

1 S.139

2 Introduced by Committee on Health and Welfare

3 Date:

4 Subject: Health; health care reform; pharmacy benefit managers; hospitals;

5 Green Mountain Care Board

6 Statement of purpose of bill as introduced: This bill proposes to establish
7 specific parameters by which pharmacy benefit managers would set the
8 maximum allowable cost for prescription drug reimbursement. It would
9 require hospitals to provide notice to individuals placed in observation status
10 and to alert individuals receiving observation services about the potential
11 financial implications. It would also direct the Department of Vermont Health
12 Access to adopt a prospective payment system for home health agencies. The
13 bill would reinstate the Health Care Oversight Committee permanently and
14 the Mental Health Oversight Committee for one year and it would establish a
15 long-term care evaluation task force to assess and catalogue in-home,
16 long-term care programs operated or subsidized by the State. The bill would
17 require updates on the Vermont Health Care Innovation Project and direct the
18 Agency of Human Services to identify overlap and duplication in the delivery
19 of services. It would also modify the circumstances under which the
20 Commissioner of Health may adopt a rule regulating the sale or distribution of
21 a children's product containing a chemical of high concern to children.

1 An act relating to pharmacy benefit managers, hospital observation status,
2 and chemicals of high concern to children

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 * * * Pharmacy Benefit Managers * * *

5 Sec. 1. 18 V.S.A. § 9471 is amended to read:

6 § 9471. DEFINITIONS

7 As used in this subchapter:

8 * * *

9 (6) “Maximum allowable cost” means the per unit drug product
10 reimbursement amount, excluding dispensing fees, for a group of
11 therapeutically and pharmaceutically equivalent multisource generic drugs.

12 Sec. 2. 18 V.S.A. § 9473 is amended to read:

13 § 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

14 WITH RESPECT TO PHARMACIES

15 * * *

16 (c) For each drug for which a pharmacy benefit manager establishes a
17 maximum allowable cost in order to determine the reimbursement rate, the
18 pharmacy benefit manager shall do all of the following:

19 (1) make available, in a format that is readily accessible and
20 understandable by a pharmacist, a list of the drugs subject to maximum
21 allowable cost, the actual maximum allowable cost for each drug, and the
22 source used to determine the maximum allowable cost;

1 (2) update the maximum allowable cost list at least once every seven
2 calendar days; and

3 (3) establish or maintain a reasonable administrative appeals process to
4 allow a dispensing pharmacy provider to contest a listed maximum allowable
5 cost.

6 * * * Notice of Hospital Observation Status * * *

7 Sec. 3. 18 V.S.A. § 1905 is amended to read:

8 § 1905. LICENSE REQUIREMENTS

9 Upon receipt of an application for license and the license fee, the licensing
10 agency shall issue a license when it determines that the applicant and hospital
11 facilities meet the following minimum standards:

12 * * *

13 (22) All hospitals shall provide oral and written notice to each individual
14 that the hospital places in observation status as required by section 1911a of
15 this title.

16 Sec. 4. 18 V.S.A. § 1911a is added to read:

17 1911a. NOTICE OF HOSPITAL OBSERVATION STATUS

18 (a) Each hospital shall provide oral and written notice to each individual
19 that the hospital places in observation status as soon as possible but no later
20 than 24 hours following such placement, unless the individual is discharged or
21 leaves the hospital before the 24-hour period expires. The written notice shall

1 be a uniform form developed by the Department of Health for use in all
2 hospitals.

3 (b) Each oral and written notice shall include:

4 (1) a statement that the individual is under observation as an outpatient
5 and is not admitted to the hospital as an inpatient;

6 (2) a statement that observation status may affect the individual's
7 Medicare, Medicaid, or private insurance coverage for hospital services,
8 including medications and pharmaceutical supplies, and for rehabilitative or
9 skilled nursing services at a skilled nursing facility if needed upon discharge
10 from the hospital; and

11 (3) a statement that the individual may contact his or her health
12 insurance provider, the Office of the Health Care Advocate, or the Vermont
13 State Health Insurance Assistance Program to understand better the
14 implications of placement in observation status.

