Illinois State Medical Society

2016 Update on ISMS Legislative Activity

in the

Illinois General Assembly

Illinois State Medical Society

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Illinois State Medical Society
20 N. Michigan Ave., Ste. 700
Chicago, IL 60602
www.isms.org
@ISMSLegislative
800-782-4767

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Dear Colleague,

The Illinois General Assembly adjourned its regular spring session without resolving the budget impasse. The relationship between the Administration and Democrat legislative leadership remains contentious, creating a gridlock that has made it difficult for legislators to advance legislative proposals. Bipartisan working groups of legislators are meeting to discuss possible resolutions to a variety of budget and non-budget related issues. To date, progress on finding any resolution to end the budget impasse has been minimal.

Despite these challenges, ISMS remains steadfast in its advocacy. The following pages will provide an in-depth look at ISMS' efforts to protect you, your practice and your patients. These efforts include:

- Introducing network adequacy standards and transparency requirements for insurance plans sold in Illinois. ISMS-backed legislation would require health insurers to develop networks of health professionals, hospitals and facilities to meet the needs of enrollees; maintain up-to-date directories of in-network professionals and facilities; and communicate with patients clearly and quickly about changes to their network.
- Improving the medical cannabis program by requiring certifications to be reported to the Prescription Monitoring Program so physicians can see who has been issued a medical cannabis card before writing other prescriptions, and removing the requirement that physicians attest to the benefits of medical cannabis, allowing them instead to simply certify that the patient has one of the qualifying medical conditions.

ISMS is also active in opposing legislation that would:

- Inappropriately expand other health care professionals' scope of practice.
- Worsen Illinois' medical liability climate by repealing the *Medical Studies Act* and removing the confidentiality of hospital peer review meetings, thus making the meetings and any other related documents discoverable in court.
- Increase onerous mandates on medicine.

I encourage all of you to read this document, and consider how the outcome of each of these issues could be different if ISMS were not advocating for you in Springfield.

I also urge you to share this document with your colleagues to show them the value of being a member of the Illinois State Medical Society. On behalf of myself and the Board of Trustees, I would like to say thank you to every physician member who makes ISMS' efforts possible.

Sincerely,

Thomas M. Anderson, M.D.
President, Illinois State Medical Society

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FISCAL YEAR 2016 and 2017 STATE BUDGET – Final FY16 Agreement/FY17 "Stop Gap" Plan Initiated

Illinois has operated for nearly a complete year without a fully-implemented state budget for Fiscal Year 2016 (FY16), which ended on June 30, 2016. Prior to the enactment of this FY16/17 budget agreement, state government has functioned under a combination of court orders (consent decrees) and budget agreements enacted by the General Assembly and signed into law, including elementary and secondary education funding.

On the last day of the state fiscal year the governor and four legislative leaders agreed to a final FY16 spending plan while enacting a temporary "stop gap" spending plan that provides a full year of funding in FY17 for elementary and secondary education. The remaining areas of the budget for other essential state services are funded until January 1, 2017. The "stop gap" funding agreement was passed by the House and Senate on SB 2047 (Sen. Trotter/Rep. Currie) on June 30th and was signed into law by the governor on the same day as Public Act 99-524. The "stop gap" agreement contained spending for both FY16/17.

Even with a "stop gap" funding agreement in place, the vast majority of items in Medicaid and other human services agencies will continue to be paid pursuant to court orders. Further, funding for the Illinois State Employee Group Insurance Program (SEGIP) was not contained in this agreement. The governor and legislative leaders believe that funding for this program will be determined during the upcoming remaining FY17 budget negotiations that will be impacted by the current state employee labor negotiations. As discussed later in this document, the governor's office has acknowledged that it will be necessary to refinance this outstanding debt to pay physicians and hospitals what they are owed for providing care to those enrolled in this program.

Even with the "stop gap" budget in place, the state comptroller estimates that Illinois will still carry an $8 billion balance of unpaid bills.

WORKERS' COMPENSATION

The current status of the workers' compensation system in Illinois continues to be a highly debated topic. As unveiled during the 2015 legislative session, the Administration's proposed "Turnaround Agenda" includes proposals to change the *Workers' Compensation Act* in an effort to improve the value of the system for employers. These proposed changes include a heightened causation standard for injured employees to qualify for workers' compensation benefits, increased use of the American Medical Association's Guides to the Evaluation of Permanent Impairment for establishing permanent partial disability awards, and statutory restrictions on recovery of benefits for employees who are injured when traveling for work. Of chief concern to physicians who treat injured workers, the Turnaround Agenda also calls for further reductions to the medical fee schedule, which was subject to an arbitrary 30 percent reduction in the 2011 reform legislation.

While there was no movement on the workers' compensation component of the Turnaround Agenda, several bills involving various aspects of workers' compensation were filed during the 2016 legislative session; these legislative measures did not advance in the committee process. As part of the ongoing budget negotiations, one of the designated "working groups," composed of legislators from each legislative caucus, is focused on examining potential changes to the *Workers' Compensation Act*. Through our active advocacy efforts, ISMS has monitored and participated in the activities of this working group.

One potential area of change to the medical fee schedule that has been discussed by the working group is to tie it to a percentage of Medicare. ISMS continues to present to the working group participants and legislative leaders evidence that making such a change would have a devastating impact on injured workers' ability to access medical care. During this spring, ISMS has authored and distributed memoranda to the members of the General Assembly focusing on the need to protect access to quality health care for injured workers and also detailing the problems associated with a Medicare-based fee schedule.

In addition to being responsive to the issues raised by the working group, ISMS has also proactively advocated for other changes to the workers' compensation system that will help physicians who treat injured workers, such as implementing meaningful electronic billing requirements for workers' compensation insurers and enforcing the late interest payment on agreed workers' compensation claims. As the General Assembly meets during this summer, ISMS will continue to closely monitor the working group on workers' compensation.

Reimbursement for Physician-Dispensed Drugs – House Bill 5751 (Rep. Ives) amends the *Workers' Compensation Act* to limit reimbursement for prescriptions filled and dispensed outside of a licensed pharmacy, commonly known as physician dispensing. The bill provides that a medical professional shall not be reimbursed for the cost of a physician-dispensed drug prescribed to an injured worker except in cases in which there is no licensed pharmacy within five miles of the prescribing physician's practice. The bill further provides that if there is not a licensed pharmacy within five miles of the prescribing physician's practice, then the medical professional who dispenses a drug is limited to reimbursement for only a supply of prescriptions which lasts no longer than 72 hours from the date of the injury or 24 hours from the date of the first referral to the medical professional, whichever is greater.

Finally, the bill provides that the limitation on "filling and dispensing" shall not apply when, on the date the employee sustained his or her injury, there is a pre-arranged agreement between the medical professional and a preferred provider program regarding the filling and dispensing of prescriptions outside a licensed pharmacy.

ISMS opposed the restrictions on physician dispensing set forth in HB 5751, as the five-mile requirement would essentially mean that physician dispensing would be prohibited in Illinois. In the context of treating workers' compensation patients, physician dispensing is often necessary for those injured workers who are unable to fill their prescriptions at a retail pharmacy. HB 5751 remains in the House Rules Committee and was never assigned to a substantive committee.

