLIC HEALTH

Abortion Ultrasound - HB 1919 and HB 786 (Rep. Phelps) would create the *Ultrasound Opportunity Act* and require that an offer of an ultrasound be given to a woman seeking an abortion after six weeks of gestation at least one hour prior to the woman having the abortion performed. HB 1919 was not called in committee. The sponsor chose not to call HB 786 on the House floor.

Abuse and Neglect Reporting - HB 2093 (Rep. Reis and Sen. Haine) provides that any physician, physician's assistant, registered nurse, licensed practical nurse, medical technician, certified nursing assistant, social worker, or licensed professional counselor of any office, clinic, or any other physical location that provides abortions, abortion referrals or contraceptives, having reasonable cause to believe a child known to him or her in his or her professional or official capacity may be an abused or neglected child, shall immediately report or cause a report to be made to the Department of Children and Family Services. HB 2093 was signed by the governor and enacted as 97-0254.

Bath Salts - HB 2089 (Rep. Rosenthal and Sen. McCann) amends the Illinois Controlled Substances Act to make it illegal to possess methylenedioxypropylamphetamine (MDPV) and several other synthetic designer drugs that are sold as bath salts or plant food. With the support of ISMS, HB 2089 passed both houses and was signed by the governor. It is enacted as Public Act 97 -0192.

Bicycle Helmets - SB 55 (Sen. Silverstein) would have required any person under the age of 16 who operates a bicycle or is a passenger on a bicycle to wear a helmet.

ISMS supported this bill, which was not called for a vote in committee.

BPA - HB 1269 (Rep. Nekritz) would create the *BPA-Free Kids Act*. Beginning June 1, 2012, the bill would prohibit the sale or distribution of reusable children's food or beverage containers that contain bisphenol-A. The bill would, beginning June 1, 2016, prohibit the sale or distribution of infant formula or baby food that is stored in a can, jar, or plastic container that contains bisphenol-A. HB 1269, although supported by ISMS, remains in the Environmental Health Committee.

Epinephrine in the School Setting - HB 3294 (Rep. Nybo and Sen. Schoenberg) addresses the administration of epinephrine in the school setting. Provides that a school district or nonpublic school may authorize the provision of an epinephrine auto-injector to a student or any authorized personnel to administer an epinephrine auto-injector to a student, that meets the prescription on file. Provides that a school district or nonpublic school may authorize a school nurse to provide or administer an epinephrine auto-injector to a student. Contains certain exemptions from liability, except for willful and wanton conduct, for acts that result in injury arising from the use of an epinephrine auto injector. HB 3294 was signed by the governor and enacted as Public Act 97-0361.

Good Samaritan/CPR - HB 1549 (Rep. Tracy and Sen. Wilhelmi) amends the *Good Samaritan Act* to state that any person trained in basic cardiopulmonary resuscitation who has successfully completed training in accordance with the standards of the American Red Cross or the American Heart Association and who in good faith, not for compensation, provides emergency cardiopulmonary resuscitation in accordance with his or her training to a person who is an apparent victim of acute cardiopulmonary insufficiency shall not, as the result of his or her acts or omissions in providing resuscitation, be liable for civil damages, unless the acts or omissions

constitute willful and wanton misconduct. With the support of ISMS, HB 1549 passed both houses and was signed into law on July 18, 2011, and is Public Act 97-150.

Immunization Registry - HB 1338 (Rep. Gabel and Sen. Delgado) creates the Immunization Data Registry Act. Provides that the Department of Public Health may develop and maintain an immunization data registry to collect, store, analyze, release, and report immunization data. Sets forth purposes for which the registry may be used. HB 1338 requires that before entering immunization data into the immunization data registry, authorized immunization providers who enter the data shall provide the patient or the patient's parent or guardian (if the patient is less than 18 years of age) a printed immunization data exemption form at least once. The bill also requires that the printed immunization data exemption form may be distributed in conjunction with the Vaccine Information Statements that are required to be disseminated by the *National Childhood Vaccine Injury Act*. ISMS supported HB 1338, which was signed into law on July 14, 2011, and is Public Act 97-117.

Medical Cannabis - SB 1548 (Sen. Haine) and HB 30 (Rep. Lang) would create the *Compassionate Use of Medical Cannabis Pilot Program Act* and allow the Department of Public Health to issue a registry identification card to a qualified patient with a debilitating medical condition that allows the patient to possess a certain amount of dried usable cannabis.

SB 1548 was later amended to remove all substantive language and currently remains on 2nd Reading in the Senate. HB 30, as amended, would create a three-year pilot program whereby patients would be allowed to possess 2.5 ounces of medical marijuana for a 14-day period in which the need has been certified by a physician.

