

THE GREEN MOUNTAIN PHYSICIAN

A PUBLICATION OF THE VERMONT MEDICAL SOCIETY

"Not for ourselves do we labor"

May/June
2009

2009 LEGISLATIVE SESSION CONCLUDES

**Legislature Rejects Medicaid Reimbursement Cuts Proposed by Governor,
Passes Legislation Improving Working Conditions for Physicians,
Delivery of Health Care**

In This Issue:

Page 1

- Legislative Wrap-Up

Pg. 2

- Letter from the EVP
- VPMS Launches

Pg. 3

- Data Mining Ban
- Red Flags Rule

Pg. 4

- Maintenance of Certification

Pg. 5

- Dr. Pisanelli joins RPMC

Pg. 6

- 10 Questions With...
- Drug Abuse Tools

Pg. 7

- How to Appeal Ins. Claim Denials

Pg. 8

- Conferences

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Representative Steve Maier (left) and Senator Doug Racine, seen here at VMS's Council Meeting on April 4, both played key roles in the legislature's rejection of Gov. James Douglas' proposed Medicaid reimbursement cuts.

Despite a severe budget shortfall and rapidly declining revenue forecasts, the Vermont General Assembly was unwilling to go along with a 9.8-percent cut in physician Medicaid reimbursement rates proposed by Gov. James Douglas, as a part of the final 2010 Budget negotiations.

The General Assembly instead overrode a gubernatorial veto of the original appropriations bill and limited a proposed four-percent cut to most procedures in Medicaid reimbursement to physicians to two percent. Evaluation and management codes 99201-99499 were not included in the reduction.

Additional cuts proposed by the governor and not enacted into law by the legislature include the elimination of the \$5.00 Primary Care case management fees paid to physicians and an attempt to pay crossover claims at the Medicaid rate in instances where the patient is covered under both Medicare and Medicaid.

While VMS Executive Vice President Paul Harrington believes that the defeat of the governor's proposals was good news for physicians, he doesn't believe that future Medicaid reimbursement cuts are out of the question.

"Revenue estimates for budget years 2011 and 2012 suggest that more budget cuts will be needed, but we will continue to fight against any further Medicaid payment cuts," said Harrington. "Physician reimbursements have been cut to levels that are beginning to seriously threaten not only the financial viability of many practices, but the ability of tens of thousands of Vermonters to access appropriate health care."

Among the cuts in Medicaid reimbursement faced by physicians in recent years has been a 2005 cut of 7.5 percent for the same procedures cut this year by the legislature, as well as evaluation and management codes continuing to be reimbursed at a 2006 Medicare rate that has fallen significantly below current Medicare reimbursement for the same procedures.

VMS's work this session was not limited entirely to defending physicians against reimbursement cuts. A number of bills advocated by VMS and passed by the legislature improved the working environment for physicians as well as the delivery of health care in the state. Health care related bills passed during the 2009 session include:

S. 129 – Practice Variation: BISHCA will be required to contract with VPQHC to identify treatments or procedures for which the utilization rates varies significantly among geographic regions within Vermont and to recommend solutions to contain health care costs by appropriately reducing variation.

Continued on page 5



LETTER FROM THE EXECUTIVE VICE PRESIDENT

Another legislative season is in the books in Montpelier.

During the course of the 2009 session VMS actively represented members' interests on a wide array of issues, including: working to limit Medicaid reimbursement cuts; improving contract standards and timely insurance claim payments; successfully opposing mandatory, state-imposed pain and palliative care CMEs; and, securing passage of member-endorsed legislation that bans most gifts from pharmaceutical companies to health care providers and mandates public disclosure of those expenditures that are allowed. For a comprehensive summary of these and other health care related bills passed during the session, please see the article on page 1.



In this issue of *The Green Mountain Physician* you'll also find timely and topical articles about:

- The U.S. District Court's decision to uphold a VMS-supported state law that bans prescription data mining (pg 3);
- New maintenance of certification program standards announced by the ABMS (pg 4);
- The launch of Vermont's prescription monitoring system (right); and,
- Advice from health care attorney Linda Cohen on how to write an effective appeal letter (pg 7).

