The Legislative Bulletin

A publication of the Vermont Medical Society

Week of March 17, 2014

Green Mountain Care Board Approves Simplified Patient Consent Policy

On March 13, the Green Mountain Care Board (GMCB) voted unanimously to significantly simplify the state's policy for obtaining patient consent in order for physicians to access protected health information (PHI) from other providers on the Vermont Information Technology Leaders' (VITL) health information exchange. This step should help promote greater use of the Vermont Health Information Exchange (VHIE) provider portal when it goes live this May and help improve patient care and reduce duplicative diagnostic testing. The Board action will also make the consent process less burdensome and confusing for patients.

In approving the new consent policy, GMCB directed VITL to work with the Office of Health Care Advocate and the State of Vermont over the next 30 days to develop easy to understand patient educational materials regarding individual rights under global consent policy and the content of information on the VHIE.

The action was initiated by an Oct. 13, 2013 request to GMCB made by the Vermont Medical Society, Fetcher Allen Health Care and the Vermont Assembly of Home Health and Hospice Agencies. The three organizations asked the Board to revise the existing multiple consent policy and instead allow for a onetime global patient consent for provider access to information on the VHIE.

The former consent policy required a separate patient consent for each participating health care provider caring for the patient. Participating healthcare provider was defined as a healthcare provider or a physician practice in any healthcare organization. Therefore, under the former consent policy, a patient would potentially be required to provide separate written consent to both multiple individual physicians and to different healthcare organizations during the course of their treatment.

Throughout the deliberations on the development of the former consent policy, concerns were raised by VMS and FAHC that the proposed policy would create significant administrative burdens for Vermont providers and their staff and it would also create significant confusion for their patients who would be faced with multiple and similar forms to sign. And as a consequence, the consent policy could result in a high degree of reluctance for health care providers to participate in the VHIE due to the lack of certainty regarding the consent status. When the former consent policy was approved by GMCB on Oct. 25, 2012, VMS recommended that the Department of Vermont Health Access (DVHA) contract for an independent review of the VHIE, including recommendations to improve its functionality and any related recommended revisions to the consent policy. However due to recent research by VITL, VMS and other organizations pointed out that it was clear that immediate action by GMCB was necessary to prevent future delays in the implementation of the VHIE.

In 2013, VITL conducted pilots in multiple sites across the state to assess use, satisfaction and the desire for additional functionality and capability. VITL uses the term VITLAccess to describe the ability of authorized healthcare providers who receive patient consent, to query the VHIE for clinical information regarding their patients.

As stated in an Oct. 11th VITL memo, "[I]n VITL's efforts to implement the Vermont Policy on Patient Consent for Provider Access to VHIE, shortcomings in the policy have been exposed. These shortcomings, if not addressed, will have a negative impact on desired patient care scenarios and will hinder acceptance of the policy by Vermont's patient population."

Continued on page 5

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H.123 Lyme Disease

For the past six years VMS and the Department of Health have opposed bills that would create disciplinary immunity for physicians and others who prescribe long-term antibiotics to treat "chronic Lyme disease." During this time, the Department of Health and VMS co-sponsored several CME conferences that provided education about Lyme disease epidemiology and treatment.

Again this year a bill was introduced that would have created immunity for treating chronic Lyme disease with long-term antibiotics. As introduced, H.123 expressly would have created a medical standard of care in law by permitting a physician to prescribe long-term antibiotic therapy for the purpose of eliminating or controlling a patient's infection or symptoms of Lyme disease. The bill also included immunity from disciplinary action for prescribing long-term antibiotic therapy. Finally, the bill included a mandate that insurers cover long-term antibiotic therapy for patients diagnosed with Lyme disease.

VMS strongly opposes legislating the standard of medical practice, which must change as science and evidence change. The legislature does not have the expertise or the flexibility to set the standard of care for medical practice, or the ability to make modifications in a timely manner. Specialty societies, peer-reviewed literature, the Center for Disease Control, the National Institute of Health, the Vermont Department of Health and the Vermont Board of Medical Practice are more appropriate entities to review and influence the standard of care. VMS joined the Department of Health, the Vermont Board of Medical Practice and others in opposing the bill.

