

Illinois State Medical Society



***2013 Update on
ISMS Legislative Activity
in the
Illinois General Assembly***

June 2013

*Illinois State Medical Society
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Dear Colleague:

In my travels as president of the Illinois State Medical Society, physicians ask me all the time – “what has ISMS done for me lately?”

ISMS works hard on so many fronts that the answer to this question is always changing, and physicians in different specialties, locations and modes of practice have different priorities. But there is at least one way ISMS impacts every single physician in the state: our legislative advocacy.

I’ve attached our 2013 end-of-session legislative update to inform you about what ISMS has been doing on our behalf in Springfield this year. In it you’ll find details of our work on a broad variety of issues, plus a helpful summary of our biggest victories – many of which you haven’t read about in the papers.

I urge you to share this document with your colleagues and use it to show how important it is to be a member of the Illinois State Medical Society. We are the only organization that represents **all** Illinois physicians – and our legislators know it.

Sincerely,

Eldon A. Trame, M.D.
President
Illinois State Medical Society

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

Executive Summary: Top Ten Legislative Victories for ISMS in 2013

What you read in the newspapers is only the tip of the iceberg when it comes to ISMS legislative advocacy. This end-of-session update provides information about every issue on which ISMS was active during this year's session of the General Assembly, and is filled with examples of ISMS heading off dangerous proposals before they even come up for a vote, let alone make the news.

Here are just a few of our major victories in this year's session:

1. ISMS defeated several significant scope-of-practice incursions. To name a few:
 - ISMS stopped a bill that would have given psychologists the authority to prescribe psychotropic drugs with only minimal pharmacology coursework. **(p. 9)**
 - ISMS amended a bill expanding advanced practice nurses' authority, successfully maintaining the team approach and protecting collaborative agreements. **(p. 8)**
 - ISMS amended a bill on home health services to keep physician assistants from replacing physicians as prescribers of these services. **(p. 8)**
 - ISMS prevented licensure of "certified professional midwives" as health care professionals; these individuals have little to no medical education. **(p. 7)**
 - ISMS prevented licensure of colon hydrotherapists as health care professionals; there is little to no evidence this therapy is medically beneficial. **(p. 7)**
 - ISMS prevented licensure of "naturopathic physicians" as health care professionals; these individuals want to offer homeopathy, herbal therapy and other services, but they are not trained to diagnose or treat disease. **(p. 9)**
2. ISMS stopped a bill that would have forced out-of-network physicians at in-network hospitals to accept PPO fee schedules. **(p. 7)**
3. ISMS amended a bill on Medicaid fraud to keep physicians from being unfairly punished for the actions of their patients. **(p. 11)**
4. ISMS kept in check an effort to dramatically increase physicians' licensure fees; instead of a blanket increase to \$750, fees will remain at \$700 for two licensure cycles and drop to \$500 thereafter. **(p. 14)**
5. ISMS worked to protect patients' mental health information on the new Illinois Health Information Exchange and clarify their right to opt out. **(p. 18)**
6. ISMS passed a bill to ensure that only medically accurate, age-appropriate, and complete information is taught as part of public school sex education in grades 6-12. **(p. 21)**
7. ISMS worked to ensure that mental health reporting requirements for health care professionals include immunity from civil, criminal and professional liability. **(p. 22)**
8. ISMS helped to amend the *Tanning Facility Permit Act* to prohibit tanning facilities from allowing minors to use tanning equipment. **(p. 23)**
9. ISMS worked to clarify parts of Illinois law related to anatomical gifts and add language regarding immunity for those acting in good faith in accordance with the law. **(p. 19)**
10. ISMS passed a bill to improve continuity of care for patients receiving home health services ordered by an out-of-state physician. **(p. 17)**

Read on to learn more about how ISMS is fighting for physicians every day in Springfield!

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INSURANCE AND THIRD PARTY PAYER ISSUES

Consumer Health Insurance Counsel – House Bill 23 (Rep. Flowers) would have created the independent Office of Consumer Health Insurance Counsel for the purpose of representing the interests of health insurance consumers. Under the bill, the counsel would have the authority to assess the impact of insurance rates, rules, and forms on consumers and could advocate for positions determined to be most advantageous to a substantial number of insurance consumers.

ISMS opposed this legislation because much of this is duplicative of the duties charged to the Illinois Department of Insurance.

House Bill 23 failed by a vote of 54 yeas and 61 nays in the House.

Denial of Contracts – An ISMS initiative, House Bill 3018 (Rep. Reis) would require an insurer, health maintenance organization, independent practice association, physician hospital organization, or preferred provider organization to provide health care professional applicants who are denied participation in any panel of in-network health care professionals with a specific reason for the denial.

The bill would also require any participating health care professional be provided 60 days' notice and an opportunity to initiate corrective action prior to the initiation of any attempts to terminate or otherwise remove the health care professional from a panel of in-network health care professionals. The required notice would include specific reasons for the proposed termination or removal.

Finally, the bill would have required that any participating health care professional terminated or removed from an in-network panel be provided an opportunity to appeal the decision.

Due to strong opposition from the insurance industry, this bill was not called for a vote in the House Insurance Committee.

Exclusive Provider Organization – House Bill 1284 (Rep. Lang) and Senate Bill 1273 (Sen. Munoz) are initiatives of Blue Cross/Blue Shield and would establish an Exclusive Provider Organization (EPO) that pays only for in-network treatment except for emergency care services and services that are not otherwise available in-network.

ISMS had concerns about the bills as originally introduced and worked with other stakeholders in the drafting of an amendment that would ensure the Act include the protections afforded to patients by the *Managed Care Patient Rights Act* and to physicians by the *Fairness in Health Care Services Contracting Act*. The amendment also included a provision that prohibits “All Products Clauses,” meaning an insurer could not require a physician to sign an EPO contract if the physician simply wanted a PPO contract.

This amendment, drafted during the last few days of the legislative session, removed ISMS’ opposition and was amended onto Senate Bill 1547. Due to strong opposition from the Department of Insurance and other insurers, the bill, as amended, was not called for a vote on the House Floor.