I also encourage you to get to know VMS Vice President Paula Duncan by reading the "10 Questions with ..." article (page 6) and learn how the role of one of Vermont's most established medical practices is changing (page 5).

And finally, I'd like to remind each of you that it is never too soon to start planning to join us at VMS's 196th annual meeting, Oct. 3, at the Basin Harbor Club in Vergennes. I hope to see you there.

In the meantime, please enjoy this issue of *The Green Mountain Physician* and, as always, do not hesitate to contact me or other VMS staff if you have any questions, concerns or comments.

Sincerely,


Paul Harrington
Executive Vice President

PRESCRIPTION MONITORING SYSTEM OPENS TO PHYSICIANS

The Vermont Prescription Monitoring System (VPMS) opened its registration process to licensed health care providers and dispensers in late April, marking the latest advancement in a new initiative that aims to better share information about patients' use of prescription drugs.

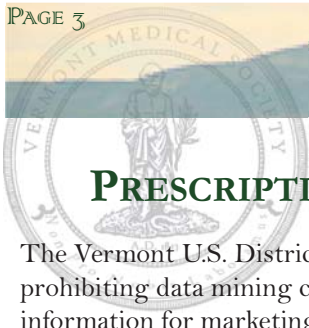
Authorized by Act 205 passed in 2006, VPMS collects a standard set of information on the patient, prescriber, dispenser, and drug whenever a Schedule II, III or IV controlled substance is dispensed to an outpatient.

Ed Haak, DO, the emergency department medical director at Northwestern Medical Center in St. Albans, believes that the new system is an important part of the effort to better organize treatment of chronic pain.

"If a patient comes into the emergency department, we can access the VPMS and use that information to identify a listing of previous prescriptions written, as well as the specific physician prescribing them, to be sure that the patient will not get an inappropriate kind – or number – of prescriptions for narcotics," said Dr. Haak.

The system began operating on Jan. 12, 2009 with weekly collection of data from pharmacies. Data were collected retroactively to July 1, 2008, and there are currently over 750,000 records in the database. Health care providers and dispensers who are registered with the system are now able to request information relating to a bona fide current patient directly from the VPMS database using a web portal. To date more than 200 health care providers have registered.

To register or learn more about VPMS, please contact Meika Zilberberg at 652-4147 or mzilber@vdh.state.vt.us, or visit the "Health Care Provider or Dispenser Registration Forms" section at <http://healthvermont.gov/adap/VPMS.aspx>.



PRESCRIPTION DATA MINING BAN UPHELD

The Vermont U.S. District Court in Bennington in late April upheld a Vermont law prohibiting data mining companies from accessing and selling physician prescription information for marketing purposes. The decision, supported by VMS, prevents manufacturing companies from using prescribing information to tailor their marketing messages in order to convince doctors to change prescribing practices.

After the ruling VMS President John Brumsted, M.D., said “physicians who write prescriptions for their patients have a reasonable expectation that the information in that prescription will not be used for purposes other than the filling and processing of the payment for that prescription.” He went on to say, “Prescribers do not consent to the trade of that information to drug company marketers and no such trade should take place without their consent.”

VMS was named as a defendant in the lawsuit challenging the law that was filed by data mining and pharmaceutical companies. In defending the law, VMS argued that the use of prescribing data in marketing efforts is directed almost exclusively toward increasing sales and market share of newer brand drugs, as opposed to often equally effective, but less expensive, generic or over-the-counter drugs. District Court Judge Garvan Murtha upheld the law citing a substantial state interest in restricting these commercial activities and affirmed VMS’s opinion that tailored marketing using individual prescriber’s data “is an intrusion into the way physicians practice medicine” that creates the “possibility that representatives could exert too much influence on prescription patterns.”

Two VMS members who played roles in the adoption and legal defense of the law were past presidents Peter Dale, M.D., and David Johnson, M.D.

“We need to do everything we can to base our prescribing on sound medical and scientific evidence without undue influence from market and a keen eye on the costs of prescription medication,” said Dale. “This law will help toward both of those goals.”

Aside from the health care implications, Dr. Johnson also believed that the case had a larger significance as well.

“This had to be done in order to prove that lobbying can’t win out all the time and that you can’t bully your way to a court ruling,” said Dr. Johnson. “I thought that this was one of those times when we as physicians had to protect the integrity of the health care delivery system.”