A House Health Care Committee amendment removed the section of the bill that stated that a physician could prescribe "long-term antibiotic therapy for the purpose of eliminating or controlling a patient's infection or symptoms," and the section that created express immunity for using long-term antibiotic therapy for Lyme disease. Instead, the bill requires the Vermont Board of Medical Practice, the Board of Osteopathic Physicians and the Board of Nursing to issue policy statements communicating to licensees that the boards will not take disciplinary action against a physician, solely for the use of medical care recognized by the guidelines of the Centers for Disease Control (CDC), the Infections Diseases Society of America (IDSA) or the International Lyme and Associated Disease Society (ILADS) for treatment of patients who are clinically diagnosed with Lyme disease or other tick-borne illness (The ISDA guidelines do not recommend long-term antibiotic therapy or the use of certain antibiotics for any manifestation of Lyme disease, while the ILADS guidelines do not recommend stopping antibiotics for patients with persistent, recurrent and refractory Lyme disease.). The amendment also requires written informed consent for long-term treatment for Lyme disease and requires physicians to document the basis for the diagnosis and treatment of Lyme disease in the patient's medical record. The amendment does not preclude discipline for errors, omissions or other misconduct when following the guidelines.

H. 123 has passed the House and will be taken up by the Senate Health and Welfare Committee next week.

While VMS continues to oppose the bill, VMS believes that version of the bill passed by the House is much better than the bill as introduced.

Link to bill as passed by the House: *http://bit.ly/1fYAboI*

Link to Department of Health Lyme disease website:
http://healthvermont.gov/prevent/lyme/lyme_disease.aspx

Link to ISDA guidelines:
http://cid.oxfordjournals.org/content/43/9/1089.full.pdf+html

Link to ILADS Guidelines:
http://ilads.org/files/ILADS_Guidelines.pdf

Vermont Board of Medical Practice to Adopt Policy on *Use of Opioid Analgesics for the Treatment of Chronic Pain*

At its March 5, 2014 board meeting the VBMP reviewed its draft policy on the Use of Opioid Analgesics for the Treatment of Chronic Pain and considered comments from VMS members. The policy is based on a model developed by the Federation of State Medical Boards (FSMB) in July of 2013 and will update the VBMP's 2006 policy on The Use of Controlled Substances to Treat Pain, which was adopted by the VBMP. The FSMB model policy was prepared by a panel of expert clinicians and reviewed by more than 30 physicians including representatives of state medical boards, invited experts in pain and addiction medicine, representatives of federal agencies and field reviewers.

Proposed policy and intro: *http://bit.ly/1gbKETd*
VMS Comments: *http://bit.ly/1g80Iph*
FSMB Model Policy: *http://www.fsmb.org/pdf/pain_policy_july2013.pdf*

Banning Smoking in Vehicles in the Presence of Children

The Vermont House of Representatives passed H.217, a bill that would strengthen Vermont's laws regarding smoking in the workplace and public places. This bill was amended to include banning smoking in the presence of children in vehicles. The bi-partisan amendment was proposed by Representative Patti Komline and 11 others. The House passed the amendment 100-35.

The amendment proposes to apply to children who are young enough to be required to ride in a safety seat (8 and under), while another bill supported by the Vermont Medical Society, H.70, applies to all children ages 18 and under. That bill did not advance in the House Transportation committee, but VMS views the amendment to H.217 as a good start.

H.217 will now likely be assigned to the Senate Health and Welfare Committee, chaired by Sen. Claire Ayer. While we have a long way to go on this, Senate President Pro Tempore John Campbell is supportive of the smoking-in-cars ban.

If any members have any questions, please contact VMS.