State Run Workers' Compensation Insurance Company – Senate Bill 2556 (Sen. Biss) and House Bill 5925 (Rep. Fine) would create the Illinois Employers Mutual Insurance Company, which is a state-run workers' compensation insurance company. The legislation provides that the initial start-up funding for the Illinois Employers Mutual Insurance Company shall be a loan from the Illinois Workers' Compensation Commission Operations Fund and it shall be operated as a domestic mutual insurance company, subject to all applicable provisions of the Illinois Insurance Code.

SB 2556 and HB 5925 are initiatives of the AFL-CIO. Throughout the debate on further workers' compensation reforms in Illinois, organized labor has consistently maintained that the insurance industry has not passed along the savings of the 2011 reform to Illinois employers. A state-run insurance company would potentially bring more competition to the market for workers' compensation insurance. State-run insurance companies operate as a competitor to private companies in several other states such as Maryland, Maine, and Kentucky,

ISMS remains neutral on this legislation. HB 5925 was assigned to the House Labor Committee, but was never called for a vote. SB 2256 was assigned to the Senate Judiciary Committee and also was not called for a vote.

Restricted Choice of Physician – Senate Bill 3043 (Sen. Barickman) amends the *Workers' Compensation Act* to provide that employers have the right to select medical professionals when their employee suffers from a work-related injury. Under current law, an injured employee has a choice of two physicians to treat a work-related injury. SB 3043 also repeals current law authorizing employers to establish a preferred provider program (PPP) that creates a network of health care professionals for injured employees to utilize in the event they are injured at work. Under current law, the employee's selection of a physician from within an established PPP is voluntary, except that if the employee chooses a provider outside of the network, the employee loses one of his or her two choices of physician.

SB 3043 provides that the employee shall choose a physician from within the network established by an employer. If an employee is not satisfied with the physician first selected from the network, SB 3043 provides the employee shall have the right to make a second choice of physician from within the network. Finally, the bill allows for the Workers' Compensation Commission to make a finding that a physician within the network that is chosen by an employee is rendering improper or inadequate care. If such a finding is made, then the Commission may permit an employee to seek care from a physician outside of the network.

ISMS has opposed efforts to limit the current freedom of choice for injured workers to select their own physicians and providers. SB 3043 was assigned to the Senate Judiciary Committee, but was not called for a hearing.

Reimbursement for Custom Compound Medications – House Bill 6575 (Rep. Kay) establishes a specific reimbursement system and rate for "custom compound medications" prescribed to injured workers. "Custom compound medication" is defined as a customized medication prescribed or ordered by a duly licensed prescriber for the specific patient that is prepared in a pharmacy by a licensed pharmacist in response to a licensed prescriber's prescription or order by combining, mixing, or altering of ingredients, but not reconstituting, to meet the unique needs of an individual patient. The bill provides that a custom compound medication shall only be reimbursed if several criteria are met:

- There is no readily available commercially manufactured equivalent product;
- No other FDA-approved alternative drug is appropriate for the patient;
- The active ingredients of the compound each have a National Drug Code (NDC) number, are components of drugs approved by the FDA, and the active ingredients in the compound are being used for diagnosis or conditions approved use by the FDA and not being used for off-label use;
- The drug has not been withdrawn or removed from the market for safety reasons; and
- The prescriber is able to demonstrate to the payer that the compound medication is clinically appropriate for the intended use.

HB 6575 restricts prescriptions for custom compound medications to a one-time, seven-day supply. Any prescription for more than seven days must be preauthorized by the employer.

Finally, HB 6575 establishes the specific method by which physicians must submit charges for custom compound medications and establishes a limit on their reimbursement. The bill provides that custom compound medications shall be charged using the specific amount of each component drug and with its original manufacturer's NDC number included in the compound. The reimbursement for custom compound drugs is set at a maximum charge of the average wholesale price minus 10 percent based upon the original manufacturer's NDC number, as published by Red Book or Medi-Span and prorated for each component amount used. Any components of the compound medication without NDC numbers shall not be charged. A single dispensing fee for a compound medication shall be $12.50 for a non-sterile compound. Charges for a custom compound drug are limited to a maximum amount of $75. An employer may consider charges exceeding this amount if the charges are accompanied by the original component manufacturer's invoice prorated for each component amount used based upon a showing of good cause and evidence-based support approved by the FDA and if the charges are submitted before the dispensing of the custom compound medication.

Under current law, there are no specific restrictions regarding the prescription of compound medications for injured workers. The Workers' Compensation Commission advises that the reimbursement for all prescriptions besides those filled and dispensed outside of a licensed pharmacy is to be the usual and customary amount. ISMS opposed HB 6575, which remains in the House Rules Committee.

MEDICAL CANNABIS

Senate Bill 10 (Sen. Haine/Rep. Lang) represents a compromise between the Administration and proponents of the medical cannabis program. Of chief concern for the various proponents of medical cannabis, SB 10 includes a two-year extension to the Medical Cannabis Pilot Program. Under current law, the pilot program would have ended on January 1, 2018. The program suffered from a delayed roll-out and the number of patients receiving medical cannabis cards was small in comparison to initial projections of program participants. As such, keeping the program operational has been a source of continuing frustration for those who have invested in the operation of the program and the patients who have utilized medical cannabis.

ISMS was key in obtaining important changes to the program. First, the physician certification form will now be changed to provide that a physician will only certify that a patient has a qualifying medical condition. Under current law, physicians who choose to complete the patient certification form must certify that the patient has a qualifying medical condition and the patient will receive a therapeutic or palliative benefit from the use of the medical cannabis. Second, the bill requires that the Illinois Department of Public Health (IDPH) inform the Prescription Monitoring Program (PMP) that a patient has a medical cannabis card. Adding such information to the PMP will help physicians.

SB 10 also includes the following substantive changes to the *Compassionate Use of Medical Cannabis Pilot Program Act:*

- Adds post-traumatic stress disorder and terminal illness with a prognosis of six months or less to the list of qualifying conditions for medical cannabis;
- Changes the patient registration from one year to three years for renewal and provides that the fingerprinting must only be performed once;
- Reconstitutes the Medical Cannabis Advisory Board of patients, physicians, and other healthcare professionals;
- Designates that applications to add qualifying conditions shall be made directly to IDPH instead of having the Medical Cannabis Advisory Board convene for the purpose of reviewing such applications;
- Addresses a conflict in the law that could possibly jeopardize the lawful gun ownership of medical cannabis patients; and
- Provides that qualifying patients under the age of 18 can have two designated caregivers to obtain medical cannabis.

SB 10 passed the General Assembly and was signed into law by the Governor as Public Act 99-519.

STATE EMPLOYEE GROUP HEALTH INSURANCE

Only a comprehensive budget solution will provide certainty and sustainable payment cycles to physicians and hospitals. Even prior to the budget stalemate beginning last July, physicians and health care facilities were – and continue to be – owed tens of millions of dollars in payments under Illinois' State Employee Group Insurance Program (SEGIP). This shortfall does not include the millions those physicians and hospitals are also owed by Medicaid or for reimbursement of health services associated with workers' compensation. With the lack of a state budget, the payment problem has intensified.

SEGIP has not been funded through either an appropriation or a court order for both FY16 and FY17. Estimated total incurred liabilities for this program are $2.75 billion in FY16 and $2.9 billion in FY17. The program serves almost 360,000 state employees and retirees.