RED FLAGS RULE IMPLEMENTATION DELAYED UNTIL AUGUST 1ST

The Federal Trade Commission (FTC) has delayed implementation of the Red Flags Rule until Aug. 1, 2009.

The Red Flags Rule is a set of regulations issued by the FTC in November 2007 that requires certain entities, including physicians and other health care practitioners, to develop and implement written identity theft prevention and detection programs to protect consumers from identity theft.

As the rule was originally to take affect on May 1, 2009, VMS, AMA and other physician groups will utilize this additional time before physicians must comply to convince the FTC and Congress that physicians are not “creditors” and therefore should not be subject to this rule. To learn more about complying with the rule and how AMA and the Vermont Medical Society are working to exempt physicians from it, visit www.vtmd.org/RedFlagRules.html

ANNUAL VMS SURVEY AVAILABLE ONLINE

Each year, the VMS conducts a survey in order to ensure that the work of the society reflects the concerns and priorities of our state’s physicians. Please take a moment to complete the survey and feel free to share this link with your colleagues and/or medical staff.

To complete the short survey, visit: www.vtmd.org/2009vmsphysicianssurvey.htm

The results of this survey will help shape the organization’s direction for the next year by serving as a guide for the VMS Priority Planning Retreat to be held on July 11th.

ABMS ADOPTS NEW MAINTENANCE OF CERTIFICATION STANDARDS

The American Board of Medical Specialties (ABMS) recently announced the adoption of a new set of standards designed to further enhance physician qualification principles assessed through its Maintenance of Certification (MOC) program. The newly adopted standards features several elements, including:

- **CME and Self-Assessment Requirements.** By 2011, ABMS's 24 member boards will be required to document that physicians are meeting CME and self-assessment requirements for MOC Part II. The content of CME and self-assessment programs receiving credit for MOC will be relevant to medical advances within the medical specialty for which physicians are certified.
- **Practice-Based Assessment and Quality Improvement.** By 2010, member boards will require physicians to provide evidence of participation in practice assessment and quality improvement every two to five years.
- **Patient Safety.** Effective in 2010, member boards will ensure that every physician enrolled in MOC will complete a patient safety self-assessment program by 2012 and then a minimum of once per MOC cycle. The ABMS board of directors approved this requirement as a "developmental standard" that will be piloted, tested for feasibility, and re-evaluated in no more than five years.
- **Communication Assessment.** Physicians who provide direct patient care will be required to participate in communication skills assessments starting with patients in 2010 and with peers in 2012.

VMS Vice President Paula Duncan, M.D., says that while she enthusiastically supports opportunities to improve care, she wants to make sure that Vermont physicians have easily available resources to help them meet these new requirements.

"What I'm really worried about is a busy primary care physician who is 59 and was going to practice another seven years feeling overwhelmed by these new practice based improvement regulations and saying 'forget it.'" said Duncan, who works with many practices throughout the state on quality of care improvement issues.

VMS will continue to monitor the design and implementation of the new standards and provide members with information as available.

2009 LEGISLATIVE WRAP-UP

(Cont'd from pg. 1)

H. 444 – 2009 Health Care Reform Omnibus: The health care reform omnibus bill passed by the General Assembly contained numerous provisions favorable to physicians, including reducing the time for both health insurers and workers' compensation carriers to pay claims, establishing contract standards for health plan contracts with physicians, and regulating rental networks.

S. 48 – Marketing of Prescribed Products: A final VMS-supported compromise deleting the public disclosure of free drug samples allowed for the passage of S. 48, which revises the current pharmaceutical disclosure law by banning many gifts outright and mandating full disclosure of allowable expenditures to physicians, health care organizations, state-funded academic institutions, and non-profit groups.

H. 24 – Colorectal Cancer Screening Insurance Mandate: With the passage of H. 24, health insurers in Vermont will now be required to cover colorectal cancer screenings. The screenings must be in accordance with American Cancer Society guidelines and patients cannot be charged co-payments of more than \$100.

