The Legislative Bulletin

A publication of the Vermont Medical Society

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In This Issue:

Proposed Budget Cuts to Adversely Impact Vermont Physicians

Earlier this month, Gov. James Douglas submitted his state fiscal year 2009 (SFY2009) Budget Adjustment Act to the Vermont General Assembly for its consideration. In order to help address the state's Medicaid deficit, the Office of Vermont Health Access (OVHA) is proposing to cut physician Medicaid reimbursement in several ways. Gov. Douglas has also proposed the same Medicaid physician reimbursement cuts in the SFY2010 budget.

4-Percent Cut in Reimbursement for All Non-Evaluation and Management Procedures

First, OVHA has recommended that Medicaid reimbursement for all non-evaluation and management procedures be reduced by 4 percent. This 4-percent reduction is on top of the 7.5-percent reduction for the same procedures that went into effect July 1, 2005 (there has not been an increase for these procedures since that date). Under the proposal, reimbursement for evaluation and management codes (99201-99499) would not be effected by the reduction and they would continue to be reimbursed at the 2006 Medicare rate. It is important to note that Medicare's rebasing of the evaluation and management codes took place in 2007, so Medicaid is now paying significantly less for evaluation and management codes than Medicare. For example, for 99213, the most frequently billed evaluation and management office visit code, Medicaid is paying 88 percent of the 2009 Medicare rate.

Since the Medicaid program is paid for jointly by the federal government and state government, any reduction in state expenditures would be significantly less than the reduction in payment to physicians. Currently the federal government contributes approximately 60 percent toward the cost of the Medicaid program and the state pays for the remaining 40 percent. Therefore, when physician reimbursement is cut by one dollar the state only saves 40 cents.

The Governor's budget proposal also assumes the passage of President Obama's economic stimulus package that contains a provision temporarily increasing the federal government's support for the Medicaid program from 60 percent to approximately 67 percent. If this additional federal financial support is enacted, Vermont would only save 33 cents in state revenues for every one-dollar reduction in physician Medicaid reimbursement.

Reduced Primary Care and Case Management Fees

OVHA's second proposal is to reduce the Primary Care and Case Management fees paid to physicians from five dollars per month to $2.50 per month. This reduction will put at risk the primary care case management program in which beneficiaries select their Primary Care Provider (PCP) and access health services through a PCP working with them to assure high quality medical care.

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Proposed Budget Cuts

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20-Percent Additional Reducation in Payment for Most Procedures for Dual Eligible Patients

Finally, the administration is recommending that OVHA pay crossover-claims at the Medicaid rate in instances where a claim is covered under both Medicare and Medicaid. Under this proposal, the state's Medicare Part B payment on behalf of low-income Medicare patients would be limited to the Medicaid amount.

Currently, the Part B Medicare 20 percent beneficiary co-insurance is paid by OVHA on behalf of dual-eligibles based on the Medicare fee schedule. Under the OVHA proposal for SFY2009 and SFY2010, reimbursement for the 20 percent co-insurance would instead be based on the much lower Medicaid fee schedule. For procedures where the Medicaid fee schedule is less than 80 percent of Medicare, physicians would receive no payment for the 20 percent co-insurance amounts paid by patients under Medicare Part B. The policy change could also result in an even greater cut in payment for psychiatric services, since the Medicare beneficiary co-insurance amount for these procedures is 50 percent. Procedures that fall under the Medicare beneficiary's $135 Part B deductible would also be paid at the lower Medicaid rate.

The VMS is concerned that a 20-percent reduction in Medicaid reimbursement for dual-eligibles on top of the 4-percent payment cut for many of the same procedures may push some physicians over the tipping point regarding their ability to treat Medicaid beneficiaries. Under the proposed policy, primary care physicians would receive a 12-percent cut in their reimbursement for most routine office visits, since Medicaid is paying 88 percent of the current Medicare rate for 99213 – the most frequently billed evaluation and management code.

With such a sharp cut in payment, some Vermont doctors will undoubtedly be forced to stop seeing Medicaid patients in order to simply stay in business. Unable to find physician care, these patients will be forced to use hospital emergency rooms - the most expensive setting for care - thus increasing long-term costs to the Medicaid program.

