

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

17
18
19
20

H.245

Introduced by Representatives Olson of Starksboro, Donahue of Northfield,
Harrison of Chittenden, Kleppner of Burlington, Logan of
Burlington, Masland of Thetford, and McCann of Montpelier

Referred to Committee on

Date:

Subject: Health; Green Mountain Care Board; health care facilities; health
networks; hospital budgets

Statement of purpose of bill as introduced: This bill proposes to expand the
Green Mountain Care Board’s hospital budget review authority to include the
option to review and approve health network budgets. It would direct the
Board to investigate the impact on the public good of eliminating or reducing a
hospital’s or health network’s monopoly or significant market power in a
health care sector and take actions necessary to promote the public good. The
bill would also give the Board additional authority to affect health system costs
through its hospital and health network budget processes.

An act relating to hospital and health network budgets

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

Sec. 1. 18 V.S.A. § 9375 is amended to read:

§ 9375. DUTIES

1 (a) The Board shall execute its duties consistent with the principles
2 expressed in section 9371 of this title.

3 (b) The Board shall have the following duties:

4 * * *

5 (7) Review and establish ~~hospital~~ budgets for hospitals and health
6 networks pursuant to chapter 221, subchapter 7 of this title.

7 * * *

8 (16)(A) Investigate whether, in the event that a hospital or health
9 network maintains a horizontal or vertical monopoly or significant market
10 power in any health care sector in this State, the public good would be
11 promoted by eliminating or reducing the monopoly or significant market
12 power. If the investigation indicates that the public good would be promoted,
13 the Board shall take such actions that are within its authority as are necessary
14 or desirable to eliminate or reduce the monopoly or significant market power
15 and shall recommend to the General Assembly any legislation needed to
16 authorize actions that are outside the Board's existing authority.

17 (B) The Board may contract with one or more outside entities as
18 needed to enable the Board to conduct an investigation pursuant to subdivision
19 (A) of this subdivision (16) and may assess the applicable hospital or health
20 network for the amount of the Board's actual expenses incurred in conducting
21 the investigation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

Sec. 2. 18 V.S.A. § 9376 is amended to read:

§ 9376. PAYMENT AMOUNTS; METHODS

(a) It is the intent of the General Assembly to ensure payments to health care professionals that are consistent with efficiency, economy, and quality of care ~~and; that~~ will permit them to provide, on a solvent basis, effective and efficient health services that are in the public interest; and that are affordable and will reduce cost increase trends to an appropriate level within a reasonable period of time. It is also the intent of the General Assembly to eliminate the shift of costs between the payers of health services to ensure that the amount paid to health care professionals is sufficient to enlist enough providers to ensure that health services are available to all Vermonters and are distributed equitably.

* * *

Sec. 3. 18 V.S.A. chapter 221, subchapter 7 is amended to read:

Subchapter 7. Hospital Budget Review

§ 9451. DEFINITIONS

As used in this subchapter:

(1) “Hospital” means a hospital licensed under chapter 43 of this title, except a hospital that is conducted, maintained, or operated by the State of Vermont.

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

4 (3) “Health network” means a system comprising two or more affiliated
5 hospitals, and may include other health care providers and facilities, that
6 deliver health care services in a coordinated manner using an integrated
7 financial and governance structure.

8 § 9453. POWERS AND DUTIES

9 (a) The Board shall:

10 (1) adopt uniform formats that hospitals and health networks shall use to
11 report financial, scope-of-services, and utilization data and information;

12 (2) designate a data organization with which hospitals and health
13 networks shall file financial, scope-of-services, and utilization data and
14 information; ~~and~~

15 (3) designate a data organization or organizations to process, analyze,
16 store, or retrieve data or information; and

17 (4) designate one accounting entity and methodology to construct
18 financials and budget submissions for all hospitals and health systems, unless
19 the Board determines that an equally effective and efficient entity and
20 methodology is appropriate.

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

3 § 9454. HOSPITALS AND HEALTH NETWORKS; DUTIES

4 (a) Hospitals and health networks shall file the following information at the
5 time and place and in the manner established by the Board:

6 (1) a budget for the forthcoming fiscal year;

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

10 (3) scope-of-service and volume-of-service information, including
11 inpatient services, outpatient services, and ancillary services by type of service
12 provided;

13 (4) utilization information;

14 (5) new hospital or health network services and programs proposed for
15 the forthcoming fiscal year;

16 (6) known depreciation schedules on existing buildings, a four-year
17 capital expenditure projection, and a one-year capital expenditure plan; and

18 (7) such other information as the Board may require.