If the delay in reimbursing physicians for the care they provide to state employees and their dependents is not addressed, this failure will create severe access issues. Many Illinois practices and large clinics have taken out substantial loans to keep their medical practices viable while they wait for reimbursement. ISMS supports full funding for this program going forward and strongly advocates that immediate action be taken to pay for care that has been provided.

One of ISMS' top legislative priorities this year has been to fully fund SEGIP. Throughout the legislative session, ISMS concentrated our lobbying efforts on fully funding the program while advocating for release of any available funds to pay physicians and hospitals during the impasse. The Administration is acutely aware of ISMS' concerns and the need to end the budget stalemate so that our members can be paid for their services.

While the Administration concedes that the only real way to solve the lack of funding is through enactment of a balanced budget, it will advocate for any professional who is currently in financial distress. Representatives from the governor's office indicated that they will work with those being adversely affected by the lack of appropriation to SEGIP to provide some financial relief through the Vendor Support Program or by certifying accounts receivable for physicians and hospitals that can be used to access individual lines of credit. The Administration is aware that some health care professionals and medical facilities are working with financial institutions to secure lines of credit in the absence of an appropriation to pay health insurance claims. The administration and state agencies are able to assist in providing any documentation necessary to verify a professional's/facility's submitted claims. Professionals and facilities should also review Illinois' Vendor Assistance Program at www.vendorassistance.com. ISMS offers assistance to our members who require help in navigating this process.

Release of Health Insurance Reserve Fund – ISMS, in partnership with Cigna, successfully advocated that the Administration use available funds from the Health Insurance Reserve Fund (HIRF) to begin paying insurers who then will pay physicians and hospitals a small portion of what they are owed from the state. Premium payments that are deducted from state employees' paychecks each month are directed to HIRF. The Governor's Office of Management and Budget estimated that employees contribute approximately $300 million, or 10 percent of overall liability. These payments were determined to be "pass through" payments, meaning that no

official appropriation is needed to release these funds. The aforementioned $300 million was released in two payments (in March and May) to facilitate payments to health care professionals.

Prompt Payment Legislation – Two legislative initiatives would have reduced the prompt payment penalty paid to physicians and hospitals that participate in state-run health plans, essentially lowering the amount of interest earned and paid on these late payments from the state. ISMS opposed both bills; neither moved out of committee this session.

House Bill 4429 (Rep. Nekritz) and House Bill 4981 (Rep. D. Harris) were both assigned to the House Revenue Committee but were not called due to ISMS' opposition.

Once Illinois' state budget cycle is on a sustainable path, interest and prompt payment penalties will not be needed. Physicians and hospitals are ultimately loaning the state money to manage the current fiscal crisis.

SCOPE OF PRACTICE

Surgery by Optometrists – Senate Bill 2899 (Sen. Althoff/Rep. Moeller) and House Bill 6166 (Rep. Moeller) contain the extension of the regulatory sunset for the *Optometric Practice Act*. However, the Illinois Department of Financial and Professional Regulation (IDFPR) also included language that would authorize optometrists to perform surgeries and injections around the eye, without consideration of whether optometrists have the appropriate education and training to perform such services.

ISMS joined the Illinois Association of Eye Physicians & Surgeons in opposing both HB 6166 and SB 2899. In an attempt to limit the expansion of certain procedures to be performed by optometrists, SB 2899 was amended, however this language still authorized optometrists to perform surgeries, including chalazion procedures, and also administer injections around the delicate and complex eye structure.

SB 2899, as amended, was voted out of the Senate with a commitment by the sponsors to hold the bill pending an agreement between proponents and opponents. The bill is currently being held in the House.

Pharmacists Prescribing Birth Control – House Bill 5809 (Rep. Mussman) is a measure that would inappropriately blur the roles of physicians and pharmacists by allowing pharmacists to prescribe birth control. While pharmacists are experts in drugs and an essential part of the health care team, they are not experts in diagnosing and treating conditions, diseases and other maladies of the human body. Pharmacists and physicians have very distinct roles in our health care system, and blurring these roles is not in the best interest of patient safety and will only increase episodic care.

ISMS remains concerned about policies that enhance episodic care and further discourage women from seeking care from a physician. Allowing pharmacists to prescribe drugs will not improve access to important health services and is detrimental to patient care. HB 5809 was

called for a subject matter hearing in the House Health Care Licenses Committee but was never called for a vote due to ISMS opposition.

Direct-Entry Midwife Licensure – House Bill 4364 (Rep. Gabel) would have created the *Home Birth Safety Act* and provided for the licensure of "certified professional midwives" (CPMs) by the Illinois Department of Financial and Professional Regulation. ISMS and several medical specialty groups oppose HB 4364. Any consumer preference needs to be balanced by safety standards to ensure that all people in Illinois have access to the highest quality care and trained professionals.

While the bill would allow midwives to provide home birthing services in Illinois, HB 4364 does not have adequate educational requirements to create a newly licensed profession. The legislation seems to require that candidates obtain "accredited" training by the Midwifery Education and Accreditation Council; however, there are loopholes in the bill that allow a midwife to be apprentice-trained with a minimal amount of "continuing education" hours and still seek licensure.

Furthermore, the bill does not require minimum education to address emergencies that may arise in home birth settings. Complications become more significant when they occur in a home birth setting, especially when the nearest medical facility can be many miles away. Calling 911 is not enough to address the complications that may arise in childbirth. Again, while HB 4364 seems to require that candidates obtain training from what is referred to as a "pathway" accredited by the Midwifery Education and Accreditation Council, the actual education and training requirements in the bill are inconsistent and unclear. Inconsistent educational requirements mean that a midwife will not have the training or experience to address medical complications that may arise.

The Illinois Chapter of the American Congress of Obstetricians and Gynecologists (ACOG) is neutral on HB 4364, while the Illinois State Medical Society and other specialty groups remain opposed due to concerns about the education and training set forth in the bill and the lack of liability protection for physicians. HB 4364 is currently in the House Rules Committee after it was not called for a vote in the House Health Care Licenses Committee due to ISMS opposition.

Expanding the Scope of Practice for Athletic Trainers – House Bill 6231 and SB 2742 (Rep. McAuliffe/Sen. Haine) would have amended the *Illinois Athletic Trainers Practice Act* to make several significant changes to the scope of practice and collaborative requirements to practice as an athletic trainer in Illinois. HB 6231 and SB 2742 are initiatives of the Illinois Athletic Trainers Association (IATA) and reflect its continuing desire to accommodate the growth of the athletic trainer profession.

ISMS opposed HB 6231 and SB 2742, as these legislative measures would drastically expand the type of patients that athletic trainers are eligible to treat by allowing athletic trainers to treat *all* patients, and not simply the athletic population they currently serve. In addition, this legislation would allow athletic trainers to collaborate with any physician or a chiropractor. Current law requires athletic trainers to collaborate with team physicians. HB 6231 and SB 2742 were held by agreement of the sponsors for further discussion and consideration.