15 (c) Each written notice shall include the name and title of the hospital
16 representative who gave oral notice, the date and time oral notice was given,
17 and contact information for the Office of the Health Care Advocate and the
18 Vermont State Health Insurance Assistance Program.

19 (d) Oral and written notice shall be provided in a manner that is
20 understandable by the individual placed in observation status or by his or her
21 legal guardian or authorized representative.

1 (e) Each written notice shall be signed and dated by the individual placed
2 in observation status, or if applicable by his or her legal guardian or authorized
3 representative, to verify receipt and an understanding of the oral and written
4 notice.

5 * * * Prospective Payments for Home Health Services * * *

6 Sec. 5. 33 V.S.A. § 1901h is added to read:

7 § 1901h. PROSPECTIVE PAYMENT; HOME HEALTH SERVICES

8 (a) On or before January 1, 2016 and upon approval from the Centers for
9 Medicare and Medicaid Services, the Department of Vermont Health Access
10 shall modify reimbursement methodologies to home health agencies, as
11 defined in section 1951 of this title, in order to implement prospective
12 payments for the medical services paid for by the Department and to replace
13 fee-for-service payment methodologies.

14 (b) The Department shall develop the prospective payment methodology in
15 collaboration with representatives of home health agencies. If practicable, the
16 Department:

17 (1) shall align the methodology with Medicare to reduce the
18 administrative burden on the agencies; and

19 (2) may include a quality payment in the methodology.

1 * * * Oversight Committees * * *

2 Sec. 6. 2 V.S.A. chapter 24 is added to read:

3 CHAPTER 24. HEALTH CARE OVERSIGHT COMMITTEE

4 § 851. CREATION OF COMMITTEE

5 (a) There is created a legislative Health Care Oversight Committee. The
6 Committee shall be appointed biennially and consist of ten members: five
7 members of the House appointed by the Speaker, not all from the same
8 political party, and five members of the Senate appointed by the Senate
9 Committee on Committees, not all from the same political party. The House
10 appointees shall include one member from the House Committee on Human
11 Services, one member from the House Committee on Health Care, one member
12 from the House Committee on Appropriations, and two at-large members. The
13 Senate appointees shall include one member from the Senate Committee on
14 Health and Welfare, one member from the Senate Committee on Finance, one
15 member from the Senate Committee on Appropriations, and two at-large
16 members.

17 (b) The Committee may adopt rules of procedure to carry out its duties.

18 § 852. FUNCTIONS AND DUTIES

19 (a) The Health Care Oversight Committee shall monitor, oversee, and
20 provide a continuing review of health care and human services programs in
21 Vermont when the General Assembly is not in session; provided, however, that

1 review of matters related to mental health and health care reform shall remain
2 in the jurisdiction of the Mental Health Oversight and Health Reform
3 Oversight Committees, respectively, for as long as each Committee is
4 authorized by law.

5 (b) In conducting its oversight and in order to fulfill its duties, the
6 Committee may consult with consumers, providers, advocates, administrative
7 agencies and departments, and other interested parties.

8 (c) The Committee shall work with, assist, and advise other committees of
9 the General Assembly, members of the Executive Branch, and the public on
10 matters relating to health care and human services programs.

11 (d) Annually, on or before January 15, the Committee shall report its
12 findings and any recommendations to the Governor and the committees of
13 jurisdiction.

14 § 853. MEETINGS AND STAFF SUPPORT

15 (a) For attendance at meetings during adjournment of the General
16 Assembly, legislative members of the Committee shall be entitled to per diem
17 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

18 (b) The Office of Legislative Council and the Joint Fiscal Office shall
19 provide professional and administrative support to the Committee. The
20 Department of Financial Regulation, the Agency of Human Services, and other

1 agencies of the State shall provide information, assistance, and support upon
2 request of the Committee.

