

Illinois State Medical Society

2015 Update on ISMS Legislative Activity

in the

Illinois General Assembly



October 2015

Illinois State Medical Society
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October 2015

Dear Colleague,

You may have noticed that this document, traditionally known as ISMS' "End-of-Session Report," is being published while the General Assembly is still in overtime session, with no end in sight. As always, ISMS remains engaged and focused on the issues that affect physicians. The ongoing stalemate between legislative leaders and Governor Rauner continues to make headlines, and while we cannot predict the outcome, you can rest assured that the voice of physicians is ringing loudly in their ears.

That said, we can report a number of significant victories from this spring that are not likely to be threatened in the remainder of the session. The following pages tell the story of how ISMS made wise use of your dues dollars to advance physician priorities and protect you and your patients against ill-conceived policies. As you read, I urge you to consider how the outcome of each issue could have been very different if ISMS were not in the room speaking on your behalf.

ISMS members are the bedrock supporting one of the most influential organizations in our state, and I am proud of our efforts and accomplishments. On behalf of myself and the ISMS Board of Trustees, I extend my deep appreciation and thanks to every physician who makes our work possible, this year and every year.

Sincerely,

Scott Cooper, M.D
President
Illinois State Medical Society

P.S. If you have received this document and are not already an ISMS member, please join us. ISMS' legislative advocacy benefits you greatly, and we offer a host of other valuable benefits to members. Visit www.isms.org/join today to become an ISMS member.

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Executive Summary: ISMS Advocacy Protects Patients and Promotes Good Medical Policy

As the only organization representing all medical specialties in Illinois, the Illinois State Medical Society is a powerful force for good medicine in our state capitol and beyond. And as an ISMS member, your dues are your single most effective tool for making positive change and preventing harmful legislation from advancing.

Among many other victories, this year ISMS:

- Prevented trial lawyers from **repealing the *Medical Studies Act*** and removing confidentiality of hospital peer review meetings (p. 13);
- Influenced **landmark opioid legislation**, strengthening patient safeguards while protecting physicians from onerous mandates and restrictions (p. 23);
- Blocked a mandate on physicians to provide **estimates of patients' health care costs** and act as insurance navigators for the patient (p. 17);
- Protected physicians' ability to charge fees for **copying medical records** in connection with claims or appeals filed under the *Social Security Act* (p. 16);
- Passed legislation allowing Illinois to join the **Interstate Medical Licensure Compact**, giving Illinois physicians access to expedited licensure in other member states (p. 14);
- Stopped proposals to inappropriately **expand IDFPR's authority and automatically suspend physician licenses**, preserving due process in medical discipline (p. 15);
- Instituted a requirement that **workers at child care facilities must be vaccinated** against vaccine-preventable diseases (p. 33);
- Ensured access to and reimbursement for **breast cancer screenings** (p. 9);
- Removed a mandate that physicians **test newborns who fail hearing screenings for cytomegalovirus (CMV)**, instead supporting a public education campaign (p. 21);
- Allowed **team physicians** from other states to care for traveling sports teams (p. 6);
- Secured proper reimbursement for services rendered by **surgical assistants** (p. 10);
- Clarified and improved **mental health reporting requirements** under Illinois' concealed carry law, which had been unfair to patients and burdensome for physicians (p. 21); and
- Created a **Certificate of Religious Exemption from immunizations**, ensuring that parents receive accurate information on the risks of vaccine-preventable diseases (p. 32).

Of course, physicians aren't the only professionals represented in Springfield, and many others often try to inappropriately expand their scope of practice. ISMS strives to protect our patients and inform lawmakers of the differences in education and training between physicians and other health professionals.

This year, we succeeded in:

- Reaching a compromise that allows **Advanced Practice Nurses** greater flexibility while maintaining the collaborative agreement requirement and other patient safeguards (p. 2);
- Preventing IDFPR from contracting with the **Illinois Psychological Association** to audit compliance with continuing education requirements, a clear conflict of interest (p. 3);
- Averting proposed expansions of **pharmacists'** authority to administer vaccines (p. 4);
- Blocking licensure of **direct-entry midwives** and **"naturopathic physicians"** (p. 4); and
- Stopping an attempt by **podiatrists** to broaden their scope of practice by redefining the foot (p.6).

These are just a few highlights of our activities in the legislature during this year's session. The following pages are filled with even more examples of how the Illinois State Medical Society fights for physicians and patients in the Illinois General Assembly. **Please share this document with your colleagues and remind them of the value and importance of legislative advocacy and ISMS membership.**

Thank you for making ISMS the most effective voice for all Illinois physicians!



FISCAL YEAR 2015 STATE BUDGET

Medicaid Reductions and Fund Sweeps House Bill 318 (Speaker Madigan/Sen. Steans) is the substantive companion bill to HB 317, the FY 2015 supplemental appropriations bill. HB 318 grants the Department of Healthcare & Family Services (HFS) emergency rulemaking authority for Medicaid rate reductions and hospital assessments. This rulemaking authority is only available for FY 2015 and only applies to spending for FY 2015.

The targeted amount for Medicaid rate reductions was \$160 million gross (\$80 million net to state). HFS reduced rates for the remainder of FY 2015 by an amount equivalent to a 2.25% reduction for the full fiscal year. This means that payments to almost all Medicaid providers from General Revenue-funded line items for services rendered between May 1 and June 30, 2015 will be cut by approximately 16.75%. Language in the bill provided that reductions must be equitable both between and among providers and provider groups.

Both the inpatient and outpatient hospital assessment taxes were increased by an amount that will net \$54 million, representing the hospital industry's share of the reduction, which will all be paid to the state. This means that the hospitals will tax themselves an additional \$27 million, an amount that will be matched by the federal government, and the whole \$54 million will be paid to the state in order to avoid reducing rates to hospitals while still ensuring that the state receives its target amount of \$54 million for hospitals.

HB 318 authorizes the Director of the Office of Management and Budget (OMB) to transfer up to \$1.366 billion from various other state funds to the General Revenue Fund (GRF). The bill also grants authority to sweep \$10 million from the Medical Disciplinary Fund. Amounts may be transferred back to the originating fund if there is an insufficient cash balance in the fund to support an appropriation from the fund or federal funding is jeopardized by such transfer.

ISMS opposed HB 318, which was fast-tracked through the legislature and was signed into law on March 26, 2015.

FISCAL YEAR 2016 STATE BUDGET

On January 1, 2015, the Illinois income tax was reduced from 5% to 3.75%, requiring the legislature to make cuts to spending in the second half of the FY 2015 budget, as noted above, and also consider similar reductions for the FY 2016 budget. Some of the FY 2016 cuts may be restored if new revenue can be secured by consensus of the General Assembly and the governor.

The General Assembly was scheduled to adjourn its regular session on May 31, 2015. That date passed without a resolution to the state's budget crisis. At the time of this writing, the legislature and Governor Rauner have not been able to agree on proposals that would secure revenue to fund state government and balance the state's budget. At this time, the political environment in Springfield is extremely hostile, as both sides not only attempt to find resolution to the state's fiscal crisis, but attempt to negotiate non-budget related items as well.

ALLIED HEALTH CARE PROFESSIONAL LICENSURE

Advanced Practice Nurses – House Bill 421 (Rep. Feigenholtz/Sen. Steans) as originally introduced would have removed the requirement that advanced practice nurses (APNs) practicing outside of a hospital, hospital affiliate, or ambulatory surgical center (ASTC) maintain a collaborative agreement with a collaborating physician. The bill would have also removed the requirement that certified registered nurse anesthetists (CRNAs) maintain a written anesthesia plan with anesthesiologists. These changes to current law would have allowed APNs to practice independent of physician input. ISMS strongly opposed HB 421 as introduced. At the request of legislators, ISMS agreed to meet with the Illinois Society for Advanced Practice Nursing (ISAPN) in an attempt to reach a compromise. ISMS and ISAPN met for months and agreed to language that:

- Maintains current law requiring APNs to have a collaborative agreement with a physician if they are practicing outside of a hospital, hospital affiliate, or ASTC. In hospitals, hospital affiliates, and ASTCs, APNs continue to be credentialed by the medical staff.
- Makes no changes whatsoever to the provision of anesthesia services by CRNAs.
- Makes no changes to the law requiring delegation of prescriptive authority by a physician, but allows APNs (other than CRNAs) to prescribe at a hospital affiliate such as an urgent care center if credentialed by the medical staff to do so. Under a written collaborative agreement, an APN can only prescribe medications if the collaborating physician delegates authority to do so. Additional limitations exist on an APN's ability to prescribe Schedule II controlled substances, including specific identification of the controlled substances prescribed and a prohibition on any delivery method other than oral, topical or transdermal application. These same restrictions will apply at the hospital affiliate.
- Eliminates specified content in the collaborative agreement and allows the physician and the APN to more broadly determine their collaborative practice within the specialty area of the APN and the physician.
- Eliminates contractual barriers that might prevent APNs from participating in Medicaid.
- Allows for a 90-day transition period when, for any reason, a physician discontinues a collaborative agreement with an APN, provided the APN seeks any needed collaboration at a local hospital and refers patients who require services beyond the training and experience of the APN to a physician or other health care professional.
- Deletes references in approximately 28 different acts where APNs and physician assistants are allowed to perform various functions, only if they are specifically mentioned in the collaborative agreement or the supervisory agreement with physician assistants. Most written collaborative agreements do not enumerate the particular patient services, but collaborating physicians routinely allow such services to be performed by the APN even though enumeration is required by the law. Nothing will prevent a

physician from including any restrictions on practice or requirements for communication within the collaborative agreement.

HB 421 as amended has been signed in law as Public Act 99-173, effective immediately.

Access to Optometrists – Senate Bill 802 (Sen. Haine) would have amended the Managed Care Reform and Patient Rights Act and prohibited health care plans or their subcontractors by contract from (1) mandating or requiring an optometrist licensed under the Illinois Optometric Practice Act to meet requirements not required of other eye care providers as a condition for participation in the health care plan or (2) reimbursing the optometrist at a rate lower than other licensed providers based on class of licensure for equal services provided by the optometrist under the plan. The bill would have required all health care plans, upon a participant enrollment or renewal, to inform the participant that he or she has a right to choose an optometrist as his or her medical eye care provider.

ISMS joined the Illinois Association of Eye Physicians & Surgeons in opposing this bill, which was assigned to the Senate Insurance Committee. The bill was sent to subcommittee and not called for a vote.

Anesthesiologist Assistants– House Bill 3205 (Rep. Zalewski) is a proposal from the Illinois Society of Anesthesiologists and supported by ISMS that would license anesthesiologist assistants (AAs). AAs are highly trained master’s degree level anesthesia providers whose function is similar to that of a specialized physician assistant for anesthesiologists. They would work under the direction of physician anesthesiologists to implement anesthesia care plans. The bill was not called for a vote in the House Health Care Licenses Committee and has been reassigned to the House Rules Committee.

Delivery of Prescription Drugs – Senate Bill 689 (Sen. Murphy/Rep. Wehrli) amends the *Pharmacy Practice Act* to allow APNs who provide hospice services or home health services to pick up prescription orders from the prescriber and/or deliver prescription drugs to a patient. SB 689 also allows pharmacists to deliver prescription drugs to physician assistants who provide hospice services or home health services at the residence or place of employment of the person for whom the prescription was issued, or at the hospital or medical care facility in which the patient is confined. They may also drop off the prescription at a designated area determined by the patient or the patient’s agent.