Physician Assistants – House Bill 5947 (Rep. Zalewski) and Senate Bill 2900 (Rep. Zalewski/ Sen. Haine) were comprehensive bills that amended over 65 different Illinois statutes to add physician assistants to provisions applicable to physicians, including adding physician assistant members to various state committees and boards. This legislation is an initiative of the Illinois Association of Physician Assistants (IAPA) and is intended to update a variety of statutes to include physician assistants in statutory roles and contexts where they also provide care.

ISMS initially opposed HB 5947 and SB 2900, as several of the expanded references to physician assistants would exceed a physician assistant's scope of practice. ISMS was able to work with IAPA, as well as the Illinois Society for Advanced Practice Nursing, on an agreed amendment to remove the problematic provisions of the introduced bill. This agreed amendment also updated various statutes to include advance practice nurses when applicable. SB 2900 was passed by the House and Senate and was signed into law as Public Act 99-581, effective January 1, 2017.

Genetic Counselor Referrals **–** Senate Bill 2985 (Sen. Martinez/Rep. Moffitt) amends the *Genetic Counselor Licensing Act* to allow genetic counseling without a physician's referral. Under current law, genetic counselors may only provide services to a patient if the patient has a referral from a physician. SB 2985 was supported by the Genetic Task Force of Illinois, the Illinois Rural Health Association, and the Illinois Public Health Association. The purpose of this legislation is to streamline access to genetic counseling, as most genetic counselors work with physician practices. SB 2985 passed both the House and Senate and was signed into law as Public Act 99-633, effective January 1, 2017. ISMS was neutral on the legislation.

INSURANCE AND THIRD-PARTY PAYER ISSUES

Network Adequacy – House Bill 6562 (Rep. Greg Harris) is an initiative of ISMS to implement comprehensive network adequacy requirements for health insurance. Network adequacy refers to a patient's ability to receive the right kind of care in a timely manner from the health care professionals who are included in the "network" of a health insurance plan. "Adequacy" can be evaluated based on the number of physicians, including specialists like pediatricians or cancer doctors, in the network and how far a patient must travel to receive the care they need. Network adequacy standards help ensure reasonable access to the benefits of a health insurance plan.

Over 380,000 Illinois citizens have purchased individual health insurance plans. Those insureds, along with many patients who have network plans from their employer, often face "narrow" or "tiered" networks that only include an extremely limited number of physicians and health systems. Many patients, particularly those who need specialized providers, may not have adequate access to care and must pay significantly more out-of-pocket for important healthcare services because the necessary specialists are not "in-network."

Patients often cannot make informed decisions when choosing healthcare professionals because network directories published by insurance companies do not accurately reflect the physicians or hospitals in the network.

Further, when physicians are no longer in the network, in many cases patients are not informed and are forced to suddenly find care elsewhere, even though the plan initially included physician or group. This causes a disruption to medical care that can have serious consequences for the health of patients.

HB 6562 provides several important protections for patients in Illinois to ensure that their health insurance networks will provide for the health care they need:

- Enacts standards for the ratio of physicians, including specialists, in the network to the number of insureds, and also maximum travel times for patients in a health insurance plan, all of which must be approved before the plan is sold in Illinois.
- Requires health insurers to provide notice to patients when their physician is no longer in their network and allows patients to change plans if this occurs.
- Allows patients with serious health conditions or who are pregnant to stay with their physician if the network changes.
- Ensures that network directories are accurate and kept up-to-date to help patients make informed decisions about selecting both their health insurance plans and physicians.

HB 6562 is strongly opposed by the insurance industry. However, Rep. Harris has committed to moving a bill forward with strong patient protection standards. ISMS and several other stakeholders continue to meet this summer in the hope of coming to an agreement on language for this important patient protection legislation.

Defining Medical Necessity – Senate Bill 2807 (Sen. Holmes) is an initiative of ISMS that amends the *Illinois Insurance Code* to ensure that health insurance policies do not refer to the term "medically necessary" in any publication, contract, or explanation of benefits sent to a patient when the health insurer is referring to a "coverage determination." The purpose of this legislation, which was drafted pursuant to ISMS policy, is to clarify the distinction between what is "medically necessary" and what may or may not be paid for by a health insurer under a health insurance policy. With an increasing number of Illinois citizens purchasing their own health insurance, ensuring that health insurance policies, explanations of benefits, and other publications sent out by health insurers accurately reflect the difference between "medically necessity" and "coverage determinations" helps patients better understand their rights, responsibilities, and choices under their health insurance policies. SB 2807 was assigned to the Senate Insurance Committee, but due to strong opposition by the insurance lobby, the bill was not called for a vote and was reassigned to the Senate Assignments Committee.

Limiting Insurers' Ability to Recoup Payment from Physicians – Senate Bill 2379 (Sen. Haine) amends the *Illinois Insurance Code* to prohibit insurers from using extrapolation or any other form of statistical sampling methodology to recoup payments from physicians. Instead, it provides that any request for recoupment shall be in writing and include specific information.

SB 2379 is an initiative of ISMS. Recoupments and extrapolation cause enormous financial strains on medical practices, which are often forced to spend vast amounts of staff time and financial resources (professional coders, lawyers, clerks, etc.) to ensure that health plans, treat them fairly during an audit process.

Recoupments often involve claims that are six or more years old, adding an additional burden to retrieve, at great expense, medical records from storage. Because many correctly coded claims are lumped into a specific extrapolation analysis, already financially strapped physicians may be subject to unjustified withholding of compensation for services.

Due to strong opposition from the insurance lobby, SB 2379 was not called for a vote in the Senate Insurance Committee and has been reassigned to the Senate Assignments Committee. However, Senator Haine has agreed to continue discussions on this topic.

Managed Care Step Therapy – House Bill 3549 (Rep. Fine/Sen. Morrison) establishes a medical exception process to what is commonly known as "step therapy." Step therapy is an onerous practice implemented by insurance companies to require patients to try specific drug therapies for medical conditions with the most cost-effective drugs first. HB 3549 was negotiated with the insurance industry by patient advocates and was supported by ISMS. As passed, the bill mandates approved step therapy exceptions in the follow situations:

- If the prescription drug is contraindicated;
- If the patient has evidence of failure or intolerance for a required prescription drug; or
- If the patient is stable on a drug prescribed while they were covered under a previous health insurance plan.

Approval of a medical exception request must be honored for twelve months. HB 3549 passed both chambers and was signed into law as Public Act 99-761, effective January 1, 2018.

Coverage for Contraceptives – House Bill 5576 (Rep. Nekritz/Sen. Hutchinson) mandates health insurance coverage for all contraceptive drugs, devices, and other products approved by the Food and Drug Administration (FDA). Under HB 5576, birth control prescriptions must be covered for up to 12 months at one time. Coverage without cost-sharing is guaranteed for all FDA-approved contraceptive drugs, devices, and supplies, including voluntary sterilization. The bill requires an accessible and timely waiver process to access birth control methods not covered, which ensures that health plans will respect the decisions made between health care providers and their patients.

HB 5576 was supported by ISMS and numerous other organizations while being opposed by various business and labor associations. HB 5576 passed both chambers and was signed into law as Public Act 99-672, effective January 1, 2017.

Insurance Company Provider Directories – House Bill 5621 (Rep. Ives) was filed to prohibit an insurer from removing a health care professional from its provider directory until the last day of the end date of the original contract between the insurer and the healthcare professional. ISMS supported the underlying bill as introduced.

