

# Illinois State Medical Society

*2018 Update on ISMS Legislative Activity*

*In the*

*Illinois General Assembly*



Illinois  
State  
Medical  
Society

*August 2018*

Illinois State Medical Society  
20 N. Michigan Ave., Ste. 700  
Chicago, IL 60602  
[www.isms.org](http://www.isms.org)  
@ISMSLegislative  
800-782-4767

Dear Colleague,

The Illinois General Assembly concluded its business on May 31<sup>st</sup> and was successful in passing a bipartisan, bicameral state budget that Governor Rauner has already signed into law.

ISMS continues to advocate for the interests of physicians and patients in an ever-changing political landscape. The following pages will provide an in-depth look at ISMS' efforts to protect you, your practice and your patients. ISMS achieved a number of significant legislative victories, including:

- Establishing important protections for physicians participating in Illinois' workers' compensation system;
- Ensuring that small physician-owned facilities can file health care liens;
- Ensuring that PMP data is protected and used only for clinical purposes;
- Protecting public health by increasing the smoking age to 21;
- Increasing insurance coverage for mental health and substance abuse services; and
- Ensuring continuity of care for patients in Illinois' Medicaid managed care program.

ISMS is also active in opposing legislation that would:

- Impose arbitrary limits on opioid prescriptions;
- Inappropriately expand other health care professionals' scope of practice;
- Make hydrocodone illegal in Illinois;
- Prevent physicians from filing health care liens; and
- Place other onerous mandates on physicians.

**I encourage 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 the Board of Trustees, I would like to thank every physician member who makes ISMS' efforts possible.

Sincerely,

Katherine M. Tynus, MD  
President, Illinois State Medical Society

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## **FISCAL YEAR 2019 BUDGET**

The General Assembly passed a full-year budget in HB 109 (Rep. Greg Harris/Sen. John Cullerton) that was signed into law by Governor Rauner as Public Act 100-586. This was the first time during his administration that the governor signed a budget with funding for an entire fiscal year (which begins on July 1, 2018). Also for the first time in several years, the legislature is not likely to return to Springfield until the fall Veto Session after the November election.

Governor Rauner and the four legislative leaders all publicly commented that the enacted budget is a bipartisan, bicameral, balanced budget framework that includes limited pension reform, cost saving measures, no tax increases and prioritized spending. This framework does not include several of the reforms included in the Governor's FY19 introduced budget, including changes to the State Employee Group Insurance Plan or any pension and healthcare cost shift.

The FY19 state budget totals \$38.5 billion in general revenue funds (GRF). GRF funding highlights include:

- \$20.4 billion spent on pension payments, state employee health insurance, Medicaid benefits, and debt payment;
- Restoring the proposed 4% across-the-board cut in Medicaid rates that the governor proposed in his annual budget address;
- \$5.9 billion for human services;
- \$1.8 billion for higher education;
- \$1.7 billion for public safety;
- \$1.2 billion for government services; and
- \$8.4 billion for elementary and secondary education.

Amid all the positive news regarding the budget, one important factor still remains unresolved - the payment of almost \$9 billion in unpaid bills incurred in previous fiscal years. A large portion of this backlog is related to various payments owed to physicians and other health care professionals. This important issue must be resolved before our political leaders can truly say that Illinois' budget upholds the commitment made to thousands of health care professionals and other service providers in Illinois.

### **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 in 2016, physicians and health care facilities were – and continue to be – owed almost \$5 billion in payments under Illinois' State Employee Group Insurance Program (SEGIP). This shortfall does not include the millions of dollars those physicians and hospitals are also owed by Medicaid or in reimbursement for health care services associated with workers' compensation. SEGIP is funded with \$2.026 billion in state GRF in FY2019.

ISMS consistently reminded key policy-makers that if the delay in reimbursing physicians for the care they provide to state employees and their dependents was not addressed, the failure would 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 lobbying efforts on fully funding the program while advocating for release of any available funds to pay physicians and hospitals that accumulated during the previous budget impasse.

### **Remaining Backlog**

Even though budgets have been enacted for FY18-19, there still remains a backlog of approximately \$1.5 billion for SEGIP claims from FY16-17 that are not funded in this year's budget. While a fully funded FY19 budget that pays for present liabilities is a positive step, we are committed to making physicians and hospitals whole.

### **MEDICAID**

Various state laws and rules 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 under 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. This will help ensure that physicians can focus on providing quality, affordable healthcare rather than being bogged down in a bureaucratic morass.

Enrollment in the Illinois Medicaid managed care program reached 2,249,704 in March 2018, an increase of 18 percent since January 1, 2018, when 1.9 million Medicaid beneficiaries were transitioned to managed care. The statewide expansion of Medicaid managed care became effective April 1. There were 2,227,446 members enrolled as of May 1, 2018. Meridian Health Plan and BCBS of Illinois increased their rolls during that period, but the other five participating plans lost members.

Throughout the legislative session Medicaid discussions revolved around the following topics:

- Medicaid financing with the passage of a revised Hospital Assessment Program;
- Pursuit of federal approval of a Section 1115 waiver that would provide alternative funding options for behavioral health care;
- Expansion and rollout of Governor Rauner and Department of Healthcare and Family Services (HFS) Director Felicia Norwood's managed care expansion and restructuring initiative; and
- Focus on Medicaid provider rates.

## **Hospital Assessment Program**

After months of negotiations, a new hospital assessment formula for \$3.5 billion in Medicaid funding was passed by the General Assembly and signed into law by Governor Rauner earlier this spring as Public Act 100-0581. The new formula was recently approved by the Centers for Medicare & Medicaid Services (CMS).

The new formula, including \$360 million in new funding, sunsets in two years. About 58 percent of that new funding is slated for safety net and rural critical access hospitals. A \$263 million transformation fund will help financially-challenged hospitals adapt to the needs in their communities. Illinois' Congressional delegation sent a letter to CMS to urge the agency to renew the updated version of the hospital assessment program for Medicaid funds.