ISMS was neutral on SB 689, which was signed into law as Public Act 99-163, effective January 1, 2016.

Continuing Education Audits – Psychologists – House Bill 3630 (Rep. Evans) and Senate Bill 1554 (Sen. Syverson/Rep. Evans) would amend the *Clinical Psychologist Licensing Act* to allow the Department of Financial and Professional Regulation (IDFPR) to contract with the Illinois Psychological Association (IPA) to audit compliance with the continuing education requirements for clinical psychologists. This contract could also include approving continuing education courses and verifying that clinical psychologists complete continuing education requirements.

ISMS and the Illinois Psychiatric Society (IPS) opposed this legislation. Particular concerns were raised about allowing IPA to audit and approve continuing education classes for clinical psychologists when IPA also provides continuing education. This would allow IPA to audit and approve their own continuing education course for psychologists, which is an obvious conflict of interest.

HB 3630 passed out of the House Health Care Licenses Committee with a commitment to hold the bill until there was agreement by all parties. The bill did not advance. SB1554 passed the Senate but was not called for a committee vote in the House.

Direct-Entry Midwife Licensure – House Bill 424 (Rep. Morrison) would have created the *Home Birth Safety Act* and provided for the licensure of “certified professional midwives” (CPMs) by IDFPR. These midwives are significantly different from certified nurse midwives. CPMs have little to no medical education, yet want to be able to provide medical treatment to pregnant women. ISMS strongly opposed this legislation, which was not called for a vote in committee.

Naturopath Licensure – House Bill 3508 (Rep. Gabel) and Senate Bill 1601 (Sen. Martinez) would have created the *Naturopathic Medical Practice Act* and provided for the regulation of “naturopathic physicians” through licensure by IDFPR.

Naturopaths hope to offer the public a form of “alternative treatment” that includes the use of nutrition, herbal therapy, homeopathy, and behavioral modification.

Naturopaths are neither trained for nor capable of diagnosing and treating physical ailments. In the face of very strong ISMS opposition, the bill was never called for a vote in the House Health Care Licenses Committee. Senate Bill 1601 was debated in the Licensed Activities and Pension Committee, but was never called for a vote.

Pharmacists –

- ***Authorization to Vaccinate Children 10 Years Old and Older*** – House Bill 3627 (Rep. Evans) would amend the *Pharmacy Practice Act* to authorize pharmacists to provide any vaccine to children 10 years and older. At age 11, most children in Illinois need their 6th grade physical, with their Tdap and meningococcal vaccine. Currently, pharmacists are limited to administering the influenza and Tdap vaccines to children ages 10 to 13. ISMS, along with the Illinois Chapter of the American Academy of Pediatrics (ICAAP), strongly opposed this bill, which failed in the House Health Care Licenses Committee.
- ***Authorization to Provide the MMR and Meningococcal Vaccines to Children*** – House Bill 4213 (Rep. Evans) would amend the *Pharmacy Practice Act* to expand the list of vaccines that pharmacists are allowed to administer to children ages 10-13 to include the MMR (measles, mumps and rubella) and meningococcal vaccines. Pharmacists would be required to notify the patient’s primary care physician and record the administration of the vaccines into the Illinois Comprehensive Automated Immunization Registry Exchange (I-Care). ISMS opposed HB 4213, which was never called for a vote in committee.

- ***Substitution of Biological Drugs*** – Senate Bill 455 (Sen. Munoz/Rep. Acevedo) amends the *Pharmacy Practice Act* and creates a framework under which a pharmacist may substitute a prescription interchangeable product for a prescribed biological product. The bill adopts the federal definition of a “biological product” and defines an “Interchangeable Biological Product” as a biological product that the United States Food and Drug Administration (FDA) has licensed and has met the standards for interchangeability pursuant to federal statute, or is therapeutically equivalent to another biological product as set forth in the latest edition of (or supplement to) the FDA’s Orange Book (the Orange book is referenced instead of the Purple Book, because the Orange Book includes insulin).

The bill provides that a pharmacist may substitute an interchangeable biological product for a prescribed biological product only if all of the following conditions are met:

- The substituted product has been determined by the U.S. FDA to be interchangeable with the biological product;
- The prescribing physician does not designate orally, in writing, or electronically that substitution of an interchangeable biological product is prohibited; and
- The pharmacy informs the patient of the substitution.

The bill specifies that within five business days following the dispensing of any biological product, the dispensing pharmacist (or designee) shall report the substitution into an electronic record that can be accessed by the prescriber through any of the following means:

- An interoperable electronic medical records system;
- An electronic prescribing technology;
- A pharmacy benefit management system; or
- A pharmacy record.

SB 455 specifies that, if any of the means of communication cited above cannot be achieved, the pharmacist must communicate with the physician by facsimile, telephone, electronic transmission, or other prevailing means – except that such communication shall not be required when:

- There is no FDA-approved interchangeable biological product for the product prescribed; or
- A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

SB 455 requires pharmacies to retain records of biological products dispensed for a period of five years.

This issue was first introduced four years ago and ISMS has argued that physicians need active notification prior to dispensing before ISMS could support the bill. Federal law states that interchangeable biologics can be substituted without any intervention of the health care provider who prescribed the referenced product. The pharmacists successfully

argued that active notification to the physician was in conflict with federal law. ISMS was successful in removing language that presumed physician notification by electronic means, which would have increased a physician's liability.

ISMS was supportive of SB 455, asserting that is a step in the right direction. The bill was signed into law as Public Act 99-200, effective January 1, 2016.

Podiatrists – House Bill 2925 (Rep. Golar/Sen. Trotter) amends the *Podiatric Medical Practice Act*. The original language, which ISMS strongly opposed, would have redefined the foot to include associated tissue that affects the foot or ankle. The Illinois Association of Orthopedic Surgeons and ISMS considered this an attempt to expand a podiatrist's scope of practice. The bill was amended and this language removed. The bill, as amended, creates a three-year temporary license for postgraduate podiatrists. ISMS was neutral on the bill as amended. HB 2925 was signed into law as Public Act 99-225 and is effective January 1, 2016.

Out-of-State Athletic Team Physicians – Senate Bill 785 (Sen. Harris/Rep. Evans) is an initiative of the Illinois Association of Orthopedic Surgeons, supported by ISMS, which will grant temporary licensure waivers for physicians who travel with their teams to Illinois for an athletic event.

Under current Illinois statute, a team's physicians could provide medical service in Illinois only if they hold a full and active license in Illinois. There is currently no practical licensure option for traveling team physicians. SB 785 would allow athletic teams to use their team physicians while in Illinois for specific athletic events. Out-of-state team physicians would have to meet the following conditions to receive a temporary licensure waiver.

- The team's physician must be licensed to practice medicine in another state.
- The team's physician must have an oral or written agreement with a sports team to provide health care services to the team members, coaching staff, and families traveling with the team for a specific sporting event to take place in Illinois.
- The team's physician would be prohibited from providing care or consultation to any Illinois resident, other than a person described in the *Good Samaritan Act*.
- The waiver may not be longer than 10 days per individual sporting event. IDPFR may grant extensions, but the total length of the waiver, with extensions, cannot exceed 30 days.

A team's physician who is exempt from licensure requirements would not be authorized to practice at an Illinois health care facility.

SB 785 was signed into law as Public Act 99-206, effective September 1, 2016.

Schools for the Deaf and Blind – House Bill 2787 (Rep. Davidsmeyer) would have required physicians, speech-language pathologists, and audiologists to notify a parent or guardian of a patient diagnosed with a hearing disability of the educational opportunities available for children

with hearing disabilities at the Illinois School for the Deaf, and to notify a parent or guardian of a patient diagnosed with a visual disability of the educational opportunities available for children with visual disabilities at the Illinois School for the Visually Impaired.

ISMS opposed this legislation, which was tabled after it passed out of the House Health Care Licenses Committee.

Technical Language to the Illinois Physician Assistant and Nurse Practice Acts, and the Patients' Right to Know Act – Senate Bill 1205 (Sen. Barickman), an ISMS initiative, is clean-up language to the *Illinois Physician Assistant Practice Act* and to the *Illinois Nurse Practice Act*. It adds the definition of “hospital affiliate” to both acts. The bill also amends the *Illinois Patients' Right to Know Act* to allow retired physicians who maintain active licenses to note on their physician profiles that they are retired and no longer see patients. The bill has been signed into law as Public Act 99-330. Changes to the *Illinois Patients' Right to Know Act* are effective immediately and the technical changes to the *Illinois Physician Assistant Practice Act* and to the *Illinois Nurse Practice Act* are effective January 1, 2016.

INSURANCE AND THIRD-PARTY PAYER ISSUES

Capping Prescription Copayments – House Bill 3605 (Rep. Andrade) and Senate Bill 1359 (Sen. Holmes) would amend the Illinois Insurance Code to put a cap on fully-insured patients' out-of-pocket costs for prescription drugs to treat chronic diseases.

- The legislation proposes a bifurcated approach that would cap out-of-pocket costs for prescription drugs at \$100 per prescription per month for silver, gold and platinum plans, and \$200 per prescription per month for bronze plans.
- The caps would apply pre-deductible and be inclusive of a patient's annual deductible and out-of-pocket spending limits.

Medicaid, Medicare, catastrophic coverage and self-insured plans would have been exempted from this legislation.

ISMS supported these bills. HB 3605 passed out of the House Human Services Committee, but was not called for a vote on the House Floor. It has been reassigned to the House Rules Committee. Senate Bill 1359 was assigned to the Insurance Committee, where it was placed in a subcommittee and not called for a vote.

Changes to Contracts – House Bill 3509 (Rep. Harris) would amend the Illinois Insurance Code to prohibit health insurance plans from changing the material terms of contracts or terms affecting reimbursement rates established in the contracts, unless the change has been negotiated and agreed to by the contracting health care professional.

ISMS supported HB 3509, but due to strong opposition from the insurance lobby, the bill was never called for a vote in the House Insurance Committee and has been reassigned to the House Rules Committee.

Copayments for Physical Therapy – Senate Bill 1425 (Sen. Sandoval) would have created a mandate in the Insurance Code requiring that copayments and deductibles for physical therapy services be equal to copayments and deductibles for services provided by primary care physicians. ISMS opposed this legislation as it would likely mean a decrease in reimbursements to primary care physicians rather than an increase to physical therapists. The bill was not called for a vote in the Senate Insurance Committee.

Copayments for Services Provided – Senate Bill 1331 (Sen. Sandoval) is an initiative of the Illinois Chiropractic Society that would amend the Illinois Insurance Code and prohibit health benefit plans or health carriers (including, but not limited to, preferred provider organizations, independent physician associations, third-party administrators, or entities that contract with licensed health care providers) from imposing any fixed copayment that exceeds 50% of the total billed charges for health care services provided to an insured or enrolled during a visit to a health care provider.

While ISMS supported this legislation, it faced significant opposition from the insurance lobby and was not called for a vote in the Senate Insurance Committee.

Coverage for Eye Care – Senate Bill 1503 (Sen. Barickman) would have amended the Illinois Insurance Code to prohibit individual or group policies of accident and health insurance that provide eye care coverage from discriminating against classes of eye care professionals in setting professional fees or in other areas, preventing covered individuals from seeking service directly from an eye care professional, and setting hospital privileges requirements. The bill would have prohibited insurers from requiring eye care providers or patients to purchase eye care goods from sources owned by, controlled by, or in common ownership with the benefits provider, and prohibited them from setting or creating policies that interfere with the doctor-patient relationship.