The bill was later amended to include language prohibiting an insurer or a health care professional from terminating an agreed-upon contract earlier than the end date of the original contract terms. ISMS opposed this amendment. HB 5621 was held by the sponsor and was reassigned to the House Rules Committee.

Sensitive Health Services – House Bill 887 (Rep. Williams) is an initiative of Planned Parenthood to allow insured individuals to request confidential communications from their health insurance plan in order to maintain privacy for certain sensitive health services. Specifically, the bill allows patients to preserve the confidentiality of "sensitive health services", which includes prevention, screening, consultation, examination, treatment, or follow-up related to:

- Reproductive health, including family planning, maternity, abortion, fertility, transgender-related care, and HIV/AIDS and sexually transmitted infection services;
- Substance abuse;
- Mental health; and/or
- Domestic violence, sexual violence, and other interpersonal violence services.

HB 887 allows an insured individual to have all communications kept confidential if disclosure could endanger the covered individual. The bill allows an insured individual to submit a standard form created by the Department of Insurance to make a confidential communications request of the insurance plan. The request allows the insured individual to receive communications of protected health information by alternative means or at alternative locations.

The insurance plan shall comply with any confidential communications request beginning either seven calendar days following receipt of an electronic or telephonic request or 14 calendar days following receipt of the request by U.S. mail. The confidential communications request remains valid until the individual submits a revocation or submits a new request to the health insurance provider.

ISMS had concerns about the initial provisions of HB 887 and was able to add an amendment to clarify that the provision of the bill requiring the confidential communications request to be made available to insureds applied to health insurance providers, as opposed to health care professionals.

HB 887, with ISMS' amendment, cleared the House Human Services Committee on a partisan roll call due to continued opposition from the insurance industry. It was not called for a vote in the House and was reassigned to the House Rules Committee.

MEDICAID

Illinois' Medicaid program has operated without an enacted budget for Fiscal Year 2016. Last year, two federal court orders required the Illinois Department of Healthcare and Family Services (DHFS) and Comptroller Leslie Munger to continue to pay Medicaid claims in the absence of a state budget.

Various state laws and rulemakings continue to push Medicaid recipients into managed care. Physicians have faced many challenges with this move/expansion of managed care for Medicaid recipients. The continually changing landscape of physicians, hospitals, and insurance companies that operate via different guidelines has been a challenge for all stakeholders.

ISMS worked throughout the session to advocate for legislation that will promote greater transparency for those who provide and receive Medicaid services and recipients. This will help ensure that physicians can focus on providing quality, affordable healthcare rather than being bogged down in a bureaucratic morass.

Medicaid Transparency **–** Senate Bill 3080 (Sen. Trotter/Rep. Greg Harris) is an initiative that contains provisions for transparency in Medicaid managed care. The bill requires each managed care organization to confirm receipt of information submitted on provider network updates; prohibits canceling claims for medically necessary services if eligibility information is later found to be inaccurate; requires the Illinois Department of Healthcare and Family Services (DHFS) to establish rules addressing payment resolutions; and mandates DHFS to publish quarterly reports on each MCO's operational performance.

ISMS supported this bill and is urging the governor to sign it into law. (Rep. Greg Harris filed HB 5671, a similar bill, but he opted not to advance HB 5671 and instead supported SB 3080 in the House.) SB 3080 passed both chambers and was signed into law as Public Act 99-751, effective August 5, 2016.

Medicaid Provider Directories **–** House Bill 6213 (Rep. Ammons/Sen. Biss) lists what information should be provided and updated in a Medicaid health plan provider directory and formulary, and requires DHFS to regularly monitor managed care entities for compliance. HB 6213 provides for the following:

- Specific requirements on directory availability, format, provider information, and federal regulation compliance for each Medicaid managed care entity contracted by DHFS;
- Requiring DHFS to monitor the MCOs for compliance with provisions of the law;
- Requiring a Medicaid managed care entity that receives a report that certain formulary information is inaccurate to investigate the report and correct any inaccurate information displayed in the electronic formulary;
- Providing that if a Medicaid enrollee calls the client enrollment services broker with questions regarding formularies, the client enrollment services broker shall offer a brief description of what a formulary is and shall refer the Medicaid enrollee to the appropriate Medicaid managed care entity regarding his or her questions about the specific entity's formulary;
- Explaining how a Medicaid enrollee can file a complaint or grievance; and
- Requiring the print and online versions of the consumer quality comparison tool to use a quality rating system developed by DHFS to reflect a MCOs' individual plan performance. This comparison tool must be available for consumer use no later than January 1, 2018.

HB 6213 passed with ISMS support and was signed into law as Public Act 99-725, effective August 5, 2016.

Medicaid Vendor Fraud **–** House Bill 4684 (Rep. Bellock) would require DHFS' Inspector General to report all suspected cases of fraud involving a vendor, a medical professional, or any

other health care agent authorized to participate in the medical assistance program to the State's Attorney of the county where the alleged fraud occurred or, when appropriate, to the Office of the Attorney General or to the United States Attorney's Office.

HB 4684 did not advance this session after ISMS expressed concern about the lack of due process afforded to physicians. Representative Bellock intends to reintroduce this bill next session.

Health Insurance Assessment to Fund Medicaid – House Bill 5750 (Rep. Greg Harris) imposes a new assessment of one percent on claims paid by a health insurance carrier or third-party administrator. All money collected via the new assessment would be deposited into the Healthcare Provider Relief Fund to increase funding for Medicaid services and would be eligible for a federal match once the Healthcare Provider Relief Fund makes payments on a Medicaid claim. ISMS raised concerns about the proposal's potential to increase patient co-pays. HB 5750 is an initiative of the Association of Safety-Net Community Hospitals. Representative Harris conducted a subject matter hearing on HB 5750 in the House Human Services Appropriations Committee, but the bill was never called for a vote this session. Discussion at the subject matter hearing focused on the need to include this proposal in the discussions regarding a potential comprehensive budget agreement; however, numerous business and insurance entities opposed this bill and oppose further discussions on the matter.

MEDICAL LIABILITY

***Repeal of the* Medical Studies Act** – Senate Bill 2744 (Sen. Harmon), an initiative of the Illinois Trial Lawyers Association (ITLA), would remove the confidentiality of hospital peer review meetings by repealing the *Medical Studies Act*, thus making the meetings and any related documents discoverable in court.

ISMS strongly opposed this legislation, which was not called for a vote by the Senate Judiciary Committee.

Repeal of Jury Size Changes – Several bills, including an initiative of ISMS, were filed this session to 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. These bills were House Bill 4473 (Rep. Sandack), House Bill 4557 (Rep. Bennett), and Senate Bill 2395 (Sen. Clayborne). Because of strong opposition from ITLA, these bills remain in the House Rules Committee and Senate Assignments Committee.

Since the enactment of *Public Act 98-1132*, a Cook county circuit court has ruled this provision to be unconstitutional based on a reading that the 1970 Illinois Constitution preserved the right to a 12-person jury trial and that any law that proscribed that right would on its face violate the Constitution. This case was appealed to the Illinois Supreme Court. ISMS continues to monitor the status of this litigation.

