

THE LEGISLATIVE BULLETIN

A PUBLICATION OF THE VERMONT MEDICAL SOCIETY

Week of March 26, 2012



Contact Us

P.O. Box 1457
Montpelier, Vermont 05601

Toll-Free: 800-640-8767
Fax: 802-223-1201

Online at: www.vtmd.org

Working for Vermont Physicians at the State House

Paul Harrington
Executive Vice President
pharrington@vtmd.org

Madeline Mongan
Deputy Exec. Vice Pres.
mmongan@vtmd.org

Stephanie Winters
Operations Director
swinters@vtmd.org

H.745 – PRESCRIPTION MONITORING BILL PASSES THE HOUSE

The VMS was pleased to have Commissioner of Health Harry Chen, MD, and Rep. Ann Pugh, Chair of the House Human Services Committee attend its February 11th Council meeting to discuss H.745, as introduced – particularly the provision mandating the use of the Vermont Prescription Monitoring System (VPMS) before prescribing or refilling prescriptions for a controlled substance in Schedules II, III, and IV.

The Vermont Medical Society (VMS) has had a long-standing concern with the problem of prescription abuse in the state. At its 2008 annual meeting it adopted a policy resolution that committed the VMS to work with the Vermont Department of Health (DOH), the Vermont Board of Medical Practice (BMP), the Vermont Department of Public Safety (DPS) and others to assist in educating health care practitioners about the risk of abuse and diversion of controlled substances and to continue to work with the Department of Health on the implementation of the Vermont Prescription Monitoring System (VPMS). Consistent with the resolution, the VMS has hosted numerous educational forums, in collaboration with these organizations the most recent being held at the VMS's 2011 annual meeting.

Last week, the House of Representatives passed H. 745, the prescription drug monitoring bill, after two provisions of particular concern to VMS were removed from the bill.

The first provision of concern to VMS would have required physicians to provide their patients' medical records to drug diversion investigators on request when physicians believed that the records included evidence of drug diversion. If it had passed, this provision would have greatly reduced the confidentiality of patients' medical records. No court order, probable cause or warrant would have been required.

VMS was also successful in having a second provision in the bill as introduced deleted that would have required physicians to check the Vermont Prescription Monitoring Service (VPMS) every time prior to prescribing a controlled substance.

VMS generally supports the current version of the bill including:

- A requirement to show identification when picking up a prescription;
- A requirement to write out the drug dosage for controlled substances in words and numbers on the prescription;
- A requirement to create a state-wide drug disposal program;
- A requirement that licensing boards determine when prescribers and dispensers should check the VPMS;
- A requirement that all practitioners who prescribe or dispense controlled substances register with the VPMS;
- A requirement that replacement prescriptions be identified on the face of the prescription and tracked in the data base;
- The creation of a 21-person group to advise the commissioner of Health on developing a unified pain management system and evidence-based training modules;
- Improved use of the VPMS data as recommended by the VPMS advisory committee; and
- Authorization to enter reciprocal agreements with other states to share data about prescriptions of controlled substances

The Senate Committees on Judiciary and Health and Welfare are expected to work jointly on H. 745, beginning in the next few weeks.

H.559 PASSES HOUSE, ESTABLISHES A HEALTH BENEFIT EXCHANGE FOR VERMONT

On Feb. 24, the Vermont House of Representatives approved H.559, legislation establishing state-specific characteristics for the federally-mandated health benefit exchanges required under the Accountable Care Act (ACA).

As passed by the House, individuals and employer-sponsored groups with less than 50 employees will be required to purchase their health insurance from private sector qualified health plans (QHPs) through the exchange beginning Jan. 1, 2014. Premium tax credits are available to individuals and families below 400 percent of the federal poverty level (FPL) (\$89,808 for a family of four) and above 133 percent of FPL (\$29,861 for a family of four) purchasing coverage through the exchange. In addition, individuals and families with incomes below 250-percent FPL are also eligible for cost-sharing subsidies to reduce their out-of-pocket exposure.

Vermonters under 133-percent of FPL will be enrolled in Medicaid and those 65 years and older would continue to receive Medicare. Beginning in 2014, VHAP and Catamount would be repealed with individuals covered under VHAP or Catamount having income over 133-percent of FPL enrolling in the exchange.

Under the ACA, employers with 50 or more full-time equivalent employees (FTEs) are subject to a penalty of \$2,000 per employee (beyond the first 30) if they do not offer health insurance coverage and at least one employee receives subsidized coverage in the Exchange. However, there are no penalties for employers with less than 50 employees for not offering insurance coverage to their employees. The lack of a penalty for small employers led BISHCA Commissioner Steve Kimball to say that he thinks businesses with fewer than 50 employees should drop their coverage beginning in 2014 because they can save money and their employees would be eligible for the federal subsidies.

