S.139

Introduced by Committee on Health and Welfare

Date: March 17, 2015

Subject: Health; health care reform; pharmacy benefit managers; hospitals; Green Mountain Care Board

Statement of purpose of bill as introduced: This bill proposes to establish specific parameters by which pharmacy benefit managers would set the maximum allowable cost for prescription drug reimbursement. It would require hospitals to provide notice to individuals placed in observation status and to alert individuals receiving observation services about the potential financial implications. It would also direct the Department of Vermont Health Access to adopt a prospective payment system for home health agencies. The bill would reinstate the Health Care Oversight Committee permanently and the Mental Health Oversight Committee for one year and it would establish a long-term care evaluation task force to assess and catalogue in-home, long-term care programs operated or subsidized by the State. The bill would require updates on the Vermont Health Care Innovation Project and direct the Agency of Human Services to identify overlap and duplication in the delivery of services. It would also modify the circumstances under which the Commissioner of Health may adopt a rule regulating the sale or distribution of a children's product containing a chemical of high concern to children.

~~An act relating to pharmacy benefit managers, hospital observation status, and chemicals of high concern to children~~

An act relating to pharmacy benefit managers and hospital observation status

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

* * * Pharmacy Benefit Managers * * *

Sec. 1. 18 V.S.A. § 9471 is amended to read:

§ 9471. DEFINITIONS

As used in this subchapter:

* * *

(6) "Maximum allowable cost" means the per unit drug product reimbursement amount, excluding dispensing fees, for a group of therapeutically and pharmaceutically equivalent multisource generic drugs.

Sec. 2. 18 V.S.A. § 9473 is amended to read:

§ 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES WITH RESPECT TO PHARMACIES

* * *

(c) For each drug for which a pharmacy benefit manager establishes a maximum allowable cost in order to determine the reimbursement rate, the pharmacy benefit manager shall do all of the following:

(1) make available, in a format that is readily accessible and understandable by a pharmacist, a list of the drugs subject to maximum

allowable cost, the actual maximum allowable cost for each drug, and the source used to determine the maximum allowable cost;

(2) update the maximum allowable cost list at least once every seven calendar days; and

(3) establish or maintain a reasonable administrative appeals process to allow a dispensing pharmacy provider to contest a listed maximum allowable cost.

* * * Notice of Hospital Observation Status * * *

Sec. 3. 18 V.S.A. § 1905 is amended to read:

§ 1905. LICENSE REQUIREMENTS

Upon receipt of an application for license and the license fee, the licensing agency shall issue a license when it determines that the applicant and hospital facilities meet the following minimum standards:

* * *

(22) All hospitals shall provide oral and written notice to each individual that the hospital places in observation status as required by section 1911a of this title.

Sec. 4. 18 V.S.A. § 1911a is added to read:

1911a. NOTICE OF HOSPITAL OBSERVATION STATUS

(a) Each hospital shall provide oral and written notice to each individual that the hospital places in observation status as soon as possible but no later

than 24 hours following such placement, unless the individual is discharged or leaves the hospital before the 24-hour period expires. The written notice shall be a uniform form developed by the Department of Health for use in all hospitals.

(b) Each oral and written notice shall include:

(1) a statement that the individual is under observation as an outpatient and is not admitted to the hospital as an inpatient;

(2) a statement that observation status may affect the individual's Medicare, Medicaid, or private insurance coverage for hospital services, including medications and pharmaceutical supplies, and for rehabilitative or skilled nursing services at a skilled nursing facility if needed upon discharge from the hospital; and

(3) a statement that the individual may contact his or her health insurance provider, the Office of the Health Care Advocate, or the Vermont State Health Insurance Assistance Program to understand better the implications of placement in observation status.

(c) Each written notice shall include the name and title of the hospital representative who gave oral notice, the date and time oral notice was given, and contact information for the Office of the Health Care Advocate and the Vermont State Health Insurance Assistance Program.

(d) Oral and written notice shall be provided in a manner that is understandable by the individual placed in observation status or by his or her legal guardian or authorized representative.

(e) Each written notice shall be signed and dated by the individual placed in observation status, or if applicable by his or her legal guardian or authorized representative, to verify receipt and an understanding of the oral and written notice.

~~* * * Prospective Payments for Home Health Services * * *~~

Sec. 5. 33 V.S.A. § 1901h is added to read:

§ 1901h. PROSPECTIVE PAYMENT; HOME HEALTH SERVICES

(a) On or before January 1, 2016 and upon approval from the Centers for Medicare and Medicaid Services, the Department of Vermont Health Access shall modify reimbursement methodologies to home health agencies, as defined in section 1951 of this title, in order to implement prospective payments for the medical services paid for by the Department and to replace fee-for-service payment methodologies.