ISMS did not take a position on this bill, which was assigned to the Senate Insurance subcommittee on Insurance Mandates and Special Issues, where it was not called for a vote.

Health Insurance Grace Period – Senate Bill 1474 (Sen. Haine) is ISMS legislation that would have created the *Health Care Professional and Provider Notification of Patients in Health Insurance Exchange Grace Period Act*. The bill would have provided that when a health care professional requests information from a qualified health plan (QHP) regarding (i) an enrollee's eligibility, (ii) an enrollee's coverage or health plan benefits, or (iii) the status of a claim or claims for services provided to an enrollee, or reports a claim in a remittance advice, and the request or service is for a date within the second or third month of a grace period, the QHP issuer would have to clearly identify that the applicable enrollee is in the grace period and provide additional information. Provides that if the QHP issuer informs the health care professional that the enrollee is eligible for services, and does not inform the health care professional or provider that the enrollee is in the grace period, that determination shall be binding on the QHP issuer, and the claim or claims for services rendered shall be paid by the QHP issuer.

SB 1474 would have also required QHP issuers to maintain a hotline for questions from health care professionals. QHP issuers seeking to recoup claims made during the last 60 days of the

grace period would have been limited to no later than 60 days after the expiration of the grace period.

Because of strong opposition by the insurance lobby, Senate 1474 was not called for a vote in the Senate Insurance Committee, and has been reassigned to the Senate Committee on Assignments.

Mammography/MRI Coverage – HB 3673 (Rep. Smiddy/Sen. Mulroe) expands access to appropriate breast cancer screening for all women 35 years of age or older who are at risk for occult breast cancer by requiring every policy of insurance to include a screening MRI when medically necessary, as determined by a physician licensed to practice medicine in all of its branches, and if the American Cancer Society's guidelines for appropriate use for women at high risk for breast cancer are met.

The bill requires that HFS to ensure that on or after or after January 1, 2016, all networks of care for adult clients include access to at least one Center of Imaging Excellence as certified by the American College of Radiology. The bill instructs HFS to convene a new panel of experts to establish quality standards for mammography. The panel must include representatives from hospitals, free standing breast care treatment centers, and breast cancer quality organizations, as well as breast cancer surgeons, reconstructive breast surgeons, oncologists, and primary care professionals.

HB 3673 requires that on or after January 2017, health care professionals participating in a breast cancer quality improvement program approved by HFS must be reimbursed for breast cancer treatment at a rate that is no lower than 95% of the Medicare rates for the data elements included in the breast cancer treatment quality program.

HFS must work with experts in breast cancer outreach and patient navigation to optimize mammogram reminders, establish a methodology for evaluation of their effectiveness, and modify the methodology based on the evaluation.

HB 3673 requires all networks of care under the Public Aid Code to develop, either internally or by contracting with experts in patient navigation and community outreach, means to navigate cancer patients to comprehensive care in a timely fashion. All Medicaid-related networks of care must include access for patients diagnosed with cancer to at least one program accredited by the Commission on Cancer as an in-network benefit.

ISMS supported HB 3673, which has been signed into law as PA 99-433, effective immediately.

Managed Care – Step Therapy – Currently, every health carrier that offers a qualified health plan under the *Affordable Care Act* (ACA) must establish and maintain a process that allows an individual to request any clinically appropriate drug when specified conditions are met. Once the conditions are met, the insurer is required to approve or deny a request within 72 hours of receipt, and in expedited cases, within 24 hours. House Bill 3549 (Rep. Fine/Sen. Morrison), would have expanded these medical exceptions procedures to all plans sold in Illinois. The bill would have established new guidelines for step therapy overrides, new review criteria for establishing step therapy based on clinical practice guidelines, and specific cost sharing guidelines.

HB 3549 would also have required that when a step therapy override request is made, it should be granted expeditiously.

ISMS supported HB 3540. Due to strong opposition from the insurance lobby, the bill did not advance in the Senate.

Reimbursements for Surgical Assistants – House Bill 2763 (Rep. Dan Burke/Sen. Noland) and Senate Bill 1522 (Sen. Noland) amends the Illinois Insurance Code to provide that payment for services rendered by a registered surgical assistant who is neither an employee of an ambulatory surgical treatment center nor an employee of a hospital shall be paid at the appropriate non-physician modifier rate, if the payer would have made payment had the same services been provided by a physician.

ISMS supported HB 2763. SB 1522 was sent to subcommittee and was not called for a vote. HB 2763 passed both chambers and was signed into law by Governor Rauner as Public Act 99-0100, effective January 1, 2016.

Topical Eye Medication – House Bill 3137 (Rep. Brady/Sen. Link) creates the *Topical Eye Medication Act* and prohibits Illinois health insurers that provide coverage for prescription topical eye medication from denying coverage for the refilling of a prescription for topical eye medication when certain conditions are met. The purpose of this bill is to ensure that patients who have difficulty administering prescription eye drops are not prohibited from purchasing timely refills. ISMS supported this bill, which is an initiative of the Illinois Society of Eye Physicians and Surgeons. The bill was signed into law as Public Act 99-226, effective January 1, 2016.

MEDICAID

Four-Drug Limit for Medicaid Patients – House Bill 336 (Rep. Chapa LaVia) and Senate Bill 832 (Sen. Hastings) would have amended the Illinois Public Aid Code and would have exempted drugs in the following therapeutic classes from being subject to prior approval as a result of the 4-prescription limit: immunosuppressant drugs, oncolytic drugs, anti-retroviral drugs, antipsychotic drugs, and, on or after July 1, 2015, anti-depressant and anti-anxiety drugs (rather than “immunosuppressant drugs, oncolytic drugs, anti-retroviral drugs, and, on or after July 1, 2014, antipsychotic drugs”). Due to state budgetary constraints, the bills were not called for a vote in committee.

Free Medical Clinics and Medicaid Reimbursement – House Bill 3305 (Rep. Phelps) – ISMS legislation – would amend the free medical clinic provision of the *Good Samaritan Act* to allow free medical clinics to accept reimbursement from the Medical Assistance Program in the same manner that free dental clinics may accept reimbursement.

Currently, the Illinois *Good Samaritan Act* permits free dental clinics to accept reimbursement from Medicaid. The Free Medical Clinic provision was amended in the 2005 tort reform

legislation to allow free medical clinics to accept medical assistance reimbursement. The entire provision was struck down by the Illinois Supreme Court.

Because of opposition from the Illinois Trial Lawyers Association and due to the state's budgetary constraints, HB 3305 was not called for a vote in the House Human Services Committee and was reassigned to the House Rules Committee.

Program Reforms and Reductions – Senate Bill 788 (Rep. Greg Harris/Sen. Steans) includes many changes to Medicaid. Among other components, the bill:

- Requires HFS to competitively bid and obtain lower prices on certain durable medical supplies.
- Codifies the 2.25% reduction in rates for Medicaid providers (including all physician services) to reflect the savings represented in the annual appropriation, and allows for the hospital assessment to be increased to offset those reductions for hospitals statewide.
- Codifies the deadlines for Accountable Care Entities and Coordinated Care Entities to move to full risk, and extends the Care Coordination fee.
- Requests HFS to seek retroactive claiming for newly eligible persons under the ACA400 assessment to maximize federal matching revenue.
- Requests the Department of Children and Family Services (DCFS) to move wards of the State into coordinated care and maximize federal matching revenue.
- Requires HFS to include quality metrics in the MCO auto-assignment algorithm by January 2017.
- Requires establishment of a publicly available Medicaid Managed Care policy manual, which will be regularly updated.
- Requires audits of nursing homes with Medicaid patients to assure proper eligibility and claiming, and also provides provisional Medicaid cards to eligible new nursing home residents.
- Requires the Inspector General to prioritize investigations of Medicaid fraud.
- Establishes a bipartisan and bicameral 1115 Waiver working group.
- Provides funding for the Illinois Poison Control Center.

While SB 788 passed both chambers, it is being held in Senate. The bill's fate will not be known until FY 2016 budget issues are resolved. ISMS is hopeful that if new revenue can be identified and agreed upon by the governor and four legislative leaders, the reductions in reimbursements to physicians can be minimized or avoided.

Medicaid Reform Research – House Bill 2684 (Rep. Greg Harris) is an initiative of Lurie Children's Hospital and is supported by ISMS. The bill would have created the *Medicaid Reform Research Act* and established reporting criteria to create accurate and creative unbiased analysis and information about the Illinois Medical Assistance Program that will lead to better health outcomes at a lower cost. The bill would have allowed the Commission on Government Forecasting and Accountability to coordinate and enter into agreements with HFS and certain institutions and entities for research on medical assistance managed care or other State medical assistance programs pursuant to the analysis purposes of the State-Funded Health Care Quality

Assurance and Research Fund. The bill would have created the State-Funded Health Care Quality Assurance and Research Fund to provide the General Assembly with an independent analysis on certain matters, including the efficacy of State managed care programs to improve continuity of care, ensure adequate provider participation, and maintain appropriate utilization of health services.

Due to the state's budgetary constraints, the bill was never called for a vote in the House Human Services Committee and has been reassigned to the House Rules Committee.

MEDICAL LIABILITY

Relief for Burn Victims – House Bill 4006 (Rep. Hoffman/Sen. Haine) creates the *Burn Victims Relief Act* and the George Bailey Memorial Program. George Bailey died two months after suffering from catastrophic burns from an explosion at the Granite City Steel Plant in the Metro East area. The program provides financial assistance to those who have been burned through no fault of their own. Specifically, burn victims who have been told by two independent physicians that their prognosis is that they have less than 18 months left to live shall immediately receive the five months of pay that they would have received for Social Security had there not been a mandatory five-month waiting period.

ISMS raised concerns about this legislation, as it originally contained a provision stating that fraud committed by a physician concerning the diagnosis necessary to be eligible for benefits under the Program shall be a Class 3 Felony. As this provision would add a criminal penalty to the practice of medicine, ISMS was able to get this provision removed by the sponsors.

ISMS was neutral on the bill as amended, which was signed into law as PA 99-455, effective January 1, 2016.

Civil Code of Procedure – Physical and Mental Examinations - House Bill 95 (Rep. Thapedi/Sen. Connelly) clarifies that among other discovery, the physical and mental examinations of parties and other persons, the taking of depositions, and interrogatories will be conducted in accordance with court rules. As originally introduced, the bill would have deleted language providing that: (1) the taking of depositions will be in accordance with rules; (2) a party shall not be required to furnish the names or addresses of his or her witnesses, except that upon motion of any party disclosure of the identity of expert witnesses shall be made to all parties and the court in sufficient time in advance of trial so as to ensure a fair and equitable preparation of the case by all parties; (3) whenever the defendant in any litigation in this State has the right to demand a physical or mental examination of the plaintiff, the plaintiff has the right to have his or her attorney, or such other person as the plaintiff may wish, present at such physical or mental examination; and (4) no person or organization shall be required to furnish claims, loss or risk management information held or provided by an insurer described in a specified Section of the Illinois Insurance Code.

ISMS objected to removing language regarding the plaintiff's right to have an attorney or other person present during a physical or mental health exam, and language providing that persons or organizations shall not have to furnish claims, loss or risk management information. Both of

these provisions were amended back into the bill. ISMS was neutral on the bill as amended. HB 95 passed both chambers. It was signed into law by Governor Rauner as Public Act 99-110, effective January 1, 2016.