Under the new formula, 55 hospitals throughout Illinois will receive \$104 million per year through 2020 for additional GME slots.

## **Federal 1115 Waiver and Implementation**

CMS approved Illinois' Section 1115 Waiver proposal to spend \$2 billion on the Better Care Illinois Behavioral Health Initiative. The waiver allows the state to spend a portion of its Medicaid dollars differently to increase the efficiency and quality of care, beginning July 1, 2018. Better Care Illinois consists of 10 pilot programs featuring newly created delivery systems to improve care, increase the value of patient experiences, and produce better outcomes. More than 750,000 Medicaid beneficiaries, or 25 percent of the Illinois Medicaid population, have behavioral health conditions. The related state plan amendments are: Integrated physical and behavioral health homes (pending approval); crisis stabilization and mobile crisis response; medication-assisted treatment (MAT); and Uniform Child and Adolescent Needs and Strengths (CANS), and Adult Needs and Strengths Assessment (ANSA).

Ten pilots will be rolled out under the 1115 waiver. These are initiatives to test specific issues for defined populations, and services will be provided by "eligible providers." The ten pilots include:

- 1) Residential and Inpatient Treatment for Individuals with Substance Use Disorder (SUD);
- 2) Clinically Managed OUD/SUD Withdrawal Management Services;
- 3) Substance Abuse Case Management;
- 4) Peer Support Services to prevent relapse and promote recovery;
- 5) Crisis Intervention Services to support stabilization and rapid recovery of individuals experiencing a psychiatric crisis;
- 6) Evidence-based Home Services pilot for postpartum-period home visit services for infants born with withdrawal symptoms;
- 7) Assistance in Community Integration Services to assist in community integration, including tenancy support assistance;
- 8) Supported Employment Services to provide job coaching, transportation, and employment sustaining assistance;
- 9) In-home Services focused on intervention to stabilize behavior that may lead to crisis or result in hospitalization; and

10) Respite Services to provide a set of time-limited services that bring families scheduled relief to prevent stressful situations or escalation in the home.

With approval of the state's Section 1115 Waiver, HFS is now working on implementation of the pilot programs. The agency will begin implementing integrated health homes through a separate state plan amendment in October. The pilot programs will be part of the Medicaid managed care system.

Integrated health homes will be focused on coordination of care spanning physical health, behavioral health, and social needs in four tiers: Tier A for those with high needs in all categories; Tier B for those with high behavioral and low to moderate physical needs; Tier C for those with high physical needs and lower behavioral needs; and Tier D with low needs. Tier a providers will need to accept members from all tiers.

### **Managed Care Expansion and Restructuring Initiative**

On January 1, 2018, Governor Rauner and HFS Director Felicia Norwood's Medicaid Expansion and Restructuring Initiative took effect with the hopes of streamlining the number of managed care organizations (MCOs) that provide medical care to patients statewide. The new contracts lay out guidelines for the five statewide plans (Blue Cross/Blue Shield of Illinois, Illinicare, Harmony, Meridian, and Molina) and the two that operate solely in Cook County (County Care and NextLevel).

Statewide enrollment in MCOs as of April 2018 was 2,249,704, including all plans, all categories of patients, and all counties. Cook County accounts for 1,078,871 covered lives. HFS suggests that when it is all complete and presuming the total enrollment capturing the DCFS youth and special needs and the waiver populations, enrollment in managed care will top 80 percent.

The goal of this new initiative is to change how Medicaid services are delivered through the managed care program. Director Norwood indicated that the state has consistently received feedback that the previous managed care construct is overly complex and places unnecessary burdens on beneficiaries and providers who need to navigate the system. HFS hopes that creating a more transparent structure with clearer guidelines will make the system more manageable for people in need of care and for the caregivers who provide these services.

The implementation of this new initiative was met with skepticism from both Democratic and Republican legislators. Both expressed concern about the cost: almost \$9 billion in contracts that were awarded outside of the normal state procurement process. These changes were scrutinized in depth during various legislative committee hearings that resulted in the filing of a number of bills and resolutions attempting to bring more transparency to the process (detailed below). Despite the session concluding with the passage of a budget, there is no clear resolve or direction regarding the long-term status of the state's Medicaid program. One of ISMS' main goals during the restructuring was the development of one single baseline formulary for all the MCOs.

The implementation of this important initiative was delayed by HFS until July 1, 2018; however, ISMS will continue to monitor the implementation of this initiative very closely.

***Managed Care Oversight Task Force Created*** – House Resolution 850, by Representative Mary Flowers, creates the Legislative Medicaid Managed Care Oversight Task Force to monitor how Illinois manages a new form of health care delivery system based on managed care system. ISMS did not take a position on the resolution, which was adopted by the Illinois House.

***Allowing Medicaid Patients to Stay with Their Physician*** – House Bill 4383 (Rep. Feigenholtz/Sen. Steans) would give Medicaid managed care enrollees the option to stay with their primary care physician if the contract between their physician and health plan is terminated. ISMS supported HB 4383, which passed both houses with overwhelming support, was signed by the governor as Public Act 100-0950.

***Drug Formularies*** – HB 4096 (Rep. Greg Harris/Sen. Steans) codifies HFS' preferred drug list as the floor for Medicaid managed care organizations' formulary for preferred drugs, but prohibits a single formulary for Medicaid. HFS is attempting to require a single formulary for Medicaid clients within any new contract with a managed care organization, but has postponed implementation until January 2019. ISMS did not take a position on HB 4096, which passed both houses with objections from Republican legislators. The governor vetoed this measure this August.

***Health Insurance Assessment to Fund Medicaid*** – House Bill 4166 (Rep. Greg Harris) imposes a new assessment of 1% on claims paid by health insurance carriers or third-party administrators. 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 4166 is an initiative of the Association of Safety-Net Community Hospitals.