Link to bill as passed the House: *http://bit.ly/1eKDnEz.*

H. 645 – Workers' Compensation

Last week the House Commerce Committee amended a bill that made various changes to the workers' compensation laws by adding a provision requiring the Commissioner of Labor in consultation with the Department of Health and VMS to promulgate rules "governing prescription of opioids, including appropriate diagnoses that require opioid treatment, opioid dosage amounts, patient screening and drug screening for patients prescribed opioids for chronic pain."

VMS was concerned about different state agencies creating multiple standards for patients with chronic pain, and recommended that the Commissioner of Labor and a physician specializing in Occupational and Environmental Medicine or Physical Rehabilitation Medicine join the Department of Health's Uniform Pain Management System Advisory Council (UPMSAC), a group consisting of clinicians and representatives of state agencies, licensing boards and consumer groups. The purpose of the UPMSAC is to advise the Commissioner of Health on rules, standards and guidelines for treating chronic pain. Adding the Commissioner of Labor and a physician who specializes in occupational or rehabilitation medicine would ensure that issues of particular concern to workers' compensation would be addressed. VMS has worked with the Commerce Committee and the Human Services Committee on this bill and it appears likely that a floor amendment will be proposed that will address this issue and ensure that standards created by the Department of Labor are consistent with the standards endorsed by the Department of Health.

Link to amendment proposed by the House Human Services Committee and supported by the House Commerce Committee: *http://bit.ly/OtW3Cg.*

H.874 – Consent for Hospice Care

Last week the House Human Services Committee introduced a committee bill that would clarify that a family member or a person with a known close relationship to a patient could elect hospice care on behalf of a patient who did not have an agent or guardian. Family members would be required to protect the patient's own wishes, whenever possible. This provision addressed an issue that has arisen in several Vermont hospice programs where Medicare reviewers questioned the consent provided by family members who were not agents or guardians.

Earlier drafts of the bill would have also repealed a provision in current law authorizing a surrogate who was not the patient's agent or guardian to consent to Do Not Resuscitate (DNR) or Clinician Orders for Life Sustaining Treatment (COLST) orders. This repeal would have become effective in July of 2016. Because only about 30 percent of patients in Vermont have advance directives appointing agents and very few have guardians, VMS was very concerned that patients and their families who needed to make these difficult decisions would be forced to either go through the probate court process for appointment of a guardian, or to continue treatments that they did not wish to have. After testimony from VMS and the Vermont Ethics Network this provision was removed from the bill.

Link to bill as introduced: *http://bit.ly/1iAlU6A.*

The Vermont Medical Society is the leading voice of physicians in the state and is dedicated to advancing the practice of medicine by advocating on behalf of Vermont's doctors and the patients and communities they care for.

Updates

• S.287, the involuntary medication bill has now passed the Senate and will be taken up in the House soon. Link to bill as passed the Senate: *http://bit.ly/1ePDkHu.*

• S.295 is designed to create a judicial intercept model for people involved in the criminal justice system who can benefit from substance abuse treatment and recovery supports. These alternative justice programs are designed to divert individuals away from a traditional criminal justice process and can occur at several points in the system, including arrest, the court process, sentencing, and release. They may include pre-charge programs.

The bill also includes provisions regulating the prescription of buprenorphine. The findings in the bill note that Vermont spends $8.3 million on Buprenorphine for Medicaid patients. Illegal diversion and misuse of Buprenorphine has increased in Vermont at the same time medication-assisted treatment has increased.. Buprenorphine is often smuggled into Vermont correctional facilities and the findings note that non-medical use of Buprenorphine appears to be gaining in popularity.

The bill would authorize the Department of Vermont Health Access to use its authority to sanction Medicaid-participating prescribers operating in bad faith or not in compliance with state or federal requirements.

It also requires the Secretary of Human Services to adopt rules requiring all Medicaid participating providers, whether licensed in or outside of Vermont, to query the Vermont Prescription Monitoring System (VPMS) prior to prescribing buprenorphine or a drug containing buprenorphine to a Vermont Medicaid beneficiary. Currently, the Medication Assisted Treatment Rules require checking the VPMS quarterly for physicians who administer Methadone or prescribe Buprenorphine to 30 or more patients in order to treat addiction.