Good Samaritans – Medical Clinics – Senate Bill 1498 (Sen. Silverstein/Rep. Fine) and House Bill 2621 (Rep. Fine/Sen. Sullivan) would amend the *Good Samaritan Act*, modifying the definition of “free medical clinic” to include programs organized by a certified local health department utilizing members of the federal Volunteer Medical Reserve Corps at which the care provided does not include an overnight stay in a healthcare facility.

ISMS supported these bills. HB 2621 remains in the Senate. Senate 1498 passed both chambers and was signed into law by Governor Rauner as Public Act 99-42, effective January 1, 2016.

Repeal of Jury Size Changes – House Bill 3256 (Rep. Sandack) – ISMS legislation – would repeal Public Act 98-1132, which reduced the size of juries in civil cases from 12 to six jurors and increased the stipend paid to jurors. Because of strong opposition from the Illinois Trial Lawyers Association (ITLA), the bill remains in the House Rules Committee.

Repeal of the Medical Studies Act – Senate Bill 1700 (Sen. Harmon), an initiative of ITLA, would remove the confidentiality of hospital peer review meetings by repealing the *Medical Studies Act* and making the meetings and any related documents discoverable in court.

The purpose of the *Medical Studies Act* is not to shield hospitals or physicians from liability, but to ensure that physicians will engage in effective examination of their peers in order to advance the quality of health care.

ISMS strongly opposed this legislation, which remains the Senate Committee on Assignments.

Uniform Interstate Discovery – Senate Bill 45 (Sen. Barickman/Rep. Keith Wheeler) creates the *Uniform Interstate Depositions and Discovery Act* and establishes procedures for the issuance of a subpoena to require deposition testimony or discovery production in Illinois in connection with litigation pending in a foreign jurisdiction. The bill provides that Illinois Supreme Court rules and the section of the Code of Civil Procedure concerning subpoenas apply to subpoenas issued under the new provisions.

ISMS expressed concern that a foreign subpoena would be honored and require the deposition outside of the state. Senate Amendment #2 was adopted to address this concern and clarified that a subpoena issued under the Act may not require compliance outside a deponent's county of residence in Illinois. ISMS was neutral on the bill as amended. SB 45 was signed into law as Public Act 99-79, effective January 1, 2016.

MEDICAL PRACTICE ACT

Controlled Substances – Detection – Senate Bill 1062 (Sen. Barickman/Rep. Zalewski) amends the *Illinois Controlled Substances Act* to require that persons who engage in research that uses controlled substances or canine odor detection services must obtain a registration issued by IDFPR. Persons so registered may, to the extent authorized by their registration, possess, manufacture, or distribute controlled substances; engage in chemical analysis, research, or instructional activities that use controlled substances; dispense those substances; purchase, store, or administer euthanasia drugs; or provide canine odor detection services.

The bill also provides that medical residents practicing within the scope of their licenses (issued pursuant to the *Medical Practice Act* and its rules) need not register. It allows medical residents, in addition to possessing controlled substances, to order, administer, and prescribe controlled substances when acting within the scope of their licenses and in compliance with the rules adopted under the Act.

ISMS did not take a position on SB 1062, which has been signed into law as 99-247, effective immediately.

Extension of the Medical Practice Act – Senate Bill 814 (Sen. Martinez), an ISMS initiative, would extend the *Illinois Medical Practice Act* 10 years from Dec. 31, 2015, to Dec. 31, 2025. This bill was not called for a vote during the spring session. It is expected that this issue will be addressed in the fall veto session.

Interstate Medical Licensure Compact – House Bill 3680 (Rep. Smiddy/Sen. Koehler) creates the *Interstate Medical Licensure Compact Act*. By enacting this legislation, the bill specifies that Illinois will join the Interstate Medical Licensure Compact, thereby allowing Illinois physicians to access an expedited licensure process in all states joining the Compact. The Compact develops a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and will provide an expedited process that allows physicians in the Compact's member states to become licensed in multiple states. The Compact provides for eligibility requirements, application requirements, fees, renewal requirements, information concerning investigation and discipline, and other procedures to implement the Compact.

ISMS supported HB 3680, which was signed into law by the governor as Public Act 99-0076, effective July 20, 2015. The Compact requires seven states to enact such legislation to become active. Prior to the signing of this legislation in Illinois, Alabama became the seventh state to enact the Compact legislation this spring.

Professional Discipline –

- ***Expanded Powers of IDFPR*** – House Bill 4060 (Rep. McDermed), an IDFPR initiative, would have inappropriately broadened IDFPR's investigatory powers by providing that certain actions to deny, suspend, or revoke licenses may be done without further process or hearings. Furthermore, the bill would have provided that discovery or evidence depositions shall not be taken, except by agreement of IDFPR and registrant. ISMS opposed this legislation, which remains in the House Rules Committee.

- ***Health Care License Suspension*** – House Bill 1359 (Rep. Gabel) as originally introduced, proposed to automatically suspend a professional’s license under certain circumstances related to Medicaid or Medicare fraud, regardless of whether the professional intentionally or deliberately committed fraud.

Currently, professional licensing laws already provide sufficient grounds for the IDFPR to seek to discipline professionals for fraudulent billing with the professional being afforded the right to due process in an administrative hearing. ISMS opposed HB 1359, as introduced, which would remove the due process afforded to health care professionals.

IDFPR agreed to an amendment that clarified that a health care professional’s license can only be suspended at such time as a professional has been criminally convicted or entered a plea of guilty or nolo contendere of criminal insurance fraud. The amendment requires that a certified copy of the conviction or judgment be the basis for the suspension, and provides that if a licensee requests a hearing, then the sole purpose of the hearing shall be limited to determining the length of the suspension of the licensee’s license.

ISMS supported the bill as amended, which was signed into law as Public Act 99-211, effective January 1, 2016.

MEDICAL RECORDS, PRACTICE AND REGULATION

Anatomic Pathology Billing –

- House Bill 3209 (Rep. Hoffman), which was introduced at the request of a physician constituent of Rep. Hoffman’s, would have exempted physician-owned labs from provisions of the *Medical Patient Rights Act* related to anatomic pathology billing.

Certain physician specialties are interested in this issue and contend the bill provides to physician-owned labs the same exemption enjoyed by hospital-owned labs and physician-owned labs operating in a hospital, with the inclusion of references to the *Clinical Laboratory Improvement Act*, the *Health Care Worker Self-Referral Act*, and the *Illinois Medical Practice Act*.

Because of concerns raised by the Illinois Society of Pathology, HB 3209 was not called for a vote in the House Health Care Licenses Committee and was reassigned to the House Rules Committee. Negotiations on this issue will hopefully result in an agreed bill.

- House Bill 2194 (Rep. Reis), originally an empty shell bill, was amended at the request of the Illinois Department of Insurance. Amendment #1 would have made violating the provisions of the anatomic pathology billing prohibitions under the *Medical Patient Rights Act* a direct violation of the *Illinois Medical Practice Act*. ISMS strongly opposed this amendment, which was never adopted. HB 2194, as it was originally introduced, remains in the House Rules Committee.

Cardiac Screening at Physicals – Senate Bill 8 (Sen. Mulroe) would have required health care professionals who perform physical examinations of persons 19 years of age or younger to include as part of that examination questions that evaluate the person's family history related to various cardiac conditions.

ISMS opposed this legislation, which was not called for a vote in the Senate Public Health Committee and was reassigned to the Senate Committee on Assignments.

Divorce/Family Law – Senate Bill 57 (Sen. Mulroe/Rep. Burke) amends the *Illinois Marriage and Dissolution of Marriage Act*. This bill was developed by the Illinois General Assembly's Family Law Study Committee with the intent of modernizing statutory rights and procedures involved in divorce cases and child-custody disputes. Under the current Section 602.1 of the Act, the law clearly identifies that both parents, custodial and non-custodial, have a right to obtain records and information about the health care of their children, unless a court states otherwise. SB 57 repeals Section 602.1 and creates new Section 602.11 which grants both parents access to health records of children unless a health care professional receives a court order denying access to a specific parent. ISMS was neutral on SB 57, which was signed into law as Public Act 99-90, effective January 1, 2016.

DNR/POLST – Senate Bill 1466 (Sen. Mulroe/Rep. Moeller) is an initiative of ISMS to improve the current Department of Public Health “Do-Not-Resuscitate Advanced Directive,” more commonly referred to as the DNR form. The bill, as amended, removes “Do-Not-Resuscitate” from the name of the form and renames the form “Practitioner Order for Life Sustaining Treatment,” or “POLST,” form. The bill has been signed into law as Public Act 99-319, effective January 1, 2016.

Down Syndrome – House Bill 3158 (Rep. Gabel/Sen. Kotowski) and Senate Bill 987 (Senate Republican Leader Radogno) would have required the Department of Public Health (IDPH) to make available up-to-date, evidence-based written information about Down Syndrome and required that IDPH make this information available to persons who render prenatal care, postnatal care, or genetic counseling to parents who receive a prenatal or postnatal diagnosis of Down Syndrome. As introduced, these bills would have also required health care professionals to provide parents with the information provided by the Department.

ISMS opposed this mandate on health care professionals and was successful in securing an amendment to HB 3158 that removed the mandate to provide such information developed by IDPH.

ISMS was neutral on HB 3158 as amended, which was passed by both chambers and was signed into law by Governor Rauner as Public Act 99-142, effective January 1, 2016. SB 987 passed out of the Senate Executive Committee but was not called for a vote on the Senate Floor, where it remains.

Fees for Medical Records – House Bill 3845 (Rep. Sims) would supersede current law regarding the fees that can be charged for copying medical records in connection with claims or appeals under provisions of the *Social Security Act*. Under current law, medical record copy fees to be charged by physicians are established in the Code of Civil Procedure. HB 3845 would have

eventually eliminated the physician's ability to charge any copy fees in connection with claims filed under the *Social Security Act*, instead forcing physician practices and other health care professionals to absorb these copying costs. ISMS strongly opposed HB 3845, which passed out of the House Human Services Committee with an agreement to hold it on Second Reading until an agreement among the stakeholders was reached. The bill was not called for a vote on the House Floor and was reassigned to the House Rules Committee.

Health Care Cost Estimates – House Bill 4032 (Rep. Franks) would place mandates on physicians to disclose anticipated health care costs to patients, and act as insurance navigators for the patient.

Specifically, the bill mandates that prior to an admission, procedure, or service and upon request by a patient or prospective patient, a health care professional shall, within two working days, disclose the allowed amount or charge of the admission, procedure, or service, including the amount of any facility fees required. In the event the health care professional is unable to quote a specific amount in advance due to the health care provider's inability to predict the specific treatment or diagnostic code, the health care professional shall disclose the estimated maximum allowed amount or charge for a proposed admission, procedure, or service.

In addition, the bill would have required that a health care professional, upon request of the patient or prospective patient, provide the patient instruction on how to use the applicable toll-free telephone number and Internet website of the health insurer. ISMS argued that forcing physicians and their staff to navigate information that insurance companies are responsible for providing will take time away from patient care.

For these reasons, ISMS strongly opposed HB 4032, which was not called for a vote in the House Consumer Protection Committee and was reassigned to the House Rules Committee.

Health Care Right of Conscience – Senate Bill 1564 (Sen. Biss/Rep. Gabel) as originally introduced would have effectively repealed the protections afforded to physicians under the *Health Care Right of Conscience Act* (HCRCA). SB 1564 is an initiative of the ACLU, which developed the changes to the Act after reports of women not receiving critical medical care because of conscience-based objections from medical professionals and facilities.