(b) The Department shall develop the prospective payment methodology in collaboration with representatives of home health agencies. If practicable, the Department:

(1) shall align the methodology with Medicare to reduce the administrative burden on the agencies; and

~~(2) may include a quality payment in the methodology.~~

Sec. 5. [Deleted.]

~~* * * Oversight Committees * * *~~

Sec. 6. 2 V.S.A. chapter 24 is added to read:

CHAPTER 24. HEALTH CARE OVERSIGHT COMMITTEE

§ 851. CREATION OF COMMITTEE

(a) There is created a legislative Health Care Oversight Committee. The Committee shall be appointed biennially and consist of ten members: five members of the House appointed by the Speaker, not all from the same political party, and five members of the Senate appointed by the Senate Committee on Committees, not all from the same political party. The House appointees shall include one member from the House Committee on Human Services, one member from the House Committee on Health Care, one member from the House Committee on Appropriations, and two at-large members. The Senate appointees shall include one member from the Senate Committee on Health and Welfare, one member from the Senate Committee on Finance, one member from the Senate Committee on Appropriations, and two at-large members.

(b) The Committee may adopt rules of procedure to carry out its duties.

§ 852. FUNCTIONS AND DUTIES

(a) The Health Care Oversight Committee shall monitor, oversee, and provide a continuing review of health care and human services programs in

~~Vermont when the General Assembly is not in session; provided, however, that~~ review of matters related to mental health and health care reform shall remain in the jurisdiction of the Mental Health Oversight and Health Reform Oversight Committees, respectively, for as long as each Committee is authorized by law.

(b) In conducting its oversight and in order to fulfill its duties, the Committee may consult with consumers, providers, advocates, administrative agencies and departments, and other interested parties.

(c) The Committee shall work with, assist, and advise other committees of the General Assembly, members of the Executive Branch, and the public on matters relating to health care and human services programs.

(d) Annually, on or before January 15, the Committee shall report its findings and any recommendations to the Governor and the committees of jurisdiction.

§ 853. MEETINGS AND STAFF SUPPORT

(a) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(b) The Office of Legislative Council and the Joint Fiscal Office shall provide professional and administrative support to the Committee. ~~The Department of Financial Regulation, the Agency of Human Services, and other~~

~~agencies of the State shall provide information, assistance, and support upon request of the Committee.~~

Sec. 6. [Deleted.]

~~Sec. 7. MENTAL HEALTH OVERSIGHT COMMITTEE~~

(a) The Mental Health Oversight Committee is created to ensure that consumers have access to a comprehensive and adequate continuum of mental health services. The Committee shall be composed of one member from each of the House Committees on Human Services, on Corrections and Institutions, and on Appropriations and a member-at-large to be appointed by the Speaker of the House, not all from the same party, and one member from each of the Senate Committees on Health and Welfare, on Institutions, and on Appropriations and one member-at-large to be appointed by the Committee on Committees, not all from the same party. Initial appointments shall be made upon passage of this act.

(b) Members of the Committee shall serve as the liaison to their respective legislative standing committees with primary jurisdiction over the various components of Vermont's mental health system. The Committee shall work with, assist, and advise the other committees of the General Assembly, members of the Executive Branch, and the public on matters related to Vermont's mental health system.

(c) The Committee is authorized to meet up to six times per year while the ~~General Assembly is not in session to perform its functions under this section.~~

(d) The Commissioner of Mental Health shall report to the Committee as required by the Committee.

(e) For attendance at meetings during adjournment of the General Assembly, legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(f) The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(g) The Mental Health Oversight Committee shall provide a progress report to each of the committees represented thereon on or before January 1, 2016.

(h) The Committee shall cease to exist after January 1, 2016.

Sec. 7. [Deleted.]

* * * Long-Term Care Evaluation Task Force * * *

Sec. 8. LONG-TERM CARE EVALUATION TASK FORCE

(a) Creation. There is created a Long-Term Care Evaluation Task Force to assess and catalogue those in-home, long-term care programs that are either operated by the State or subsidized by the State.