Medical Liability Reform **–** Senate Bill 2382 (Sen. Barickman) is an initiative of ISMS that includes several changes related to medical liability, including restoration of 12-person juries. SB 2382 also:

- Prohibits payer policies and criteria under federal law from being used to establish a legal basis for negligence or breach of the standard of care in medical liability lawsuits. These provisions are adopted from AMA model legislation that was enacted in Georgia, and is known in that state as the "Provider Shield Act." The goal of this language is to protect Illinois physicians from medical liability claims that are not related to the practice of medicine and are instead tied with administrative compliance with federal laws, such as the *Affordable Care Act*.

- Addresses a practice commonly known as "phantom damages." This situation arises in medical liability cases when a plaintiff submits bills setting forth what has been charged for their medical care, as opposed to the amount that is actually reimbursed. After medical bills have been adjusted, the reimbursed rate will be lower than what was initially charged. This legislation would prevent the windfall of "phantom damages" in medical liability cases.

- Enforces the required submission of a "certificate of merit" for medical liability cases. The certificate of merit is aimed at preventing unmeritorious medical liability claims from being filed by requiring plaintiffs to obtain an affidavit from a medical professional who has reviewed the medical record and determines that there is a reasonable and meritorious cause for filing a medical liability lawsuit. Current law allows plaintiffs an option to avoid the filing of the certificate of merit, therefore defeating its intended purpose.

- Reduces post-judgment interest rates. Current Illinois law requires that nine percent interest be paid on any judgments from the date of the judgment until it is paid, with a six percent rate for governmental entities. This legislation would reduce the statutory post-judgment interest rate to the rate on the 10-year U.S. Treasury note most recently issued prior to the date of judgment for civil matters. For units of local government, the rate would be one percent. The tie-in to the 10-year U.S. Treasury note would be capped at six percent with a floor of three percent. Additionally, given the federal requirement to provide for Medicare set-asides in these judgments or awards, the post-judgment interest rate would be required to be computed after notification from Medicare whether or not Medicare has a lien against the judgment and no interest would be paid on the Medicare set-aside portion.

- Allows health care professionals to say "I'm sorry." Health care professionals need protection from the misuse of an apology in the context of litigation. This legislation would allow for a physician and other health care professionals to express any grief, apology, or otherwise say "I'm sorry" for the outcome of services without that statement being used against them in the future.

SB 2382 was assigned to the Senate Judiciary Committee, but was not called for a vote due to strong ITLA opposition.

Credentialing – House Bill 4986 (Rep. Sandack) is an initiative of ISMS that amends the *Health Care Professional Credentials Data Collection Act* to provide that any health care professionals' credentials data collected or obtained by a health care entity, health care plan, or hospital shall be privileged information.

HB 4986 was drafted in response the Illinois Supreme Court's decision in *Klaine v. Southern Illinois Hospital Services*. The case centers on whether confidential and privileged information collected through the medical staff credentialing process may be discoverable in a lawsuit. The court's opinion wrongly ignores confidentiality protections established through law.

Due to strong opposition from ITLA, HB 4986 was never called in the House Judiciary – Civil Law Committee.

MEDICAL PRACTICE ACT

***Ten Year Extension of the* Medical Practice Act** – Senate Bill 814 (Sen. Martinez) and House Bill 4481 (Rep. Zalewski), both ISMS initiatives, would extend the *Illinois Medical Practice Act* by 10 years from December 31, 2016, to December 31, 2026. These bills were not called for a vote during this spring session, as other bills extending the sunset provision of the *Medical Practice Act* advanced.

Ten Year Extension of the* Medical Practice Act and *Removal of Paper Notification on Renewal – Senate Bill 2537 (Sen. Martinez) is an initiative of the Illinois Department of Financial and Professional Regulation (IDFPR). The bill extends the *Illinois Medical Practice Act* sunset for 10 years. As introduced, the bill also removes the requirement that IDFPR mail to each licensed physician a renewal notice at least 60 days in advance of the expiration of his or her license.

Due to budgetary constraints, IDFPR is ceasing all paper mailings reminding licensed professionals of their upcoming renewals and, instead, replacing these mailed notifications with electronic reminders. While IDFPR was able to cease such mailings for many licensed professionals, the *Illinois Medical Practice Act* specifically states that such mailing shall occur 60 days in advance of the expiration of a physician's license. As such, a statutory change is required in order for IDPFR to cease renewal reminder mailings to physicians licensed in Illinois.

IDFPR asserted that the renewal notices can be sent through electronic means, claiming that it has been successful with its other regulated professionals in transitioning away from paper-based notices. ISMS expressed concern to IDFPR about ending the renewal mailing and IDFPR's ability to gather accurate email addresses for electronic reminders and communicate to physicians about the change.

Working with IDFPR, ISMS was able to negotiate an amendment to SB 2537 which still requires that IDPFR must provide a renewal notice through electronic means to each licensee under the Act, at least 60 days in advance of the expiration date of his or her license.

SB 2537 passed the Senate, and remains in the House Rules Committee.

MEDICAL RECORDS, PRACTICE AND REGULATION

Personal Information Protection – House Bill 1260 (Rep. Williams/Sen. Biss) contains provisions that are almost identical to 2015's Senate Bill 1833, which was not acted upon after an amendatory veto by the governor last year.

HB 1260 amends the *Personal Information Protection Act* and expands the scope of information 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.

HB 1260 includes the changes secured by ISMS last year in a similar bill, but also incorporates the changes of the governor's amendatory veto. It passed in both chambers and was signed into law as *Public Act 99-0503*. The bill takes effect January 1, 2017.

Repeal of Health Facilities Planning Board – HB 4982 (Rep. David Harris) was introduced to repeal the *Illinois Health Facilities Planning Act* and abolish the Health Facilities and Services Review Board. ISMS supported the bill. HB 4982 remains in the House Rules Committee and was not assigned to a substantive committee.

FOIA and Wrongful Death – House Bill 6083 (Rep. Bryant/Sen. Radogno) arose from the tragic case of Molly Jones who died of a gunshot wound in her boyfriend's apartment, yet the cause of her death was found to be undetermined. During a lengthy investigation by local law enforcement, Molly's father made multiple attempts to obtain records regarding the investigation, but was only partially successful. He alleges that the Carbondale Police Department repeatedly violated the *Freedom of Information Act* (FOIA) making it impossible to file a wrongful death action.

As introduced in the House, HB 6083 amended both FOIA and the *Wrongful Death Act* (WDA). Due to single-subject concerns, Rep. Bryant separated the issues into two bills. House Amendment #2 to HB 6083 removed the FOIA provisions and instead amended the WDA to allow an action to be brought within five years after the date of the death if the death is the result of violent intentional conduct, or within one year after the final disposition of the criminal case if the defendant is charged with (i) first degree murder, (ii) intentional homicide of an unborn child, (iii) second degree murder, (iv) voluntary manslaughter of an unborn child, (v) involuntary manslaughter or reckless homicide, (vi) involuntary manslaughter or reckless homicide of an unborn child, or (vii) drug-induced homicide.

Questions and concerns were raised suggesting that the increase in the statute of limitations in the WDA is broad and thus could allow a case to be filed long after a wrongful death occurred.

ISMS successfully amended HB 6083 to address these concerns. ISMS supported HB 6083 as amended.