ISMS opposed SB 1564 as originally drafted for the following reasons:

First, the bill would have required health care professionals and personnel to declare in writing what treatment they will not perform because of their conscientious convictions. The penalty for failure to reduce such objections to writing is that the health care professional is required to perform the objectionable care when requested.

- Prior written policies are not possible for two reasons. First, the conscience objection of a health care professional and personnel typically depends upon the specific facts of the individual case. Almost every health care professional will decline to perform certain procedures based upon their conscience, and these often cannot be predetermined but arise out of the circumstances. Second, patients often provide physicians' proposed treatments obtained from Internet websites

from around the world with which physicians are entirely unfamiliar and would never include in written policies.

Second, the bill would have required health care professionals and personnel to counsel patients to consider treatment options that the professional does not recommend because of a conscientious objection.

- ISMS opposes any requirement for a physician or health care professional to counsel a patient to undergo a procedure with which the physician has a conscientious objection, as such counseling would be effectively participating in the activity. ISMS supports the current common law requirement that legal treatment options be mentioned to the patient, but health care professionals should not be required to recommend that patients undergo treatment to which they have a conscientious objection.

Finally, the bill removed protections against employment discrimination based upon conscience convictions and requires health care professionals and personnel to perform treatments regardless of conscientious objection.

- The protection against an employer asking either in writing or orally about conscientious objections protects the ability of health care professionals and personnel to be free from discrimination in employment and should be maintained.

Many physician specialty groups supported the bill as introduced, including the Illinois Chapter of the American College of Obstetricians & Gynecologists, the Illinois Academy of Family Physicians, and the Illinois Osteopathic Medical Society.

After negotiating and obtaining key concessions from the ACLU, ISMS agreed to language in Amendment #3 to SB 1564. As amended, the bill requires all health care facilities to adopt protocols on how conscientious objections will be handled in a timely manner and gives the facilities clear authority to enforce protocols that comply with the Act.

Amendment #3 also clarifies that physicians and personnel must inform patients not only about their condition, prognosis and risk, but also about legal treatment options and the risks and benefits of treatment options consistent with the current standards of medical practice or care. It also clarifies that in cases in which individual physicians or personnel object to providing a service, but when there is no facility-wide conscience-based objection the facility's protocol must address how the service will be provided by others in the facility.

Finally, Amendment #3 clarifies that when health care facilities, physicians, or personnel cannot provide a service because of a conscientious objection, the patient must be notified that the service will not be provided and the health care facility, the physician or other personnel must do one of the following: (1) refer the patient; (2) transfer the patient; or (3) provide the patient with written information on health care providers who they reasonably believe may offer the service the patient cannot receive because of the conscientious objection.

Nothing in this bill creates a cause of action for damages based on an individual's failure to comply with protocols. The bill maintains that physicians have the right to refuse to "perform, assist, counsel, suggest, recommend, refer or participate in any way in any form of medical practice or health care service that is contrary to his or her conscience." However, such refusals must occur in accordance with access to care and information protocols discussed that will accommodate the objection while also assuring patient access to appropriate care and information.

ISMS, along with the Illinois Catholic Health Association, is neutral on SB 1564 as amended. The bill however, has not yet been called for a vote. It is expected that this legislation will still be called for a vote before end of the year.

Hepatitis C –

- ***Mandatory Testing for Hepatitis C*** – Senate Bill 661 (Sen. Mulroe/Rep. McAuliffe) creates the *Hepatitis C Screening Act*. SB 661 would require physicians, physician assistants and advanced practice nurses providing primary care, regardless of setting, to offer hepatitis C screening to all persons born between 1945 and 1965 if they are providing a "comprehensive physical examination." Settings include, but are not limited to a physician's office, clinic, in-patient or outpatient facility.

Additionally, SB 661 would require all physicians, physician assistants and advanced practice nurses performing a "comprehensive physical examination" in any setting where blood is drawn for testing to offer hepatitis C screening to persons born between 1945 and 1965, a birth cohort that has shown to have the highest incidence of hepatitis C infection.

ISMS opposed this legislation, which was partly initiated in response to guidelines issued in 2012 by the Centers for Disease Control and Prevention. These guidelines recommend hepatitis C testing for specific populations, including those of the "baby boomer" generation.

Due to the prevalence of hepatitis C and the personal experience many legislators have had with the disease, including the House sponsor, HB 661 narrowly passed both chambers.

ISMS communicated its opposition to the governor's office. On August 21, 2015, Governor Rauner issued a total veto of the bill.

In his veto message, the governor stated that "Senate Bill 661 imposes significant short-term financial obligations upon the State Medicaid agency and the State health insurance plan at a time when Illinois is facing a fiscal crisis. The bill would help identify Illinoisans afflicted with hepatitis C, but it does not address the important question of how to pay for the expensive treatment necessary to defeat the disease. It is an untenable position to diagnose a disease but not account for funding for the treatment. The bill further mandates that doctors adhere to the *Testing Recommendations for Chronic Hepatitis C Virus Infection*. By dictating a specific standard of care to doctors, the bill sets an ill-advised precedent with respect to the State's health care industry. This bill

replaces doctors' ability to provide patient-centered care with government-mandated medical care. This could expose our doctors to new and costly litigation, which will further increase medical costs.”

The sponsor of SB 661 did not file a motion to override the governor's veto, therefore the bill will not become law. ISMS continues to work with the legislative Hepatitis C Task Force in an effort to increase education to health care professionals and the public on the importance of screening.

- ***Prior Approval for Hepatitis C Treatment*** – Senate Bill 1465 (Sen. Trotter/Rep. Gabel) provides for the establishment of prior-approval and eligibility criteria for hepatitis C treatment medication for Medicaid patients. In August of 2014, in response to rapidly increasing costs for the treatment of people on Medicaid who have hepatitis C, HFS introduced increased utilization controls regarding the administration of interferon-free therapy for Medicaid recipients. SB 1465 amends the current criteria for eligibility for interferon-free therapy, thus making the drug more available to Medicaid patients who have hepatitis C.

ISMS supported SB 1465, but because of concerns expressed by HFS about the cost, the bill was not called for a vote in committee. It has been reassigned to the House Rules Committee.

- ***Public Education Campaign – Hepatitis C Program*** – House Bill 3623 (Rep. McAuliffe) would have required IDPH to: (1) establish a program to heighten awareness and enhance knowledge and understanding of hepatitis C; (2) conduct a study examining both the current and future status of the disease in the State; (3) communicate to health care providers and employers the benefits of disease awareness and prevention; and (4) develop a prevention program to reduce the risk of transmission of hepatitis C. The bill would provide that voluntary hepatitis C testing would be established at facilities that provide voluntary HIV testing. HB 3623 would have required IDPH to establish a voluntary hepatitis C counseling training course that includes information relating to the special needs of persons with positive hepatitis C test results, including the importance of early intervention and treatment and recognition of psychosocial needs. Amendment #1 would have made these provisions subject to appropriation.

ISMS supported this legislation, which passed out of the Human Services Committee, but due to opposition from IDPH, the bill was not called for a vote on the House floor. HB 3623 has been reassigned to the House Rules Committee.

- ***Screening for Hepatitis C in Cases of Heroin Overdoses*** – House Bill 2890 (Rep. McAuliffe) would require a hospital treating a patient for a heroin overdose to test that patient for hepatitis C. ISMS did not take a position on this bill, which remains in the House Rules Committee.

Mandated Testing for Cytomegalovirus – House Bill 184 (Rep. Nekritz/Sen. Mulroe) would have required IDPH to establish and maintain a public education program to inform pregnant women and women who may want to become pregnant about cytomegalovirus (CMV). The bill would have also required physicians treating newborns to test any newborn who fails a newborn hearing screening for CMV before the newborn is 21 days old, and provide to the parents information regarding birth defects caused by congenital CMV and available methods of treatments.

ISMS, along with the ICAAP, supported creating a public education campaign, but opposed language mandating that physicians test for the virus, as this would legislate the practice of medicine. ISMS and ICAAP were successful in amending the physician mandate out of the bill. As amended, HB 184 requires hospitals to provide information to parents of a newborn who fails two initial hearing screening on CMV and the opportunity to test for CMV before leaving the hospital. ISMS supported the bill as amended, which has been signed into law as PA 99-424, effective January 1, 2016.

Mental Health Reporting under the FOID Card Act – Senate Bill 836 (Sen. Sullivan/Rep. Phelps) addresses issues related to the new mental health reporting requirements passed as part of the Illinois concealed carry law.

Current law requires medical professionals to report to the Department of Human Services those between the ages of 0-18 who show signs of being developmentally or intellectually disabled. With this reporting timeframe, there is no discretion provided to the professional, nor is there consideration given to patient's cognitive development through the years of childhood. In addition, current law requires such reports to be made within 24 hours of the determination of the medical professional that the person is developmentally or intellectually disabled.

SB 836 changes the requirement that the report shall be made for those between the ages of 0-18, and instead provides that such report of intellectual or developmental disability be made for a person age 14 and older. The age of 14 was selected with the input of medical professionals, as it is at the age of 14 that both developmental and intellectual disability conditions have stabilized to a degree that they can be sufficiently evaluated by a health care professional as necessary for reporting. The current 0-18 reporting requirement unfairly identifies and reports those with a disability that may stabilize during childhood years.

The bill also provides that such reports should be made within seven days, instead of 24 hours. A 24-hour requirement is onerous on the health care professional and nothing shows that 24-hour reporting is necessary in this particular reporting context. SB 836 retains the 24-hour reporting requirement for those who have been identified as being a clear and present danger.

SB 836 revises the term “determination” to reflect that physicians diagnose, but generally do not “determine” conditions or illnesses. The revision specifies that the determination is done by diagnosis. The bill also changes the definition of “developmental disability” so as to include a more medically-based determination of such impairment.

Finally, the bill establishes a method to appeal a revocation of a FOID card when it has been revoked by the Illinois State Police due to a report of being intellectually or developmentally disabled.

SB 836 is supported by the Illinois State Medical Society and Illinois Psychiatric Society. The bill passed both chambers and was signed into law by Governor Rauner as Public Act 99-29, effective July 10, 2015.

Personal Information Protection – Senate Bill 1833 (Sen. Biss/Rep. Williams), amends the *Personal Information Protection Act* and expands the scope of information to be protected to include medical, health insurance, biometric, consumer marketing, and geolocation information. Any notice of breaches of security must be provided to the Illinois Attorney General.

ISMS opposed the bill as originally introduced on the grounds that provisions impacting breaches of medical information and the bill's requirements conflicted with a physician's obligations under the *Health Insurance Portability and Accountability Act* (HIPAA).

The Attorney General agreed to an amendment clarifying that entities in compliance with HIPAA will be deemed in compliance with this Act, as long as they notify the Attorney General's Office of a breach within five business days of notifying the Secretary of the Department of Health and Human Services.

ISMS supported the bill as amended. On August 21, 2015, Governor Rauner issued an amendatory veto of the bill, expressing concern that adding "consumer marketing information" and "geolocation information" to protected personal information makes the bill too broad and could prove too burdensome for businesses in Illinois.

The sponsor of SB 1833 filed a motion to override the governor's veto. However, it was never called for a vote within the time frame required by the Illinois Constitution. As such, it appears that, for now, the SB 1833 will not become law.