(b) Membership. The Task Force shall be composed of the following 10 members:

(1) the Chair of the Senate Committee on Health and Welfare or designee, appointed by the Committee on Committees;

(2) the Chair of the House Committee on Human Services or designee, appointed by the Speaker of the House;

~~(3) the Commissioner of Disabilities, Aging, and Independent Living or~~ designee;

(4) the Long-Term Care Ombudsman;

(5) a representative of elders, appointed by the Community of Vermont Elders;

(6) a representative of retired persons, appointed by the American Association of Retired Persons;

(7) a representative of the Area Agencies on Aging;

(8) a representative of home health care providers, appointed by the Vermont Association of Home Health Agencies;

(9) a representative of the Support and Services at Home (SASH) program; and

(10) a representative of private home health care providers, appointed by Bayada Home Health Care.

(c) Powers and duties. The Task Force shall assess the availability and effectiveness of in-home, long-term care services in Vermont that are either State-operated or State-subsidized and create a catalogue of existing services to determine where overlapping services or gaps in service may exist.

(d) Assistance. The Task Force shall have the administrative, technical, ~~and legal assistance of the Department of Disabilities, Aging, and Independent~~

~~Living. For purposes of preparing any recommended legislation, the Task~~ Force shall have the assistance of the Office of Legislative Council.

(e) Report. On or before January 15, 2016, the Task Force shall submit a written report to the House Committee on Human Services and to the Senate Committee on Health and Welfare with its findings and any recommendations for rules or legislative action.

(f) Meetings.

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee shall call the first meeting of the Task Force to occur on or before August 1, 2015.

(2) The Commissioner of Disabilities, Aging, and Independent Living or designee shall serve as chair of the Task Force.

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on February 1, 2016.

(g) Reimbursement.

For attendance at meetings during adjournment of the General Assembly, legislative members of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for ~~no more than four meetings.~~

Sec. 8. [Deleted.]

* * * Reports * * *

Sec. 9. VERMONT HEALTH CARE INNOVATION PROJECT; UPDATES

The Project Director of the Vermont Health Care Innovation Project (VHCIP) shall provide an update at least quarterly to the House Committees on Health Care and on Ways and Means, the Senate Committees on Health and Welfare and on Finance, and the Health Reform Oversight Committee regarding VHCIP implementation and the use of the federal State Innovation Model (SIM) grant funds. The Project Director's update shall include information regarding:

(1) the VHCIP pilot projects and other initiatives undertaken using SIM grant funds, including a description of the projects and initiatives, the timing of their implementation, the results achieved, and the replicability of the results;

(2) how the VHCIP projects and initiatives fit with other payment and delivery system reforms planned or implemented in Vermont;

(3) how the VHCIP projects and initiatives meet the goals of improving health care access and quality and reducing costs;

(4) how the VHCIP projects and initiatives will reduce administrative costs;

(5) how the VHCIP projects and initiatives compare to the principles expressed in 2011 Acts and Resolves No. 48;

(6) what will happen to the VHCIP projects and initiatives when the SIM grant funds are no longer available; and

(7) how to protect the State's interest in any health information technology and security functions, processes, or other intellectual property developed through the VHCIP.

Sec. 10. REDUCING DUPLICATION OF SERVICES; REPORT

(a) The Agency of Human Services shall evaluate the services offered by each entity licensed, administered, or funded by the State, including the designated agencies, to provide services to individuals receiving home- and community-based long-term care services or who have developmental disabilities, mental health needs, or substance use disorder. The Agency shall determine areas in which there are gaps in services and areas in which programs or services are inconsistent with the Health Resource Allocation Plan or are overlapping, duplicative, or otherwise not delivered in the most efficient, cost-effective, and high-quality manner and shall develop recommendations for consolidation or other modification to maximize high-quality services, efficiency, service integration, and appropriate use of public funds.

(b) On or before January 15, 2016, the Agency shall report its findings and recommendations to the House Committee on Human Services and the Senate Committee on Health and Welfare.

~~* * * Chemicals of Concern to Children * * *~~

Sec. 11. 18 V.S.A. § 1774(d) is amended to read:

(d) Commissioner of Health recommendation; assistance.

(1) Beginning on July 1, 2017, and biennially thereafter, the Commissioner of Health shall recommend at least two chemicals of high concern to children in children's products for review by the Working Group. The Commissioner's recommendations shall be based on the ~~degree of~~ human health risks, exposure pathways, and impact on sensitive populations presented by a chemical of high concern to children.

(2) The Working Group shall have the administrative, technical, and legal assistance of the Department of Health and the Agency of Natural ~~Resources.~~

Sec. 11. [Deleted.]

