



## Legislative Report Final Wrap Up 2017

### 2017 Legislation Wrap-Up

After two tumultuous final weeks, the Legislature adjourned late on Thursday, May 18<sup>th</sup>, nearly three weeks after the originally anticipated date. While all lingering bills, including the budget, miscellaneous tax and economic development bills, passed both legislative bodies, it is anticipated that Gov. Phil Scott will hold true to his word and veto the budget, because the heavily debated issue of teachers' health insurance remained unresolved. Should a veto occur, the body will reconvene on June 21 and 22 for a special session.

The following is a list of bills that passed the House and Senate during the 2017 session, all of which will go to Governor Scott's desk for consideration.

#### **S.50, Telemedicine**

With the hope of providing Vermonters increased access to telemedicine technology, the Legislature passed a bill that requires all health insurance plans to provide coverage for services delivered via telemedicine and it must be covered to the same extent as services provided in-person.

The bill stipulates that providers must obtain and document a patient's oral or written informed consent prior to delivering telemedicine services and include proof of consent in the patient's medical record. The House Health Care Committee was concerned about the level of specificity in the informed consent language, so the bill was amended to require the following: an explanation of the differences between telemedicine and in-person delivery of care; patients may experience a qualitative difference in care based on their ability to establish therapeutic rapport with a provider via telemedicine versus in-person; patients have the right to exclude any individual from participating in their consultation and may stop telemedicine services at any time and choose in-person care.

In recognition that third-party vendors for telemedicine services have informed consent language in place, the bill allows providers to comply with their vendor's informed consent language to the extent permissible under the vendor contract.

The health insurance coverage stipulations of the bill become effective on October 1, 2017, while the informed consent provisions become effective upon passage. S.50 passed the House and Senate and will go to Governor Scott's desk.

### **H.507, Next Generation Medicaid ACO Pilot Reporting and Out-of-Pocket Prescription Drug Limits**

When the Scott Administration announced its 30,000 member Medicaid Next Generation Accountable Care Organization (ACO) pilot mid-session, legislators were immediately concerned that reporting of results and true transparency might no longer be emphasized as important elements of the pilot. Lawmakers then passed a bill detailing pilot program reporting requirements.

The bill requires the Department of Vermont Health Access (DVHA) to submit three reports to the Legislature prior to year's end containing updates on the implementation of the Next Generation Medicaid ACO pilot. The updates will include the following information:

- The amount of Medicaid funds provided by DVHA to the ACO in the months preceding the report;
- The amount of funds expended by the ACO on behalf of attributed Medicaid beneficiaries in the months preceding the report;
- The extent to which the ACO has met the quality indicators specified in the project agreement;
- The extent to which DVHA and the ACO have met reporting benchmarks outlined in the pilot operational timeline;
- A comparison of health care services utilization by category and care management level with the utilization of the same services in prior years and with Medicaid beneficiaries not attributed to the ACO;
- Information regarding complaints, grievances and appeals;
- Information on the size of the participating provider network; and
- Changes in the size of the Medicaid population attributed to the ACO since the start of the pilot program.

Additionally, the Green Mountain Care Board (GMCB) is required to provide the Legislature and Health Care Advocate with a written update on the Board's progress in meeting the benchmarks identified in their Year 0 All-Payer Model and their preparations for regulating ACOs.

As often happens during the legislative session, language attached to bills that don't move are amended into germane bills. Such was the case with this bill's final section related to out-of-pocket prescription drug limits. In 2012, the Vermont General Assembly required insurance plans to place a cap on prescription drug out-of-pocket

expenses and limit consumer exposure to perpetually increasing prescription drug prices. Since 2012, both MVP and BCBSVT have found it increasingly difficult to develop innovative Bronze Exchange plans that simultaneously uphold the state-mandated prescription out-of-pocket cap and the Federally-mandated actuarial value. For this reason, during the 2016 session, the General Assembly allowed health plans to design benefits for the 2018 plan year that either eliminated or increased the prescription drug maximum, as long as one Bronze plan with the cap remained on the market.