19 (b) Hospitals and health networks shall adopt a fiscal year that shall begin
20 on October 1.

1 (c) Hospitals and health networks shall use the accounting entity and
2 methodology designated by the Board pursuant to subdivision 9453(a)(4) of
3 this chapter.

4 § 9456. BUDGET REVIEW

5 (a)(1) The Board shall conduct reviews of each hospital's and, at the
6 Board's option, each health network's proposed budget based on the
7 information provided pursuant to this subchapter and in accordance with a
8 schedule established by the Board.

9 (2) The Board may, at its discretion and in the interest of controlling
10 health system costs, establish methodologies for reviewing each hospital's or
11 health network's budgets based on revenue, based on costs, or based on the
12 setting of a global budget for the hospital or health network.

13 (3) Pursuant to its rate setting authority under section 9376 of this title,
14 the Board may establish reference-based pricing for hospitals or health
15 networks, or both. Any such reference-based pricing may apply with respect
16 to all public and private payers, to the extent permitted under federal law, or to
17 one or more payer segments, such as State employees, municipal employees,
18 or school employees, or a combination of these. The Board may determine a
19 transition period for implementation of reference-based pricing to permit
20 appropriate reductions, as determined by the Board, in hospital or health
21 network costs to accompany implementation.

1 (b) In conjunction with budget reviews, the Board shall:

2 (1) review utilization information;

3 (2) consider the Health Resource Allocation Plan identifying Vermont's
4 critical health needs, goods, services, and resources developed pursuant to
5 section 9405 of this title;

6 (3) consider the expenditure analysis for the previous year and the
7 proposed expenditure analysis for the year under review;

8 (4) consider any reports from professional review organizations;

9 (5) solicit public comment on all aspects of hospital or health network
10 costs and use and on the budgets proposed by individual hospitals and health
11 networks;

12 (6) meet with hospitals and health networks to review and discuss
13 hospital budgets for the forthcoming fiscal year;

14 (7) give public notice of the meetings with hospitals and health
15 networks, and invite the public to attend and to comment on the proposed
16 budgets;

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

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

6 (10) require each hospital and health network to provide information on
7 administrative costs, as defined by the Board, including specific information
8 on the amounts spent on marketing and advertising costs;

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

15 (12) review the hospital's or health network's investments in workforce
16 development initiatives, including nursing workforce pipeline collaborations
17 with nursing schools and compensation and other support for nurse preceptors;
18 and

19 (13) consider the salaries for the hospital's or health network's
20 executive and clinical leadership and the hospital's or health network's salary

1 spread, including a comparison of median salaries to the medians of northern
2 New England states.

3 (c) Individual hospital and health network budgets established under this
4 section shall:

5 (1) be consistent with the Health Resource Allocation Plan;

6 (2) take into consideration national, regional, or in-state peer group
7 norms, according to indicators, ratios, and statistics established by the Board;

8 (3) promote efficient and economic operation of the hospital;

9 (4) reflect budget performances for prior years;

10 (5) include a ~~finding that the analysis provided in subdivision (b)(9) of~~
11 ~~this section is a reasonable methodology for reflecting a reduction in net~~
12 ~~revenues for non-Medicaid payers~~ reasonable reduction in commercial payer
13 rates to reflect actual and anticipated increases in reimbursements from
14 Medicaid, Medicare, and other public health care assistance programs; and

15 (6) demonstrate that they support equal access to appropriate mental
16 health care that meets standards of quality, access, and affordability equivalent
17 to other components of health care as part of an integrated, holistic system of
18 care.

19 (d)(1) Annually, the Board shall establish a budget for each hospital and, at
20 the Board's option, for one or more health networks, on or before September

1 15, followed by a written decision by October 1. Each hospital and health
2 network shall operate within the budget established under this section.

3 (2)(A) It is the General Assembly's intent that hospital and health
4 network cost containment conduct is afforded state action immunity under
5 applicable federal and State antitrust laws, if:

6 (i) the Board requires or authorizes the conduct in any hospital or
7 health network budget established by the Board under this section;

8 (ii) the conduct is in accordance with standards and procedures
9 prescribed by the Board; and

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

11 (B) A hospital's or health network's violation of the Board's
12 standards and procedures shall be subject to enforcement pursuant to
13 subsection (h) of this section.