Health Benefits Exchange – Senate Bill 34 (Sen. Koehler) and Senate Bill 1717 (Sen. Haine) would have established the legal authority for a health benefits exchange called for under the federal *Patient Protection and Affordable Care Act*. Senate Bill 34 would impose more requirements on insurers than Senate Bill 1717 to join the exchange, such as marketing standards, and would require the exchange governing board to determine that a plan is “in the interest of qualified individuals and qualified employers” before it can be sold.

House Bill 3227 (Rep. Gabel/Sen. Koehler), as amended by the Senate, would create a state-run health insurance exchange beginning Jan. 1, 2015. Under the bill, the Department of Insurance would review and recommend the health insurance plans that could be available on the exchange. All plans would have to meet state and federal insurance guidelines.

Health insurance plans and dental plans would be required to be available to individuals and small businesses with fewer than 50 employees in 2014. In 2016, businesses that have up to 100 employees would also qualify. The health insurance exchange would be paid for by an assessment on health insurance companies.

Under House Bill 3227, the exchange would be governed by an 11-member exchange board. Members would be appointed by the Governor. Four members would represent the insurance industry, health care administrators and licensed health care professionals, with no more than two representing any group. At least seven members would represent the following interests: labor, women, minorities, disabled persons, small business, and public health.

In addition to the voting board members, the Director of Healthcare and Family Services, the Executive Director of the Exchange, an economist with experience in health markets, and an educated health care consumer would be also be appointed to serve as non-voting members to the board.

Advising the board would be a minimum of six exchange technical advisory groups including the following: an insurer advisory group, a business advisory group, a consumer advisory group, a provider advisory group, an insurance producer advisory group, and a dentist advisory group.

Neither Senate Bill 34 nor Senate Bill 1717 were called for a vote in the Senate. House Bill 3227, as amended, passed the Senate and is on the order of concurrence in the House.

ISMS is neutral on the bills.

Health Care Billing Practices – Senate Bill 2142 (Sen. Rezin) would create the *Health Care Billing Practices Act* and require a health care professional who provides treatment to a minor child to proportionally bill each parent for any amount that is not covered by insurance. Under the bill, the parent taking the child to the physician’s office would be responsible for providing the most recent copy of any court order that proportions payment of health care expenses between the custodial and non-custodial parent. Finally, the bill would not limit the health care professional’s ability to collect unpaid medical expenses.

ISMS opposed Senate Bill 2142, which was held in the Senate Judiciary Committee before it was reassigned to the Senate Committee on Assignments.

Insurance Coverage for Telemedicine – Senate Bill 1422 (Sen. Hunter) and Senate Bill 2366 (Sen. Harmon) would require that health insurance plans provide coverage for telemedicine services.

SB 2366 specifically provides that an entity subject to the provision concerning telehealth:

- (1) shall provide coverage under a health insurance policy or contract for health care services appropriately delivered through telehealth;
- (2) may not exclude from coverage a health care service solely because it is provided through telehealth and is not provided through an in-person consultation or contact between a health care provider and a patient; and
- (3) shall not require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through telehealth.

Senate Bill 2366 sets forth provisions concerning reimbursement, teleophthalmology, the requirements for telehealth and telepsychiatry services, and medical records documenting the telehealth services.

ISMS supported both bills. Senate Bill 1422 was held in the Senate Insurance Committee. SB 2366 passed out of the Senate Insurance Committee and is currently on third reading in the Senate.

Insurance Layperson – Senate Bill 1658 (Sen. Haine/Rep. Williams) is an initiative of the Illinois College of Emergency Physicians. The bill amends the Illinois Insurance Code to provide that nothing in the provision concerning nonparticipating facility-based physicians and providers shall be interpreted to change the prudent layperson standards with respect to emergency services under the *Managed Care Reform and Patient Rights Act*.

ISMS supported this bill, which passed both houses and awaits further action by the Governor.

Notice of Health Care Service Liens – House Bill 2617 (Rep. Tracy), an ISMS initiative, would have amended the *Health Care Services Lien Act* to require that notice be provided, in the same manner as a notice of a judgment, award, settlement, or compromise would be provided, to a lien holder by an injured person or his or her authorized representative when a case is dismissed or a judgment is entered against the injured person.

Because of strong opposition from the Illinois Trial Lawyers Association, House Bill 2617 did not advance.

Prior Authorization – On May 31, the last day of session, House Bill 3638 (Rep. Fine) and Senate Bill 2585 (Sen. Kotowski) were introduced. The bills would require the Department of

Healthcare and Family Services and the Department of Insurance to jointly develop a uniform prior authorization form for prescription drug benefits by July 1, 2014. Beginning Jan. 1, 2015, or six months after the form is developed, every prescribing professional may use that uniform prior authorization form to request prior authorization for coverage of prescription drug benefits. Every health care service plan would be required to accept that form as sufficient to request prior authorization for prescription drug benefits. If a health care service plan fails to utilize or accept the prior authorization form, or if it fails to respond within two business days upon receipt of a completed prior authorization, the prior authorization request shall be deemed to have been granted.

ISMS is currently reviewing this legislation, which may be assigned and debated in a standing committee during the fall veto session.

PPO Hospital Provider Fees – House Bill 87 (Rep. Franks) would have amended the Illinois Insurance Code and forced any physician or other health care professional who provides services to a patient through an in-network hospital to accept the patient’s PPO fee schedule, even if the health care professional was non-participating.

ISMS strongly opposed this bill, which was never called for a vote in the House Insurance Committee.

Single Payer System – House Bill 942 (Rep. Flowers) would have created the *Illinois Universal Health Care Act*. The bill would have provided all individuals residing in Illinois health insurance. The bill would have established the qualification requirements for participating health providers and reimbursement rates. It would have prohibited private health insurers to sell health insurance coverage that duplicates the coverage of the Program and would have prohibited investor-ownership of health delivery facilities. House Bill 942 would have established a single prescription drug formulary and list of approved durable medical goods and supplies. A special committee would be able to negotiate the prices of pharmaceuticals and durable medical goods with suppliers or manufacturers.

ISMS opposed this legislation, which remains in the House.