H.507 requires DVHA to convene an advisory group to develop options for Bronze-level Exchange plans offered for the 2018 and 2019 plan years. In developing standard plan designs for 2018 and 2019, DVHA must present the recommendations of the advisory committee to the GMCB. DVHA must certify at least two standard Bronze plans that include the out-of-pocket maximum and one or more with modifications to the out-of-pocket prescription drug limit.

For each individual enrolled in a Bronze-level plan for 2017 and 2018 who had out-of-pocket prescription drug expenditures during the 2017 plan year that met the limit, the insurer must automatically reenroll the individual in a bronze-level QHP for the 2019 plan year with a drug limit at or below the established \$1,300 limit.

The bill was signed by Governor Scott and took effect immediately.

## **H.518, Appropriations**

### **Provider Parity**

Due to the constrained timeframe prior to adjournment, the House Health Care Committee rejected the Senate-amended version of H.29, a bill that included pay parity language aimed at leveling reimbursement rates between independent and hospital-employed doctors. Chairman Bill Lippert felt there simply was not enough time to take proper testimony and decide on the issue this session.

Language relating to parity was originally proposed in the Senate Finance Committee by Sen. Michael Sirotkin on behalf of HealthFirst, Vermont's network of independent physicians. Once discussion began, it was evident that President Pro-Tem Tim Ashe fully supported the proposal. As passed out of the Senate, the bill would have required the Green Mountain Care Board to convene a working group to investigate payment differentials. The group would be tasked with developing a plan to reduce pay disparities between independent physicians and those employed by academic medical centers by the maximum achievable amount over the course of three years.

In an attempt to ensure advancement this session, Senator Ashe secured a placeholder in the budget for more in depth parity language. When H.29 failed to pass the House, the remaining Appropriations Bill language stipulates that the Green Mountain Care Board report to the Health Reform Oversight Committee by October 1, 2017 the

substantial changes that have been implemented to achieve site-neutral, fair reimbursements for medical services as envisioned in Acts 143 and 144.

With the Green Mountain Care Board's commitment to bring all involved stakeholders to the table, the discussion of provider parity will continue beyond adjournment, throughout the summer and into next session.

### Guaranteed Issue

In order to provide some level of consumer protection in the individual and small group market, a proposal was brought forth by Sen. Claire Ayer, Chair of the Senate Health and Welfare Committee, and amended into the Appropriations Bill guaranteeing acceptance of all individuals, small group employers and employees, and all dependents for any health benefit plan, regardless of any outstanding premium amount a subscriber may owe for coverage provided during the previous plan year.

### Health Insurance Regulation and Market Stabilization

Given the ever-changing and ambiguous Federal health care landscape, Vermont legislators felt compelled to ensure appropriate measures were taken to protect the stability of the Vermont market. H.518 contains language to require the GMCB, the Department of Financial Regulation and DVHA to take actions to maintain the current health care regulatory framework and stable health insurance market in 2017 while the General Assembly is not in session.

All sections of the State Appropriations Bill will take effect on July 1, 2017. However, with a veto by Governor Scott looming, there is great potential that all sections will be reconsidered during a veto session tentatively scheduled for June 21-22, 2017.

### [H.516, Miscellaneous Tax Bill](#)

#### Green Mountain Care Board Bill Back

The original Green Mountain Care Board's bill back authority provisions did not pass the House, but the content was found germane and included in the Miscellaneous Tax Bill, H.516. The language puts forth a new bill back allocation methodology for the state's health insurers, BCBSVT and MVP.

Previously provided in statute, the allocation was as follows: 40% by the State, 15% by the hospitals, 15% by nonprofit hospital and medical services corporations, 15% by health maintenance organizations and 15% by health insurance companies. The new language collapses nonprofit hospital and medical services corporations, health maintenance organizations and health insurance companies into one category accounting for 45% of the total bill-back. Within this category, expenses will be billed based on premiums paid for health coverage.

