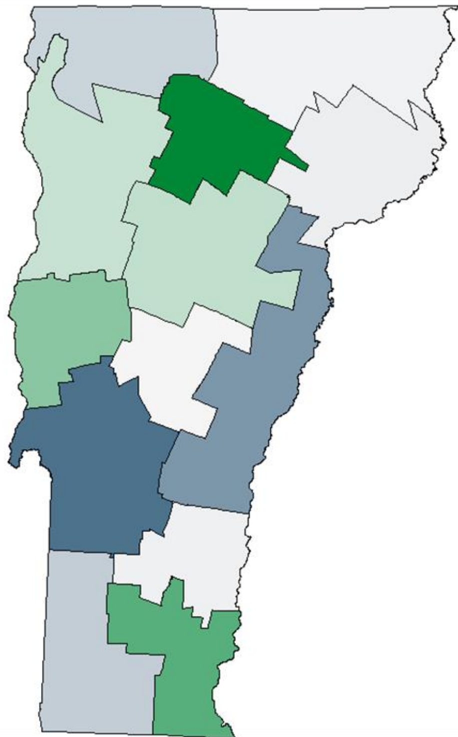

H.912 An act relating to the health care regulatory duties of the GMCB

Senate Health & Welfare
March 13, 2018

VERMONT
GREEN MOUNTAIN CARE BOARD

Background: CON laws

What is CON?

- Certificate of need laws requires health care facilities to obtain state approval prior to making large capital investments or offering new health services that exceed set financial thresholds

Intent of CON?

- CON laws aim to avoid unnecessary duplication of services and limit excessive growth in health care costs by approving only those expenditures deemed necessary to meet community health needs

CON laws: State-by-state comparison

Jurisdiction

Service	Jurisdictions	Count
Acute Hospital Beds	AL AK CT DE FL GA HI IL IA KY ME MD MI MS MO NV NH NJ NY NC RI SC TN VT VA WA WV DC	28
Air Ambulance	AL ME MA MI VT DC	6
Ambulance Services	AZ	1
ASCs	AL AK CT DE GA HI IL IA KY ME MD MA MI MS MT NV NH NY NC RI SC TN VT VA WA WV DC	27
Burn Care	AL HI ME MD NJ NY NC TN VT WA DC	11
Cardiac Catheterization	AL AK CT DE GA HI IL IA KY ME MD MI MS MO NH NJ NY NC RI SC TN VT VA WA WV DC	26
CT Scanners	AK CT HI ME MI MO NY NC RI VT VA WV DC	13
Gamma Knives	AL AK GA HI ME MA MI MS MO NC RI SC VT VA DC	15
Home Health	AL AR GA HI KY MD MS MT NJ NY NC SC TN VT WA WV DC	17
Hospice	AL AR CT FL HI KY MD MS MT NJ NY NC OR RI SC TN VT WA WV DC	20
Intermediate Care Facilities	AR FL GA HI IL IA KY LA MD MS MO MT NV NJ NC OK SC TN VT VA WV WI	22
Long Term Acute Care	AL AK CT DE FL GA HI IL IA KY ME MD MI MS MO NH NJ NC OR RI SC TN VT VA WA WV DC	27
Nursing Home Beds	AL AK AR CT DE FL GA HI IL IA KY LA ME MD MA MI MS MT NE NH NV NJ NY NC OH OK OR RI SC TN VT VA WA WV WI DC	37
Medical Office Buildings	VT DC	2
MRI Scanners	AK CT HI KY ME MA MI MS MO NH NY NC RI SC TN VA VT WV DC	18
NICU	AL AK CT FL GA HI IL KY ME MD MA MI NJ NY NC RI SC TN VT VA WA WV DC	23
Obstetrics Services	AL AK CT GA HI IL ME MD NY RI VT VA WA WV DC	15
Open Heart Surgery	AL AK CT GA HI IL IA KY ME MD MA MI MS NH NJ NY NC RI SC TN VT VA WA WV DC	25
Organ Transplants	AL AK CT FL HI IL IA KY ME MD MA MI NJ NY NC RI VT VA WA WV DC	21
PET Scanners	AK CT DE GA HI KY ME MA MI MS MO NH NC RI SC TN VT VA WV DC	20
Psychiatric Services	AL AK AR CT FL GA HI IL KY ME MD MA MI MS NH NJ NC OK RI SC TN VT VA WA WV DC	26
Radiation Therapy	AL AK CT DE GA HI IA KY ME MA MI MS MO NH NY NC RI SC TN VT VA WV DC	23
Rehabilitation	AL FL GA HI IL KY ME MD MA MS MO MT NE NH NJ NY NC RI SC TN VT VA WA WV DC	25
Dialysis	AL AK HI IL ME MS NY NC VT WA WV DC	12
Assisted Living Facilities	AR LA MO NC VT	5
Subacute Services	AK FL HI IL NC OK RI SC TN WA WI VT DC	13
Substance/Drug Abuse	AL CT FL GA HI KY ME MD MA MS MT NH NC RI SC TN VT WV DC	19
Ultra Sound	HI ME VT DC	4