ALLIED HEALTH CARE PROFESSIONAL LICENSURE

Colon Hydrotherapists – House Bill 3368 (Rep. Dunkin) and Senate Bill 1651 (Sen. Martinez) would have licensed colon hydrotherapists as health care professionals.

ISMS opposed these bills because there is little to no science that supports this therapy as medically beneficial.

Both bills failed to advance.

Direct Entry Midwife Licensure – House Bill 2685 (Rep. Morrison) and House Bill 1194 (Rep. Berrios) would have created the *Home Birth Safety Act* and provided for the licensure of “certified professional midwives” (CPMs) by the Department of Financial and Professional Regulation. These midwives are significantly different from certified nurse midwives. CPMs

have little to no medical education, yet want to be able to provide medical treatment to pregnant women.

House Bill 3636 (Rep. Berrios) would have created the *Certified Professional Midwife Licensure Act* to provide for licensure of direct entry midwives.

ISMS opposed all of these bills. House Bill 2685 failed in the House Health Care Licenses Committee and House Bill 1194 was never assigned to committee. House Bill 3636 was introduced during the last week of the spring legislative session and it remains in the House Rules Committee.

Home Health Services/Physicians Assistants – House Bill 2839 (Rep. Durkin/Sen. Haine) as originally introduced would have allowed physician assistants to prescribe home health services. ISMS had concerns about this expansion of a PA's scope of practice. ISMS amended the bill to provide that the definition of "home health services" is limited to services provided under a plan of treatment prescribed by a physician licensed to practice medicine in all its branches, a physician assistant who has been authorized by a physician to prescribe those services, or an advanced practice nurse with a collaborating agreement with a physician that delegates that authority.

ISMS supported the bill as amended, which passed both houses and awaits further action by the Governor.

Independent Practice for Advanced Practice Nurses – Senate Bill 73 (Sen. Steans) and House Bill 1052 (Rep. Bradley), as originally introduced, would allow all types of advanced practice nurses, including certified nurse anesthetists, to provide medical care completely independent of physicians. Current Illinois law emphasizes a team approach in patient care, requiring physician input and collaboration.

Senate Bill 73 was never called for a vote in the Senate Licensed Activities Committee. ISMS successfully amended HB 1052 with language retaining the collaborative agreement between a physician and an APN. The amendment instead eases some of the current restrictions in collaborative agreements.

Specifically, the ISMS language clarifies that a written collaborative agreement outside of an employment arrangement may not restrict APNs from contracting with Medicaid, Medicare or other health plans, nor limit geographic practice locations. It further clarifies that the agreement may include services the collaborating physician may provide, but chooses not to. And finally, the amendment provides that, notwithstanding the collaborative agreement, an APN may provide primary health care services such as health screenings, histories and physicals, women's health exams and school physicals as part of their routine practice or on a volunteer basis.

There are no changes to prescribing or to anesthesia services included the bill as amended. House Bill 1052, as amended, passed out of both houses and awaits further action by the Governor.

Naturopath Licensure – Senate Bill 1168 (Sen. Martinez) would have created the *Naturopathic Medical Practice Act* and provided for the regulation of naturopathic physicians through licensure by the Illinois Department of Financial and Professional Regulation.

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

In the view of ISMS, naturopaths are neither trained nor capable of diagnosing and treating physical ailments. ISMS opposed this legislation, which was never called for a vote in the Senate Licensed Activities Committee.

Optometry – Contact Lenses – Senate Bill 2218 (Sen. Frerichs/Rep. Burke) prohibits the dispensing of contact lenses by anyone other than a licensed optometrist, licensed pharmacist, or a physician licensed to practice medicine in all of its branches. Senate Amendment 1, which was adopted, clarified that "contact lenses" include, but are not limited to, contact lenses with prescriptive power and decorative and plano power contact lenses. It also clarified that "direct supervision" means that the optometrist is responsible for training the person assisting the optometrist in the dispensing or sale of contact lenses, but does not mean that the optometrist must be present in the facility where he or she practices under a license or ancillary registration at the time the contacts are dispensed or sold.

ISMS supported Senate Bill 2218, which passed both houses and awaits further action by the Governor.

Prescriptive Authority for Psychologists – Senate Bill 2187 (Sen. Harmon/Rep. Bradley) and House Bill 3074 (Rep. Bradley) would have granted clinical psychologists who have their doctorate in psychology and complete a master’s program in psychopharmacology the authority to prescribe and dispense drugs used in the treatment of mental, emotional, and psychological disorders.

The bills also would have required prescribing psychologists to maintain a collaborative agreement with any type of physician.

ISMS is strongly opposed to these bills. Simply requiring minimal instruction in pharmacology, neuroscience and physiology independent of a professional’s overall education and training is far from adequate and does not prepare a person to treat a patient as a medical doctor would. The collaborative agreement language is misleading and fails to require that any collaboration be with an Illinois physician licensed to practice medicine in all of its branches who provides mental health services.

House Bill 3074 was never assigned to a standing committee. Senate Bill 2187 passed the Senate and was assigned to the House Executive Committee. It was amended to remove all substantive and objectionable language. The bill, as amended, was re-referred to the House Rules Committee.

Public Record Offenses – Senate Bill 1841 (Sen. Mulroe/Rep. Sandack) would provide that any professional licensee disciplined by the Department of Financial and Professional Regulation for an offense relating to the failure to pay taxes or student loans, or payments related to continuing education or advertising, may file a petition with the Department on forms provided by the Department, along with the required fee of \$200, to have the records of that offense removed from public view if certain conditions are met. It would also provide that removal of records of a disciplinary offense from the Department's website shall not be considered a vacating or expunging of the offense from the licensee's disciplinary record.

ISMS supported Senate Bill 1841, which passed the Senate but is being held in the House Rules Committee.

Surgical Pain Procedures – Senate Bill 1662 (Sen. Martinez) would create the *Interventional Surgical Pain Procedures for Chronic Pain Act* and prohibit the practice of interventional surgical pain procedures for pain medicine, unless the person is a physician licensed to practice medicine in all its branches.

