

# VERMONT LEGAL AID, INC.

## OFFICE OF THE HEALTH CARE ADVOCATE

264 NORTH WINOOSKI AVE. - P.O. Box 1367

BURLINGTON, VERMONT 05402  
(800) 917-7787 (VOICE AND TTY)

FAX (802) 863-7152  
(802) 863-2316

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

OFFICES:

MONTPELIER  
SPRINGFIELD

TO: House Health Care Committee

FROM: Trinka Kerr, Chief Health Care Advocate

RE: Possible additional provisions to H. 812 (Consumer Protections in ACOs)

DATE: February 19, 2016

First, a general comment and possible change: H. 812 as introduced uses the terms “guidelines and principles” when describing the content of the bill. We would prefer the term “requirements,” and the use of “must” or “shall” rather than “should.” This would make the bill and the protections stronger and more enforceable.

We recommend the following additions to Section 1 of H. 812, as introduced (using the subsection numbers in the bill):

### **(5) Grievance and Appeals**

In addition to the recommendation that the Green Mountain Care Board (GMCB) should adopt rules governing an ACO appeal process, this section should include requirements that an ACO:

- Add the word “independent” before “external review processes.”
- Provide a written notice of grievance and appeal rights to patients, which includes a statement of what events are appealable and the contact information for the Office of the Health Care Advocate (HCA) for assistance with a possible appeal.
- Provide reasonable assistance with appeals; patients who make an oral complaint must be informed of their right to appeal and given the above notice.
- Provide regular reports on the numbers and types of appeals and grievances to the GMCB.

Because the GMCB has stated that it does not have the authority to oversee a new appeal process, a provision granting that authority as a specific “duty” could be added to 18 V.S.A. §9375, e.g.:

The board shall adopt and enforce rules for a patient appeal process for patients attributed to an accountable care organization. This process shall include an internal process within the ACO, and an external independent review process similar to the independent external review of health care service decisions by insurers required of the Department of Financial Regulation in 8 V.S.A. § 4089f.

## **(7) Consumer Protection**

- The notice of attribution to the patient should also include information about the HCA in the event that a patient feels their rights have been violated by the ACO.
- No ACO shall include any provision in a contract with a health care provider that prohibits the provider from giving patients information about the contract that may affect their health or decision regarding health.
- If the ACO implements guidelines or protocols, they must be made available to all patients of participating providers upon request.
- No ACO shall prohibit a contracted provider from, or penalize a contracted provider for, discussion treatment options with patients regardless of the ACO's position on the treatment options, or advocating on behalf of patients within the appeal and grievance processes, nor shall it penalize a provider because the provider in good faith reports to state or federal authorities any act or practice by the ACO that jeopardizes patient health or welfare.

## **New section: Best Practices and Transparency**

- ACO providers shall engage all patients in shared decision making to ensure that patients are aware of and understand their treatment options and the related risks and benefits of each option.
- Shared decision making and the treatment options offered shall be documented in the patient's visit note.
- ACO providers shall give all patients copies of their complete visit notes after each appointment and must make their patients aware of this visit note policy.
- The ACO must make patients' access to their health records a top priority, with the goal of providing all patients with real-time, electronic access to their complete health information.
- ACOs shall report annually to the GMCB the number of patients with access to a patient portal that includes a meaningful amount of health information including but not limited to diagnoses, care plans, visit notes, medication lists, and lab and imaging results.