Under the proposed three-year pilot project, the Illinois Department of Public Health would administer the program and would issue identity cards to patients with debilitating medical conditions to allow them to purchase medical marijuana at registered, non-profit medical cannabis organizations.

Under HB 30, a patient would have to submit to the Illinois Department of Public Health a physician's written certification that the patient would be likely to receive therapeutic or palliative benefit from cannabis and that the patient has a qualifying medical condition.

ISMS was neutral on the bill. HB 30 failed to pass the House and was put on postponed consideration. It is expected to be called again during the legislature's fall veto session.

Mental Health Initiatives - HB 1591 (Rep. Bellock and Sen. Dillard) amends the Mental Health and Developmental Disabilities Code, the *Mental Health and Developmental Disabilities Confidentiality Act*, and the *Probate Act of 1975*. Adds provisions concerning: (i) the administration of psychotropic medication and electroconvulsive therapy on an inpatient and outpatient basis; (ii) the right of a community mental health provider or inpatient mental health facility to be represented by counsel during a respondent's commitment proceedings; (iii) the transportation of a mental health patient by a licensed ambulance service; (iv) the filing of an involuntary admission petition prior to the expiration of an agreed order for outpatient admission; (v) a respondent's right to object to a motion for voluntary dismissal; (vi) the

extension of an order for admission on an outpatient basis; and (vi) the right of a guardian ad litem to inspect and copy any medical or mental health records. HB 1591 was signed by the governor and enacted as Public Act 97-0375.

Medical Reviews - SB 1585 (Sen. Crotty and Rep. Joe Lyons) would allow for the Secretary of State to accept statements from certain licensed physician assistants and advanced practice nurses that report whether certain people are a risk to the public by driving a car. ISMS took no position this bill. The bill was signed by the governor and enacted as Public Act 97-0185.

MRSA - SB 1378 (Sen. Radogno) and HB 1658 (Rep. Bellock and Sen. Radogno) as originally introduced would have required that the person responsible for completing the medical certification of cause of death for a death certificate to note the presence of methicillin-resistant staphylococcus aureus if it is a contributing factor to or the cause of death.

The Department of Public Health successfully sought an amendment for HB 1658 that will require the person responsible for completing the medical certification of cause of death for a death certificate to note the presence of methicillin-resistant staphylococcus aureus, clostridium difficile, or vancomycin-resistant enterococci if it is a contributing factor to or the cause of death.

ISMS was neutral as amended. HB 1658 was signed by the governor and enacted as Public Act 97-0376.

Pharmaceutical Disposal - HB 3090 (Rep. Arroyo and Sen. Delgado) amends the Safe Pharmaceutical Disposal Act to provide that any city, village, or municipality may authorize the use of its city hall or police department to display a container suitable for use as a receptacle for used, expired or unwanted pharmaceuticals. Further states that the receptacle shall only permit the deposit of items, and the contents shall be locked and secured. HB 3090 was signed by the governor and enacted as Public Act 97-0546.

Psychotropic Drugs - HB 286 (Rep. Flowers and Sen. Delgado) creates the *Administration of Psychotropic Medications to Children Act*. The measure requires the Department of Children and Family Services to promulgate final rules, on or before Oct. 1, 2011, amending its current rules establishing and maintaining standards and procedures to govern the administration of psychotropic medications. HB 286 outlines at least 10 scenarios the amended rules must address. HB 286 was signed by the governor and enacted as Public Act 97-0245.

Seat Belts - HB 219 (Rep. Beaubien and Sen. Cullerton) provides that every driver and passenger (rather than every driver, front seat passengers, and certain passengers under the age of 19) of a motor vehicle operated on a street or highway of this state must wear a properly adjusted safety belt, with specified exceptions. HB 219 was signed by the governor and enacted as Public Act 97-0016.

Seat Belts on School Buses - SB 70 (Sen. Silverstein) would have required each school bus to be equipped with seat belts for each passenger and that each passenger would be required to wear the seat belt.

ISMS supported this bill, which was not called for a vote in committee.

Standing Orders - SB 123 (Sen. Steans and Rep. Daniel Burke) clarifies that health care professionals may provide medical services within a public health clinic in conformance with standing orders issued by a public health standing orders physician, without prior establishment of a physician-patient relationship between the public health standing orders physician and the person receiving medical services.

ISMS supported this bill, which is awaiting further action by the governor.

Smoke Free Exemption - HB 1965 (Rep. Burke and Sen. Sandoval) amends the *Smoke Free Illinois Act*. In the provision concerning exemptions, includes gaming facilities licensed under the *Riverboat Gambling Act*, if smoking is not banned in gaming facilities located in the nearest neighboring state. Provides that the exemption shall no longer apply to a gaming facility on and after the date that smoking is banned in gaming facilities located in the nearest neighboring state. ISMS opposed this measure, which remains in the Senate Executive Committee.