HB 4166 was assigned to 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.

### **Medicaid Rate Cut Restored**

Governor Rauner's FY19 budget request included a 4% reduction/cut for Medicaid health care professionals to help balance the state budget. The FY19 state budget that was enacted in HB 109 (PA 100-0586) did not include the 4% across-the-board rate cut from the Governor's FY 19 introduced budget. The budget also restores all rate increases and add-on payments that were removed in the Governor's FY 19 introduced budget.

***Prompt Payment Penalties*** – Earlier this spring, Comptroller Mendoza issued a report indicating that the \$16 billion in past-due debt that piled up during the two-year budget stalemate comes with a steep price.

Since July 2015, Mendoza reported that prompt-payment penalties have totaled \$1.14 billion, \$100 million more than the total from 1998 up to then. This report strengthened ISMS' argument that

a fully balanced FY19 budget that paid off the entire backlog of bills was needed to prevent this interest from accruing further.

In response to this report, Senator Laura Murphy filed various amendments to SB 44 that would decrease the prompt payment interest rate for unpaid bills that have exceeded 90 days without payment; this decrease would apply for FY19 and future fiscal years. The penalty rate is decreased from 1% per month (or 0.033% per day) to the greater of 0.25% per month or twice the percentage increase of the Consumer Price Index during the 12-month period immediately preceding that fiscal year. Current law states that if payment is not issued to the payee within this 90-day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month.

While the Senator's intentions were sound, health care professionals should not be penalized once again for state payment delays in the absence of a balanced budget with a short-term payment cycle under 30 days. Once Illinois' state budget cycle is on a sustainable path, interest and prompt payment penalties will not be needed. Health care professionals and medical facilities are ultimately loaning Illinois money to manage the current fiscal crisis. While everyone remains committed to finding a budget solution, health care professionals and facilities are struggling to maintain the current level of quality, affordable health care while suffering through delays and lack of payment. Senator Murphy chose not to move her bill this session after hearing from numerous health care professionals throughout Illinois.

### **INSURANCE AND THIRD-PARTY PAYER ISSUES**

***Limiting Short Term Health Insurance Coverage in Response to Federal Action*** – House Bill 2624 (Rep. Fine/Sen. Steans) places restrictions on Short-Term, Limited Duration Health Insurance Coverage, or “skinny plans.” As amended, the bill limits the duration of short-term plans to six months and requires plans to include notices to consumers that the policies are not compliant with the federal Affordable Care Act (ACA).

This legislation was introduced in response to a federal rule issued by the Trump administration that would allow insurers to offer short-term policies that do not comply with ACA regulations.

Under the proposed rule, which was released earlier this spring, insurers would be able to offer short-term coverage for almost 12 months, rather than the current three-month cap. Those plans would not be subject to requirements under the ACA, such as mandated essential health benefits and pre-existing condition protections.

ISMS supported HB 2624, which passed the Senate unanimously but ran into some opposition in the House where it passed on a vote of 62-45-0. The provisions of HB 2624, which ISMS supported and which passed both houses, were also amended onto an omnibus insurance legislative package that was passed in SB 1737 (Sen. Munoz/Rep. Hoffman). SB 1737 was issued an amendatory veto by the governor.

***Mental Health and Substance Abuse Parity*** – Senate Bill 1707 (Sen. Raoul/Rep. Lang) helps remove administrative barriers that hurt patients' ability to obtain timely care for mental health and substance use disorders. Specially, the bill removes prior authorization and step therapy requirements when they are not supported by clinical criteria from medical organizations such as

the American Society of Addiction Medicine.

SB 1707 increases much-needed transparency and accountability for ensuring patients have access to the coverage benefits they have chosen. Specifically, the bill:

- Requires that health insurers to submit comparative analyses to the state for the purpose of ensuring compliance with state and federal parity laws;
- Strengthens the state’s ability to investigate potential parity violations; and
- Increases public’s access to the findings and conclusions of those and other investigations.

ISMS supported SB 1707, which passed both houses and was signed into law as Public Act 100-1024.

***Network Adequacy Trailer Bill*** – Senate Bill 3491 (Sen. Holmes/Rep. Greg Harris) is a trailer bill to the Network Adequacy and Transparency Act clarifying that network plans shall not be subject to any fines or penalties for information that the health care professional or facility submits that is inaccurate or incomplete.

The bill also clarifies that the ratios mandated by the NAT Act do not apply to dental- or vision-specific benefits. The bill unanimously passed both chambers and awaits further action by the governor. SB 3491 was signed into law as Public Act 100-0601.

***Preventing “Non-Medical” Switching*** – House Bill 4146 (Rep. Fine/Sen. Steans) seeks to prevent insurance companies from changing an enrollee’s drug formulary coverage after the enrollee is already locked into a health plan for a year. Specifically, the bill seeks to prevent the following actions:

- 1) Increasing out-of-pocket costs for a covered drug;
- 2) Moving a prescription to a more restrictive tier; and
- 3) Removing prescriptions from a formulary.

After lengthy negotiations, the insurance industry removed its opposition. ISMS supported the bill, which unanimously passed both chambers as was signed into law as Public Act 100-1052.

***Recoupment*** – House Bill 4820 (Rep. Fine), an ISMS legislative initiative, seeks to limit a payer’s ability to recoup payment to 60 days, as opposed to the current 18 months. The bill would also prevent insurance companies from reducing payments for office visits when they are billed with a code for an additional service provided during the office visit. Due to strong opposition from the insurance industry, this bill did not advance.