3 Sec. 7. MENTAL HEALTH OVERSIGHT COMMITTEE

4 (a) The Mental Health Oversight Committee is created to ensure that
5 consumers have access to a comprehensive and adequate continuum of mental
6 health services. The Committee shall be composed of one member from each
7 of the House Committees on Human Services, on Corrections and Institutions,
8 and on Appropriations and a member-at-large to be appointed by the Speaker
9 of the House, not all from the same party, and one member from each of the
10 Senate Committees on Health and Welfare, on Institutions, and on
11 Appropriations and one member-at-large to be appointed by the Committee on
12 Committees, not all from the same party. Initial appointments shall be made
13 upon passage of this act.

14 (b) Members of the Committee shall serve as the liaison to their respective
15 legislative standing committees with primary jurisdiction over the various
16 components of Vermont's mental health system. The Committee shall work
17 with, assist, and advise the other committees of the General Assembly,
18 members of the Executive Branch, and the public on matters related to
19 Vermont's mental health system.

20 (c) The Committee is authorized to meet up to six times per year while the
21 General Assembly is not in session to perform its functions under this section.

1 (d) The Commissioner of Mental Health shall report to the Committee as
2 required by the Committee.

3 (e) For attendance at meetings during adjournment of the General
4 Assembly, legislative members of the Committee shall be entitled to per diem
5 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

6 (f) The Committee shall have the administrative, technical, and legal
7 assistance of the Office of Legislative Council and the Joint Fiscal Office.

8 (g) The Mental Health Oversight Committee shall provide a progress report
9 to each of the committees represented thereon on or before January 1, 2016.

10 (h) The Committee shall cease to exist after January 1, 2016.

11 * * * Long-Term Care Evaluation Task Force * * *

12 Sec. 8. LONG-TERM CARE EVALUATION TASK FORCE

13 (a) Creation. There is created a Long-Term Care Evaluation Task Force to
14 assess and catalogue those in-home, long-term care programs that are either
15 operated by the State or subsidized by the State.

16 (b) Membership. The Task Force shall be composed of the following
17 10 members:

18 (1) the Chair of the Senate Committee on Health and Welfare or
19 designee, appointed by the Committee on Committees;

20 (2) the Chair of the House Committee on Human Services or designee,
21 appointed by the Speaker of the House;

1 (3) the Commissioner of Disabilities, Aging, and Independent Living or
2 designee;

3 (4) the Long-Term Care Ombudsman;

4 (5) a representative of elders, appointed by the Community of Vermont
5 Elders;

6 (6) a representative of retired persons, appointed by the American
7 Association of Retired Persons;

8 (7) a representative of the Area Agencies on Aging;

9 (8) a representative of home health care providers, appointed by the
10 Vermont Association of Home Health Agencies;

11 (9) a representative of the Support and Services at Home (SASH)
12 program; and

13 (10) a representative of private home health care providers, appointed by
14 Bayada Home Health Care.

15 (c) Powers and duties. The Task Force shall assess the availability and
16 effectiveness of in-home, long-term care services in Vermont that are either
17 State-operated or State-subsidized and create a catalogue of existing services to
18 determine where overlapping services or gaps in service may exist.

19 (d) Assistance. The Task Force shall have the administrative, technical,
20 and legal assistance of the Department of Disabilities, Aging, and Independent

1 Living. For purposes of preparing any recommended legislation, the Task
2 Force shall have the assistance of the Office of Legislative Council.

3 (e) Report. On or before January 15, 2016, the Task Force shall submit a
4 written report to the House Committee on Human Services and to the Senate
5 Committee on Health and Welfare with its findings and any recommendations
6 for rules or legislative action.

7 (f) Meetings.