The Legislature-passed language will increase the amount BCBSVT pays the GMCB for provision of regulatory services. BCBSVT opposed this language, foreseeing direct financial impact to members, representatives of MVP contend that such reform is fair, just and necessary.

The bill back provisions become effective July 1, 2017. H.516 passed the House and Senate and will go to Governor Scott for consideration.

### Vermont Information Technology Leaders

The Secretaries of Administration and Human Services are directed to conduct a comprehensive review of the State's Health-IT Fund, Health Information Technology Plan, and Vermont Information Technology Leaders (VITL). Following comprehensive review, a report is due November 15, 2017 that must include reviews of:

- The need for a State-sponsored Health-IT Fund;
- How past payments from the Fund have or have not promoted the advancement of health information technology adoption and utilization in Vermont; and
- The Vermont Information Technology Leaders (VITL) organization, including its operation of the Vermont Health Information Exchange, its core mission, and the level of staffing needed to carry out its mission.

The report must also include recommendations regarding:

- Whether to continue the Health-IT Fund, including its current revenue source; and
- Accounting or financial actions the State should take regarding State-owned assets that either compromise or support the Vermont Health Information Exchange.

The VITL assessment section of the H.516 will take effect upon passage. The bill passed both the House and Senate and will go to Governor Scott's desk for consideration.

### **S.4, ACO Public Meeting**

To improve transparency across the health care system, the Legislature approved S.4, a bill requiring that governing board meetings of an accountable care organization (ACO) be open to the public. The House amended the original Senate language to include board meetings of the Vermont Care Organization, an entity that may encompass the three accountable organizations in Vermont. In order to be eligible for payments from Medicaid or commercial insurers, each ACO must obtain and maintain certification from the Green Mountain Care Board. The bill allows a board to convene executive sessions when considering contracts, personnel matters, trade secrets, confidential attorney-client communications, and information prohibited from public disclosure by a data use contract. It also indicates that an ACO governing board must provide public notice of its meetings to give Vermonters an opportunity to attend.

The bill will take effect July 1, 2017. It passed the House and Senate and will go to Governor Scott for consideration.

### **S.133, Mental Health Omnibus Bill**

Early in the 2017 legislative session it became clear that both the House Health Care Committee and the Senate Health and Welfare Committee would make improving the mental health care system in Vermont a top priority. The committee chairs decided the Senate would craft a proposal, then send it to the House for additions and revisions.

Both Rep. Bill Lippert, Chair of House Health Care, and Sen. Claire Ayer, Chair of Senate Health and Welfare, praised their committees for their tireless work in addressing a multitude of mental health issues this session, culminating in passage of S.133.

The bill:

- Directs hospital emergency departments to examine the use of restraints and criminal charges filed against an individual during emergency department stays;
- Encourages the Agency of Human Services (AHS) to establish a long-term evaluation of the structure for delivery of mental health services within the broader, more holistic health care system;
- Requires a review of involuntary medication treatments and psychiatric medications and their role in inpatient emergency department wait times;
- Directs the Secretary of the Agency of Human Services and hospitals with psychiatric facilities to evaluate prospects for achieving parity for individuals presenting at hospitals regardless of psychiatric or physical presentation;
- Requires the examination of facility options to prevent or divert individuals from the need to access the emergency department; and
- Requires that before September 1, 2017 the Commission of Human Resources consult with BCBSVT and Vermont Care Partners regarding the feasibility of including the designated and specialized services agencies in the State employees' health benefit plan and submit any findings and relevant recommendations for legislative action to the Legislature.

All provisions of S.133 take effect upon passage. As it has passed both the House and Senate, it will now go to Governor Scott's desk for consideration.

For more information on legislative proposals, visit the Blue Cross and Blue Shield of Vermont website at [www.bcbsvt.com](http://www.bcbsvt.com) or call Andrew Garland at (802) 371-3225 or Kathy McNally at (802) 371-3205. If you wish to discontinue receiving these updates or know of anyone else who would like to receive it, please call Kathy McNally or send an e-mail to [mcnallyk@bcbsvt.com](mailto:mcnallyk@bcbsvt.com)