

**S.73 – Potential ambulatory surgical center budget review language for HHC discussion**

Sec. A. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

(7) Review and establish hospital and ambulatory surgical center budgets pursuant to chapter 221, subchapter 7 of this title.

Sec. B. 18 V.S.A. § 9402 is amended to read:

**§ 9402. DEFINITIONS**

As used in this chapter, unless otherwise indicated:

\* \* \*

(18) “Ambulatory surgical center” shall have the same meaning as in section 2141 of this title.

Sec. C. 18 V.S.A. § 9405 is amended to read:

**§ 9405. STATE HEALTH IMPROVEMENT PLAN; HEALTH RESOURCE ALLOCATION PLAN**

\* \* \*

(b) The Green Mountain Care Board, in consultation with the Secretary of Human Services or designee, shall publish on its website the Health Resource Allocation Plan identifying Vermont’s critical health needs, goods, services, and resources, which shall be used to inform the Board’s regulatory processes, cost containment and statewide quality of care efforts, health care payment and delivery system reform initiatives, and any allocation of health resources within the State. The Plan shall identify Vermont residents’ needs for health care services, programs, and facilities; the resources available and the additional resources that would be required to realistically meet those needs and to make access to those services, programs, and facilities

affordable for consumers; and the priorities for addressing those needs on a statewide basis. The Board may expand the Plan to include resources, needs, and priorities related to the social determinants of health. The Plan shall be revised periodically, but not less frequently than once every four years.

(1) In developing the Plan, the Board shall:

\* \* \*

(B) identify priorities using information from:

\* \* \*

(iv) materials provided to the Board through its other regulatory processes, including hospital and ambulatory surgical center budget review, oversight of accountable care organizations, issuance and denial of certificates of need, and health insurance rate review; and

\* \* \*

(4) As used in this section:

(A) “Health resources” means investments into the State’s health care system, including investments in personnel, equipment, and infrastructure necessary to deliver:

(i) hospital, nursing home, and other inpatient services;

(ii) ambulatory care, including primary care services, mental health services, health screening and early intervention services, ambulatory surgical center services, and services for the prevention and treatment of substance use disorders;

\* \* \*

Sec. D. 18 V.S.A. chapter 221, subchapter 7 is amended to read: **(to take effect beginning with ASC fiscal year 2022)**

Subchapter 7. Hospital and Ambulatory Surgical Center Budget Review

## § 9451. DEFINITIONS

As used in this subchapter:

(1) “Ambulatory surgical center” means (resolve definition inconsistencies).

(2) “Hospital” means a general hospital licensed under chapter 43 of this title.

(2)(3) “Volume” means the number of inpatient days of care or admissions and the number of all inpatient and outpatient ancillary services rendered to patients by a hospital.

## § 9453. POWERS AND DUTIES

(a) The Green Mountain Care Board shall:

(1) adopt uniform formats that hospitals and ambulatory surgical centers shall use to report financial, scope-of-services, and utilization data and information;

(2) designate a data organization with which hospitals and ambulatory surgical centers shall file financial, scope-of-services, and utilization data and information; and

(3) designate a data organization or organizations to process, analyze, store, or retrieve data or information.

(b) To effectuate the purposes of this subchapter, the Board may adopt rules under 3 V.S.A. chapter 25.

## § 9454. HOSPITALS AND AMBULATORY SURGICAL CENTERS; DUTIES

(a) Hospitals and ambulatory surgical centers shall file the following information at the time and place and in the manner established by the Board:

(1) a budget for the forthcoming fiscal year;

(2) financial information, including costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of services, and wage and salary data;

- (3) scope-of-service and volume-of-service information, including inpatient services, outpatient services, and ancillary services by type of service provided;
- (4) utilization information;
- (5) new hospital or ambulatory surgical center services and programs proposed for the forthcoming fiscal year;
- (6) known depreciation schedules on existing buildings, a four-year capital expenditure projection, and a one-year capital expenditure plan; and
- (7) such other information as the Board may require.

(b) Hospitals and ambulatory surgical centers shall adopt a fiscal year ~~which~~ that shall begin on October 1.

#### § 9456. BUDGET REVIEW

- (a) The Board shall conduct reviews of each hospital's and ambulatory surgical center's proposed budget based on the information provided pursuant to this subchapter and in accordance with a schedule established by the Board.
- (b) In conjunction with budget reviews, the Board shall:
  - (1) review utilization information;
  - (2) consider the Health Resource Allocation Plan identifying Vermont's critical health needs, goods, services, and resources developed pursuant to section 9405 of this title;
  - (3) consider the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;
  - (4) consider any reports from professional review organizations;

(5) solicit public comment on all aspects of hospital or ambulatory surgical center costs and use, as applicable, and on the budgets proposed by individual hospitals and ambulatory surgical centers;

(6) meet with hospitals and ambulatory surgical centers to review and discuss hospital their budgets for the forthcoming fiscal year;

(7) give public notice of the meetings with hospitals and ambulatory surgical centers, and invite the public to attend and to comment on the proposed budgets;

(8) consider the extent to which costs incurred by the hospital or ambulatory surgical center in connection with services provided to Medicaid beneficiaries are being charged to non-Medicaid health benefit plans and other non-Medicaid payers;

(9) require each hospital and ambulatory surgical center to file an analysis that reflects a reduction in net revenue needs from non-Medicaid payers equal to any anticipated increase in Medicaid, Medicare, or another public health care program reimbursements, and to any reduction in bad debt or charity care due to an increase in the number of insured individuals;

(10) require each hospital and ambulatory surgical center to provide information on administrative costs, as defined by the Board, including specific information on the amounts spent on marketing and advertising costs; and

(11) require each hospital and ambulatory surgical center to create or maintain connectivity to the State's Health Information Exchange Network in accordance with the criteria established by the Vermont Information Technology Leaders, Inc., pursuant to subsection 9352(i) of this title, provided that the Board shall not require a hospital or ambulatory surgical center to create a level of connectivity that the State's Exchange is unable to support.