***Right to Shop*** – SB 2807 (Sen. Oberweis), referred to as the “Right to Shop Act,” is an initiative that ISMS and the Illinois Health and Hospital Association (IHA) strongly opposed. The proposal would encourage patients to focus exclusively on cost when seeking medical care, with complete disregard for physician experience, expertise or other factors related to quality of care. The bill requires insurance companies to establish “incentive” programs that give patients financial rewards for choosing the lowest-cost option. Incentivizing patients to choose the least expensive physician

is a fundamentally flawed way to achieve the goals of increased price transparency and lower health care costs.

While SB 2807 emphasizes the benefits of price transparency, it uses price transparency as a vehicle to coerce patients into choosing the lowest-cost health care professional or medical facility. Health insurers will be required to provide comparisons of allowable amounts (i.e., contracted rates) among network health care professionals for comparable health care services, and enrollees are encouraged to use that information to select the least expensive health care professional or medical facility in exchange for some financial benefit from the insurer. This framework grossly misleads patients into thinking that health care services can be selected on the basis of cost alone, and effectively creates a tiered network structure whereby physicians are placed in tiers exclusively on the basis of cost.

SB 2807 further distorts the health care delivery system by allowing patients to receive full coverage for services provided by an out-of-network health care professional as long as the professional's price is less than the average network contract price.

This simultaneously eliminates incentives for health plans to offer fair contract rates and for physicians to sign network contracts. ISMS has worked to ensure that carriers design health insurance networks in ways that preserve patient access to necessary and appropriate care and use fair contracting practices to attract and retain a broad range of physicians and other health care professionals, and SB 2807 would undermine these efforts.

Finally, ISMS has concerns about proposed mandates that would require physicians and other professionals to provide up-front cost estimates on health care services, as it may be difficult to identify all of the health care services that will be needed. Unforeseen circumstances, conditions, and symptoms can arise at the time that services are actually delivered, which can render advance cost estimates irrelevant. Additionally, physician offices and other health care facilities will likely not have all of the correct insurance information to provide accurate estimates of costs.

Due to the strong opposition from ISMS and IHA, Senate Bill 2807 did not advance.

### **MEDICAL RECORDS, PRACTICE AND REGULATION**

***Ambulatory Surgical Treatment Centers (ASTCs)*** – House Bill 4831 (Rep. Ives) would remove requirements that physicians who work at ASTCs also have surgery privileges with at least one Illinois hospital in order for the facility to receive a license. ISMS supported this bill, but due to strong opposition from IHA, this bill failed to advance.

***Bill of Rights for Hospital-Based Employed Physicians*** – House Bill 5238 (Rep. Pritchard) is ISMS legislation establishing a hospital-based employed physician's bill of rights. The protections established in the legislation include the following rights:

- 1) To compensation based on the totality of the physician's activities for the hospital or affiliate including but not limited to education endeavors and preparation, committee participation, student and resident activities, and administrative responsibilities;
- 2) To academic freedom, without censorship in clinical research or academic pursuits;

- 3) To not be solely responsible for data entry, coding, management of the use of electronic medical records system;
- 4) To evaluation of clinical activity through the peer process and to be judged only by clinicians and not corporate executives;
- 5) To perform activities outside of defined employed time boundaries solely at the prerogative of the individual and not the hospitals or affiliate employing the physician, unless the activities directly conflict with or increase risk for the hospital or affiliate;
- 6) To have conflict of interest disclosures limited to the physician's activities that directly affect the hospital or affiliate and the disclosures should only be made to entities that directly reimburse the physician during his or her period of employment;
- 7) To have resources appropriately allocated by the hospital or affiliate for CME.
- 8) To allow of physician autonomy in how he or she treats the patient. Physicians should be legally empowered to be a patient advocate and to be allowed to adhere to the spirit of the Hippocratic Oath allowing patient privacy, confidentiality, and continuity of a patient's health care.

Due to strong opposition from IHA, this bill failed to advance.

***Continuing Medical Education on Safe Opioid Prescribing*** – Senate Bill 2777 (Sen. Althoff/Rep. Bellock) is an initiative of the Rauner administration, and as originally introduced it would have required all prescribers with an Illinois Controlled Substance license to take as part of their continuing medical education (CME) ten hours of coursework in very specific issues related to opioid prescribing.

ISMS opposed this legislation, but due to the lack of opposition from other medical groups and widespread support from members of the General Assembly, ISMS negotiated a compromise that will require every prescriber who is licensed to prescribe controlled substances to complete three hours of CME on safe opioid prescribing practices offered or accredited by a professional association, state government agency, or federal agency.

The language provides that continuing education on safe opioid prescribing practices applied to meet any other state licensure requirement or professional accreditation or certification requirement may be used toward the requirement established under this provision.

These three hours are part of the total continuing education hours required for renewal of a license. ISMS negotiated this language to as few hours as possible in order to reduce the burden on physicians. The bill passed both chambers and has been signed into law as Public Act 100-1106.

***Continuing Medical Education Sexual Harassment*** – House Bill 4953 (Rep. McAuliffe/Sen. Bush) is a direct result of the #metoo movement and will require that every licensed professional in Illinois to take one hour of sexual harassment training as part of their current continuing education requirement, effective for license renewals occurring on or after January 1, 2020. The bill passed both chambers and was signed into law as Public Act 100-0762.

***Copies of Medical Records*** – House Bill 4116 (Rep. Welch) would have prohibited physicians or medical facilities from charging for copies of medical records if the records are being requested by the patient or his or her attorney for use in supporting an application, claim, or appeal relating to a government benefit or program. ISMS opposed this bill, which did not advance.

***Copies of Medical Records for Veterans*** – House Bill 4848 (Rep. Swanson) will require health care professionals and health care facilities to provide one complete copy of a patient's records without charge if the patient is an indigent, homeless veteran and the records are requested to support a claim for federal veterans' disability benefits. ISMS was involved in negotiations on this issue last year. ISMS and IHA supported the bill, which passed both chambers unanimously and was signed into law as Public Act 100-0814.