Source: "Certificate of Need: State Health Laws and Programs." *National Conference of State Legislators*. Updated January 2013; material added April 2015. http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx.

Background: HRAP

What is HRAP?

- The Health Resource Allocation Plan is a statutorily-required four-year plan that provides an inventory of supply and the distribution of health facilities and services in the state.

Intent of HRAP?

- Create a policy tool to improve the allocation of scarce health care resources in the state.

Why update CON and HRAP?

- Certificate of need (CON) adjustments seek to
  - Preserve spirit of original intent of CON—focus on projects that directly relate to health care delivery
  - Streamline the application process—allow for more expedited reviews
  - Adjust monetary thresholds for inflation (hospitals only)
  - Align CON criteria with statewide health care reform goals and principles
  - Revisit Enforcement penalties
- Eliminate the static, supply-focused Health Resource Allocation Plan (HRAP) and replace it with a more nimble, dynamic, updated assessment of unmet need

Stakeholder Process

- Conducted seven stakeholder meetings April through November 2017. Representatives from the following groups were invited to partipate:
    - **Office of the Health Care Advocate, VT Association of Hospitals and Health Systems, VT Medical Society, UVM Medical Center, VT Health Care Association, VT Dept. of Health, Dept of Mental Health, HealthFirst, Bi-State, Dept of Rate Setting, DAIL, BCBS, MVP**
- Gathered feedback on current statute and put forth and received feedback on potential changes to CON and HRAP legislation.
- Proposal presented at the Board's November 16 meeting for Board review and public comment.

HRAP Proposal

- **Current**: HRAP statute describes a static inventory of a specified set of health care goods and services, with focus on supply; is not a driver of solutions; does not measure gaps or underlying need.
- **Proposed**: More general resource allocation language to improve relevancy:
  - Help policymakers and regulators with analysis and decision-making, such as certificate of need applications, hospital budgets, and ACO oversight in context of larger system.
  - Utilize existing data sources more meaningfully.
  - More dynamic and up-to-date.
  - House proposal maintains the name

HRAP Proposal

In a nutshell

1) Requires the Board to consult the **State's Health Improvement Plan** and the **reimagined HRAP** to identify health investment priorities.
2) Requires the Board to publish a **report** at least every 4 years that uses existing data sources to assess Vermont's critical health needs, goods, services, and resources. (**In other words requires a more comprehensive assessment of both supply and demand and thus: unmet need**). *Language requires board to use that report in its decision-making processes.*
3) Changes the HRAP review process from one that required 5 public hearings in different regions of the state with 30 days notice published in the newspaper to one where discussion take place at GMCB meetings which are open to the public and during which we take public comment.

Some of the many health-related data sources that could be leveraged to better inform resource allocation decisions

Vermont State Health Improvement Plan	State Health Assessment Plan - Healthy Vermonters 2020	Hospital Community Health Needs Assessment Reports	Hospital Report Card
Vermont Hospitals Report	Vermont Health Care Expenditure Analysis	Inventory of Quality Activities in Vermont	Inventory of Vermont Communities Health-related Resources
Inventory and Analysis of Existing Vermont Health Data Final Report	Vermont Health Data Inventory	Health Care Workforce Microsimulation Demand Model	SIM Population Health Plan

CON Proposal

- Five substantive areas for change:
  - Greater focus on projects related to health care delivery
  - Streamline the application process
  - Adjust monetary thresholds for inflation (hospital only)
  - Align criteria with statewide health care reform goals and principles
  - Enforcement

CON Proposal: Greater focus on health care delivery

- **Current**: Routine replacement of non-medical equipment (ex kitchens, boilers) reviewed if it meets the monetary threshold

- **Proposed**: Exclude routine replacement of non-medical equipment in CON process and instead review in hospital budget process.

CON Proposal: Streamline the process

- **Current**: Project may only be expedited if uncontested and no interested parties.