Power of Attorney for Health Care – SB 159 (Sen. Haine/Rep. Williams) changes the *Power of Attorney Act* and the Statutory Short Form Power of Attorney for Health Care Form (Form) by granting additional powers and authority to a named health care agent. The bill also clarifies who cannot sign as a witness to a power of attorney and makes several technical changes.

SB 159 adds a third effective option for an agent, authorizing the agency to become effective when the principal lacks decision-making abilities based on a physician's determination, but granting the named health care agent immediate access to the principal's medical and mental health records, the authority to share such records with others as needed, and the complete ability to communicate with health care providers, including the ability to question the principal's decision-making ability. The bill requires a "lack of decisional capacity" (i.e. the principal's inability to understand the nature and consequences of a decision and the inability to reach and communicate an informed decision in the matter) as the standard for a physician's determination of a principal's inability to make health care decisions.

SB 159 adds a provision to the Form allowing a principal to nominate their health care agent as their legal guardian. SB 159 also replaces all references to “mental health service provider” with “psychologist.”

Furthermore, the bill requires that the form include a notice that an “advanced practice nurse, dentist, podiatric physician, optometrist,” and “psychologist” are prohibited from signing as a witness. Under current law, these professionals are prohibited from serving as witnesses to the signing of the Form.

ISMS supported SB 159, which was signed into law as Public Act 99-328, effective January 1, 2016.

Prescriptions of Controlled Substances

- ***Addressing the Rise in Heroin Use*** – House Bill 1 (Rep. Lang/Sen. Kotowski) is a comprehensive package designed to address heroin and opioid abuse and addiction in Illinois. The legislation arose out of numerous meetings of the House Bipartisan Heroin Crisis Task Force where members heard testimony from State agencies, the Illinois State Medical Society and associations representing coroners, pharmacists, judges, prosecutors, police officers, educators, and counselors, as well as treatment centers, policy organizations, affected family members and addicts.

ISMS was instrumental in amending a large portion of the bill and removing provisions that would have criminalized the practice of medicine, required physicians to take continuing medical education on the dangers of opioids and drug addiction, required physicians to offer mental health screening prior to prescribing opioids, limited the amount of opioids a physician could prescribe, and granted the IDFPR broad authority to obtain and use prescribing habits of physicians as reported by the Prescription Monitoring Program (PMP).

Below is a summary of the provisions within HB 1 as amended.

Use of Opioid Antagonists

Pharmacists Dispensing Antagonists

- Amends the *Pharmacy Practice Act* to authorize pharmacists to dispense opioid antagonists. This dispensing must be done in accordance with written procedures and protocols developed by IDFPR, with IDPH and the Department of Human Services (DHS).
- Pharmacists dispensing opioid antagonists pursuant to this new Section must complete a training program developed by IDPH.
- Amends the *Good Samaritan Act* to provide that a pharmacist who dispenses or administers an opioid antagonist without fee or compensation shall not be liable for civil damages as a result of their acts or omissions, except for willful and wanton misconduct.

DHS Drug Overdose Prevention Program

- Requires the Director of the Division of Alcoholism and Substance Abuse to publish a report annually regarding statewide overdose trends. The report must now include an analysis of drug overdose information reported by hospitals and coroners.
- Updates existing law authorizing DHS to create a program for the dispensing, prescribing, or distribution of the opioid antagonist Naloxone. References to “opioid antidotes” were updated to “opioid antagonists” and the definition of opioid antagonist was improved to account for potential advances in opioid antagonists.
- Clarifies that health care professionals can prescribe opioid antagonists to persons who may not be personally at risk of experiencing an opioid overdose, but rather may be able to assist another individual during an opioid overdose.
- Ensures civil immunity, except for willful and wanton misconduct, for lay people administering opioid antagonists to those experiencing an opioid overdose.
- Allows for criminal immunity for health care professionals administering or dispensing opioid antagonists to patients or others who may administer the opioid antagonist.
- Updates the definition of “health care professional” to include pharmacists and also to accurately reflect the terminology referencing advanced practice nurses and physician assistants.
- Requires every state and local government agency employing law enforcement officers and firefighters to have opioid antagonists and provide training for the administration of opioid antagonists. This requirement also applies to publicly and privately owned ambulances and other transport vehicles. These entities may apply to DHS for a grant to acquire opioid antagonists and to fund training programs.
- Requires DHS to create a public education program about opioid and heroin overdose, including information regarding immunity for those who administer opioid antagonists.

Administration of Opioid Antagonists in Schools

- Amends an existing law that authorizes select school personnel to administer asthma medication and epi-pens to include the administration of opioid antagonists.

Emergency Medical Services Directors Committee

- Requires the EMS Medical Directors Committee to address regional standing medical orders for the administration of opioid antagonists.

Disposal of Unused Medication

Medication Take-Back Program

- Requires the Illinois Environmental Protection Agency (IEPA) to establish by rule a medication take-back program to allow for the collection and disposal of unused controlled substances.

- This program must be established by June 1, 2016, and IEPA must issue a report to the General Assembly detailing the amount of controlled substances collected under the program.
- IEPA must also create a sign detailing information on approved collection sites for controlled substances and mail-back programs. This sign must be posted by pharmacies in the area where medications are dispensed.
- Finally, the amendment authorizes IEPA to include collection of controlled substances in its existing household waste collections.

Prescription Pill and Drug Disposal Fund

- Expands eligibility for grants by the Illinois Criminal Justice Information Authority from the Prescription Pill and Drug Disposal Fund, which is an existing program that is currently used to reimburse law enforcement for the collection and disposal of controlled substances. Municipalities or organizations that establish containers designated for the collection and disposal of unused controlled substances may now receive grants from the Fund. In addition, publication or advertising of collection events or mail-back programs conducted by municipalities or organizations are also eligible for grant funding.
- To generate more revenue for grant opportunities, the bill doubles the existing fee (\$20 to \$40) assessed against certain criminal offenses that supports the Prescription Pill and Drug Disposal Fund.

Prescribing Requirements

Schedule II Drugs

- In addition to the current restriction to three 30-day sequential prescriptions for Schedule II drugs, a physician must document in a patient's medical record the medical necessity for the amount and duration of the three 30-day sequential prescriptions for Schedule II narcotics.

Medication Shopping

Unsolicited Reports

- Authorizes the PMP to issue an unsolicited report to a prescriber when a person has been identified as having three or more prescribers or three or more pharmacies, or both, that do not utilize a common electronic file within the course of a 30-day period.
- Current law allows the PMP the discretion to issue such reports when a person has six or more prescribers or six or more pharmacies, or both, that do not utilize a common electronic file within the course of a 30-day period.
- The amendment provides that these reports will be sent to prescribers and dispensers and the designees of prescribers and dispensers.

Protections from Negative Feedback

- Provides that any patient feedback, including grades, ratings, or written or verbal statements, in opposition to a clinical decision that the prescription of a controlled substance is not medically necessary shall not be the basis of any adverse action, evaluation, or any other type of negative credentialing, contracting, licensure, or employment action taken against a prescriber or dispenser.

Violations of the *Controlled Substances Act*

- Makes the attempt to acquire a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge a violation of the *Controlled Substances Act*. Creates a new offense to knowingly withhold information requested from a health care professional with the intent to obtain a controlled substance that has not been prescribed by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact.

Prescription Monitoring Program

PMP Advisory Committee

- Reconstitutes the make-up of the PMP Advisory Committee, which will now be appointed by the Clinical Director of the PMP instead of by the Secretary of DHS or their designee.
- The composition of the PMP Advisory Committee is as follows: four physicians, one advanced practice nurse, one physician assistant, one optometrist, one dentist, one podiatric physician, and three pharmacists. The Clinical Director has the ability to appoint a representative of an organization representing a profession required to be appointed to the Committee. The Clinical Director of the PMP shall serve as the Chair of the Committee.
- The PMP Advisory Committee must complete reviews of grant opportunities and the content of the PMP website on a quarterly basis.

Peer Review Subcommittee

- The Peer Review Subcommittee shall be composed of three physicians and two pharmacists from the PMP Advisory Committee, selected by the Clinical Director.
- The purpose of the Peer Review Subcommittee is to establish formal peer review of the professional performance of prescribers and dispensers. The deliberations, information, and communications of the Peer Review Subcommittee are privileged and confidential and shall not be disclosed in any manner except in accordance with current law.
- The Peer Review Subcommittee may identify prescribers and dispensers who may be prescribing outside currently accepted medical standards and send those prescribers and dispensers a “request for information.” This communication shall be sent via certified mail, return receipt requested. A prescriber or dispenser has 30 days to respond to the request for information.

- A prescriber or dispenser will be referred to IDFPFR by the Peer Review Subcommittee in the following circumstances: (1) if a prescriber or dispenser does not respond to three successive requests for information; (2) in the opinion of the majority of members of the peer review committee, the prescriber or dispenser does not have a satisfactory explanation for the practices identified by the peer review subcommittee in its request for information; or (3) following communications with the peer review subcommittee, the prescriber or dispenser does not sufficiently rectify the practices identified in the request for information in the opinion of the majority of the members of the peer review subcommittee.
- IDFPFR may initiate an investigation and discipline in accordance with current laws and rules for any prescriber or dispenser referred by the Peer Review Subcommittee.
- The Peer Review Subcommittee is required to submit an annual report detailing its activities for the prior year starting on July 1, 2017. This report is to be submitted to DHS and the General Assembly.

Automatic Enrollment in the Prescription Monitoring Program (PMP)

- Requires automatic enrollment in the PMP for all dispensers and prescribers when they obtain or renew their controlled substance license.
- All prescribers shall designate one or more medical specialties or fields of medical care and treatment when the prescriber registers with the PMP.

Authorization of Designee to View PMP

- Allows for prescribers and dispensers to authorize a designee to consult the PMP on their behalf. Designees, who will receive information on how to use the PMP, must meet the following conditions before they can view the PMP:
 - The designee must be employed by the same hospital, health care system, or professional practice as the prescriber, or be under contract with such practice, hospital, or health care system.
 - The prescriber or dispenser takes reasonable steps to ensure that such designee is sufficiently competent in the use of the PMP.
 - The prescriber or dispenser remains responsible for ensuring that access to the PMP by the designee is limited to authorized purposes and occurs in a manner that protects the confidentiality of the information obtained from the PMP, and remains responsible for any breach of confidentiality.
 - The ultimate decision as to whether or not to prescribe or dispense a controlled substance remains with the prescriber or dispenser.

PMP Website

- The PMP is required to maintain a website with specific information, including current clinical guidelines on the prescribing of opioids and other controlled substances, accredited continuing education programs related to prescribing and dispensing, programs or information developed by health care professionals that may be used to

assess patients or help ensure compliance with prescriptions, and updates from federal agencies and other public and private organizations that are relevant to prescribing.

- The website must be periodically reviewed by the PMP Advisory Committee.

Updates from the PMP

- The PMP is required to send periodic updates to all enrolled prescribers and dispensers on a variety of different topics, including opportunities for accredited continuing education related to prescribing and dispensing. These communications must also be reviewed by the PMP Advisory Committee.

PMP Information

- Requires dispensers to transmit additional information to the PMP, including the date of birth and gender of the person receiving the prescription, and the days' supply indicated by the prescription.
- Information to be reported to the PMP must now be transmitted no later than the end of the next business day after the date the controlled substance is dispensed. Current law requires the information to be transmitted within seven days after the prescription is dispensed.