ISMS supported this bill, but due to strong opposition from a number of other allied health care groups, the bill was held in committee and did not advance.

MEDICAID

Four-Drug Limit for Medicaid Patients – Last year the Illinois General Assembly instituted a limit of four drugs that would be covered as a Medicaid benefit for many patients. This limitation has caused great concern among physicians and patients alike, as many patients have gone without essential medications. While the Department of Health and Family Services has attempted to minimize some of the difficulties caused by this legislation, physicians believe more should be done to address physician and patient concerns.

House Bill 2352 (Rep. Cassidy) was introduced at the request of ISMS to require the Department, in consultation with statewide organizations representing prescribers, to develop a protocol that expedites review and approval of prescriptions for psychiatric conditions and chronic conditions such as asthma, hypertension and diabetes. The bill would also allow the Department to exempt prescriptions for antibiotics and other categories of drugs simply by using its rulemaking authority.

House Bill 2352 was one of many bills introduced that attempted to expand the number of drugs a Medicaid patient could have, but because of concerns the Department had about cost, this bill and all other bills did not advance.

Program Expansion – Senate Bill 26 (Sen. Steans/Rep. Feigenholtz) will extend Medicaid coverage to adults ages 19 through 64 who earn less than \$16,000 per year. The state would provide health care to 342,000 more Illinoisans who currently don't qualify for coverage because of income level or health condition. The federal government will pay 100 percent of the cost of coverage for the new Medicaid population for the first three years, then tapering between 2017 and 2020, until it reaches 90 percent.

The bill makes other changes to the Medicaid program including "fixing" some of the SMART Act Medicaid cuts, such as partially restoring dental care to pregnant women. The bill also allows for a new category of mental health facilities for short term crises.

Senate Bill 26 includes a provision adding 21 days to the Hospital Assessment Program, retroactive to June 10, 2012.

Final changes to the bill also:

- give provider-sponsored organizations opportunities to form integrated delivery systems and coordinate care in the Medicaid program rather than have the state rely solely on HMOs;
- require the state to provide interested provider organizations with sufficient data to determine if they want to become a Medicaid care coordination entity to serve children and parents of children eligible for Medicaid;
- establish a process for provider-sponsored organizations to assume increasing levels of risk, culminating in full-risk capitation in the fourth year; and
- require HMOs to pay Medicaid claims within 30 days or pay a late payment penalty.

ISMS remained neutral on the bill. Physicians remain concerned about the low reimbursement rate paid to all physicians in Illinois, and that the two year increase paid to primary care physicians will not be made permanent.

Senate Bill 26 passed both houses and awaits further action by the Governor.

Fraud – House Bill 71 (Rep. Cassidy/Sen. Mulroe) as originally introduced would have provided that any vendor that knowingly assists or knowingly or willfully fails to prevent a person from committing specified violations; or any person (including a vendor) who, in any matter related to the medical assistance program, knowingly or willfully falsifies, conceals, or omits information in connection with the provision of health care or related services commits medical assistance fraud.

The bill would have enhanced the criminal penalty, from a Class A misdemeanor to a Class 4 felony, for any person, firm, corporation, association, agency, institution, or other legal entity that, in any matter related to a state or federally funded or mandated health plan, knowingly and willfully makes a false statement in connection with the provision of health care or related services. Finally, it would have made the offense of willfully obstructing criminal investigations of health care offenses a Class 4 felony.

ISMS opposed the bill as introduced and was successful in amending the bill to ensure that physicians would not be unfairly punished for the actions of their patients. As amended, the bill provides that any vendor that knowingly assists a person (rather than any vendor that knowingly assists or knowingly or willfully fails to *prevent* a person) in committing specified violations concerning the unauthorized use of a medical card, or the unauthorized use of medical benefits with or without a medical card, commits medical assistance fraud. It provides that the term

"knowledge" has the meaning ascribed to that term in the Criminal Code of 2012 when used in the context of certain violations of medical assistance fraud. It does not include provisions creating the offense of obstruction of criminal investigations of health care offenses.

ISMS was neutral on the bill as amended, which passed both houses and awaits further action by the Governor.

Senate Bill 1330 (Sen. Raoul/Rep. McAsey) establishes civil penalties for fraud in the medical assistance program. The penalties range from \$10,000 to \$50,000 for any person (including a vendor, organization, agency or other entity, but excluding a recipient) who:

- knowingly presents or causes to be presented a fraudulent claim for payment under the State's medical assistance program;
- knowingly gives or causes to be given to any person, with respect coverage of inpatient hospital services, information that he or she knows or should know is false or misleading;
- arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in the medical assistance program or a federal or state health care program; or
- commits other specified fraudulent acts.

The bill allows the Director of Healthcare and Family Services to exclude, terminate, suspend, or bar the person from participation in the medical assistance program, but not before granting the affected individual, entity, or vendor an opportunity for a hearing after reasonable notice. Senate Bill 1330 removes language allowing the Department to recover interest on the amount of an overpayment.

ISMS worked with other interested parties to clarify certain parts of the bill, particularly with regard to how to handle overpayments paid to vendors by the state.

ISMS was neutral on the bill as amended, which passed both houses and awaits action by the Governor.

MEDICAL LIABILITY REFORM

Summary of ISMS Legislation – Senate Bill 2160 (Sen. Barickman) is ISMS legislation and would have reenacted many of the provisions from Public Act 94-677 (the medical liability reform law of 2005), with the exception of caps on awards for non-economic damages and the *Sorry Works!* program. Specifically, Senate Bill 2160:

- 1) Strengthened the affidavit of merit by requiring the disclosure of the consulting physician's name and that the physician be an expert in the area of medicine that is the subject of the lawsuit;

- 2) Limited 90-day extensions for filing the affidavit and written report to situations where the affiant was unable to obtain consultation because the consultation could not be obtained before the statute of limitations expired;
- 3) Allowed the use of annuities for the payment of portions of the award for medical costs;
- 4) Increased the standards for expert witnesses by requiring them to be board certified or board eligible in the same specialty as the defendant. The expert would also have to devote a majority of time to the practice of medicine, teaching or research. Retired experts would have to be current with continuing education requirements;
- 5) Extended Good Samaritan immunity to retired physicians providing free care;
- 6) Allowed a free medical clinic to receive reimbursement from the Department of Healthcare and Family Services, provided the reimbursements would only be used to pay overhead expense of operating the clinic and not to provide compensation to the health care professional receiving civil immunity;
- 7) Provided that the interest rate on judgments would be automatically increased or decreased by a percentage equal to the percentage change in the consumer price index during the preceding 12 months (currently, the 9% interest rate is not annually indexed); and
- 8) Delayed the accrual of interest in certain cases where a federal Medicare lien may exist against the judgment by providing that in such cases, the interest would be computed from the day after the federal Medicare program provides confirmation of any lien against the judgment, rather than from the day the judgment is entered.