14 (3)(A) The Office of the Health Care Advocate shall have the right to
15 receive copies of all materials related to ~~the~~ hospital and health network budget
16 review and may:

17 (i) ask questions of employees of the Green Mountain Care Board
18 related to the Board's hospital or health network budget review;

19 (ii) submit written questions to the Board that the Board will ask
20 of hospitals and health networks in advance of any hearing held in conjunction
21 with the Board's hospital or health network review;

1 (iii) submit written comments for the Board’s consideration; and
2 (iv) ask questions and provide testimony in any hearing held in
3 conjunction with the Board’s hospital or health network budget review.

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

7 (4) The Board may adopt rules to incorporate certificate of need
8 determinations into the budget review process of a hospital or health network.
9 The rules shall retain the jurisdictional thresholds and required criteria set forth
10 in subchapter 5 of this chapter but may provide for a streamlined process that
11 reduces costs for the Board or the applicant, or both.

12 (e) The Board may establish a process to define, on an annual basis, criteria
13 for hospitals and health networks to meet, such as utilization and inflation
14 benchmarks. The Board may waive one or more of the review processes listed
15 in subsection (b) of this section.

16 (f)(1) The Board may, upon application, adjust a budget established under
17 this section upon a showing of need based upon exceptional or unforeseen
18 circumstances in accordance with the criteria and processes established under
19 section 9405 of this title.

1 (2) A hospital or health network shall not increase its rates in response
2 to a revenue shortfall in the absence of exceptional circumstances, as
3 determined and approved by the Board.

4 (g) The Board may request, and a hospital or health network shall provide,
5 information determined by the Board to be necessary to determine whether the
6 hospital or health network is operating within a budget established under this
7 section. For purposes of this subsection, subsection (h) of this section, and
8 subdivision 9454(a)(7) of this title, the Board’s authority shall extend to an
9 affiliated corporation or other person in the control of or controlled by the
10 hospital or health network to the extent that such authority is necessary to carry
11 out the purposes of this subsection, subsection (h) of this section, or
12 subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable
13 presumption of “control” is created if the entity, hospital, health network, or
14 other person, directly or indirectly, owns, controls, holds with the power to
15 vote, or holds proxies representing 20 percent or more of the voting securities
16 or membership interest or other governing interest of the hospital, health
17 network, or other controlled entity.

18 (h)(1) If a hospital or health network violates a provision of this section, the
19 Board may maintain an action in the Superior Court of the county in which the
20 hospital is located or the health network is headquartered to enjoin, restrain, or
21 prevent such violation.

1 (2)(A)(i) After notice and an opportunity for hearing, the Board may
2 impose on a person who knowingly violates a provision of this subchapter, or a
3 rule adopted pursuant to this subchapter, ~~a civil~~ an administrative penalty of ~~no~~
4 not more than ~~\$40,000.00~~ \$400,000.00, or in the case of a continuing violation,
5 ~~a civil~~ an administrative penalty of ~~no~~ not more than ~~\$100,000.00~~
6 \$1,000,000.00 or one-tenth of one percent of the gross annual revenues of the
7 hospital or health network, whichever is greater. This subdivision (2)(A)(i)
8 shall not apply to violations of subsection (d) of this section caused by
9 exceptional or unforeseen circumstances.

10 (ii) After notice and an opportunity for hearing, the Board may
11 order all or a portion of the amount of a penalty imposed pursuant to
12 subdivision (i) of this subdivision (2)(A) to be withheld from the compensation
13 of the hospital's or health network's executive officer or officers responsible
14 for the violation and remitted to the Board in partial or complete satisfaction of
15 the penalty, as applicable.

16 (B)(i) The Board may order a hospital or health network to:

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

19 (bb) cease operating contrary to the budget established for
20 the hospital or health network under this section, provided such a deviation
21 from the budget is material; and

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

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

19 (C)(i) Notwithstanding any provision of 3 V.S.A. chapter 25 to the
20 contrary, the Board may establish a process to reduce expenditures for a
21 hospital or health network that violates its budget order. The process shall

1 include notice and an opportunity to be heard and provide an opportunity for
2 public comment.

3 (ii) A hospital or health network that seeks to reduce expenditures
4 for patient services in response to the Board's budget violation order shall do
5 so in accordance with a compliance plan approved by the Board.

6 (3)(A) The Board shall require the officers and directors of a hospital or
7 health network to file under oath, on a form and in a manner prescribed by the
8 Board, any information designated by the Board and required pursuant to this
9 subchapter. The authority granted to the Board under this subsection (h) is in
10 addition to any other authority granted to the Board under law.

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

16 * * *

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on July 1, 2025 and Sec. 3 (amendments to
19 hospital and health system budget review) shall apply beginning with hospital
20 fiscal year 2027.