Electronic Health Record (EHR) Pilot Project

- Within one year of the effective date of the bill, DHS must adopt rules establishing pilot initiatives involving a cross-section of hospitals in Illinois to increase the integration of PMP information with EHRs. The PMP Advisory Committee shall consult with DHS to identify funding sources to support pilot projects promoting the integration of the PMP with EHRs.

Confidentiality Protections

- Amends the *Open Meetings Act* to allow for the meetings of the Advisory Committee and the Peer Review Subcommittee to be closed to the public when discussing specific prescribers, dispensers, or patients.

Pharmacy Information

- Pharmacies are required to maintain a policy regarding the type of identification necessary, if any, to receive a prescription in accordance with state and federal law. The pharmacy is required to post this information in the place where prescriptions are filled.

Overdose Reporting Requirements

Coroners

- Requires coroners to report to IDPH when a drug overdose is determined to be a cause or contributing factor in a death. IDPH is required to use this information to create a semiannual report to the General Assembly and a monthly report on its website.

Emergency Departments

- When treatment is provided in a hospital emergency room, a health care professional, hospital administrator, or their designee is required to report drug overdose to IDPH within 48 hours of providing treatment or at such time the overdose is confirmed.
- IDPH shall by rule create a form for this report with specific fields and with the input of a statewide organization representing a majority of hospitals in Illinois.
- The identity of the person and entity reporting shall not be disclosed to the subject of the report. The health care professional, hospital administrator, or designee and his or her employer shall not be held criminally, civilly, or professional liable for the required reporting, except for willful or wanton misconduct.
- IDPH is also required to use this information for a report to the General Assembly.

Insurance Coverage Provisions

Opioid Antagonist Mandate

- Creates a new mandate in the Insurance Code to require coverage for at least one opioid antagonist, including refills.

Application of Current Mandates

- Applies the mandate of Section 370c (Mental and Emotional Disorders) and 370c.1 (Mental Health Parity) of the Insurance Code to the State Employees Group Insurance plan.
- Applies the mandate of Section 370c to the Counties Code and the Municipal Code.

Mental and Emotional Disorders

- In an existing mandate for Mental and Emotional Disorders, provides that no additional criteria may be used to make medical necessity determinations for substance use disorders besides the criteria established by the American Society of Addiction Medicine.
- Also in this existing mandate for Mental and Emotional Disorders, requires the offer of coverage for medically necessary acute treatment services and medically necessary clinical stabilization services. “Acute treatment services” means 24-hour medically supervised addiction treatment that provides evaluation and withdrawal management. “Clinical stabilization services” means 24-hour treatment following acute treatment services, which may include intensive education and counseling.

Mental Health Parity

- Requires the Department of Insurance (DOI) to enforce the requirements of State and federal mental health parity laws.
- Expands the existing Mental Health Parity mandate to include addiction parity and to apply to qualified health plans offered through the Health Insurance Marketplace.

- The Mental Health and Addiction Parity mandate also requires insurers to use policies and procedures for the election and placement of substance abuse treatment drugs on their formulary that are no less favorable to the insured as those policies and procedures the insurer uses for the selection and placement of other drugs.
- Insurers must follow the expedited coverage determination for substance abuse treatment drugs in the *Managed Care Reform and Patient Rights Act*.
- By Jan. 1, 2016, DOI must develop a plan for a Consumer Education Campaign on mental health and addiction parity, which must include live training events and the establishment of a consumer hotline to assist consumers in navigating the parity process.
- DOI shall convene a working group of health care insurance carriers, mental health advocacy groups, substance abuse patient advocacy groups, and mental health physician groups for the purpose of discussing issues related to the treatment and coverage of substance abuse disorders and mental illness.
- Creates the Parity Education Fund as a special fund in the state treasury to be used by DOI to provide financial assistance for the consumer education campaign related to Mental Health and Addiction Parity.

External Review

- Amends the *Health Carrier External Review Act* to require the written notice of the right to review to also include a copy of DOI's Request for External Review form.

Medicaid

- On or after July 1, 2015, requires Medicaid to cover all FDA-approved forms of medication assistance treatment prescribed for the treatment of alcohol dependence or the treatment of opioid dependence. These treatments shall not be subject to any utilization controls, except for (1) those established under the American Society of Addiction Medicine patient placement criteria, (2) prior authorization mandate, or (3) lifetime restriction mandate.
- On or after July 1, 2015, requires coverage for opioid antagonists in the Medicaid Program.
- Applies existing insurance mandates for Section 370c (Mental and Emotional Disorders) and 370c.1 (Mental Health and Addiction Parity) for Medicaid patients.

Drug Awareness Campaign

- Requires the State Board of Education and the Department of Human Services to develop a three-year heroin and opioid prevention program for elementary and secondary schools.

- Participation in the program by school districts is voluntary. Subject to appropriation, the Department shall reimburse a school district for the costs associated with participation in the program.

Civil and Criminal Forfeiture

- Allows for the distribution of criminal forfeiture funds to be used to purchase opioid antagonists.

Drug Courts

- Expands eligibility for drug court programs for those sentenced to probation for certain offenses under the *Cannabis Control Act*, the *Controlled Substances Act*, and the *Methamphetamine Control and Community Protection Act*.
- Subject to appropriation, requires mandatory education seminars on substance abuse and addiction for all drug court prosecutors and public defenders throughout the State.

ISMS supported HB 1, as amended. On August 24, 2015, Governor Rauner issued an amendatory veto of the bill making two significant changes. First, the amendatory veto would have changed the effective date for provisions of the bill that alter coverage requirements for qualified health plans on the Health Insurance Marketplace. Specifically, the amendatory veto altered the effective date from immediate to January 1, 2017 for coverage for opioid antagonists, clinical stabilization services, and various coverage requirements related to mental health and addiction parity. This change was offered because the qualified health plans for 2015 and 2016 have already been certified by the Department of Insurance, thus requiring the effective date of such coverage changes to begin in 2017.

Second, the amendatory veto would have deleted language requiring both Medicaid fee-for-service and managed care plans to provide coverage for medication assisted treatment for opioid and alcohol dependency and opioid antagonists. It would have also deleted a provision that prohibiting medication assisted treatment for opioid and alcohol dependency from being subject to any utilization control, limitations on prior authorization, or lifetime treatment limits. The amendatory veto message stated that these coverage requirements would have a significant effect upon the State's Medicaid budget, as well as interfere with established utilization control processes already in use by Medicaid providers.

The House and Senate sponsors were successful overriding Governor Rauner's amendatory veto. HB 1 is now Public Act 99-480, effective immediately.

Medicine Locking Package – House Bill 3219 (Rep. Zalewski/Sen. Martinez) would amend the *Pharmacy Practice Act* to create a pilot project requiring that Schedule II controlled substances containing hydrocodone be dispensed in non-reusable locking closure packages with instructions for patient use, and provides that the pilot program only applies to pharmacies that voluntarily choose to participate. Prescriptions reimbursed via the Medicare Part D and Medicaid programs are exempt from the pilot program, as are prescriptions for individuals residing in nursing homes. The pilot program will begin on Jan. 1, 2017. The Illinois College of Emergency Physicians proposed Senate Amendment 1, which was adopted, allows prescribers issuing a prescription to indicate orally, in writing, or electronically that locking closure packaging shall not be used.

ISMS did not take a position on this bill, which has been signed into law as Public Act 99-473, effective immediately.

Professional Corporations – House Bill 3547 (Rep. Davidsmeyer) would amend various practice acts to add limited liability companies to the types of entities that may be granted licenses to provide services under those Acts. The bill, as introduced, would have made various changes to the *Professional Service Corporation Act* and the *Medical Corporation Act*.

ISMS opposed this bill as originally drafted, because the language as written was not clear whether individuals could be employed by physicians. The bill would have instituted a \$10,000 fine for mistakes made in registering a corporation and would have prevented a physician with multiple offices from having all the registration renewals go to one place, as a registered agent under the Secretary of State's registration of companies is allowed. Finally, the bill failed to clarify that a hospital affiliate can be a limited liability company.

Most of the concerns identified by ISMS were addressed in House Floor Amendment #2. The amendment was not adopted and the bill was reassigned to the House Rules Committee.

Much of the language from HB 3547, including all of the ISMS' changes, were amended onto HB 3332 (Rep. Rita/Sen. Althoff), which was signed into law Public Act 99-227, effective immediately.

Repeal of the Health Facilities Planning Act – House Bill 3139 (Rep. David Harris) and Senate Bill 1387 (Sen. Brady), ISMS legislation, would repeal the *Illinois Health Facilities Planning Act* and abolish the Health Facilities and Services Review Board. Because of strong opposition from the Illinois Hospital Association, neither bill was called for a vote.

PUBLIC HEALTH

Child Immunizations – Senate Bill 1410 (Sen. Mulroe/Rep. Gabel) seeks to increase immunization rates among Illinois children by creating a Certificate of Religious Exemption for parents or guardians who want to exempt their child from school-required vaccines on religious grounds. The certificate will detail the grounds for objection by the parent or guardian and the specific immunizations and/or examinations to which they object, as currently required by state statute. The signed certificate would also reflect that the parent or legal guardian understands their school's exclusion policies in the case of a vaccine-preventable disease outbreak or exposure.

The certificate must also be signed by the authorized examining health care professional responsible for the performance of the child's school-required health examination, confirming that they have provided education to the parent on the benefits of immunization and the health risks to the student and community of the communicable diseases for which immunization is required. The health care provider's signature on the certificate reflects only that education was given and does not allow a health care professional to determine a religious exemption.

Certificates would be required on the same schedule as school physicals (kindergarten, 6th and 9th grades), and therefore would not require any extra visits with health care professional or added costs to those persons requesting a religious exemption.

ISMS supported SB 1410, which was signed into law as Public Act 99-249, effective immediately.

Contact Lenses – House Bill 2450 (Rep. Dan Burke) and Senate Bill 1259 (Sen. Hutchinson) would have amended the *Consumer Fraud and Deceptive Business Practices Act* to make it an unlawful practice for a manufacturer or distributor of prescription contact lenses to prevent a retailer from selling or advertising contact lenses below any specified price and would remove certain restrictions on who can sell contact lenses. ISMS joined the Illinois Society of Eye Physicians and Surgeons and other groups in their opposition to this bill, as it would have allowed patient self-prescription and unrestricted sale of the lenses without a doctor's approval. Neither bill was called for a vote in committee.

Hospital Discharge – Caregivers – Senate Bill 1298 (Sen. Rose/Rep. Costello) and House Bill 2915 (Rep. Costello) are initiatives of the American Association of Retired Persons (AARP). These bills create the *Caregiver Advise, Record, and Enable Act*. The Act requires hospitals, prior to discharging or transferring a patient, to provide the patient or the patient's legal representative an opportunity to designate a caregiver and document the patient's designation of a caregiver. Under the Act, hospitals must notify the patient's designated caregiver prior to the patient's discharge or transfer, unless the patient indicates that he or she does not want the designated caregiver to be notified, and consult with the designated caregiver and issue a discharge plan that contains certain information. The hospital issuing the discharge plan shall make an effort to provide or arrange for the designated caregiver to receive instructions in the after-care assistance tasks described in the discharge plan.

The Illinois Hospital Association amended SB 1298 to clarify that nothing in the Act will interfere with the rights of an agent operating under a valid health care directive or valid power of attorney. The bill was also clarified to ensure that nothing in the Act will be construed to create a private right of action against a hospital, a hospital affiliate, a hospital employee, or a consultant or contractor with whom a hospital has a contractual relationship, solely for providing instruction to a designated caregiver. SB 1298 ensures that a hospital, hospital employee, hospital affiliate, or a consultant or contractor shall not be held liable, except for willful and wanton misconduct.