Because of strong opposition from the Illinois Trial Lawyers Association, Senate Bill 2160 did not advance.

Legislating Settlement Agreements – Senate Bill 1912 (Sen. Raoul/Rep. Sims) is an initiative of the Illinois Trial Lawyers Association. While the intent of the bill is to ensure that plaintiffs who enter into a settlement agreement are paid in a timely manner, Senate Bill 1912 removes judicial discretion and creates a one-size fits all approach.

Specifically, the bill requires the defendant to tender a release to the plaintiff within 14 days of written confirmation of the settlement, even though the written confirmation is not in the form of a written settlement agreement signed by all parties, except in instances court approval of the settlement is required.

The bill also gives the plaintiff's attorney authority on how liens will be satisfied.

ISMS opposed Senate Bill 1912 for these reasons. Despite opposition from ISMS, business and insurance groups, Senate Bill 1912 passed both houses and awaits further action by the Governor.

MEDICAL PRACTICE ACT

Elder Abuse – Additional Training – House Bill 3382 (Rep. Tabares) would amend the *Medical Practice Act* and all other professional regulatory acts to mandate that qualifications for licensure and continuing education requirements for health care professionals include completion of a one-hour course or training program on identifying and reporting of elder abuse and neglect.

ISMS opposed this bill on the grounds that non-medical groups, including government, should not dictate what physicians are taught, regardless of the issue. The bill failed to advance out of the House Health Care Licenses Committee

Extension of the Medical Practice Act – Senate Bill 1794 (Sen. Martinez), an ISMS initiative, would extend the *Illinois Medical Practice Act* 10 years from Dec. 31, 2013, to Dec. 31, 2023.

The bill remains in the Senate Committee on Assignments.

Given that the *Act* sunsets at the end of this year, the legislature will have to act on it before Dec. 31, 2013. We expect this action to take place during the legislative fall veto session, which is the third week in October and the first week in November. ISMS will be working with the Department of Financial and Professional Regulation and legislators to ensure the *Act* is extended.

Increase in Licensure Fees – 2013 began with intense negotiations with the Illinois Department of Financial and Professional Regulation (IDFPR) regarding physician licensure fee increases and how best to replace the \$8 million that had been swept from the fund and transferred to the General Revenue Fund (GRF). This money has never been paid back and because of this, the Medical Disciplinary Fund (MDF) experienced a shortage of funds.

To address the immediate funding crisis in the MDF, ISMS introduced House Bill 1001 (Rep. Hays) and Senate Bill 1494 (Sen. Martinez) to transfer \$9.6 million from GRF to the MDF. To ensure long term stability in the fund, the bills would have increased physician initial licensure and renewal fees 67% to \$500. The bills also provided for a 10-year extension of the *Medical Practice Act*.

Unfortunately, neither Senate Bill 1494 nor House Bill 1001 were called for a vote due to strong opposition from the Governor's office and concern among legislators about the lack of state revenue in GRF and the poor fiscal condition in the state.

In early February, Speaker Michael Madigan introduced House Bill 193, a bill to require physicians to restore money to the MDF that was diverted to pay for other state programs. To make up this diversion, House Bill 193 would have raised initial and renewal fees for physician licenses to \$750 and sharply raise other physician licensure fees as well. **The licensure fees would have remained at \$750** even after the money would have been paid back, creating a surplus of revenue in the MDF, making it ripe for future sweeps.

Senate President John Cullerton introduced Senate Bill 622. Senate Bill 622 authorized the transfer of \$6.6 million from the Local Government Tax Fund into the MDF and then beginning

in 2014, and over two licensure cycles, required that the \$6.6 million be paid back. Fees for initial licensure and renewal fees would be increased from \$300 to \$700. After \$6.6 million would be paid back, those licensure fees would be brought down to a reasonable level of \$500 for a three year license.

Efforts to amend Senate Bill 622 in the Illinois House so that the bill would closely mirror House Bill 193 were averted due to ISMS opposition. The House approved an unamended version of Senate Bill 622 on March 7 and it was signed into law on March 8.

Physician Profiles – House Bill 1327 (Rep. Flowers/Sen. Delgado) amends the *Patients' Right to Know Act* and extends the disclosure period from five years to 10 years for certain information that must be posted on a physician's public profile. Currently, the Department of Financial and Professional Regulation maintains a record of all disciplinary actions for each physician that is separate from the profiles but is accessible to the public.

Because this information already exists and is publicly available, ISMS remained neutral on the bill, which passed both houses and awaits further action by the Governor.

MEDICAL RECORDS, PRACTICE AND REGULATION

Anatomic Pathology Billing – Senate Bill 1630 (Sen. Haine), as originally drafted, would have amended the *Medical Practice Act* to prohibit any clinical laboratory or other physician from charging, billing, or otherwise soliciting payment for anatomic pathology services unless the services were rendered personally by the clinical laboratory or physician, or under the clinical laboratory's or physician's direct supervision.

Senate Amendment 2, which was adopted in committee, would allow a referring physician who takes a patient specimen to charge a patient or a payer an acquisition or processing charge when (i) the charge is limited to actual costs incurred for specimen collection and transportation, and (ii) the charge is separately coded or denoted as a service distinct from the performance of the anatomic pathology service.

ISMS is monitoring and reviewing this legislation, which passed out of the Senate Insurance Committee and is on second reading in the Senate.