***Health Care Cost Estimates*** – House Bill 4933 (Rep. Welter) would place mandates on physicians to disclose anticipated health care costs to patients, and act as insurance navigators for patients as well. 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 website of their health insurer. ISMS opposed this legislation, which did not advance.

***Health Care Liens*** – House Bill 5776 (Rep. Yingling) would have severely restricted a physician's ability to file health care liens by forcing the physician and/or health care facility to first bill the patient's health insurance carrier. Should the physician or medical facility be able to file and collect on the lien, the amount awarded could not be more than the amount collected under the patient's health care benefit plan.

Finally, it makes the physician and/or the health care facility that recovers under a judgment, verdict, or settlement responsible for the pro rata share of the legal and administrative expenses incurred in obtaining the judgment, verdict, or settlement. ISMS opposed this legislation, which did not advance.

***Health Care Liens by ASTFs*** – House Bill 4911 (Rep. Thapedi/Sen. Weaver) is an ISMS initiative that amends the Health Care Services Lien Act to allow Ambulatory Surgical Treatment Facilities (ASTFs) to file liens. Under current law, only individual health care professionals and state-licensed medical facilities are able to file liens. This bill unanimously passed both chambers and was signed into law as Public Act 100-0653.

***Illegal Possession of an Illinois Controlled Substance License Number*** – Senate Bill 3184 (Sen. Bennett) is ISMS legislation that would amend the Illinois Controlled Substances Act to prohibit the unauthorized request for or possession of a prescriber’s Illinois controlled substance number or DEA number. This would be a new section added under the existing law regarding the unauthorized possession of a prescription form. Legislative staff in the Senate expressed concerns that this bill is duplicative of current law. ISMS disagrees with the staff and will reintroduce this language next year in the House.

***Immunity for Free Medical Clinics*** – House Bill 4270 (Rep. Olson) would amend the Good Samaritan Act and apply it to free medical clinics. Currently, the civil immunity granted by the Act only applies to the health care professionals working within the clinic. ISMS supported this bill, but due to opposition from the plaintiff’s bar, the bill failed to advance.

***Mandated Informed Consent*** – House Bill 94 (Rep. Lang) would amend the Medical Patient Rights Act to require that a health care professional provide an informed consent document to a patient at least 20 hours before a health care procedure, except in cases of a medical emergency or when it is not reasonably possible to do so. The informed consent must use exact statutory language in 14-point bold font capital letters and state “IF YOU DO NOT DONATE HUMAN TISSUE SPECIMENS FROM YOUR MEDICAL PROCEDURE, YOU WILL STILL RECEIVE YOUR MEDICAL PROCEDURE AND ITS BENEFITS.” ISMS opposed this bill, which did not advance.

***Notification of Breast Density*** – House Bill 4392 (Rep. McAuliffe/ Sen. Mulroe) provides that if a patient’s mammogram demonstrates dense breast tissue, the Department of Public Health (IDPH) shall require every provider of mammography services to include in any summary of the mammography report sent to the patient in accordance with the federal Mammography Quality Standards Act a specifically-worded notice regarding dense breast tissue. The bill provides that these provisions do not create a duty of care or other legal obligation beyond the duty to provide notice. HB 4392 is supported by the Illinois Radiological Society. For that reason, ISMS remained neutral on the bill, which passed both chambers and was signed into law as Public Act 100-0749.

***Prescription Monitoring Program Data*** – Senate Bill 2952 (Sen. Bush/Rep. McAuliffe) is an initiative that seeks to improve protection of the confidentiality of the within Illinois’ Prescription Monitoring Program (PMP). ISMS was deeply involved in negotiations on this bill. Prescription data will be received, stored, and maintained in each patient’s database record within the new Prescription Information Library.

Any request for PMP data from any other department or agency must be approved in writing by the clinical director of the PMP or his or her designee unless otherwise permitted by law.

The bill also provides that the PMP Advisory Committee shall consist of 16 members appointed by the clinical director of the PMP, composed of prescribers and dispensers licensed to practice in their respective professions as follows: one family or primary care physician; one pain specialist physician; four other physicians, one of whom may be an ophthalmologist; two (rather than one) advanced practice registered nurses; one physician assistant; one optometrist; one dentist; one veterinarian; one clinical representative from a statewide organization representing hospitals; and

three pharmacists. ISMS supported SB 2952 as amended. The bill passed both houses and was signed into law as Public Act 100-1093.

***Prescription Refills*** – Senate Bill 3170 (Sen. Stadelman/Rep. Wallace), an ISMS initiative, extends the validity of prescriptions for non-controlled substances from 12 months to 15 months. The bill was signed into law as Public Act 100-0804.

***Prohibiting the Disclosure of a Physician’s Medical License Number*** – Senate Bill 3018 (Sen. Jones) is ISMS legislation to prohibit the Illinois Department of Financial and Professional Regulation (IDFPR) from disclosing a physicians’ medical license number. If someone were able to obtain a physician’s medical license number and birth date, that person would easily be able to obtain the physician’s controlled substance license number. Due to strong opposition from the Secretary of State’s Office (SOS) and from IDPFR, the bill failed to advance.

***Telehealth*** – Senate Bill 458 (Sen. Manar) modifies the Illinois Insurance Code to require that any payment or reimbursement made to a health benefit policy or plan for a service delivered through telehealth or telepsychiatry be made on the same basis and at the same rate as established for similar services that are not delivered through telehealth. SB 458 sets out requirements for the provision of telehealth services, such as the capabilities of interactive telecommunication systems, and prohibits requiring the presence of a telepresenter or an in-person visit between a patient and a health care provider prior to the delivery of telehealth services. The bill makes similar changes to the Illinois Public Aid Code. SB 458 is an initiative of the SIU School of Medicine and Southern Illinois Healthcare. ISMS supports the intent of the bill and is currently working with other stakeholders on the language. While bill was not called for a vote during this spring session, it may be called during the fall veto session.