Student Athletes - SB 150 and HB 200 (Sen. Raoul and Rep. Cross) were introduced to address the issue of head injuries in student athletes. As originally introduced, the bills would have required school and park districts operating athletic programs to develop and disseminate guidelines on policies to inform and educate coaches, athletes and parents of the nature and risk of concussions, criteria for removal from and return to play and the risks of not reporting head injuries.

HB 200 was later amended to require each school board to adopt a policy regarding student athlete concussions and head injuries that is in compliance with the protocols, policies and by-laws of the Illinois High School Association. It requires that information on the school board's concussion and head injury policy must be a part of any agreement, contract, code or other written instrument that a school district requires a student athlete and his or her parents or guardian to sign before participating in practice or interscholastic competition.

Under HB 200, the Illinois High School Association will make available to all school districts education materials that describe the nature and risk of concussions and head injuries and that each school district must use the materials to educate coaches, student athletes and parents about the nature and risk of concussions and head injuries, including continuing play after a concussion or head injury.

Finally, the bill encourages park districts to make available to its users educational materials that describe the nature and risk of concussion and head injuries, including the advisability of removing youth athletes from a practice or game if they exhibit signs, symptoms, or behaviors consistent with a concussion, such as loss of consciousness, headache, dizziness, confusion or balance problems.

ISMS supported HB 200, which was signed by the governor and is enacted by Public Act 97-0204.

Tanning Beds - SB 1329 (Sen. Schoenberg) and HB 1666 (Rep. Gabel) would prohibit a tanning facility from allowing anyone under 18 years old to use the facility, regardless if the minor has permission from his or her parents.

ISMS supported both bills. HB 1666 failed in the House Human Services Committee, and SB 1329 remains on 2nd Reading in the Senate.

Toxoplasmosis Testing - SB 1944 (Sen. Delgado) would require that health care professionals provide counseling for toxoplasmosis and testing for *T. gondii* when providing care to a pregnant woman during her pregnancy, unless the woman had been diagnosed prior to the pregnancy or she refuses; and during her delivery, unless she had already been determined to be infected or she refuses. The bill was amended to remove all of the substantive language.

ISMS opposed this bill, which remains in the Senate.

STATE REIMBURSEMENTS

SB 1802 prohibits a change in rates for medical services purchased by various divisions within the Department of Human Services, absent rule changes by the Department authorizing such rate reductions. This legislation also provides that for State fiscal year 2012 and future fiscal years, any bill approved for payment under this Section must be paid or the payment issued to the payee within 90 days of receipt of a proper bill or invoice. If payment is not issued to the payee within this 90-day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 90-day period, until final payment is made.

SB 1802 amends the Children's Health Insurance Program and allows for co-payments for emergency room use for non-emergencies, which are not to exceed \$10. The Department of Health and Family Services will also discontinue coverage for over-the-counter drugs and will obtain waivers to establish a program limiting pharmacies eligible to dispense specialty drugs.

SB 1802 was signed into law on June 30, 2011 and is Public Act 97-0074.

Direct Deposits - SB 1728 (Sen. Bivins and Rep. Mitchell) and HB 3449 (Rep. Mautino and Sen. Bivins) would require that state payments for an employee's payroll or an employee's expense reimbursement be made through direct deposit, and for all state payments to a vendor that exceed a certain allowable limit of paper warrants in a fiscal year, by the same agency, must be made through direct deposit. If a state agency fails to meet the direct deposit requirements, the Comptroller may charge the employee or vendor a processing fee of \$2.50 per paper warrant.

The bills also amend the *State Prompt Payment Act* and provide that an individual interest penalty for a late payment owed by the state amounting to \$5 or less will not be paid by the state, except for claims under Medicaid.

ISMS was neutral on these bills. SB 1728 passed out of the Senate, but was held in the House. HB 3449 was signed by the governor and enacted as Public Act 97-0348.

Pediatric Reimbursements - HB 1661 (Rep. Bellock) amends the *Covering ALL KIDS Health Insurance Act* and the Illinois Public Aid Code. Provides that beginning Jan. 1, 2012, the physician fee schedule for the Covering ALL KIDS Health Insurance Program, and for pediatric physician specialists under the medical assistance program, must increase to become competitive with those of non-governmental, third-party health insurance programs. Provides that by Jan. 1, 2015, the payment for a pediatric specialty physician service must not be lower than Medicare reimbursement, in accordance with the Medicare payment localities for Illinois. ISMS supported the measure; however, due to Illinois' fiscal crisis, the measure was not considered.