When this policy was proposed in 2005, former VMS president Dr. Harvey Reich commented, "the cutbacks proposed by the Douglas administration will have a disproportionate impact on those specialty practices treating elderly patients with chronic conditions." According to a recent study by the Center for Studying Health System Change, "a decline in physicians' income increased the likelihood that a physician would stop accepting new Medicaid patients ..." For more information, please go to: http://www.hschange.com/CONTENT/974/

In order to help ensure that Vermonters covered by the Medicaid program have continued access to medical services, the VMS will urge members of the House Appropriations Committee to reject the administration's proposed physician Medicaid reimbursement cuts in both the state fiscal year 2009 Budget Adjustment Act as well as in the state fiscal year 2010 budget.

Please consider helping our efforts to fight these damaging proposals by contacting members of the House Appropriations Committee. They can be reached either at the Statehouse at 802-828-2228 - 115 State Street, Montpelier, VT 05633, or via the contact information below.

House Appropriations Committee

Rep. Martha Heath, Chair, 342 Rollin Irish Rd., Westford, VT 05494 – (802) 893-1291 - *mpheath@aol.com*
Rep. Mark Larson, Vice-Chair, 64 Temple St., Burlington, VT 05401 – (802) 862-7596 - *mlarson@leg.state.vt.us*
Rep. Robert Helm, 728 Moscow Rd., Fair Haven, VT 05743 - (802) 265-2145 - *rhelm@leg.state.vt.us*
Rep. Joe Acinapura, 45 Park St. , Brandon, VT 05733 - (802) 247-8403 - *joeacinapura@verizon.net*
Rep. Howard Crawford, P.O. Box 906, St. Johnsbury, VT 05819 - (802) 626-8226
Rep. William Johnson, Clerk, 3603 Rte. 102, Canaan, VT 05903 - (802) 277-8329
Rep. Kathleen Keenan, 8 Thorpe Ave., St. Albans, VT 05478 - (802) 524-5013 - *kkeenan@leg.state.vt.us*
Rep. Ann Manwaring, P.O. Box 1089, Wilmington, VT 05363 - (802) 464-2150 - *amanwaring@leg.state.vt.us*
Rep. Alice Miller, 88 Horton Hill Rd., Shaftsbury, VT 05262 - (802) 442-9825 - *amiller@leg.state.vt.us*
Rep. Sue Minter, 900 Maggies Way, Waterbury Center, VT 05677 - (802) 244-6229 - *sminter@leg.state.vt.us*
Rep. John Morley, 26 Irasburg St., Orleans, VT 05860 - (802) 754-8450 - *jmorley@leg.state.vt.us*

House Human Services Committee Reviews the *Report of the Palliative Care, End-of-Life Care, and Pain Management Study Committee*

In 2008, Act 166 created a legislative study on palliative care and pain management and required the study committee to collaborate with stakeholder groups, including VMS, to discuss and make recommendations improving palliative care, end-of-life care, pain management, and access to these services for children.

The study committee met over the summer and fall and recently submitted its report to the House Human Services Committee and the Senate Health & Welfare Committee. Drs. Zail Berry, John Brumsted, Ira Byock, David Clauss, Wendy Davis, Brian Erickson, Ed Haak, Jeffrey Klein, Todd Mandell, Robert McCauley, Allan Ramsay, and Donald Swartz participated actively in the study committee process.

VMS-led Group's Continuing Medical Education (CME) Proposal to Study Committee

One of the topics raised by the study committee was the need for additional education and training for health care professionals in the areas of palliative care and pain management. To respond to this concern, VMS convened a group of physicians representing the Department of Health, the Vermont Board of Medical Practice, the UVM College of Medicine CME Office and the Vermont Medical Society. Participants included Commissioner of Health Wendy Davis, MD; Vermont Board of Medical Practice Chair David Clauss, MD; VMS President John Brumsted, MD; and Associate Dean for CME at the UVM College of Medicine Jeffrey Klein, MD,.

