

THE LEGISLATIVE BULLETIN

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SENATE COMMITTEE APPROVES BILL TO EXAMINE PRACTICE VARIATION

Late Friday afternoon, the Senate Health and Welfare Committee unanimously approved S. 129, legislation directing state government to analyze and address variations in the use of health care services by hospitals and physicians treating Vermont residents. Much of the impetus behind the legislation was based on the research of Dr. Elliott Fisher and Dr. Jack Weinberg as found in the Dartmouth Atlas project.

VMS president John Brumsted, MD, Chief Quality Officer for Fletcher Allen Health Care and a board-certified obstetrician/gynecologist, testified before the committee on the importance of fully examining the reasons behind apparent differences in practice variation, before concluding that the variation was unwarranted. He also indicated that the major reason for examining practice variation should be to improve the quality of health care, not solely as a mechanism to reduce health-care costs.

In his testimony, VMS Executive Vice President Paul Harrington pointed out that Vermont consistently ranks as one of the lowest cost and most efficient health care systems in the country. The Dartmouth Atlas shows that in 2005 Vermont had the lowest number of Medicare discharges per thousand enrollees in New England. In addition, the Atlas ranks Vermont seventh in the nation, and lowest in New England, in discharges per thousand Medicare enrollees for ambulatory-sensitive conditions. He indicated that while the examination of practice variations could yield important results, the comparative differences between in-state hospital service areas will likely be minimal when contrasted with Vermont's experience compared to utilization rates in other states.

If signed into law in its current form, S. 129 would:

- Require the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA) to analyze variations of health care provided by physicians and hospitals in the state and recommend ways to contain costs through variation reductions.
- Require the Commissioner to contract with the Vermont Program for Quality in Health Care (VPQHC) in order to carry out the analysis and recommendation development. BISHCA would also be allowed to contract with other organizations, such as the Maine Health Information Center, the Dartmouth Institute and the Jeffords Institute for Quality and Operational Effectiveness at FAHC. VMS is concerned with a provision granting BISHCA the authority to redirect up to \$150,000 of VPQHC's current funding to other organizations in order to pay for the additional analysis.
- Require the Commissioner to by Dec. 15, 2009 report to the legislature on its analysis of health care utilization.
- Require the Commissioner to consult with VMS, the Vermont Association of Hospitals and Health Systems, insurers, and others in recommending a process that appropriately addresses practice variations.
- Require the Commissioner to by Dec. 15, 2009 prepare a health plan administrative costs report that gives the legislature administrative costs comparisons between private insurers, self-insured health plans and the plan provided to state employees and retirees.

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PALLIATIVE CARE & PAIN MANAGEMENT LEGISLATION FINALIZED BY HOUSE HUMAN SERVICES COMMITTEE

After hearing two additional days of testimony, the House Human Services Committee last week finalized its committee bill on Palliative Care and Pain Management, H. 435.

CME Requirements for Physicians Not Mandated

The committee's draft discussion bill released just before the legislative Town Meeting break had included a section that mandated all physicians licensed by the Vermont Board of Medical Practice (VBMP) to complete a minimum of four hours of continuing medical education (CME) in pain management and palliative care approved by the VBMP by rule every two years as a condition of license renewal. This mandate was opposed by VMS and was not included in H. 435.

The issue was first raised during the summer study committee and in response VMS worked with a group of physicians, including: Wendy Davis, MD, Commissioner of Health; David Clauss, MD, Chair of VBMP; Jeffrey Klein, MD, Associate Dean for CME at the UVM College of Medicine; and, John Brumsted, MD, VMS President. The group submitted a joint letter to the study committee opposing mandatory certification and instead outlining a two-track approach to ensuring competency of practicing physicians in Vermont and ensuring knowledge about pain management and palliative care. The first track would identify knowledge deficits in pain and palliative care and create interdisciplinary CME curriculum options in a variety of delivery formats to address those deficits. The second track would make recommendations regarding the establishment of new standards to ensure the sustained competency of practicing physicians reflecting the best emerging national standards for evaluation of competence and maintenance of certification.

During the bill's mark up last week the committee heard testimony on the issue of mandatory CME from numerous individuals, including: Cyrus Jordan, MD, Medical Director of the Vermont Program for Quality in Health Care (VPQHC); Donald Swartz, MD, Medical Director of the Vermont Department of Health; Dr. Klein; and, Dr. David Clauss. Dr. Clauss expressed concern that medical literature does not support a link between CME and improvements in quality of practice or maintenance of competency.

VBMP to Report to Legislature on CME

While committee members continued to voice serious

concern about the fact that Vermont is one of only six states with no CME requirement for physicians as part of its license renewal process, in the end the committee decided that more information was needed before they created a mandate. The bill directs VBMP to review the CME issue and report back to the Committee by Jan. 15, 2010. VBMP's report must include "recommendations for improving the knowledge and practice of health care professionals in Vermont with respect to palliative care and pain management."

VMS is pleased that the Committee did not mandate CME and believes that the VBMP report will fit the collaborative process that includes VMS, VBMP, the UVM Office of CME and the Department of Health.

Therapeutic Privilege

The bill updates the Vermont informed consent law by clarifying that patients are entitled to answers to their specific questions about foreseeable risks and benefits of their treatment, and stipulating that clinicians may not withhold requested information. This proposed change is consistent with the AMA Ethical opinion 8.082, Withholding Information from Patients.

Inclusion of "Pain" in Scope of Practice Laws

The bill will also add the word "pain" to the scope of practice sections of the licensing laws of health care practitioners. Dr. Clauss testified that while the current scope of practice law clearly permits treatment of pain, the VBMP supported adding the word "pain" to physicians' scope of practice.