H.559, as originally introduced, contained language allowing the state to implement a Basic Health Plan option (BHP) as an alternative to the exchange for adults with income between 133 and 200 percent of FPL.

In its testimony, VMS strongly opposed the creation of a BHP for two reasons. First, removing the 20,000 Vermonters earning between 133 and 200 percent of FPL from the exchange could lead to the failure of exchange due to its low enrollment. In addition, in order to achieve cost savings for the state of Vermont, the BHP would likely reimburse physicians and other health professionals at the Medicaid rate. With Medicaid's below cost reimbursement for physicians at 78 percent of Medicare, the BHP policy to expand Medicaid for uninsured adults with incomes up to 200 percent of FPL would add to the cost-shift and further jeopardize patient access to physicians and acerbate efforts to attract and retain the physicians needed in the future to care for an aging population.

VMS believes the solution to poor access for Medicaid beneficiaries and the associated below-cost Medicaid reimbursement for providers is not to expand Vermont's Medicaid program but instead to have current Medicaid beneficiaries above 133 percent of FPL receive their insurance from QHPs through the health benefit exchange. With these beneficiaries in the exchange covered by private health insurance plans, solving the problems associated with poor Medicaid access to provider and below-cost reimbursement becomes smaller and therefore more achievable.

In response to the arguments put forward by VMS and the Vermont Association of Hospitals and health Systems against the BHP, the House passed bill deleted the administration's language authorizing a Basic Health Plan. However, the administration is currently seeking an amendment to the bill in the Senate to restore its ability to expand Medicaid through a Basic Health Plan option. Last week, VMS testified before the Senate Health and Welfare Committee against including the Basic Health Plan option in the Senate version of H.559 due to its adverse impact on patient access to physicians.



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.

**H.524 – OFFICE OF PROFESSIONAL REGULATION (OPR)
BILL EXPANDS NATUROPATHS PRESCRIPTION AUTHORITY**

H. 524 will eliminate the naturopaths’ formulary, the list of drugs that naturopaths have authority to prescribe. H. 524 would instead permit naturopaths who pass a test to prescribe any prescription drug that they believe is consistent with their scope of practice. These changes to the naturopaths’ prescribing authority were proposed by the Director of OPR with the concurrence of the Commissioner of Health, to address the difficulty updating and amending the formulary to ensure that it is current. The current formulary would remain in effect until 2015. After 2015, naturopaths who have not passed the test would not be able to prescribe prescription drugs.

VMS opposes this expansion of prescribing for naturopaths, due to concern about the potential risk to patients when dangerous drugs are prescribed by naturopaths without sufficient training. Naturopaths’ education and training is very different from physicians’ education and training. Their naturopathic college curricula generally appear to include only one or two courses in pharmacology that are typically taught by naturopaths. Much of their training focuses on natural treatment modalities such as botanical medicine, naturopathic manipulation, diet and nutrient therapy, herbs and supplements, homeopathy, Chinese medicine, and hydrotherapy. Their education programs include far fewer hours in their clinical years of school than medical students have. Post-graduate training is not required for naturopaths; optional one-year programs are offered by some institutions. In contrast, at least one post-graduate year is required for physicians to be licensed in Vermont and most physicians are board certified and have three or more years of post graduate training.

VMS is concerned that it would be difficult to ensure that the test would be rigorous and scientific. In 2009 OPR used an open-book test written (and then taken) by two Vermont naturopaths as a pre-requisite to prescribing from the current formulary now on the OPR website. VMS would recommend that a test from a national organization such as the NBME be used.

H. 524 is now being considered by the Senate Government Operations Committee.

S.199 – BILL ELIMINATING THE PHILOSOPHICAL EXEMPTION FOR IMMUNIZATIONS PASSES SENATE

S.199, a bill that would eliminate the philosophical exemption allowing parents to enroll children in public school without immunizations, has passed the Senate and is now under review by the House Health Care Committee. The committee plans to end testimony this week and vote it out early next week.

A press conference to stress the importance of – and science behind – immunizations was held today by Vermont Medical Society, Fletcher Allen Health Care, Vermont Association of Hospitals and Health Systems, American Academy of Pediatrics Vermont Chapter and Vermont Academy of Family Physicians. Speakers included Senator Kevin Mullin, Representative George Till, M.D., Robert Macauley, M.D., William Raszka, M.D., and President of the Vermont Association of Hospitals and Health Systems Bea Grause.

While the bill’s first hurdle has been cleared, VMS urges its members to actively support its passage as written in order to promote the safety of our state’s youngest citizens. We encourage you to contact members of the General Assembly, even beyond members of the Health Care Committee. We would further encourage you to contact the Governor, as a threat of veto will keep some from voting for the Bill on the House floor. To find your Representative and their contact information go to: <http://www.leg.state.vt.us/legdir/findmember3.cfm>. It is often more useful to speak with your Reps in person or on the phone when you feel strongly about an issue and also have expertise.