***Telehealth within Medicaid*** – Senate Bill 3049 (Sen. Manar/Rep. Scherer) modifies the Illinois Public Aid Code to require HFS to reimburse psychiatrists, clinical psychologists, advanced practice registered nurses certified in psychiatric and mental health nursing, clinical social workers, federally qualified health centers, and other mental health professionals and clinicians who provide mental health services to recipients via telehealth. SB 3049 also requires HFS to reimburse any Medicaid certified eligible facility or provider organization, including licensed substance abuse centers, that acts as the location of the patient at the time a telehealth service is rendered. ISMS did not take a position on the bill. SB 3049 passed both chambers and was signed into law as Public Act 100-1019.

***Regulation of Not-for-Profits*** – House Bill 5479 (Rep. Dan Burke) would require the SOS to adopt rules to create grading standards for non-profit corporations in Illinois. Under the bill, each non-profit corporation would receive a “grade” that would evaluate how effective the non-profit is in light of its administrative expense ratio (how much it spends on administrative costs compared to program expenses related to its non-profit mission). It also gives the SOS the power to put a corporation with a certain score on “probation” for a period of two years, which means that the organization would be suspended from receiving any state funds. ISMS opposed this bill, which failed to advance.

***Restricted Opioid Prescribing*** – Senate Bill 3431 (Sen. Rezin), an initiative of the lieutenant governor’s office, attempts to address the opioid crisis. The bill would restrict the duration of opioid prescriptions for those patients who are 18 years of age or older. Specifically, the bill provides that for first-time prescriptions, a prescriber may not issue an opioid prescription for more than a seven day supply. The bill provides that if in the professional medical judgment of the prescriber, more than a seven day supply of an opiate is required to treat the patient's acute medical condition or is necessary for treatment/management of chronic pain, pain associated with a cancer diagnoses, or for palliative care, then the prescriber may issue a prescription for the quantity needed to treat that acute medical condition, chronic pain, pain associated with a cancer diagnosis, or pain experienced while the patient is in palliative care.

ISMS opposed these restrictions on opioid prescribing. The bill did not advance.

## **PUBLIC HEALTH**

***Bone Marrow Awareness*** – Senate Bill 3062 (Sen. Murphy/ Rep. Mussman) as originally introduced would have mandated that physicians notify all new patients of the existence of a bone marrow registry and distribute information on the registry. ISMS was successful in negotiating a less burdensome bill, and as amended, the bill requires IDPH to develop and disseminate information regarding a bone marrow registry. The bill also provides that the information may be disseminated orally, in print, electronically, or in any other manner determined by IDPH. ISMS supported the bill as amended, which passed both chambers and signed into law Public Act 100-1020.

***Ensuring Access to Drug Coverage for Cancer Patients*** – House Bill 4821 (Rep. Fine/Sen. Morrison) seeks to protect patients with stage IV advanced, metastatic cancer and would preclude any state-licensed health benefit plan that covers treatment for stage IV cancer from excluding drug coverage. The legislation includes health plans that cover the patient directly, or indirectly, such as a pharmacy benefit manager. ISMS supported HB 4821, which passed both chambers and signed into law as Public Act 100-1057.

***Epinephrine Administration Act*** – Senate Bill 2889 (Sen. Rose) creates the Epinephrine Administration Act. The bill will allow health care professionals to prescribe epinephrine in approved pre-filled syringes in the name of an authorized entity where allergens capable of causing anaphylaxis may be present. The goal of this legislation is to assist schools that have not been able to purchase epinephrine auto-injector pens due to rising costs. This bill represents language negotiated with both ISMS and the Illinois Chapter of the American Academy of Pediatrics. ISMS was neutral on bill, which passed both chambers and was signed into law as Public Act 100-0799.

***Hydrocodone*** – House Bill 4707 (Rep. Scherer/ Sen. Bush) as originally introduced would have up-scheduled hydrocodone to a Schedule I drug under Illinois’ Controlled Substance Act. ISMS opposed this bill, and along with other medical groups agreed to the creation of a Prescription Drug Task Force related to opioid abuse. The task force shall consist members of the legislature, agency staff, and representatives from various medical groups, including physicians and other stakeholders. ISMS was neutral on the bill as amended, and the bill was signed into law as Public Act 100-0989.

***Lyme Disease*** – Legislators from different parts of Illinois have been holding hearings regarding the state’s response to the growing trend of reported Lyme disease cases. It became clear through these hearings and meetings that further education and funding for Lyme disease awareness and reporting is ultimately what is needed to assist the medical community in tracking and monitoring the prevalence of newly confirmed cases.

As introduced, House Bill 4515 (Rep. Swanson/Sen. Nybo) would have exempted physicians from any form of discipline under the Medical Practice Act for the treatment of Lyme Disease after very onerous processes were completed by physicians, including stating that the treatment will not result in the direct and proximate death of or serious bodily injury to the patient; requiring physicians to review all available clinical information on Lyme Disease or other tick-borne disease literature to determine the best course of treatment; and providing other options to the patient before treatment. This bill has strong support among legislators, including from various legislative leaders. ISMS strongly objected to these conditions as they were clearly a mandate on the practice of medicine. The House and Senate sponsors agreed with ISMS’ concerns and agreed to language in the final version of the bill that:

- Provides that IDPH shall establish the Lyme Disease Prevention, Detection, and Outreach Program to advise IDPH on disease prevention and surveillance and provider and public education relating to the disease;
- Provides that IDPH shall continue to support the vector-borne disease epidemiologist coordinator who is responsible for overseeing the program;
- Provides that the program shall meet specified requirements to raise awareness about and to promote prevention of Lyme disease. Creates the Lyme Disease Task Force; and
- Provides that IDFPR shall not take disciplinary or non-disciplinary actions against a physician for experimental treatment, including, but not limited to, the prescription of or treatment with long term antibiotics for Lyme Disease or other tick-borne diseases.