COLST and DNR Orders

The committee bill includes a definition of "clinician orders for life sustaining treatment," or COLST orders. These orders address issues such as intubation, mechanical ventilation, transfer to hospital, antibiotics, artificially administered nutrition or other medical interventions. COLST orders may also include do-not-resuscitate (DNR) orders. The COLST form was designed by a group of clinicians, including FAHC's Dr. Macauley, to improve end-of-life care and ensure consistency across settings. In emergencies practitioners familiar with the form would be able to quickly find information needed to make a decision.

The Vermont Ethics Network (VEN), VMS and others will continue to work to educate clinicians and the public about the form in an effort to increase its use statewide. The COLST form is available for viewing on

TIMELY PAYMENT OF WORKERS' COMPENSATION MEDICAL BILLS TO BE ADDRESSED

Last week the House Health Care Committee agreed to include legislation dealing with timely payment of workers' compensation medical bills in a comprehensive health care-related bill that the committee will develop over the next two weeks. H. 162 was drafted by a workgroup led by VMS, based on the results of a joint Vermont House and Senate Committee hearing on the issue of timely payment of workers' compensation claims. During the course of this hearing, several major issues emerged.

First, although there is existing law in Title 18 related to the timely payment of workers compensation claims, the Vermont Department of Labor's (VTDOL) primary statutory authority is found in Title 21 and the Department is unaccustomed to applying provisions found within Title 18. In addition, the Title 18 forty-five day timely payment provision is in conflict with the Department of Labor's Rule 40 thirty-day timely payment provisions. Rule 40 contains the workers' compensation medical fee schedule and it controls most reimbursement issues related to workers' compensation claims.

Second, the Department of Labor indicated that under current law only a claimant could bring a complaint regarding a timely payment problem to the Department of Labor. The department indicated that, in the event of a timely payment issue, a health care provider would have the ability to file a lien against payments received by the injured worker. However, under current law the health care provider would not have the standing necessary to file a complaint with the Department of Labor.

Finally, the jurisdictional responsibilities relating to the regulation of workers' compensation insurance carriers is currently split between VTDOL and the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA). VTDOL is primarily responsible for ensuring that the claimant's work-related injury health care services and disability benefits are received. BISHCA's insurance division has primary responsibility for the regulation of all insurance carriers, and its health care administration addresses issues related to health insurance. As with any program where there is divided responsibility, there is a potential for a lack of information sharing and coordination of activities.

In order to address these issues, the VMS-led workgroup developed H. 162, which includes new standards for the timely payment of workers' compensation medical bills within Title 21.

H. 162's key features include:

- Requiring employers or insurance carriers to pay a medical bill or notify appropriate parties of a contested bill within 30 days of the bill's receipt.
- Stipulating that if the insurance carrier fails to pay the medical bill within 30 days following the receipt of the request information, interest shall accrue on an unpaid medical bill at a rate of 12 percent.
- Allowing employees or health care providers to file disputes with the Commissioner of Labor regarding medical bills or accrued interest.
- Authorizing the Commissioner of Labor to impose administrative penalties against insurance carriers who violate these new standards. The Commissioner also has the authority to refer carriers to BISCHA for additional sanctions.
- Describing what constitutes appropriate medical documentation, namely that it shall describe the injury and be sufficiently detailed as to allow for the review of the medical necessity for services and the appropriateness of the fee charged.

VMS will keep you up-to-date regarding the status of this legislation, as well as other components in the House Health Care Committee's comprehensive bill.

PALLIATIVE CARE & PAIN MANAGEMENT LEGISLATION

(Cont'd from Page 2) the Department of Health website at: http://healthvermont.gov/regs/ad/dnr_colst_instructions.pdf.

H. 435 is scheduled for debate on the House Floor and then is expected to be assigned to the Senate Health & Welfare Committee.

For a more comprehensive VMS analysis H. 435, including provisions regarding a patients' bill of rights, Medicaid waivers for pediatric palliative care and the inclusion of palliative care in the Blueprint for Health, visit www.VTMD.org/PalliativeCareLegislation.

To view the full text of H. 435, visit <http://www.leg.state.vt.us/DOCS/2010/BILLS/INTRO/H-435.PDF>.

TOBACCO IN THE WORKPLACE LEGISLATION PASSES SENATE

Smokefree Workplace

A bill to prohibit the use of lighted tobacco products in the workplace (S.7) was passed last week by the Senate. Prior to approving the bill, the Senate made two amendments – removing the provision that had included vehicles within the definition of a workplace and agreeing with a Veterans Affairs request to exclude any residential facility for elders or disabled persons that is regulated by centers for Medicaid and Medicare Services.

The legislation will now move on to the House where VMS expects it will be given to the House General Committee. To view the text of the bill as passed by the Senate, visit <http://www.leg.state.vt.us/docs/2010/calendar/sc090320.pdf>.

Tobacco Program Funding

Coalition for a Tobacco Free Vermont is still working to sustain tobacco program funding at its current level and is urging legislators to withhold their support from the Governor's recommended \$1.9 million funding cut.

The House Health Care Committee decided last week that it would recommend to the Appropriations Committee that it not cut the tobacco program. This week the Board sent a memo to both the House and Senate Appropriations Committees urging against a cut to the program in light of new statistics that illustrate the success of Vermont's comprehensive anti-smoking initiative.

BILL APPROVED TO EXAMINE PRACTICE VARIATION

(Cont'd from Page 1)

- Require the Commissioner of Administration to by Jan. 15, 2010 present a plan to the legislature regarding a shared decision-making demonstration project to be integrated with the Blueprint for Health.

VMS expects the full Senate to vote on the measure later this week and send it to the House of Representatives for its consideration. VMS will continue to closely monitor this legislation and provide updates in future issues of the legislative bulletin.

The text of S.129 may be found at: <http://www.leg.state.vt.us/>.

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