S.209 AUTHORIZES NATUROPATHS TO SERVE AS PATIENTS’ MEDICAL HOMES

The Senate also passed legislation that would require health insurers to cover naturopaths as primary care providers and medical homes under the Blueprint for Health. This legislation was supported by the Commissioner of Health and the Director of the Blueprint for Health.

VMS opposed authorizing naturopaths to serve as medical homes for patients, particularly for patients with multiple complex chronic conditions. VMS is concerned that naturopaths’ training and scope of practice are not comparable to the training or typical scope of practice of physicians who are serving as medical homes.

Many of the treatment modalities in naturopaths scope of practice, such as homeopathy, botanical medicine, naturopathic manipulation, diet and nutrition, Chinese medicine, hydrotherapy, and naturopathic physical medicine, have limited or no scientific evidence-based support. Additionally, naturopaths may not follow the same evidence-based guidelines that primary care physicians follow, particularly with respect to preventive care such as immunizations. S.209 will be reviewed by the House Health Care Committee.

S.103 – PHYSICIAN ASSISTED SUICIDE BILL UNLIKELY TO PASS

Two key leaders in the Vermont Senate say S.103 – legislation that would allow doctors to help terminally ill patients to take their own lives – won't pass this year. Senate President Pro Tem John Campbell and Judiciary Committee Chairman Richard Sears — both opponents of the bill — say they won't bring the measure up for a vote on the Senate floor this year. After hearing emotional testimony from both supporters and critics of the right-to-die legislation, Sears says a three-two majority of his committee still are opposed. VMS testified in opposition to the bill, based on its policy of not supporting laws for or against physician-assisted suicide.

VMS last formally considered physician assisted suicide in 2003, and, based on a vote of the entire membership, adopted a policy that affirms the importance of “promoting initiatives that assure all dying Vermonters receive good, comprehensive palliative care.” The policy does not support laws for or against physician assisted suicide, for the reason that laws against assisted suicide could chill the use of medications needed to control symptoms and laws for assisted suicide might discourage or circumvent the provision of good palliative care.

Physicians supporting the VMS policy expressed the belief that decisions about dying should be made at the bedside by physicians with their patients. Since 2003, VMS members have been leaders in ongoing efforts to improve hospice and palliative care in Vermont, actively participating in and supporting wide-ranging initiatives including:

- Development of educational materials for physicians;
- Palliative care and pain management education;
- Advocacy for pediatric and adult enhanced hospice programs that extend the time period for hospice and permit provision of concurrent curative and hospice services;
- The creation of an advance directive registry;
- The development of a statewide form for “Clinician Orders for Life Sustaining Treatment”;
- Palliative care consults and palliative care case conferences;
- Work with Vermont Board of Medical Practice to clarify the policy for prescribing controlled substances to treat chronic pain; and,
- Development of the Vermont Prescription Monitoring System and educational initiatives around prescribing controlled substances.

Recently Vermont has received the highest ranking in the country for hospitals with palliative care programs; 100 percent of large and mid-size hospitals having palliative care programs compared to a national rate of 53 percent. Hospice spending for Medicare patients in Vermont, however, is reported to be well below the national average. VMS recognizes the need to continue to work on these issues.

H. 777 REQUIRES INSURERS TO REIMBURSE HOMEBIRTH, BUT INSURERS MAY NOT REQUIRE LIABILITY INSURANCE UNTIL 2014

The House Health Care Committee voted out of committee a bill that would by law exempt licensed midwives and certified nurse midwives from carrying medical malpractice insurance for home birth until 2014. H.777 would require insurers to reimburse licensed midwives and certified nurse midwives for homebirths, and at the same time, would not permit the insurer to require that midwives be part of the insurer's network until 2014. The midwives testified that because malpractice coverage was not affordable for them, they had not been able to contract with health insurers.

VMS expressed concern that this bill would not protect women and their babies who are harmed because of negligence of midwives. VMS is also concerned because Vermont is only one of a few states that has a joint and several liability rule. Most states allow juries to apportion harm among defendants. A jury in Vermont, however, may not apportion fault among defendants unless the patient has also been negligent.

As a result, a plaintiff may choose to collect the entire award from any defendant. So an insured physician who provides care to a woman or infant who is transferred to a hospital in an emergency and makes a small mistake could be liable for the entire harm most of which was caused by the midwife's serious error. The committee did not agree to language offered by VMS that would have ensured that a physician responding in an emergency would only have been liable for his or her own actions. H.777 has been referred to the House Judiciary Committee for further review of the malpractice issue.