The group submitted a joint letter to the study committee outlining a two-track approach to address the committee's interest in ensuring that health care practitioners were well trained in palliative care and pain management. The first step would bring together interested patients to identify current areas of knowledge deficit in pain management and palliative care and create an appropriate curriculum of interdisciplinary CME options. The UVM CME office has the ability to produce course content in delivery formats that would best suit the needs of health care practitioners statewide. The second step would develop recommendations for standards that would ensure sustained competency of Vermont's practicing physicians and accurately reflect the emerging national standards for the evaluation of physician competence and maintenance of certification.

Report's Final Recommendations on CME

The study committee's final report included a related, but not identical, two-fold recommendation on health care professional education. First, the Vermont Department of Health was charged with working with the FAHC Palliative Care Service and the various licensing boards to determine how to continue and expand education and training in palliative care and pain management. Their charge would include identifying providers who have or have not completed courses and institute a record keeping system. Licensing boards would also be required to mandate participation in educational programs that had demonstrated effectiveness as a condition of licensure. The second recommendation was that the Vermont Board of Medical Practice distribute information developed by the Department of Health on options for patients and families in need of palliative care and pain management. The report also noted that some members of the legislative committee believed that CME, including training in palliative care, should be a prerequisite for relicensure of physicians in Vermont.

Insurance Coverage for Hospice and Palliative Care, including care for children

The report found that while hospice and palliative care programs offer high quality patient care, improve quality of life for patients and save money by avoiding more expensive hospital care, insurance coverage for these services is insufficient. Because the Medicare hospice benefit was designed for adults, ensuring access to hospice and palliative for children is particularly problematic. In its recommendations the study committee directed BISHCA to conduct a study comparing the costs of hospice and palliative care versus the costs of hospital care for patients in the last six to 12 months of life. The committee also recommended removing barriers to insurance coverage for hospice and palliative care and pediatric hospice care.

Storing DNR & COLST orders in the Department of Health Advance Directive Registry

The report recommended a VMS-supported amendment to the law that would enable patients to include their Do-Not-Resuscitate orders (DNR) or Clinician Orders for Life Sustaining Treatment (COLST) in the Vermont advance directive registry managed by the Department of Health. Under current law, only patients' advance

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Palliative Care Report

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directives can be stored in the registry. Including DNR and COLST orders in the registry would enable patients and health care professionals treating them to access these important documents.

Bill of Rights for Vermonters receiving hospice care
The study committee found that the existing hospital and nursing home patients' bills of rights did not adequately address the rights of Vermonters who were dying or Vermonters who were suffering from chronic pain. To address this finding, the committee recommended expanding the existing nursing home and hospital bills of rights or creating a new bill of rights to address these issues. The report includes a proposed legislative bill on this subject as Appendix F.

The draft bill in Appendix F addresses two principal topics – communication with patients who are dying and pain treatment. Subsection (a) of the draft bill creates a right for dying patients to be informed by their physicians of all available options for terminal care and mandates that the options on the list include:

- Hospice care;
- Adequate medication for pain and symptom control;
- Voluntary refusal of food and liquid to shorten the dying process; and,
- Terminal sedation.

As drafted patients would have the right to select any, all or none of the options on the list and to receive supportive care for the specific option chosen.

VMS recommends adding palliative care, spiritual care, family support and bereavement services to the list, and removing specific treatment options, particularly ones that are used very infrequently like total sedation. VMS does not recommend legislating communication with dying patients, which is a process and not susceptible to a checklist approach.

Subsection (b) of the draft bill in Appendix F creates a right for a patient to request or choose opiate medications to relieve chronic pain without submitting to surgical procedures first. Subsection (c) follows with a requirement that if a physician refuses to prescribe opiate medication, the physician must inform the patient of other physicians who specialize in pain treatment with methods that include opiates. While VMS fully supports referring patients to specialized pain clinics when clinically appropriate, there are cases in which a physician may believe that it is not clinically appropriate to refer the patient to another physician for the purpose of obtaining opiate treatment. For example, a physician may have a patient who the physician believes is abusing or diverting opiate medication.

The Report of the Palliative Care, End-of-Life Care, and Pain Management Study Committee is being reviewed by the House Human Services Committee. The committee plans to introduce a committee bill based on the recommendations of the report.

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