

# Insights

## New Indiana Health Care Laws

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July 16, 2018

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This article summarizes many of the notable health care laws that were passed during the 2018 legislative session, which includes laws that are effective July 1, 2018, as well as laws that are effective after July 1, 2018. These laws affect both healthcare institutions, as well as individual providers.

### **New Health Care Laws Effective July 1, 2018:**

#### **INSPECT (SEA 221)**

Authored by Senator Erin Houchin and sponsored by Representative Ben Smaltz, Senate Enrolled Act 221 ("SEA 221")<sup>[1]</sup> updates INSPECT requirements for practitioners with a controlled substance registration ("CSR"). Under SEA 221, practitioners with a CSR must be registered with INSPECT by January 1, 2019. Further, SEA 221 requires practitioners to check INSPECT before prescribing an opioid or a benzodiazepine to a patient based on the following timeline:

- Beginning July 1, 2018, a practitioner who has INSPECT fully "integrated" into the practitioner's electronic medical records.
- Beginning January 1, 2019, a practitioner who provides services in a hospital emergency department or a pain management clinic.
- Beginning January 1, 2020, a practitioner who provides services to a patient in a hospital.
- Beginning January 1, 2021, all practitioners must check INSPECT prior to prescribing an opioid or benzodiazepine.

#### **Continuing Education Requirements (SEA 225)**

Authored by Senator Randy Head and sponsored by Representative Cindy Kirchhofer, Senate Enrolled Act 225 ("SEA 225")<sup>[2]</sup> creates continuing education requirements for any practitioner wishing to obtain or retain a CSR. Beginning July 1, 2019, a practitioner who applies for or who is renewing a CSR must have completed two (2) hours of continuing education during the previous two (2) years addressing the topic of opioid prescribing and opioid abuse. The Indiana Public Licensing Agency will maintain a list of approved courses on its website. This requirement is currently set to sunset July 1, 2025.

#### **Credentialing (HEA 1007)**

Authored by Representative Cindy Kirchhofer and sponsored by Senator Randy Head, House Enrolled Act 1007 ("HEA 1007")<sup>[3]</sup> requires the Office of Medicaid Policy and Planning to create and implement a centralized credentialing process for health care providers registering with managed care entities to provide services to

Medicaid members. Under HEA 1007, a managed care entity may not establish additional credentialing requirements, although a managed care entity may still require additional documentation prior to entering into a contract or agreement with a provider.

The bill also provides a mechanism for provisional credentialing. Under HEA 1007, if all of the following criteria are met, an insurer is required to provisionally credential a provider if the insurer fails to issue a credentialing decision within thirty (30) days:

- The provider submitted a completed and signed credentialing application form.
- The provider previously received credentials from the insurer in Indiana, and the application is within the same scope of practice.
- The provider is a member of a credentialed group and already participates with the insurer.
- The provider is within the insurer's network.

Reimbursement is then retroactive to the date of the provisional credential.

### **POST and Hierarchy of Consent (HEA 1119)**

Authored by Representative Cindy Kirchhofer and sponsored by Senator Mike Crider, House Enrolled Act 1119 ("HEA 1119")<sup>(4)</sup> allows advanced practice nurses and physician assistants, in addition to physicians, to execute Physician Order of Scope and Treatment forms. HEA 1119 also codified a health care hierarchy of consent, as follows:

- Judicially appointed guardian
- Spouse
- Adult child
- Parent
- Adult sibling
- Grandparent
- Adult grandchild
- The nearest other adult relative in the next degree of kinship
- A friend who is an adult; has maintained regular contact with the individual; and is familiar with the individual's activities, health, and religious or moral beliefs
- The individual's religious superior, if the individual is a member of a religious order

Accordingly, if an individual is unable to make his or her own health care decisions and has not selected a surrogate decision maker, a health care provider must make reasonable inquiry into the availability of individuals able to provide consent, based upon the above listed hierarchy. If multiple people on the same level of hierarchy fail to reach a consensus on the appropriate health care decision, a majority of available individuals controls the outcome.

### **Perinatal Levels of Care (SEA 360)**

Authored by Senator Ed Charbonneau and sponsored by Representative Cindy Kirchhofer, Senate Enrolled Act 360 (“SEA 360”)[5] requires the Indiana State Department of Health (“ISDH”) to establish a program to certify perinatal levels of care designations for every hospital or birthing center licensed to provide birthing services in Indiana. The measure is an effort to standardize care in order to target Indiana’s infant mortality rate and help expecting mothers identify the facility that can best deliver the level of care they need.