S. 7 – Tobacco Use in the Workplace: The General Assembly passed legislation that further restricts the use of lighted tobacco products in most workplaces. The intent of the bill was to close some loopholes in the existing Smoking in Public Places Law (Clean Indoor Air Act).

S. 26 – Disclosure of Patient Information to Medical Examiner: Under a bill spurred by the Department of Health and supported by VMS, health care providers will now be required to provide the medical records of deceased patients to the state's chief medical examiner when requested.

Legislation that VMS helped defeat was a provision in **H. 435**, a pain and palliative care bill, that would have mandated that all physicians licensed by the Vermont Board of Medical Practice complete a minimum of four hours of palliative CME every two years.

To view the full text of any of these bills, visit <http://www.leg.state.vt.us/database/status/status.cfm?Session=2010>, type in the corresponding bill number and click on the "As passed both House and Senate" version.

ONE OF VERMONT'S LONGEST FAMILY-RUN PRACTICES CLOSES AS DR. PISANELLI JOINS STAFF OF RUTLAND REGIONAL MEDICAL CENTER



Dr. Victor Pisanelli, Jr.'s family has been an integral part of health care in Rutland since the 1940s.

The way Dr. Victor Pisanelli, Jr. sees it, the book hasn't ended, it's just time to start a new chapter.

When he saw his first patient on the morning of April 1st, the long-time surgeon did so for the first time as a full-fledged employee of Rutland Regional Medical Center (RRMC), ending a streak of more than 60 years in which the Pisanelli family has been in private surgical practice in Rutland. Dr. Pisanelli's switch from self-employed physician to hospital employee not only ended one of Vermont's longest family-run medical practices, but also highlighted the financial realities that are causing more and more physicians to eschew private practice for the relative security of hospital employment.

"Financially it is getting harder and harder for independent practitioners," said Dr. Pisanelli, a VMS Council member. "The costs of running a private practice are going up and reimbursement is flat. By becoming an employee of the hospital, the burden of paying for the overhead shifts to them, which allows me to do what I really want to do; take care of my patients."

The Pisanelli family's unrivaled medical legacy in Rutland began when Dr. Pisanelli's dad, Dr. Victor Pisanelli, Sr., opened a surgery practice in the family's home on West Street in 1947. The younger Dr. Pisanelli joined the practice in 1977 and his sister, Patricia, began practicing there in 1985. One year later the practice moved to its current Allen Street location. And the family's extraordinary contributions to health care in Rutland do not just include surgeons. Two other Pisanelli siblings, Kathy and Gina, as well as the family matriarch, Dorothea, were, or still are, nurses.

After Dr. Pisanelli, Sr.'s passing in 1992 and Patricia's retirement to Middlebury in 1999, Dr. Pisanelli, Jr. remained with the practice. Now, he has decided to join forces with two other private practice surgeons making the transition to hospital employees, Drs. Matthew Conway and John Louras.

According to VMS's Executive Vice President Paul Harrington, it's a decision that more and more doctors are making.

"Many physicians are finding that in an era of Medicare and Medicaid reimbursement cuts, reduced insurance fee schedules and growing labor costs, it is difficult to cover their operating expenses," said Harrington. "One way to remedy that is to become an employee of a hospital and no longer have to worry about things like payroll, malpractice insurance and paying the office lease."

And while he admits to being somewhat sad to see his family's history of private practice end, Dr. Pisanelli is happy with the decision and believes that in the end, the community's health will be better for it.

"We've had a strong medical presence in our family but I knew I was the last in the line," said Dr. Pisanelli, whose grown children have all gone on to enjoy successful, although non-medical, careers. "I've had a few months to digest all of this and I think it is a good thing because I always knew that there had to be a transition. Instead of shutting things down cold turkey when I retire, the hospital can recruit someone new and it will be a turnkey process for them."



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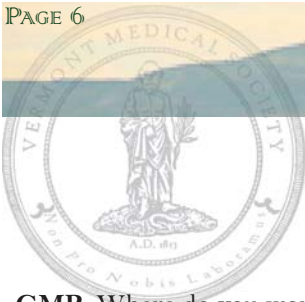
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10 QUESTIONS WITH ... DR. PAULA DUNCAN, VMS VICE PRESIDENT



GMP: Where do you work, what do you do there and how long have you been there?