After passing the House by a vote of 113-0-0, Senator Radogno filed Senate Amendment #1 to make the following changes to HB 6083:

- Provide that an action may be brought against an individual who committed a violent intentional act that caused death within five years after the date of the death (instead of "within five years after the date of the death if the death is the result of violent intentional conduct") or against a criminal defendant within one year after the final disposition of the criminal case (instead of "within one year after the final disposition of the criminal case") if the criminal defendant (instead of "defendant") is charged with one of the enumerated charges;
- Provide that the new provisions extend the statute of limitations only against the individual who allegedly committed a violent intentional act or was the defendant charged with one of the specified crimes;
- Provide that the new provisions do not extend the statute of limitations against any other person or entity; and
- Provide that the changes apply to causes of action arising on or after the effective date of the amendatory Act.

ISMS supported HB 6083 with these changes. As amended in the Senate, HB 6083 passed unanimously and the House concurred with the Senate amendments unanimously. The bill was signed into law as Public Act 99-587, effective January 1, 2017.

FOIA Exemption for Cook County Hospital **–** Senate Bill 384 (Sen. Munoz/Rep. Simms) amends the *Open Meetings Act* to provide that a public body may close its meeting to the public in order to discuss matters protected under the federal *Patient Safety and Quality Improvement Act of 2005* or matters related to the *Medical Studies Act*. SB 384 is an initiative of Cook County Hospital, which was unable to convene its physician peer review committee because it is a public body. Pursuant to the provisions of the *Open Meetings Act*, public bodies may only close their meetings to the public if there is a specific exemption set forth in the *Open Meetings Act.* The Illinois Trial Lawyers Association opposed this amendment because of its reference to the *Medical Studies Act*. An amendment was then filed and adopted which removes the reference to the *Medical Studies Act* and also specifies that the provision applies to a hospital or other institution providing medical care that is operated by the public body.

ISMS supported both the original bill and the amendment. Senate Bill 384 passed both houses unanimously and was signed into law as Public Act 99-687, effective January 1, 2017.

Health Care Right of Conscience – Senate Bill 1564 (Sen. Biss/Rep. Gabel) was introduced during the previous session. As originally introduced, it 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. The ACLU drafted this legislation in response to reports of

women alleging that they were denied critical medical care because of conscience-based objections from medical professionals and facilities.

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

SB 1564 would have required health care professionals and personnel to declare in writing what treatment they will not perform because of their conscientious convictions.

- Prior written policies are not possible for two reasons. First, the conscience objection of a health care professional 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 with 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 would 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 would have required 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 Congress 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 every physician has 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 ensuring patient access to appropriate care and information.

ISMS, along with the Illinois Catholic Health Association, is neutral on SB 1564 as amended. It passed the House by a vote of 61-54-0 and the Senate by 34-19-1. It was signed into law as Public Act 99-690, effective January 1, 2017.

Reporting for Emergency Room Physicians **–** Senate Bill 2205 (Sen. Sandoval) would amend the *Illinois Medical Practice Act* to require every emergency room physician to report to the Secretary of State certain medical conditions of a patient that are likely to cause loss of consciousness or any loss of ability to safely operate a motor vehicle within 10 days of the emergency room physician becoming aware of the condition. The bill also provides that emergency room physicians who fail to make the report shall be guilty of a Class C misdemeanor.

Senate Bill 2205 was introduced in response to a constituent request involving a driver, who had been told not to drive by several physicians, but still did so, and passed out at the wheel, killing a young woman. While the medical community remains concerned about the safety of drivers in Illinois, both ISMS and the Illinois College of Emergency Physicians (ICEP) opposed SB 2205, as it would potentially require the reporting of over one million patients by emergency physicians to the Secretary of State. A subject matter hearing was held on SB 2205. Physicians from ICEP testified against the bill. The bill did not advance from the Senate Criminal Law Committee.

Denial of Professional License Because of County Debts – Senate Bill 2925 (Sen. Hutchinson) would authorize the director of any department that issues an occupational or professional

license to deny or withhold renewal of such license to a person or business that has failed to pay a debt owed to a county of 3,000,000 or more inhabitants (which only applies to Cook County). The bill also authorizes a director of a department that issues an occupational or professional license to enter into an intergovernmental agreement with the county to establish responsibilities, duties, and procedures relating to the administration of the license denial.

SB 2925 is an initiative of Cook County Board President Toni Preckwinkle in order to increase the collection of debts owed to the County. ISMS expressed its concerns that this provision would be used to deny licenses issued to physicians. ISMS was able to add an amendment to this bill providing that it shall not apply to the Department of Financial and Professional Regulation with respect to issuing or renewing a license.

SB 2925 was not called for a vote in the Senate Licensed Activities and Pensions Committee and was referred back to the Senate Assignments Committee.

Mandatory Reporting of Child Abuse – Senate Bill 3168 (Sen. Julie Morrison) would amend the *Abused and Neglected Child Reporting Act* to expand the current mandate for specific licensed professionals, including physicians, to report any child abuse they observe. Under current law, these licensed professionals are only mandated to report abuse observed in their professional or official capacity. This legislation was inspired by a case in Lake County that involved a teacher who had an inappropriate relationship with a student. The teacher's colleagues, who did not report the relationship to the authorities, claimed that they did not know about the abuse in their official capacity, as the student was no longer a student at their school. As such, they claimed that they were not "mandated reporters" under the law.

ISMS, along with several other organizations representing licensed professionals who are mandated reporters under the *Abused and Neglected Child Reporting Act*, expressed concern about the potential unintended consequences of this legislation, as the bill would impose a broad mandate to report child abuse even if the victim of the child abuse was not known to the mandated reporter. The sponsor agreed to hold the bill for further study to specifically address the situation that occurred in Lake County.

Veteran Intake Forms – Senate Bill 2514 (Sen. Hastings) would create the *Patient Intake Form Military Veteran Inquiry Act.* The Act would require physicians and health care professionals to include on each patient intake form a question asking whether the patient or the patient's spouse has ever served in the military, for purposes of tailoring treatment options. "Health care provider" is defined in the Act as including physicians in a public or private facility that provides preventative, diagnostic, therapeutic convalescent rehabilitation, mental health or intellectual disability services, including general or specific hospitals, skilled nursing homes, extended care facilities, intermediate care facilities and mental health centers. SB 2514 is an initiative of the Northern Illinois Veterans' Hospice Partnership, which is a group of hospice providers who are examining ways to improve the medical care provided to veterans.

ISMS opposed SB 2514, as the bill would create a mandate on physicians and hospitals. ISMS successfully convinced the sponsor to hold the bill in the State Government and Veterans' Affairs Committee.

PUBLIC HEALTH

Food Allergies in Restaurants – ISMS policy supports the enactment of legislation modeled after the *Massachusetts Food Allergy Awareness Act* to make restaurants and food service establishments safer for those with allergies by educating food service employees and customers about the health risks of allergies. While there have been some efforts in Illinois to enact legislation regarding the notification of food allergies, none have been signed into law. Many restaurants in Illinois have already taken steps to protect employees and customers from exposure to food allergies.

As such, ISMS supported the introduction of Senate Joint Resolution 47 (Sen. Silverstein) urging further study of the issue, including consideration of the provisions of the *Massachusetts Food Allergy Awareness Act* as a model for legislation here in Illinois. ISMS hopes this important measure will be called for a vote this year.