With ISMS changes, HB 4515 passed both houses with large majorities and was amendatory vetoed by the governor this August. The sponsors of the bill indicated they will seek an override.

***Medical Cannabis*** – Senate Bill 336 (Sen. Harmon/Rep. Cassidy) creates the Opioid Alternative Pilot Program (OAPP) to provide access to medical cannabis as an alternative for persons eligible for opioid prescriptions and authorizes applicants for the Medical Cannabis Pilot Program to gain access to medical cannabis while their applications are pending. The bill would also establish extensive regulation of both the opioid program participants and the provisional registrants. This is a separate program parallel to Illinois’ medical cannabis pilot program.

To enroll, the person would have to provide a written certification from a licensed physician, show his or her state issued ID card, and have his or her participation verified through an online system created by IDPH. The physician’s written certification need only certify that the person has a condition for which they have been, or could be, prescribed an opioid. For the Opioid Alternative Program, participation is limited to residents aged 21 and older.

Additionally, the bill provides that IDFPR and IDPH shall create a cannabis tracking system to be used by all licensed dispensing organizations participating in the OAPP. The new Illinois Cannabis

Tracking System shall be used to collect information about all participants and track sales for verification purposes.

OAPP certifications must also be made within 90 days of submitting the certification to the dispensary. Additionally, the dispensary must verify the authenticity of the certification and the physician's license information with IDFPR's license look-up tool. Mirroring the section on provisional applicants, an OAPP participant may not obtain cannabis in amounts exceeding 2.5 ounces per 14-day period, for up to 90 days.

IDPH is required to electronically forward the patient's identification information to the PMP once it has received his or her written certification. The PMP shall then make a notation on the person's prescription record which states that he or she has a written certification under the OAPP and is a patient entitled to the lawful medical use of cannabis. Once the individual no longer has such authority, the IDPH must notify the PMP and DHS to remove that notation from their record. Such information may be shared electronically between the agencies.

After extensive negotiations, ISMS was neutral on the legislation as amended. The bill was into law as Public Act 100-1114.

***Prescription Monitoring Program Access*** – HB 4650 (Rep. Zalewski/Senator Morrison) as originally introduced would have allowed Medicaid managed care companies to have access to the PMP. ISMS strongly opposed this. After discussions with pharmacists and representatives working for MCOs, it was realized that the intent of the bill is to identify Medicaid clients who suffer from addiction and get them into appropriate treatment programs. With that in mind, ISMS successfully negotiated language that would allow clinical pharmacists employed by and designated by the MCO providing services to access the PMP for the sole purpose of clinical review of services provided to persons covered by the entity under the contract. The language also requires that the MCO pharmacist notify prescribers of review activities. ISMS supported this amended language. HB 4650 passed both chambers and was signed into law as Public Act 100-1005

***Protecting Children from Sun Exposure*** – Various dermatological societies formed the Sunucate Coalition this session to bring further awareness to the importance of proper use of sunscreen. HB 4685 (Rep. Connor/Sen. Tom Cullerton) is a Sunucate Coalition initiative that creates the Reducing the Risk of Skin Cancer and Excessive UV Exposure in Children Act. The bill provides that a student or participant in a youth camp may possess and use a topical sunscreen product while on school property or at a school-sponsored event or activity or youth camp without a physician's note or prescription, if certain conditions are met. The bill also provides that a school district or youth camp shall allow a student or participant to use articles of sun-protective clothing outdoors. In addition, the bill provides that, beginning with the 2019-2020 school year, all schools districts may incorporate in their curriculum a unit of instruction on skin cancer prevention.

ISMS supported HB 4685, which passed the House as amended by a vote of 110-0-0; however, upon arriving in the Senate, an additional amendment was requested by various school groups that was not adopted prior to the Senate adjourning for the summer. Proponents hope to work out these various issues prior to the fall veto session.

***Raising the Smoking Age*** – Senate Bill 2332 (Sen. Morrison/Rep. Lilly) 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 or electronic cigarettes to be 21 years of age, up from the current age of 18. ISMS supports this legislation. Despite strong opposition from the business community, the bill passed both chambers, but was vetoed by the governor.

***Substance Use “Deflection”*** – Senate Bill 3023 (Senator Bush/ Rep. Evans) provides a structure by which local law enforcement, treatment facilities, and communities can build partnerships that deflect people away from arrest as a result of substance use and place them into appropriate treatment programs. ISMS supports the legislation, which passed both houses and was signed into law as Public Act 100-1025.

***Substance Use Treatment within Medicaid*** – Senate Bill 2951 (Sen. Bush/Rep. Feigenholtz) would require Illinois to seek federal approval for Medicaid coverage for youth-focused, team-based treatment model for the early treatment of serious mental health conditions, and provide outreach and appropriate clinical treatment. ISMS supports this legislation, which passed both chambers and was signed into law as Public Act 100-1016.

### **SCOPE OF PRACTICE**

***Athletic Trainers*** – House Bill 5213 (Rep. Demmer) would have repealed the Illinois Athletic Trainers Practice Act, which ISMS opposed. The Act limits the scope in which a trainer may practice, and if it were repealed trainers may be able to perform outside of their designated scope of practice. This bill did not advance.

***Direct-Entry Midwife Licensure*** – Senate Joint Resolution 67 (Sen. Martinez/Rep Moeller) and House Joint Resolution 128 (Rep. Moeller) were filed to address home birth and midwife policies. These resolutions would have created a 16-person committee to study home birth practices. Several physicians would be appointed along with several members of the home birth advocacy community. These resolutions both failed to pass out of the House. No substantive legislation was filed.

***Pharmacists Prescribing Birth Control*** – House Bill 274 (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; blurring these roles is not in the best interest of patient safety, and will only increase episodic care.