Controlled Substances and Prescribing Habits – Senate Bill 1454 (Sen. Delgado/Rep. Beiser), was introduced in response to concerns about the perceived abuse of Dihydrocodeinone. As originally drafted, Senate Bill 1454 moved Dihydrocodeinone from a Schedule III drug to a Schedule II drug. The bill would have required that all Schedule II prescriptions be issued via electronic prescribing and that all electronic prescribing must pass through the Prescription Monitoring Program portal to establish an audit trail regarding the dispensing of the medication.

The original language would have required the Prescription Monitoring Program Advisory Committee to generate a file of information regarding practitioners with consistently high numbers of patients with multiple prescribers, and submit it to the Department of Financial and Professional Regulation. The bill would have required that by Jan. 1, 2015, all electronic health records systems interface with the Prescription Monitoring Program application program to

ensure that all professionals have access to specific patient records as they are treating the patient.

The Prescription Monitoring Program Advisory Committee would also have been required to annually report its evaluation of historic prescribing of controlled substances to the Director of the Division of Alcoholism and Substance Abuse, the Director of Public Health, and the Secretary of the Department of Financial and Professional Regulation. Part of this report would be recommendations for courses of continuing professional education and other training materials for licensed health care professionals in the appropriate use of pain medications.

The Prescription Monitoring Program Advisory Committee would also be responsible for providing outreach and assistance to health care professional organizations to encourage and facilitate continuing medical education training programs for their members regarding appropriate prescribing practices for optimum patient care.

ISMS opposed this legislation and offered Senate Amendment 5, which was adopted, to keep Dihydrocodeinone a Schedule III drug, but restrict it to the same prescriptive limits as a Schedule II drug. This would limit the prescription to a 30-day supply with any continuation requiring a new prescription but allowing prescribers to issue multiple prescriptions not exceeding a 90-day supply to be filled at 30-day intervals.

The ISMS amendment would also require that by Jan. 1, 2018, all electronic health records systems to interface with the Prescription Monitoring Program application program to ensure that all health care professionals have access to specific patient records as they are treating the patient.

ISMS supported the bill as amended, which passed the Senate. Due to opposition from the Illinois Retail Merchants Association and the Illinois Pharmacists Association, the bill was held in the House Human Services Committee.

Health Facility Definition – House Bill 2423 (Rep. Will Davis/Sen. Hunter) is an initiative of the Illinois Health Facilities Planning Board and is intended to clarify specifically what facilities and what services currently fall under the Certificate of Need (CON) process.

ISMS opposed the bill as originally introduced because it specified that certain facilities qualify as health care facilities regardless of whether they are owned or operated by a physician, a partnership, a medical or professional corporation, or an unincorporated medical or professional group. It also added "category of service" as defined in the rules governing the CON process. These changes could be interpreted as an expansion of the CON process and would have brought larger physician practices into the CON process, which is cost prohibitive for physicians.

ISMS worked with the Board on language that would clarify which facilities and services are currently subjected to the CON process without expanding the definition of "health care facility." The amendment maintains the status quo and states the CON process shall only apply to any institution or place and category of service operated or owned by a physician that meets the major medical equipment threshold, and when the project cost is in excess of the capital

expenditure minimum threshold. House Floor Amendment 2, which was adopted, removed ISMS' opposition.

HB 2423, as amended, passed both houses and awaits further action by the Governor.

Home Health Services by Out-of-State Physicians – House Bill 2760 (Rep. Sosnowski/Sen. LaHood) is an initiative of ISMS and addresses home health care services ordered by an out-of-state physician. Current law does not expressly allow for home health care services to be ordered by an out-of-state physician, so this bill ensures that Illinois law allows for such orders and then provides a reasonable time frame for the patient to find an Illinois physician to order home health services.

As originally drafted, patients have 90 days to transition to an Illinois physician. An amendment was added to provide for a transition period of 180 days for those patients where home health services are needed to care for two or more medical conditions requiring intensive management by two or more physicians.

HB 2760 passed out of both houses and awaits further action by the Governor.

Identification Badges – House Bill 2452 (Rep. Walsh/Sen. Bertino-Tarrant) amends the *Medical Patients Right Act* and requires a health care facility that provides treatment or care to a patient in this State (rather than a health care facility licensed in this State) to require each employee of or volunteer for the facility (including students), who examines or treats a patient or resident of the facility to wear an identification badge that readily discloses the first name, licensure status, if any, and staff position of the person examining or treating the patient or resident.

ISMS remained neutral on the bill as physicians are already required to wear a name tag during all patient encounters that clearly identifies his or her license.

The bill passed both houses and awaits further action by the Governor.

Medical Marijuana – House Bill 1 (Rep. Lang/Sen. Haine) creates a regulatory system under which the state will administer the Compassionate Use of Medical Cannabis Pilot Program. The pilot program will last for four years beginning Jan. 1, 2014.

Under House Bill 1, no patient or caregiver may purchase more than 2.5 ounces of medical cannabis during a 14-day period.

To become a qualified patient, a person must have a written certificate from a physician that he or she has one or more specific debilitating medical conditions. The bill names 38 specific medical conditions that may qualify a patient for this written certificate. These include:

cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency, syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis,

fibrous dysplasia, spinal cord injury, traumatic brain injury and post-concussion syndrome, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson's, Tourette's, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, Complex Regional Pain Syndromes Type I, Causalgia, Complex Regional Pain Syndromes Type II, Neurofibromatosis, Chronic Inflammatory Demyelinating, Polyneuropathy, Sjogren's syndrome, Lupus, Interstitial, Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, or residual limb pain.

The list does not include ailments such as chronic pain and nausea. Citizens may petition the Department of Public Health to add to the list of debilitating medical conditions, and the Department will have 180 days to accept or deny the request.

A doctor issuing the written certificate needed for a patient to obtain medical cannabis must be licensed to practice medicine in Illinois and must maintain a controlled substance license.

"Written certification" means a document dated and signed by a physician, stating:

- that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition;
- that the qualifying patient has a debilitating medical condition, and specifying the debilitating medical condition the qualifying patient has; and
- that the patient is under the physician's care for the debilitating medical condition.