The ISDH may change the level of care designation for a hospital or birthing center if it determines the hospital or birthing center does not meet the standards necessary for the designated level of care. Further, under SEA 360, a licensed hospital or birthing center offering birthing services may only operate as perinatal center if the hospital or birthing center complies with standards required by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

### **Newborn Screening Requirements (HEA 1017 and HEA 1287)**

Both House Enrolled Act 1017 (“HEA 1017”)[6] authored by Representative Doug Gutwein and sponsored by Senator Ed Charbonneau, and House Enrolled Act 1287 (“HEA 1287”)[7] authored by Representative Heath VanNatter and sponsored by Senator Ed Charbonneau, update Indiana’s newborn screening requirements.

HEA 1017 adds spinal muscular atrophy and severe combined immunodeficiency to the list of required screenings for newborn infants, and HEA 1287 updates the timeline for when blood samples must be collected from newborn infants. Under HEA 1287, a newborn infant’s blood sample must be collected not earlier than 24 hours after birth. Prior to HEA 1287, a blood sample could not be collected earlier than 48 hours after birth, but the shortened timeline allows families to return home sooner if desired and appropriate. If a newborn is discharged from the hospital before 24 hours, then a blood sample must be collected no earlier than immediately before discharge and a second sample must be collected between 48 and 120 hours.

### **New Health Care Laws with Later Effective Dates:**

#### **Prior Authorization for Health Care Services (HEA 1143)**

Authored by Representative Donna Schaibley and sponsored by Senator Liz Brown, House Enrolled Act 1143 (“HEA 1143”)[8] streamlines the prior authorization (“PA”) requirements for health care services covered by commercial health insurance plans in Indiana that are not otherwise governed by the federal Employment Retirement Income Security Act of 1974, otherwise known as ERISA. The provisions of HEA 1143 do not apply to dental services, vision services, long term rehabilitation, or pharmaceuticals.

Under HEA 1143, effective September 1, 2018, health insurance plans will be required to make public on their respective websites the CPT codes for which PA is required, as well as a list of the health insurance plans’ requirements to establish a complete PA request. Any changes to the standards of a health insurance plan’s PA requirements must be made public 45 days’ prior to the change.

Effective December 31, 2018, health insurance plans will not be permitted to deny a claim for an unanticipated health care service solely because of lack of PA, although a retrospective review may be required.

Effective December 31, 2019, PA determinations will be required to be made within 72 hours for urgent care situations and within seven (7) business days for non-urgent care situations, and the reason for any denial must be stated in writing within the applicable timeframe. Health insurance plans will also be required to accept PA requests through electronic transmission. Finally, health insurance plans will not be permitted to deny payment for services that have otherwise received PA, unless the PA request or the claim contained fraudulent or materially incorrect information, or the individual was not covered under the health insurance plan on the date on which the health care service was rendered.

#### **National Accreditation (HEA 1260)**

Authored by Representative Mike Karickhoff and sponsored by Senator Mike Crider, House Enrolled Act 1260 (“HEA 1260”)[9] requires the ISDH to issue a hospital license if the applicant has been accredited by a nationally recognized accrediting organization starting January 1, 2019, without the ISDH conducting its own annual survey in an effort to eliminate otherwise duplicative surveys. However, licensure by accreditation does not affect the ISDH’s performance of an initial survey of a hospital obtaining an initial license. Further, the ISDH will retain the authority

to investigate a complaint against an accredited hospital for noncompliance with state laws or rules, and the ISDH will still conduct random validation surveys on behalf of the Centers for Medicare and Medicaid Services. The ISDH will also continue to conduct an annual survey of hospitals not accredited by a nationally recognized accrediting organization.

If you have any questions regarding these bills or other recent measures, please contact Amy Levander at [alevander@kdlegal.com](mailto:alevander@kdlegal.com) or your regular Krieg DeVault attorney.

[1] SEA 221 (2018), available at: <http://iga.in.gov/legislative/2018/bills/senate/221>.

[2] SEA 225 (2018), available at: <https://iga.in.gov/legislative/2018/bills/senate/225>.

[3] HEA 1007 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1007>.

[4] HEA 1119 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1119>.

[5] SEA 360 (2018), available at: <https://iga.in.gov/legislative/2018/bills/senate/360>.

[6] HEA 1017 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1017>.

[7] HEA 1287 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1287>.

[8] HEA 1143 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1143>.

[9] HEA 1260 (2018), available at: <https://iga.in.gov/legislative/2018/bills/house/1260>.