Because ISMS is not opposed to increasing access to contraception, an amendment was offered that would allow pharmacists to dispense contraception under a standing order issued by the IDPH. While the sponsor accepted the ISMS amendment, other issues remained. HB 274 passed out of the House Health Care Licenses Committee, but failed in the House.

***Physical Therapists*** – House Bill 4643 (Rep. D. Burke/ Sen. Mulroe) as originally introduced would have completely removed the requirement that patients first receive a medical diagnosis and referral before seeing a physical therapist. Illinois is one of only six states that have this requirement. The majority of states have limited direct access. ISMS successfully negotiated a compromise with physical therapists that would provide limited direct access, but retain physician involvement, referral and diagnosis with regard to physical therapy services. The amendment also prohibits PTs from making a diagnosis. They are limited to evaluating and treating. The bill passed both chambers and signed into law as Public Act 100-0897.

***Physician Assistants Ratio*** – Senate Bill 2904 (Sen. Steans/ Rep. Feigenholtz) as originally introduced would have removed the physician-physician assistant (PA) ratio in its entirety. The physician assistants argued that the current five-to-one ratio hurts access in rural and underserved areas and creates barriers to employment.

The Illinois Academy of Physician Assistants secured key physician support, including among ISMS members. After extensive debate on an ISMS resolution, the ISMS House of Delegates voted to refer the issue of removing the ratio to the ISMS Board for decision. The ISMS governmental affairs team was directed to negotiate a compromise that included increasing the ratio from five to one to seven to one, and providing some relief to physicians practicing in certain rural and underserved areas should they want to collaborate with more than seven PAs.

The amended bill provides that a physician licensed to practice medicine in all its branches may not collaborate with more than seven (rather than five) full-time equivalent physician assistants. It specifies that entering into an excessive number of written collaborative agreements with licensed physician assistants, resulting in an inability to adequately collaborate and repeated failure to adequately collaborate with a physician assistant, constitutes grounds for disciplinary action.

The bill also provides that a physician licensed to practice medicine in all its branches may collaborate with more than seven physician assistants when the services are provided in a federal primary care health professional shortage area with a Health Professional Shortage Area score greater than or equal to 12. This will assist rural areas in need of access. ISMS was neutral on the bill as amended. SB 2904 was signed into law as Public Act 100-0605.

## **WORKERS' COMPENSATION**

***Protections for Physicians and Medical Facilities*** – Senate Bill 904 (Rep. Hoffman/Sen. Hastings), an ISMS-directed initiative, was introduced late in the legislative session to address a growing crisis of unpaid workers' compensation medical bills, a crisis that could threaten the health of our workers' compensation system and injured workers in Illinois. It makes three changes to the Illinois Workers' Compensation Act:

- Allowing health care professionals to collect interest on late medical claims by filing a claim for this interest in circuit court. While this interest provision has been in law since 2006, health care professionals have had no means to collect this interest.

- Requiring workers' compensation insurance companies to send an Explanation of Benefits to physicians explaining why they have denied the authorization of medical care, or what additional information they need to make a decision on that care.
- Preventing workers' compensation insurers from ignoring the law requiring them to use electronic billing for workers' compensation claims. This has been the law for seven years, yet workers' compensation insurers still refuse to use standardized electronic billing systems that are used throughout the health care world.

Delayed payment has always been an issue in treating injured workers. But recently, physicians throughout Illinois have documented an alarming increase in delays of payment for “pre-authorized” workers' compensation medical care. Despite the fact that the insurer will authorize the medical care, they are now delaying payment until the indemnity claim at the Workers' Compensation Commission is resolved, which can take as long as three years. Without a way to collect interest, the physician is simply on the hook for the cost of the care.

While the Illinois Chamber of Commerce, the Illinois Manufacturers Association and representatives from the insurance industry all opposed the bill, they were unable to convince legislators that the Illinois Workers' Compensation Commission should establish a process for medical providers to file a claim to collect interest. SB 904 passed both chambers with a strong bipartisan supermajority of votes. The bill was issued an amendatory veto by the governor. ISMS plans to move for an override of the governor's amendatory veto.

***Business and Insurance Proposed Changes to the Worker's Compensation System*** – House Bill 5910 (Rep. Ives) and Senate Bill 3617 (Sen. McCarter) are proposals introduced in response to ISMS' Senate Bill 904. The business community's proposal would create an avenue to collect on medical claims at the Commission. While the bills purport to add protections for physicians participating in the workers' compensation system, the actual language not only falls short but would codify what physicians are currently experiencing – waiting years to be paid for pre-authorized medical services.

These bills also alter the interest language that has been in law since 2005, stating (for example) that interest shall accrue from “the date of determination of liability where there exists a reasonable dispute as to the liability for the expense,” instead of current law, under which interest begins to accrue 30 days after the employer receives the bill that contains substantially all of the data elements required to adjudicate the bill.

This could be interpreted to mean that there will be no more pre-authorized medical services and every single medical claim would now be litigated at the Commission.

Finally, the business community proposed language that would make it impossible to enforce electronic billing provisions by adding new standards on physicians to prove “intentional violation” of electronic billing requirements and confining the penalty to cases where there is a “repeated pattern of failing to comply.” That would be impossible to prove and allow for grossly negligent and reckless behavior by insurance companies in the practices of electronic billing to go unpunished.

ISMS opposed these proposals, which did not advance.

***State-Run Workers' Compensation Insurance Company*** – House Bill 4595 (Rep. Fine) would create the Illinois Employers Mutual Insurance Company, 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.

HB 4595 is an initiative of the Illinois Laborers' Union. Throughout the debate on workers' compensation reform in Illinois, organized labor has consistently maintained that the insurance industry failed to pass the savings of the 2011 reform on 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 New York.

HB 4595 passed the House on a partisan roll call, but was held in the Senate. ISMS remains neutral on this legislation.