Dr. Duncan: I work at the UVM College of Medicine as the AHEC medical director and pediatric faculty in the Vermont Child Health Improvement Program. I teach first year medical students in the "leadership" course and direct the 8-week "generations" course for second year students with Dr. Bill Pendelbury. I've worked with over 60 primary care practices in Vermont over the last five years, helping them optimize their preventive services care for adolescents. I've also had the chance to work with primary care practices as a coach in their Blueprint activities.

GMP: What got you interested in medicine?

Dr. Duncan: I was one of those kids who grew up going on house calls in the 50s with my dad. Although I had never met one, I was always telling his patients that I was going to be a "lady doctor."

GMP: If you weren't a doctor, what would you be?

Dr. Duncan: A middle school teacher. I really enjoy the optimism, energy and emerging altruism of 11 to 14 year olds.

GMP: Is there one thing from your residency that you still think of often today? If so, what is it?

Dr. Duncan: I think most of us never forget some of our first really sick patients and their families. For me, I remain grateful for all the lessons they taught me about "really helping families."

GMP: If I only had one afternoon to sight see in your town, what is an absolute must see?

Dr. Duncan: Lake Champlain from the Burlington bike path. There's now a bridge on the bike path over the river into Colchester so you can ride on the old RR bed right out into the lake. In the summer you can get a small boat ferry ride and keep right on going up into the Champlain Islands.

GMP: Which colleges or universities did you attend?

Dr. Duncan: I graduated from Women's Medical College in 1972 before going on to Albany Med and Stanford for my pediatric training. Going to medical school at Women's was a great experience for me. Many of the faculty were women which was really unusual in those days. My first child, Josh, was born while I was a second year medical student and they happily rearranged my first clerkship rotations so I could have three months home with him after his birth.

GMP: What new trends have you seen recently in your field?

Dr. Duncan: The focus on quality of care, measurement and practice systems change in primary care is new. I think it can be very helpful to improved patient outcomes as long as it is all done in the service of providing time and support for an essential part of primary care: the relationship that the patient has with his/her physician and the medical home team.

GMP: If you were awarded a full year's sabbatical to study any medical issue, what would it be?

Dr. Duncan: I love the increasing focus on prevention and health promotion in health care. I would study the impact of physicians using a strength-based approach and shared decision-making strategies when they counsel patients about healthier choices.

GMP: If you were named U.S. Secretary of Health and Human Services, what would be your first policy enactment?

Dr. Duncan: I would establish three criteria to be actively addressed in the evolving health care reform effort: universal access, quality and fair reimbursement.

GMP: Why are you involved with the Vermont Medical Society?

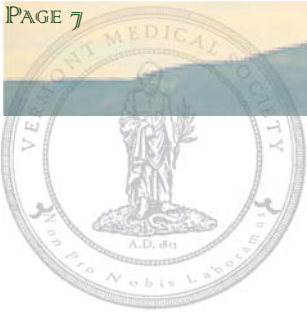
Dr. Duncan: In my experience the staff and physicians of the Vermont Medical Society play a critical and positive role in addressing both the health of Vermonters and their health care and I love being part of that team.

PATIENT DRUG ABUSE SCREENING TOOLS NOW AVAILABLE TO PHYSICIANS

The National Institute on Drug Abuse (NIDA), has unveiled its first comprehensive Physicians' Outreach Initiative, NIDAMED.

Designed to give medical professionals tools and resources to screen their patients for tobacco, alcohol, illicit, and nonmedical prescription drug use, NIDAMED includes an online screening tool, a companion quick reference guide and a comprehensive resource guide for clinicians.

The initiative stresses the importance of the patient-doctor relationship in identifying unhealthy behaviors before they evolve into life threatening conditions. Physicians can access the new tools at www.drugabuse.gov by clicking on the NIDAMED icon.



APPEALING INSURANCE CLAIM DENIALS: FOUR STEPS FOR SUCCESS

By Linda Cohen, Health Care Attorney

Many forecasters are projecting an increase in insurance claims denials activity by insurers as a result of the current economic downturn. These denials directly affect the bottom line of any medical practice. Some practice management experts have suggested that physicians allocate at least one hour of staff time per week to appealing denials. This article offers strategies on how to positively impact your practice's bottom line by challenging some of the most common forms of denials for physical health services by health insurance plans.