Raising the Smoking Age – Senate Bill 3011 (Sen. Mulroe/Rep. Feigenholtz) is an important public health initiative that would raise the smoking age in Illinois to 21. The bill requires anyone purchasing or possessing tobacco products and electronic cigarettes to be 21 years of age, up from the current age of 18. Anyone using a false identification card to obtain tobacco products would be guilty of a Class B misdemeanor. ISMS supports this legislation.

SB 3011 passed the Senate after multiple attempts, by a vote of 32-22-2; it is currently in the House awaiting action.

Epi-Pens – House Bill 4462 (Rep. Mussman/Sen Nybo) amends the *State Police Act* and the *Illinois Police Training Act* creating the Annie LeGere Law. The bill provides that the Department of State Police and the Illinois Law Enforcement Training Standards Board may conduct or approve training programs for officers to recognize and respond to anaphylaxis, including the administration of an epinephrine auto-injector. This legislation also provides that the Department of State Police or a local governmental agency may authorize officers to carry, administer, or assist in the administration of epinephrine auto-injectors if they have completed the required training, and must provide for policies on the use of epinephrine auto-injectors. Finally, this legislation makes several changes to the School Code in the existing portions addressing the self-administration of asthma medication and the administration of epinephrine auto-injectors in schools. The bill expands the administration of epi-pens to include a school bus.

This legislation was inspired by Annie LeGere, who passed away in 2015 as a result of an anaphylactic shock due to an unknown allergic reaction. A foundation has been created in her memory to help advance training for law enforcement to administer epinephrine. ISMS supported HB 4462, which passed both chambers unanimously and was signed into law as Public Act 99-0711.

Hearing Screening for Newborns Act – House Bill 4935 (Rep. Winger/Sen. Radogno) requires medical care facilities to conduct bilateral hearing screenings of each newborn infant unless medical reasons prevent the screening from being completed before the newborn is transported to another facility. The bill also outlines provisions for newborn hearing screening requirements if the child is born outside of a medical care facility. HB 4715 specifically details follow-up provisions to newborn hearing screening to ensure better coordination and care with the Illinois Department of Public Health (IDPH) and health care professionals. Except in cases of willful or wanton misconduct, no health care professional, hospital, or medical facility acting in compliance shall be civilly or criminally liable for complying with the requirements of the Act.

The impetus for this legislation was a constituent of State Representative Christine Winger, who had expressed concerns that newborns are not receiving adequate follow-up care when they do not pass a newborn hearing screening test. The constituent believes there is a lack of coordination between IDPH and health care professionals on any follow-up that is occurring after the initial hearing screening test.

ISMS remained neutral on the bill. HB 4935 was signed into law as Public Act 99-0834.

Disposal of Medicine – House Bill 5781 (Rep. Bellock/Sen. Connelly) is an initiative of the DuPage County Coroner and ISMS member Dr. Richard Jorgensen to ensure that coroners and law enforcement officials are authorized to dispose of dangerous medications following a death. A 2014 federal Drug Enforcement Administration (DEA) ruling suggests that state authorization is necessary for officials and medical professionals to directly take possession of such substances for the purpose of disposal.

HB 5781 codifies the authority of police officers, medical examiners, and coroners to dispose of unused medications found at the scene of a death following consultation with the investigating law enforcement agency. Such disposal will be considered in accordance with any state or federally approved medication take-back program or location. The bill does not apply to drugs under the Food and Drug Administration Risk Evaluation and Mitigation (REM) Strategy, requiring separate protocols.

ISMS supported HB 5781. The bill was amended to require that medications collected as evidence in a criminal investigation must be photographed and documented and included within the police, coroner, or medical examiner report. If an autopsy is performed, no medication seized shall be disposed of until the toxicology report is received by the entity that requested it. Another amendment was filed to ensure that the provisions of the bill are consistent with the procedures of a police investigation or a coroner's death investigation. Having passed both chambers, HB 5781 was signed into law as Public Act 99-648, effective January 1, 2017.

Sex Change on Birth Certificate – House Bill 6073 (Rep. Greg Harris) amends the *Vital Records Act* to allow individuals who have undergone gender transition treatment to change their sex on their birth certificates. Current law requires that an individual must have gender reassignment surgery in order to qualify for a change of sex on the birth certificate. HB 6073 is an initiative of the ACLU and reflects a growing change in attitudes toward transition to different genders, which may be accomplished by an individual without surgery.

ISMS was opposed to the bill as introduced because of concerns of the definition of "licensed medical or mental health professional." ISMS was able to work with the sponsor and the proponents of the bill to create improved definitions of "licensed health care professional" and "licensed mental health professional."

HB 6073 passed out of the House Human Services Committee. It remains in the House awaiting further floor action.

Autism Awareness – Senate Bill 345 (Sen. Harmon/Rep. Hoffman) as originally introduced, amended the *Illinois Medical Practice Act* and included several mandates on physicians related to the care and treatment of persons with autism. Amendments to the bill also set forth a specifically defined standard for medical liability related to immune gamma globulin therapy and the treatment of those patients with primary immunodeficiency. ISMS was able to work with the sponsor to remove these objectionable provisions from the bill.

The bill as amended creates the *Autism and Co-Occurring Medical Conditions Awareness Act.* SB 345 sets forth legislative findings about autism and encourages medical professionals to consider co-occurring conditions that may present with a diagnosis of autism. The bill also amends the Illinois Insurance Code to provide that an insurance company shall not delay, discontinue, or interrupt immune gamma globulin therapy for persons who are diagnosed with a primary immunodeficiency when immune gamma globulin therapy has been prescribed by a physician, if provided as a covered benefit under the plan

SB 345 has passed both the House and the Senate and was signed into law as Public Act 99-788, effective August 12, 2016.

Changes to the State Board of Health – Senate Bill 2416 (Sen. Haine/Rep. Flowers) and House Bill 6082 (Rep. Demmer) as introduced would have abolished the State Board of Health (SBH).

The SBH is currently composed of 17 members: five physicians, a dentist, an environmental health practitioner, a local public health administrator, a local board of health member, a registered nurse, a veterinarian, a public health academician, a health care industry representative, a representative of the business community, a representative of the non-profit public interest community and two citizens at large. The SBH's primary function is to advise the Director of the Illinois Department of Public Health (IDPH) regarding all aspects of health care delivery in Illinois. IDPH is required to submit agency rulemakings to the SBH for review prior to filing them with the State.

ISMS and other public health advocates opposed the elimination of this important advisory board. These bills were initiatives of IDPH. According to IDPH, the SBH presented significant delays to the rulemaking process, as current law requires the SBH to review all rules 90 days before IDPH submits rules to the Joint Committee on Administrative Rules. In addition, IDPH claimed that existing advisory boards provided the input necessary to promulgate specific rules and that the SBH members received a per diem for their services that was not comparable to service on other State advisory bodies.

Due to ISMS' opposition, SB 2416 and HB 6082 were not called for a vote. ISMS was successful in amending the bill to provide the SBH with 30 instead of 90 days to review to IDPH proposed rules. Further, the amendment also reduced the budget burden on IDPH by removing the per diem and expenses for SBH members. With that amendment, SB 2416 passed the Senate unanimously but remains in the House Rules Committee.