8 (1) The Commissioner of Disabilities, Aging, and Independent Living or
9 designee shall call the first meeting of the Task Force to occur on or before
10 August 1, 2015.

11 (2) The Commissioner of Disabilities, Aging, and Independent Living or
12 designee shall serve as chair of the Task Force.

13 (3) A majority of the membership shall constitute a quorum.

14 (4) The Task Force shall cease to exist on February 1, 2016.

15 (g) Reimbursement.

16 For attendance at meetings during adjournment of the General Assembly,
17 legislative members of the Task Force shall be entitled to per diem
18 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for
19 no more than four meetings.

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* * * Reports * * *

Sec. 9. VERMONT HEALTH CARE INNOVATION PROJECT; UPDATES

The Project Director of the Vermont Health Care Innovation Project

(VHCIP) shall provide an update at least quarterly to the House Committees on Health Care and on Ways and Means, the Senate Committees on Health and Welfare and on Finance, and the Health Reform Oversight Committee regarding VHCIP implementation and the use of the federal State Innovation Model (SIM) grant funds. The Project Director’s update shall include information regarding:

- (1) the VHCIP pilot projects and other initiatives undertaken using SIM grant funds, including a description of the projects and initiatives, the timing of their implementation, the results achieved, and the replicability of the results;
- (2) how the VHCIP projects and initiatives fit with other payment and delivery system reforms planned or implemented in Vermont;
- (3) how the VHCIP projects and initiatives meet the goals of improving health care access and quality and reducing costs;
- (4) how the VHCIP projects and initiatives will reduce administrative costs;
- (5) how the VHCIP projects and initiatives compare to the principles expressed in 2011 Acts and Resolves No. 48;

1 (6) what will happen to the VHCIP projects and initiatives when the
2 SIM grant funds are no longer available; and

3 (7) how to protect the State's interest in any health information
4 technology and security functions, processes, or other intellectual property
5 developed through the VHCIP.

6 Sec. 10. REDUCING DUPLICATION OF SERVICES; REPORT

7 (a) The Agency of Human Services shall evaluate the services offered by
8 each entity licensed, administered, or funded by the State, including the
9 designated agencies, to provide services to individuals receiving home- and
10 community-based long-term care services or who have developmental
11 disabilities, mental health needs, or substance use disorder. The Agency shall
12 determine areas in which there are gaps in services and areas in which
13 programs or services are inconsistent with the Health Resource Allocation Plan
14 or are overlapping, duplicative, or otherwise not delivered in the most efficient,
15 cost-effective, and high-quality manner and shall develop recommendations for
16 consolidation or other modification to maximize high-quality services,
17 efficiency, service integration, and appropriate use of public funds.

18 (b) On or before January 15, 2016, the Agency shall report its findings and
19 recommendations to the House Committee on Human Services and the Senate
20 Committee on Health and Welfare.

1 * * * Chemicals of Concern * * *

2 Sec. 11. 18 V.S.A. § 1774(d) is amended to read:

3 (d) Commissioner of Health recommendation; assistance.

4 (1) Beginning on July 1, 2017, and biennially thereafter, the
5 Commissioner of Health shall recommend at least two chemicals of high
6 concern to children in children's products for review by the Working Group.
7 The Commissioner's recommendations shall be based on the ~~degree of~~ human
8 health risks, exposure pathways, and impact on sensitive populations presented
9 by a chemical of high concern to children.

10 (2) The Working Group shall have the administrative, technical, and
11 legal assistance of the Department of Health and the Agency of Natural
12 Resources.

13 Sec. 12. 18 V.S.A. § 1776 is amended to read:

14 § 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN
15 TO CHILDREN; PROHIBITION OF SALE

16 (a) Rulemaking authority. The Commissioner shall, after consultation with
17 the Secretary of Natural Resources, adopt rules as necessary for the purposes
18 of implementing, administering, or enforcing the requirements of this chapter.