A written certification shall be made only in the course of a bona fide physician-patient relationship, after the physician has completed an assessment of the qualifying patient's medical history, reviewed relevant records related to the patient's debilitating condition, and conducted a physical examination.

An exemption is created in a Veterans Affairs hospital setting where patients are unlikely to see a physician directly. In a VA hospital, a bona fide physician-patient relationship shall be found as long as the patient is cared for under normal VA hospital protocols.

Any physician issuing a written certificate must not have any remuneration agreement with any cultivation center or dispensing organization. Nor may the physician be in any partnership or fee-sharing agreement with any person who has any ownership in a dispensing organization or cultivation center.

ISMS was neutral on House Bill 1, which passed both houses and awaits further action by the Governor.

Mental Health Confidentiality – House Bill 1017 (Rep. Feigenholtz/Sen. Steans) and Senate Bill 1186 (Sen. Steans) are initiatives of the Governor's office of Health Information Technology.

These initiatives amend the *Mental Health and Developmental Disabilities Confidentiality Act* to allow a patient's information to be disclosed on the Health Information Exchange (HIE), making it easier for health care professionals to access medical records in real time.

ISMS worked closely with other stakeholders to clarify the patient's ability to opt-out of the program. House Amendment 2 to House Bill 1017 ensures that the patient would be provided written notice of the purpose of the HIE and their right to opt-out, which is their responsibility to do, as opposed to putting that burden on the health care professional.

ISMS supported both bills. House Bill 1017, as amended, passed both houses and awaits further action by the Governor.

Power of Attorney for Health Care – An ISMS initiative, House Bill 2373 (Rep. Williams) would create a more patient-friendly power of attorney for health care. One of the main goals of this legislation would provide a notice and form in simpler language that will be more easily understood by the general public. This form would be designed with the intent to increase the use of these instruments and encourage individuals to designate a person to make health care decisions for them when they can no longer do so themselves. The legislation would preserve the individual right to use any other “non-statutory” form, but specify for the first time the minimum requirements for an alternate form to be considered acceptable under the *Illinois Power of Attorney Act*.

Because there was a comprehensive rewrite of the *Power of Attorney Act* last year, this bill was held in the House Rules Committee. ISMS intends to continue to advocate for these changes next year.

PUBLIC HEALTH

Abortion Ultrasound – House Bill 2683 (Rep. Wheeler) would have created the *Ultrasound Opportunity Act* and required any physician who is to perform an abortion to offer the woman seeking an abortion an opportunity to receive and view an ultrasound prior to the woman having an abortion.

ISMS opposed this bill, which was not called for a vote in the House Human Services Committee. It has been re-assigned to the House Rules Committee.

Anatomical Gift Act – House Bill 2339 (Rep. Will Davis/Sen. Clayborne) was introduced to establish consistency between the *Illinois Act* and the *Revised Uniform Anatomical Gift Act* of 2006.

ISMS worked closely with the Secretary of State's office and other stakeholders to ensure that the core provisions of the *Illinois Act* that have encouraged organ donation are retained.

House Amendment 1 clarifies:

- who may execute an organ or tissue gift during the donor's lifetime and make it consistent with the *Illinois Health Care Surrogate Act*;

- methods on how donors make an anatomical gift;
- that first person consent registry is maintained;
- that a person other than the donor is barred from changing, amending or revoking an anatomical gift;
- that a donor's revocation of an anatomical gift is not a refusal and does not bar another person from making an anatomical gift of the donor's body, organs or tissue after the donor has died;
- that an anatomical gift of an organ for a specific purpose is neither a refusal to give other organs, nor a limitation on the making of an anatomical gift for other purposes; and
- that a person may presume that a document of gift is valid unless that person knows that it was not validly executed or was revoked.

The amendment also adds new uniform language regarding immunity from civil and criminal actions for those acting in good faith in accordance with the Act or with the applicable anatomical gift law of another state.

ISMS supports House Bill 2339, as amended. It passed both houses and awaits further action by the Governor.

Breast Cancer Education – House Bill 3175 (Rep. Hatcher/Sen. Hunter) requires the Director of Public Health to establish and implement an education campaign to inform breast cancer patients anticipating surgery, especially those in racial and ethnic minority groups, on the availability and coverage of breast reconstruction, prostheses and other options.

The campaign must include in the dissemination the following information, which must be posted on all relevant state websites:

- breast reconstruction is possible at the time of surgery or can be delayed;
- breast prostheses or breast forms may be available;
- federal law mandates both public and private plans to include coverage of breast reconstruction and prostheses; and
- the patient has a right to choose the health care professional of reconstructive care, including the potential transfer of care to a surgeon who provides breast reconstructive care.

The campaign may include dissemination of other information, whether developed by the Director or by other entities, as the Director determines relevant. In developing information to be disseminated, the Director is required to consult with appropriate medical societies and patient advocates representing racial and ethnic minority groups.

House Bill 3175 requires the Director to report to the General Assembly every two years the activities carried out, including evaluating the extent to which the activities have been effective in improving the health of racial and ethnic minority groups.

House Bill 3175 passed both houses and awaits further action by the Governor.

Congenital Heart Defect Screening – House Bill 2661 (Rep. Gabel/Sen. Steans), as originally introduced, would have amended the *Alternative Health Care Delivery Act* and the *Hospital Licensing Act* to require all birth centers and hospitals to test every newborn for congenital heart defects via a screening test in line with the current standard of care.

The language was deleted and replaced with Senate Committee Amendment 1. It amends the *Newborn Metabolic Screening Act* and requires the Department of Public Health to promulgate and enforce rules and regulations requiring that every newborn be subjected to tests for genetic, metabolic, and congenital anomalies as the Department may deem necessary (rather than tests for phenylketonuria, hypothyroidism, galactosemia and such other metabolic diseases as the Department may deem necessary from time to time). It further requires the Department to require that screening tests for critical congenital heart defects be performed at birthing hospitals and birth centers in accordance with a testing protocol adopted by the Department in line with current standards of care.

ISMS was neutral on this bill, which passed both houses and awaits further action by the Governor.