(c) Individual hospital and ambulatory surgical centers budgets established under this section shall:

- (1) be consistent with the Health Resource Allocation Plan;
- (2) take into consideration national, regional, or in-state peer group norms, according to indicators, ratios, and statistics established by the Board;
- (3) promote efficient and economic operation of the hospital or ambulatory surgical center;
- (4) reflect budget performances for prior years;
- (5) include a finding that the analysis provided in subdivision (b)(9) of this section is a reasonable methodology for reflecting a reduction in net revenues for non-Medicaid payers; and
- (6) demonstrate that they support equal access to appropriate mental health care that meets the Institute of Medicine's triple aims standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care.

(d)(1) Annually, the Board shall establish a budget for each hospital and ambulatory surgical center on or before September 15, followed by a written decision by October 1. Each hospital and ambulatory surgical center shall operate within the budget established under this section.

(2)(A) It is the General Assembly's intent that hospital cost containment conduct and ambulatory surgical center cost containment conduct is afforded state action immunity under applicable federal and State antitrust laws, if:

- (i) the Board requires or authorizes the conduct in any hospital or ambulatory surgical center budget established by the Board under this section;
- (ii) the conduct is in accordance with standards and procedures prescribed by the Board; and

(iii) the conduct is actively supervised by the Board.

(B) A hospital's or ambulatory surgical center's violation of the Board's standards and procedures shall be subject to enforcement pursuant to subsection (h) of this section.

(3)(A) The Office of the Health Care Advocate shall have the right to receive copies of all materials related to ~~the~~ hospital and ambulatory surgical center budget review and may:

- (i) ask questions of employees of the Green Mountain Care Board related to the Board's hospital and ambulatory surgical center budget review;
- (ii) submit written questions to the Board that the Board will ask of hospitals and ambulatory surgical centers in advance of any hearing held in conjunction with the Board's hospital and ambulatory surgical center budget review;
- (iii) submit written comments for the Board's consideration; and
- (iv) ask questions and provide testimony in any hearing held in conjunction with the Board's hospital and ambulatory surgical center budget review.

(B) The Office of the Health Care Advocate shall not further disclose any confidential or proprietary information provided to the Office pursuant to this subdivision (3).

- (e) The Board may establish a process to define, on an annual basis, criteria for hospitals and ambulatory surgical centers to meet, such as utilization and inflation benchmarks. The Board may waive one or more of the review processes listed in subsection (b) of this section.
- (f) The Board may, upon application, adjust a budget established under this section upon a showing of need based upon exceptional or unforeseen circumstances in accordance with the criteria and processes established under section 9405 of this title.
- (g) The Board may request, and a hospital or ambulatory surgical center shall provide, information determined by the Board to be necessary to determine whether the hospital or

ambulatory surgical center is operating within a budget established under this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the Board's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital or ambulatory surgical center to the extent that such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or ambulatory surgical center, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital, or ambulatory surgical center, or other controlled entity.

(h)(1) If a hospital or ambulatory surgical center violates a provision of this section, the Board may maintain an action in the Superior Court of the county in which the hospital or ambulatory surgical center is located to enjoin, restrain, or prevent such violation.

(2)(A) After notice and an opportunity for hearing, the Board may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than \$40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than \$100,000.00 or one-tenth of one percent of the gross annual revenues of the hospital or ambulatory surgical center, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.

(B)(i) The Board may order a hospital or ambulatory surgical center to:

(I)(aa) cease material violations of this subchapter or of a ~~regulation~~ rule or order issued pursuant to this subchapter; or

(bb) cease operating contrary to the budget established for the hospital or ambulatory surgical center under this section, provided such a deviation from the budget is material; and

(II) take such corrective measures as are necessary to remediate the violation or deviation and to carry out the purposes of this subchapter.

(ii) Orders issued under this subdivision (2)(B) shall be issued after notice and an opportunity to be heard, except where the Board finds that a hospital's or ambulatory surgical center's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital or ambulatory surgical center. Where there is an immediate threat, the Board may issue orders under this subdivision (2)(B) without written or oral notice to the hospital or ambulatory surgical center. Where an order is issued without notice, the hospital or ambulatory surgical center shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days of receipt of the hospital's or ambulatory surgical center's request for a hearing, and a decision shall be issued within 30 days after conclusion of the hearing. The Board may increase the time to hold the hearing or to render the decision for good cause shown. Hospitals and ambulatory surgical centers may appeal any decision in this subsection to Superior Court. Appeal shall be on the record as developed by the Board in the administrative proceeding and the standard of review shall be as provided in 8 V.S.A. § 16.

(3)(A) The Board shall require the officers and directors of a hospital or ambulatory surgical center to file under oath, on a form and in a manner prescribed by the Board, any information designated by the Board and required pursuant to this subchapter. The authority

granted to the Board under this subsection is in addition to any other authority granted to the Board under law.

(B) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the Board or to a hearing officer appointed by the Board or who knowingly testifies falsely in any proceeding before the Board or a hearing officer appointed by the Board shall be guilty of perjury and punished as provided in 13 V.S.A. § 2901.