Step 1: Pick your battles.

Not every denial is worthy of an appeal and your practice is best served to pursue only those appeals that have merit. Some appeals that may not be worth pursuing include circumstances where patients are seeking something inappropriate, for example, physical therapy visits in excess of the contractual benefit. While there may be a medical necessity for that treatment, if the insurance contract limits the number of visits, your efforts to appeal the denial of extra visits will not be successful. And, you have a relationship with insurance companies that you also need to manage, so you don't want your practice to become regarded as a frivolous appellant. Generally, the kinds of appeals that are most likely to bear fruit are lack of medical necessity, experimental or investigational treatment including off-label uses of pharmaceuticals and access to out-of-network providers.

Step 2: Align your efforts with your patient's.

Insurers in this market have varied appeal processes, some are coextensive for provider and patient and some are separate. In either circumstance, you and your patient should join in the appeal effort. One of the most effective ways to do this is to have the patient assign his/her right to benefits to you, this way you can stand in both your own shoes and those of the patient in pursuing payment.

Step 3: Know the rules.

The rules for the appeal process are contained in your provider manual and your patients' subscriber certificates. Generally speaking, there is a limited period of time after the denial during which an appeal can be taken, often 90 days from the denial. Initially, both you and the patient must use the insurer's internal appeals process fully and obtain a final decision from the insurer. Some insurers have a mandatory two-level internal appeals process, some have a one-level

process and some offer a voluntary secondary level of appeals. If the insurer continues to deny the claim after appeal, you can apply for an external appeal with the Department of Banking, Insurance, Securities and Health Care Administration within 90 days of the denial or proceed straight to court. The external appeals process uses professional review organizations with physicians under contract to review the insurer's determination and offers an excellent, low-cost opportunity to have an informed clinical review of the issues underlying the claim.

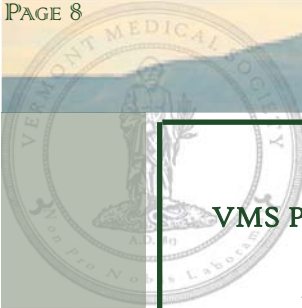


Step 4: Appeal Strategies

When you receive the denial, have your office staff contact the insurer to get all the information possible about the reason for the denial and offer to provide anything the insurer might be missing. What standards did the insurer apply? What peer-reviewed literature was considered? What utilization review criteria were involved? Did the insurer have all of the relevant patient history? Once you have that information, request a peer-to-peer clinical review from the insurer. These conversations force the insurer's clinicians to consider and respond to your positions and are more effective than desk reviews. During this conversation remember that Vermont's broad definition of medical necessity (which should be incorporated in your non-ERISA contracts) works strongly in your favor and argue to that standard. If this call is not successful, you will need to write an appeal letter. Make sure that you include all relevant clinical information, both from your files and those of other relevant providers; argue to Vermont's medical necessity definition and cite peer-reviewed literature to support your position. Providing this information to the insurer or external review agent immeasurably improves the likelihood of success on appeal.

Linda Cohen is a health care attorney at Dinse, Knapp & McAndrew specializing in advising providers in a variety of regulatory, transactional and litigation matters. Her practice concentrates on client counseling and litigation about provider reimbursement issues relating to commercial and government payers. Learn more about Linda at www.dinse.com.

CONFERENCES



VMS PRIORITY PLANNING RETREAT

July 11, 2009
9:30 am - 12:00 pm
Best Western, Waterbury, Vt.

For more information
Call Stephanie at 802-223-7898 or
swinters@vtmd.org

BASING PRACTICE ON EVIDENCE: A ONE-DAY WORKSHOP FOR MENTAL HEALTH PROFESSIONALS

July 11, 2009
Dartmouth College, Hanover, N.H.

For more information e-mail
ccehs@hitchcock.org

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July 16, 2009
Hilton Hotel
Burlington, Vt.

To register, please contact Continuing Medical
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VMS COUNCIL MEETING

September 3, 2009
Vermont Interactive Television
Sites located across the state

For more information
Call Stephanie Winters at swinters@vtmd.org or
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