Comprehensive Sex Education – House Bill 2675 (Rep. Lilly/Sen. Steans) and Senate Bill 2354 create a standard for existing sexual health education courses, ensuring that only medically accurate, age-appropriate, and complete information is taught as part of public school sex education curricula. This would include information on reducing unintended pregnancies, STDs and STIs, and would stress abstinence. This proposal applies to grades six through 12, ensuring that whenever public schools choose to teach sex education, their programs must be medically accurate and developmentally and age appropriate.

Pursuant to ISMS House of Delegates policy, ISMS supported the bill. House Bill 2675 passed both houses and awaits further action by the Governor.

Electronic Cigarettes – Senate Bill 1756 (Sen. Mulroe/Rep. Willis) amends the *Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act* and prohibits the sale of electronic cigarettes to anyone under the age of 18.

ISMS supported this bill, which passed both houses and awaits further action by the Governor.

Immunizations – Senate Bill 1217 (Sen. Haine/Rep. McAuliffe) would have allowed dentists to administer vaccinations after they complete “appropriate training” on how to address contraindications and adverse reactions. ISMS strongly opposed this legislation. The requirement for additional training is inadequate and will not protect patients, especially those who suffer from chronic illnesses, experience allergic reactions and/or those who are on other drugs that may negatively interact with an immunization.

There is also concern about dentists’ ability to actually implement a program for which they have little to no experience, including the vaccine schedule, its administration, handling and storage. ISMS questioned the Illinois State Dental Society on how dentists will retain documentation and

communicate with the patient's primary care provider, and how they intend to bill for these services. General dentists do not enroll in Medicare, nor do they participate in most health plans.

Because of ISMS' opposition, the language permitting dentists to provide immunizations was removed and replaced with language making minor changes to the *Dental Practice Act*. ISMS is neutral on the bill as amended, which passed both houses and awaits further action by the Governor.

Mammography Reports – Senate Bill 2314 (Sen. Hunter/Rep. Wheeler) – as originally drafted would have required every provider of mammography services, in the instance of a patient's mammogram demonstrating dense breast tissue, to provide the patient a written summary of the mammography report stating that dense breast tissue makes it more difficult to identify cancer and may also be associated with an increased risk of cancer. The summary would also encourage women to talk to their physician about getting additional tests.

ISMS opposed this language because this bill would legislate the practice of medicine. There is also no consensus within the scientific community on the relationship between breast density and cancer risk. There is also no reliable method for assessing breast density, and no clinical guidelines that recommend additional screening solely on the basis of high breast density.

ISMS offered an amendment, which was adopted, stripping the bill of the mandatory report and replacing it with changes to the written summary on breast cancer currently published by Department of Public Health. The written summary will now include the meaning and consequences of "dense breast tissue" under the guidelines of the Breast Imaging Reporting and Data System of the American College of Radiology.

ISMS supported the bill, as amended, which passed both houses awaits further action by the Governor.

Mental Health Reporting – In December of 2012, the 7th Circuit of Appeals ruled Illinois' ban on carrying concealed firearms as unconstitutional and mandated that the Illinois General Assembly pass a law allowing for concealed carry of firearms.

House Bill 183 (Rep. Phelps/Sen. Forby) creates the *Firearm Concealed Carry Act* and allows residents and non-residents who meet specified qualifications to apply for a license to carry a concealed firearm in this State. Part of this bill amends the Mental Health and Developmental Disabilities Code and requires health care professionals providing mental health services to report patients with certain developmental disabilities or those who present a clear and present danger within 24 hours of the determination to the Department of Human Services.

ISMS worked with interested parties to ensure that health care professionals who are required to report have immunity from civil, criminal and professional liability.

ISMS was neutral on House Bill 183, which passed both houses and awaits further action by the Governor.

Tissue Transfer – As originally introduced, House Bill 158 (Rep. Lang) would have created the *Human Tissue Transfer Act* and provided that the person from whom the human tissue specimen was physically removed is the owner of that human tissue specimen, and that transfer of ownership of a human tissue specimen from a living donor to another party, if that other party is a physician, requires the written agreement as set forth in the Act. It would have required physicians pay to the donor a specific fee for the tissue. In cases where the payment required by the agreement is not made prior to the death of the donor, the bill would mandate payment be made to the successor in interest.

ISMS was very much opposed to this bill as introduced and worked with interested parties to amend the bill to create guidelines for physicians in cases where human tissue is used for commercial purposes.

House Bill 158, as amended, would amend the *Medical Patient Rights Act* and include in the definition of "patient" any person who is the subject of a research program or an experimental procedure, as defined under the rules and regulations adopted pursuant to the *Hospital Licensing Act*. It would provide that if human tissue is removed from a patient by a physician or other health care professional for the purpose of pursuing commercial research, then certain guidelines shall be followed. The bill, as amended, defines "human tissue" to mean blood, plasma, blood products or derivatives, other bodily fluids, or hair taken from a living natural person for commercial research use *not* be transplanted directly into another human body. The bill also clarifies that nothing in the provision concerning the commercial use of human tissue shall be construed to (1) limit the use of human tissue, organs, cadavers, or any other biological specimen in non-commercial medical or scientific research, education, treatment, or diagnosis or (2) limit or supersede organ or tissue donation as permitted by law.

ISMS supported the bill as amended, which passed out the House Judiciary Committee, but was not called for a vote on the House Floor.

Smoke Free Exemptions – Senate Bill 53 (Sen. Link) would have created exemptions to the *Smoke Free Illinois Act* to specifically allow smoking on outdoor patios of businesses. ISMS opposed this legislation, which was not called for a vote in the Senate Public Health Committee.

Tanning Beds – House Bill 188 (Rep. Gabel and Sen. Radogno) and Senate Bill 2244 (Sen. Radogno) amends the *Tanning Facility Permit Act* and prohibits tanning facilities from allowing anyone under the age of 18 to use tanning equipment or a device defined as equipment that emits ultraviolet (UV) radiation used for tanning of the skin, such as a sunlamp, tanning booth, or tanning bed that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers.

ISMS supported both bills. House Bill 188 passed both houses and awaits further action by the Governor.