ISMS did not take a position on SB 1298, which was signed into law as Public Act 99-222, effective January 27, 2016.

Immunizations for Child Care Workers – Senate Bill 986 (Senate Republican Leader Radogno/Rep. Gabel) provides that no person may be employed by a child care facility that cares for children ages six and under unless that person shows proof of having received the Tdap (tetanus, diphtheria, and pertussis) vaccine in addition to the measles, mumps, and rubella (MMR) vaccine. Current law contains no specific requirements for vaccinations of those working in child care facilities. This legislation was prompted by the measles outbreak that

occurred in a suburban child care facility outside of Chicago. ISMS supported SB 986, which has been signed into law as Public Act 99-249, effective January 1, 2016.

Mental Health

- ***Diagnosis – DSM-5***– House Resolution 7 (Rep. Flowers) would create a Mental Health Diagnosis Task Force, whose purpose would be to thoroughly survey Illinois law to identify all instances where laws and government functions depend on purported understandings of mental illness or disorder, mental capacity, mental health, behavior or psychology, which may have been recently discredited or found to be incorrect or called into question. This is an initiative of the Church of Scientology and it is an attempt to discredit the current Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

IPS and ISMS opposed this resolution, which was assigned to the House Executive Committee where it was not called for a vote.

- ***Disclosure of Mental Health Records*** – Senate Bill 818 (Sen. Nybo/Rep. Guzzardi) and House Bill 2796 (Rep. Guzzardi) amends the *Mental Health and Developmental Disabilities Confidentiality Act* to provide that unless otherwise expressly provided for in the Act, records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure regardless of whether the records and communications are made or created in the course of a therapeutic relationship.

ISMS expressed concern with the original drafting of the bills. First, as originally drafted, the bill used the word “communications” instead of “record.” Second, there are two types of records that ISMS believes should not be confidential. These items are: (1) evaluations completed for purposes other than therapeutic purposes, such as for employment evaluation purposes, and (2) summary statements given by the patient recorded in a health history.

These concerns were addressed in Senate Committee Amendment #1 to SB 818. ISMS was neutral on SB 818 as amended, was signed into law by the governor as Public Act 99-28, effective January 1, 2016. HB 2796 remains in the House Rules Committee.

- ***Disclosure of Student Records*** – House Bill 3599 (Rep. Leitch/Sen. Koehler) creates the *Student Optional Disclosure of Private Mental Health Act*. The bill will allow students to pre-authorize in writing the disclosure of certain private mental health information to a designated person. HB 3559 is an initiative of a family who lost their son to suicide. IPS supported this bill, which has been signed into law as Public Act 99-278 and is effective January 1, 2016.
- ***Mental Health System Planning*** – Senate Bill 1249 (Sen. Steans/Rep. Gabel) transfers the responsibility of mental health system planning from the Governor’s Office of Health Innovation and Transformation (GOHIT) to the Governor’s Office. The bill includes clarifying language providing that the responsibility shall include reviewing the effective delivery of services to individuals with substance use conditions or disorders. The bill

also adds trauma-informed care as a component of a full review of network adequacy for mental health and substance abuse services. Finally the bill requires the Office of the Governor to report its findings and recommendations to the General Assembly by January 15, 2016

ISMS did not take a position on SB 1249. On August 26, 2015, Governor Rauner issued an amendatory veto changing the date the report is due from January 15, 2016 to May 31, 2016.

The sponsor of SB 1249 has not filed a motion to override the governor's amendatory veto. It appears that, for now, SB 1249 will not become law.

- ***Therapy for Felons*** – House Bill 2673 (Rep. Leitch) amends the Mental Health and Developmental Disabilities Code to clarify that the circuit court has jurisdiction over all persons alleged to be in need of psychotropic medication or electroconvulsive therapy, whether or not they are charged with a felony. This legislation was initiated to address situations where a person may be charged with a felony, but is awaiting trial and in custody. These persons may refuse psychiatric treatment and therefore become unfit to stand trial. Proponents, including the Illinois Psychiatric Society, supported this initiative as it allows for medical treatment to be administered to these persons in need of care.

The bill was signed into law as Public Act 99-0179, effective immediately.

Right to Try – House Bill 1335 (Rep. Harris/Sen. Connelly) will allow a terminally ill person access to medication that has not yet fully completed the FDA approval process. In conjunction with their physicians, patients who have exhausted all approved options could obtain potentially life-saving medicines or treatments that have completed Stage 1 Clinical Trials. The act is permissive – physicians *may* recommend their patients for this type of treatment and the manufacturer *may* provide the treatment. Physicians who recommend this treatment will be immune from professional discipline. There is no mandate that health insurance companies pay for the treatment, so the patient will likely be responsible for the costs.

ISMS advocated for civil immunity for physicians, but that was strongly rejected by ITLA. Because the bill is permissive and applies only to terminally ill patients, ISMS was neutral on HB 1335, which has been signed into law and is effective January 1, 2016.

Sale of Raw Milk –In July 2014, IDPH issued rules that would provide for stricter regulations on the sale of raw milk in Illinois. The Illinois State Medical Society and a variety of public health groups oppose unfettered sale of raw milk, citing that raw milk can pose serious threats to people's health and that pasteurization is the only reliable way to kill bacteria like E. Coli or salmonella and ensure that milk is safe to drink.

As adoption of the rules stalled, House Bill 2690 (Rep. Breen/Sen. Nybo) was introduced on behalf of advocates for the sale of raw milk. Originally, the bill would have allowed the sale and distribution of raw milk in accordance with rules promulgated by IDPH. The original bill also provided that sellers or distributors of raw milk products are not liable for any injury caused by

the consumption of raw milk if that product has been produced and processed in accordance with the rules established by IDPH.

Subsequent amendments introduced by raw milk advocates weakened IDPH's authority to issue rules regulating the sale of raw milk. ISMS was able to secure an amendment preserving IDPH's authority to issues such rules.

ISMS was neutral on HB 2690 as amended, which passed the House but stalled in the Senate.

WORKERS' COMPENSATION

Several elements of workers' compensation reform, including reductions to the Workers' Compensation Medical Fee Schedule, were proposed during this legislative session. These bills were filed during the latter half of the spring legislative session, following the meetings of "working groups," which were small groups of legislators and their staff, led by representatives of the governor's office. While the General Assembly continues to meet this summer, it is unclear what the final form of any workers' compensation bill will be.

Late in the spring session, the Illinois House of Representatives convened a Committee of the Whole to debate further reforms to the workers' compensation system and to hear testimony from stakeholders. ISMS testified at that hearing and voiced strong opposition to further reductions to the Medical Fee Schedule. After the Committee of the Whole, a series of amendments were introduced and debated on the House Floor.

- House Bill 1287 (Speaker Madigan) was introduced with seven amendments, with each amendment covering one area of proposed changes to the *Workers' Compensation Act*. Amendments 1 through 3 were intended to encapsulate the changes proposed within Governor Rauner's "Turnaround Agenda." These changes included the following:
 - Amendment #1 would have added a heightened causation standard, which would mean fewer claims would qualify for benefits under the Act.
 - Amendment #2 would have required the Commission to consider a report of impairment prepared using the AMA's Guidelines to the Evaluation of Permanent Impairment when determining Permanent Partial Disability (PPD).
 - Amendment #3 would have provided for a reduction to the Workers' Compensation Medical Fee Schedule, which appeared to be a 60% reduction, except for a procedure, treatment, or service classified by an evaluation and management code or physical medicine code on the Fee Schedule.

All three of these amendments were defeated by the House of Representatives on floor votes, with Democrats voting no and Republican members of the House voting "present."

However, Amendments #4 through #7 to HB 1287 were adopted on the House floor.

- Amendment 4 encompasses several different types of reform aimed at workers' compensation insurers, such as requiring the prefiling of rates for approval.
- Amendment #5 attempts to codify recent court cases involving "traveling employees."
- Amendment #6 addresses the compensability of repetitive and cumulative injuries by authorizing an employer to seek contribution or reimbursement from each of the employee's prior employers in the event a repetitive injury is found to be compensable.
- Amendment #7 adds additional reporting requirements for self-insured businesses and creates a Workers' Compensation Premium Rates Task Force to consider the National Council on Compensation Insurance (NCCI) recommendations for workers' compensation premium rates and the extent to which Illinois employers' actual premiums reflect those recommended rates.

HB 1287 passed the House by a vote of 63-39-4. While a subject matter hearing on the bill was held in the Senate on June 9, 2015, the bill awaits further action in the Senate.

- Senate Bill 994 (Senate Republican Leader Radogno) and House Bill 4223 (House Republican Leader Durkin) were introduced after debate of amendments #1 through #4 to HB 1287. The bills reflect Governor Rauner's "Turnaround Agenda" and were prepared by Governor Rauner's office. Leader Durkin filed HB 4223 as new legislation in the House, which was not assigned to a substantive committee and remains in the House Rules Committee.

Leader Radogno filed the language as an amendment to Senate Bill 994, which was then assigned to the Senate Judiciary Committee for a hearing. SB 994 and HB 4223 are identical and contain the following provisions:

- Creates a "major contributing cause" standard in order to obtain compensation under the *Workers' Compensation Act*.
- Establishes a causation standard for "cumulative" or "repetitive" injuries for those employed in the same occupation or industry by multiple employers over time. These injuries will only be compensable (considered as the "major contributing cause") if those repetitive or cumulative injuries are greater than 50 percent of all the combined causes of the medical condition or injury. If this standard is satisfied, then the employer liable for the workers' compensation claim will be the most recent current or former employer who has employed the employee for at least three months.
- Establishes a causation standard for the "traveling employee" or employees who are injured when they travel for work. SB 994 provides that for an employee who travels, the injury must arise out of and in the course of employment, and the travel must be necessary for the performance of job duties. The language in SB

994 is an attempt to codify a recent Illinois Supreme Court case, *Venture-Newberg v. Illinois Workers' Compensation Commission*.

- Addressed the use of AMA impairment reports for the determination of PPD. Specifically, SB 994 provides that the fifth factor the Arbitrator must consider in making these awards are “objective” findings in the treating medical records and also the independent medical examinations. It also deletes the provision stating that no single enumerated factor shall be the sole determinant of disability.
- Implements a 51 percent reduction to the Medical Fee Schedule, but only for specific portions of the Medical Fee Schedule. The “sections” that are referenced in SB 994 appear to relate to a document called the “Instructions and Guidelines,” which is published by the Workers' Compensation Commission. SB 994 limits the 51 percent reduction to the following parts of the Medical Fee Schedule: Ambulatory Surgical Treatment Centers and Ambulatory Surgical Treatment Facilities; Anesthesia; Hospital Inpatient; Hospital Outpatient; and Professional Services. Evaluation and Management and Physical Medicine codes on the Professional Services fee schedule are exempted from the 51 percent reduction.
- Changes the authority to implement rules mandating electronic billing for medical claims from the Illinois Department of Insurance to the Workers' Compensation Commission. The amendment does not change the statutory deadlines contained in this provision, which have already been surpassed by several years.

SB 994 was called for a vote in the Senate Judiciary Committee. ISMS testified against the bill and it failed to advance out of committee. While the legislative leaders and representatives from the governor's office continue to meet over these and other issues, it is unknown at this time what, if anything, will be agreed to.