Finally, the bill requires the Commissioner of Health to adopt rules that include a requirement that patients taking Buprenorphine receive appropriate counseling from a licensed clinical professional.

S.295 has passed the Senate and will be taken up by the House Judiciary Committee and the House Human Services Committees.

Link to bill as passed the Senate: *http://bit.ly/1ifGZCx.*

• S.317 – Repeal of Unconstitutional Abortion Laws. A bill that repeals unconstitutional Vermont statutes related to the performance of abortions was passed by the House and Senate in late February. The Vermont laws that stand to be repealed made it a crime to intentionally cause a miscarriage with felony penalties of five to 20 years if a woman dies and three to 10 years if a woman did not die. The laws to be repealed also had fines and prison penalties for advertising or giving information or advice with respect to causing the miscarriage of a pregnant woman. These fines and penalties were unconstitutional under federal law.

Link to bill as passed House and Senate: *http://bit.ly/1db3WYG.*

• H.762 – Adverse Childhood Experience Questionnaire. Last week the House Health Care Committee passed out H.762, a bill related to adverse childhood experiences (ACE) and their relationship to chronic mental and physical illness.

The bill would require the Blueprint for Health to explore ways to implement an ACE screening tool that addresses 10 categories of adverse childhood experiences, offering increased per-member per-month payments to incentivize its usage. The Blueprint is also asked to consider creating pilot programs in two counties in which community health teams could utilize the services of a family wellness coach. The Vermont Department of Health would be required to develop and implement a pilot program for primary schools in at least two interested school districts throughout the state using the Vermont Center for Children, Youth, and Families' Vermont Family Based Approach.

The bill is now to be reviewed by the House Appropriations Committee for potential impact on the State budget.

Link to bill as passed the House Health Care Committee: *http://bit.ly/PJIorJ.*

Consent

(Cont'd from pg. 1) The memo goes on to say: "[T]his complexity, which is unique to Vermont, is also causing delays in the implementation of the VHIE due to unique requirements that are passed through to the VHIE software vendor. To date, the vendor has been unable to provide VITL a date certain at which they could support an organization by organization consent policy, delaying VITL's ability to implement the policy as it exists today."

In response to these concerns, VMS requested that GMCB revise the current consent policy to make patient consent a global consent, rather than requiring that each participating healthcare provider obtain a separate consent. VMS stated that while significant, this one change would allow for the vast majority of the current opt-in policy to remain in place and make providers' use of the VHIE much more likely, as well as less confusing for patients.

The three material changes made to the former Consent Policy are as follows:
1. An individual's consent will be "global" and will permit access to that individual's PHI by all participating healthcare providers involved in his or her treatment.
2. The individual's consent will permit access to PHI on the VHIE and also to PHI in the Blueprint Registry maintained under the Vermont Blueprint for Health. The Blueprint will be responsible for auditing consent records and all instances of emergency access to PHI in the Blueprint Registry, and an individual may request an audit of access to his or her PHI on the Blueprint Registry.
3. The Policy will be simplified to remove references and specific procedures relating to the exchange of PHI from a federal program providing drug or alcohol abuse treatment, as this PHI will not be accessible on the VHIE at this time. With this change, consents will remain in effect indefinitely unless revoked in writing.

Now that VITL has tested the VHIE at seven healthcare provider pilot sites, it is nearing the commencement of the rollout of the VHIE provider portal throughout the state in May of 2014. The decision to change the consent policy provides VITL with sufficient time to begin the advance planning for VITLAccess user training, education and development of associated education materials for providers and patients.

VMS believes that GMCB's recent action to simplify the patient consent process will be a critical success factor in the implementation of VITLAccess to PHI on the information exchange and it will begin the long-anticipated process of allowing authorized healthcare providers to query the VHIE for clinical information regarding their patients from other providers across Vermont.