~~Sec. 12. 18 V.S.A. § 1776 is amended to read:~~

§ 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO CHILDREN; PROHIBITION OF SALE

(a) Rulemaking authority. The Commissioner shall, after consultation with the Secretary of Natural Resources, adopt rules as necessary for the purposes of implementing, administering, or enforcing the requirements of this chapter.

~~(b) Additional chemicals of concern to children. The Commissioner may by rule add additional chemicals to the list of chemicals of high concern to children, provided that the Commissioner of Health, on the basis of the weight~~

~~of credible, scientific evidence, has determined that a chemical proposed for addition to the list meets both of the following criteria in subdivisions (1) and (2) of this subsection:~~

(b) Additional chemicals of concern to children. The Commissioner may by rule add additional chemicals to the list of chemicals of high concern to children, provided that the Commissioner of Health, on the basis of ~~the weight~~ evaluation of credible, scientific evidence, has determined that a chemical proposed for addition to the list meets both of the following criteria in subdivisions (1) and (2) of this subsection:

(1) The Commissioner of Health has determined that an authoritative governmental entity or accredited research university has demonstrated that the chemical:

(A) harms the normal development of a fetus or child or causes other developmental toxicity;

(B) causes cancer, genetic damage, or reproductive harm;

(C) disrupts the endocrine system;

(D) damages the nervous system, immune system, or organs or causes other systemic toxicity; or

(E) is a persistent bioaccumulative toxic.

(2) The chemical has been found through:

(A) biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(B) sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

~~(C) monitoring to be present in fish, wildlife, or the natural environment.~~

(c) Removal of chemical from list. The Commissioner may by rule remove a chemical from the list of chemicals of high concern to children established under section 1773 of this title or rules adopted under this section if the Commissioner determines that the chemical no longer meets both of the criteria of subdivisions (b)(1) and (2) of this section.

(d) Rule to regulate sale or distribution.

~~(1) The Commissioner, upon the recommendation of~~ after consultation with the Chemicals of High Concern to Children Working Group, may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children upon a determination that:

(A) ~~children will be exposed to a chemical of high concern to children in the children's product~~ there is potential for exposure of children to the chemical of high concern; and

(B) ~~there is a probability that, due to the degree of exposure or frequency of exposure of a child to a chemical of high concern to children in a children's product, exposure could cause or contribute to one or more of the adverse health impacts listed under subdivision (b)(1) of this section~~ one or more safer alternatives to the chemical of high concern to children are available.

~~(1) The Commissioner, upon the recommendation of~~ after consultation with the Chemicals of High Concern to Children Working Group, may adopt a rule to regulate the sale or distribution of a children's product containing a chemical of high concern to children upon a determination that:

~~(A) children will be exposed to a chemical of high concern to children in the children's product~~ there is reasonable risk of exposure of children to the chemical of high concern; and

~~(B) there is a probability that, due to the degree of exposure or frequency of exposure of a child to a chemical of high concern to children in a children's product, exposure could cause or contribute to one or more of the adverse health impacts listed under subdivision (b)(1) of this section~~ one or more safer and technically and economically feasible alternatives to the chemical of high concern to children are available.

(2) In determining whether children will be exposed to a chemical of high concern in a children's product, the Commissioner shall review available, credible information regarding:

(A) the market presence of the children's product in the State; or

(B) ~~the type or occurrence of exposures to the relevant chemical of high concern to children in the children's product;~~

~~(C) the household and workplace presence of the children's product; or~~

~~(D) the potential and frequency of exposure of children to the chemical of high concern to children in the children's product~~ the amounts of the chemical of high concern contained in the children's product as reported under section 1775 of this title.

~~* * *~~

Sec. 12. [Deleted.]

~~* * * Appropriation * * *~~

Sec. 13. APPROPRIATION

The sum of $1,250,000.00 in Global Commitment funds is appropriated from the General Fund to the Department of Vermont Health Access in fiscal year 2016 to increase Medicaid reimbursement rates for home health agencies and for implementation of the prospective payment methodologies set forth in ~~Sec. 5 of this act.~~

Sec. 13. [Deleted.]

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) Secs. 1 and 2 (pharmacy benefit managers), 9 and 10 (reports), and this section shall take effect on passage.

(b) Secs. 3 and 4 (notice of hospital observation status)~~, 5 (prospective payments for home health services), 6 and 7 (reinstating oversight committees), 8 (Long-Term Care Evaluation Task Force), 11 and 12 (chemicals of concern to children), and 13 (appropriation)~~ shall take effect on July 1, 2015.