19 (b) Additional chemicals of concern to children. The Commissioner may
20 by rule add additional chemicals to the list of chemicals of high concern to
21 children, provided that the Commissioner of Health, on the basis of ~~the weight~~

1 of credible, scientific evidence, has determined that a chemical proposed for
2 addition to the list meets both of the following criteria in subdivisions (1) and
3 (2) of this subsection:

4 (1) The Commissioner of Health has determined that an authoritative
5 governmental entity or accredited research university has demonstrated that the
6 chemical:

7 (A) harms the normal development of a fetus or child or causes other
8 developmental toxicity;

9 (B) causes cancer, genetic damage, or reproductive harm;

10 (C) disrupts the endocrine system;

11 (D) damages the nervous system, immune system, or organs or
12 causes other systemic toxicity; or

13 (E) is a persistent bioaccumulative toxic.

14 (2) The chemical has been found through:

15 (A) biomonitoring to be present in human blood, umbilical cord
16 blood, breast milk, urine, or other bodily tissues or fluids;

17 (B) sampling and analysis to be present in household dust, indoor air,
18 drinking water, or elsewhere in the home environment; or

19 (C) monitoring to be present in fish, wildlife, or the natural
20 environment.

1 (c) Removal of chemical from list. The Commissioner may by rule remove
2 a chemical from the list of chemicals of high concern to children established
3 under section 1773 of this title or rules adopted under this section if the
4 Commissioner determines that the chemical no longer meets both of the
5 criteria of subdivisions (b)(1) and (2) of this section.

6 (d) Rule to regulate sale or distribution.

7 (1) The Commissioner; ~~upon the recommendation of~~ after consultation
8 with the Chemicals of High Concern to Children Working Group, may adopt a
9 rule to regulate the sale or distribution of a children's product containing a
10 chemical of high concern to children upon a determination that:

11 (A) ~~children will be exposed to a chemical of high concern to~~
12 ~~children in the children's product~~ there is potential for exposure of children to
13 the chemical of high concern; and

14 (B) ~~there is a probability that, due to the degree of exposure or~~
15 ~~frequency of exposure of a child to a chemical of high concern to children in a~~
16 ~~children's product, exposure could cause or contribute to one or more of the~~
17 ~~adverse health impacts listed under subdivision (b)(1) of this section~~ one or
18 more safer alternatives to the chemical of high concern to children are
19 available.

1 (2) In determining whether children will be exposed to a chemical of
2 high concern in a children's product, the Commissioner shall review available,
3 credible information regarding:

4 (A) the market presence of the children's product in the State; or

5 ~~(B) the type or occurrence of exposures to the relevant chemical of~~
6 ~~high concern to children in the children's product;~~

7 ~~(C) the household and workplace presence of the children's~~
8 ~~product; or~~

9 ~~(D) the potential and frequency of exposure of children to the~~
10 ~~chemical of high concern to children in the children's product~~ the amounts of
11 the chemical of high concern contained in the children's product as reported
12 under section 1775 of this title.

13 * * *

14 * * * Appropriation * * *

15 Sec. 13. APPROPRIATION

16 The sum of \$1,250,000.00 in Global Commitment funds is appropriated
17 from the General Fund to the Department of Vermont Health Access in fiscal
18 year 2016 to increase Medicaid reimbursement rates for home health agencies
19 and for implementation of the prospective payment methodologies set forth in
20 Sec. 5 of this act.

1 * * * Effective Dates * * *

2 Sec. 14. EFFECTIVE DATES

3 (a) Secs. 1 and 2 (pharmacy benefit managers), 9 and 10 (reports), and this
4 section shall take effect on passage.

5 (b) Secs. 3 and 4 (notice of hospital observation status), 5 (prospective
6 payments for home health services), 6 and 7 (reinstating oversight
7 committees), 8 (Long-Term Care Evaluation Task Force), 11 and 12
8 (chemicals of concern to children), and 13 (appropriation) shall take effect on
9 July 1, 2015.