

TO: Representative Janet Ancel
Chair, Committee on Ways and Means
FROM: Paul Harrington
Executive Vice President, Vermont Medical Society
RE: Sec. 30 of the Fee Bill: Establishing a 2.35 percent tax on the net patient revenue
of Independent Physicians and Dentists
DATE: February 3, 2016

In his Fiscal Year 2017 Budget Address, Governor Peter Shumlin asked the Vermont General Assembly to enact a new 2.35 percent tax on the net patient revenues of independent physicians and dentists. The administration estimates that 40 percent of physicians are independent and would be subject to the tax and 60 percent are employed by hospitals and would not be subject to the new tax.

The tax would be applied retroactively to January 1, 2016 and it would raise \$17 million in new state revenue (\$11 million from independent physicians and \$6 million from independent dentists).

In order to determine the tax amount, independent physicians would be required to file a net patient revenue form with the state by April 15, 2016. The form has not been developed and these practices do not currently account net patient revenue.

Under the proposal, independent physician is defined as an entity of one or more physician licensed to practice medicine, osteopathy or naturopathy who are not otherwise employed by a hospital, nursing home or home health agency. All Vermont-based independent physicians' practices, as well as Federally Qualified Health Clinics and Rural Health Clinics would be subject to the tax.

The Governor stated he would use \$12 million of the new tax revenue to address the Medicaid deficit. He would also use \$3.9 million of the tax revenue to raise Medicaid payments for evaluation and management codes for all primary care (pediatricians, family physicians and general internists) from the current level of 83.6 percent of Medicare to 100 percent of Medicare, effective July 1, 2016.

Using the administration's estimate of the percentage independent physicians, \$1.6 million (40 percent of \$3.9 million) of the \$11 million tax revenue would be used to increase Medicaid reimbursement for independent primary care physicians. Only 15 percent of the tax revenue raised from independent physicians will be returned to a subset of independent physicians in the form of higher Medicaid payments. With the added federal match, \$3.4 million or 30 percent of the total revenue would be returned to independent primary care physicians in the form for increased Medicaid fees.

The tax would result in a 2.35 percent reduction for all independent physicians in their Medicare reimbursement for calendar year 2016 and beyond.

The tax would result in a 2.35 percent reduction for all independent physicians in their commercial insurance reimbursement for calendar year 2016 and beyond.

The tax would result in a 2.35 percent reduction for all independent non-primary care physicians in their Medicaid reimbursement for calendar year 2016 and beyond. Payments to these independent non-primary care physicians represent 55 percent of Medicaid expenditures for professional services.

The tax would result in a 2.35 percent reduction for all independent primary care physicians in their Medicaid reimbursement for the first two quarters of calendar year 2016. Payments to these independent primary care physicians represent 45 percent of Medicaid expenditures for professional services.

The Governor justified the new tax on independent physicians and dentists based on the current 6 percent tax on net patient revenues paid by hospitals that was first collected in 1992 and includes physician net patient revenue.

Hospitals are typically the largest employers in their community and they have the ability to negotiate for higher reimbursement. Independent physicians are small businesses and these independent physicians do not have the market power to negotiate for higher fees from commercial insurance companies. An unexpected and retroactive 2.35 percent tax on the net patient revenue of independent physicians could force them out of business and result in thousands of Vermonters losing access to physicians' services.

Currently, only Minnesota taxes independent physicians and their tax expires in 2019. West Virginia had a tax on physicians that was repealed in 2010. Both states adopted their taxes on physicians in the early 90s. If enacted, Vermont would be the only state in the country to tax independent physicians and the tax could be a significant disadvantage when trying to retain existing physicians and attract new physicians to the state.

The Vermont Medical Society strongly opposes the adoption of a provider tax on physicians due to:

The devastating impact such a tax would have on the state's ability to retain and attract physicians and the resulting decrease in patients' access to care in the face of current and worsening physician shortages; and

The financial and administrative strain such a tax would place on the survivability of small independent practices in the state.

The tax would rapidly accelerate the trend away from independent physician practice to an almost exclusive practice model in Vermont of physicians being employed by hospitals.

Under the proposal, DVHA would hire 3.5 new FTEs to administer the tax at a cost of \$530,871. Rather than spending large sums on new state employees, the VMS believes this money could be better spent on helping support those providing direct patient care.

The Governor also proposed an all-payer model that includes Medicare expenditures in Vermont growing more slowly than the national average. The all-payer model term sheet proposes to reduce growth in Medicare costs by 0.2 percent off the national trend for services covered by the agreement at the end of the 5 years.

In 2009, Vermont's spending per Medicare enrollee was \$8,719 (the lowest spending per Medicare enrollee in New England). Maryland is the only state with a Medicare waiver. Maryland's spending per Medicare enrollee for the same period was \$11,449, and the national average was \$10,365. Vermont's per capita Medicare spending was 70 percent of Maryland's and 84 percent of the national average. Unfortunately, the proposed all-payer model does not give Vermont credit for its low spending per Medicare enrollee, but seems to freeze it in place.

Vermont's average annual growth in Medicare spending for the period 2004-2009 was 8.0 percent and the national average growth in Medicare spending for the same period was 7.1 percent. Using these past trends, under the all-payer term sheet, Vermont would have been held to a lower Medicare growth rate of 6.9 percent (7.1 - 0.2).

According to the 2009 Vermont Health Care Expenditure Analysis, a total of \$843 million in Medicare expenditures was spent on the 110,203 beneficiaries identified as living in Vermont in 2008.

Trending forward the \$843 million in Medicare spending in 2008 using the state's average growth rate of 8.0 percent would have resulted in \$910 million in 2009. Trending forward the \$843 million in Medicare spending in 2008 using the national average rate 7.1 percent minus 0.2 percent would result in Medicare spending of \$901 million in 2009. The resulting decrease of \$9 million in federal Medicare funds in 2009 would have placed even greater demands on state funds to support Vermont's health care system.

The proposed all-payer model term sheet allows for the Green Mountain Care Board to prospectively cut Medicare physician reimbursement when the national Medicare growth rate minus 0.2% is not met.

The possible GMCB Medicare cuts would be on top of the Governor's proposed 2.35 percent Medicare cut for all independent physicians and reduce Vermont's already low spending even further. With Vermont rapidly aging population, these two payment reductions could significantly threaten seniors' access to independent physician services.

The Vermont Medical Society urges the Committee to reject the proposed 2.35 percent tax on the net patient revenues of independent physicians and dentists, due to its high probability for decreasing patients' access to care in the face of current and worsening physician shortages.