- **Proposed**: Clarifies projects presumed to be expedited: **Repair, renovation, or replacement of building infrastructure (not new construction)** and **Routine replacement of medical equipment.**

CON Proposal: Streamline the process

- **Current**: The Board shall hold a public hearing except in the case of emergency CON or no interested parties (at Board discretion).

- **Proposed**: Health Care Advocate, competing applicant, or interested party may waive the requirement for a public hearing, but continue to participate.
- *House*: The Order granting the request will include a description and timing of process and must include 10 days for public comment after application is complete.

CON Proposal: Streamline the process

- **Current**: Applicants have a year to respond to every request for information.

- **Proposed**: Allow applicants six months to respond in order to ensure applications are more timely processed.

CON Proposal: Adjust monetary thresholds for inflation (hospital only)

- **Current**: Diagnostic and therapeutic equipment at $1M. New health care service or technology annual operating expenses at $500,000.

- **Proposed**: **Diagnostic and therapeutic equipment increases** to **$1.5M** from $1M. **New health care service or technology annual operating expenses** increases to **$1M** from $500,000. **Periodically adjust thresholds for inflation**

GMCB: Adjustment shall not exceed an amount calculated using the rate of medical inflation

House: Consumer Price Index rate of inflation

CON Proposal: Adjust monetary thresholds for inflation (hospital only)

- A comparison to other states…

By or on behalf of a hospital			
	Capital	**Equipment**	**New Service**
Vermont	$3,000,000	$1,000,000	$500,000
MEAN	$5,991,772	$1,942,137	$1,188,811
MEDIAN	$3,000,000	$1,500,000	$1,000,000
RANGE (low)	$300,000	$250,000	$150,000
RANGE (high)	$50,000,000	$6,000,000	$3,242,028

Source: 2016 National Directory State Certificate of Need Programs Health Planning Agencies, American Health Planning Association

Medical Inflation vs. CPI

- Prices for medical care increase faster than general inflation
- Medical inflation is more appropriate as an upper limit for threshold adjustment; language says “shall not exceed”

By or on behalf of a hospital			
	Capital	Equipment	New Service
2003	$3,000,000	$1,000,000	$500,000
General inflation 2017	$3,997,647	$1,332,549	$666,275
Medical inflation 2017	$4,859,363	$1,619,788	$809,894

Source: Bureau of Labor Statistics Calculator Inflation Rates calculated from 01/2003 through 12/2016

CON Proposal: Align criteria with statewide health care reform goals and principles

- **Current**: First criterion requires application "is consistent with the Health Resource Allocation Plan."

- **Proposed**: In its decisions, the Board must consider health care payment and delivery reform initiatives, address current and future community needs, and is consistent with appropriate allocation of health care resources, including appropriate utilization of services. See HRAP proposal.

CON Proposal: Enforcement

- **Current**: One time violation: not more than $40,000. Continuing Violation: Greater of not more than $100,000 or 1/10th of 1% of gross annual revenues.
- **Proposed**:
  - Cap for one-time violation increased to **$75,000** from $40,000. Cap for continuing violation increased to **$200,000** from $100,000. (Retains 1/10th of 1% of gross annual revenues).
  - Removes “knowingly” violates.

Additional issues considered– not in H.912

- Purchase or transfer of ownership of nursing homes – H.921 An Act Relating to Nursing Home Oversight
- Urgent care centers currently excluded under physician office exemption.
- Review of Health Information Technology

Expenditure Analysis & Spending Estimates

- Maintains expenditure analysis currently provided in the GMCB Annual Report

- Modifies “unified health care budget” statute to reflect how the estimates have been operationalized (initially at BISHCA, now at GMCB)
    - Aligns statutory language with All Payer Model Agreement

Delegation

- Clarifies that the Board may delegate certain tasks to one member or to staff
- *Examples*:
    - CON applications are received by a staff member, who reviews and ensures that the necessary materials have been submitted. That staff member prepares questions & documentation requests. Board members also provide questions, but staff is responsible for working with the applicant.
    - The hospital budget rule provides for meetings with the hospitals prior to the next years guidance. This is done by the staff & the results are reported to the Board at a public meeting.
- Response to recent Vermont Supreme Court Decision *dicta*
    - *In re PATH at Sone Summit, Inc* 2107 VT 56, No. 2016-298

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Medicaid Advisory Rate Case

- Codifies Medicaid Advisory Rate Case provision
  - Last year, in Act 113; prior year in the budget
  - Provides authority to advise the Department of Vermont Health Access on their Accountable Care Organization contract rate
  - Ensures a mechanism for the Board to understand the financial terms of the Medicaid contract
  - Complements the ACO Budget process