The Legislative Bulletin

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H. 745 – Prescription Drug Abuse – Vermont Prescription Monitoring System (VPMS)

Legislation designed to implement the administration's proposals to address prescription drug abuse is on a fast track in the House Human Services Committee, including proposals to require prescribers and dispensers to check the Vermont Prescription Monitoring System (VPMS) database and permit law enforcement officers to check VPMS as part of their investigations.

For purposes of discussion, committee chair Rep. Ann Pugh (D - South Burlington) has incorporated provisions from a number of other bills addressing prescription drug abuse in a draft of H. 745, now known as "the mother bill." The provisions include: proposed amendments to the original bill from the Commissioner of Health; Senate bills S. 242 and S. 191, which would require individuals picking up controlled substances at a pharmacy to show an ID and create a task force to design and require educational modules on prescription drug abuse; and, House bills, H. 608 and H. 531, which address reporting lost or stolen prescriptions and requiring identification to pick up prescriptions for controlled substances.

The Commissioner of Health revised the initial proposal that would have required physicians to check the VPMS each time prior to prescribing a controlled substance. Instead the Commissioner proposed that the licensing boards for health care professionals who prescribe or dispense controlled substances establish recommendations for checking the database for new patients and patients receiving treatment for chronic pain. A prescriber or dispenser who failed to comply with the licensing board standards would be subject to professional discipline.

The House Human Services Committee heard from a number of witnesses last week. John Matthew, M.D., director of the Plainfield Health Center, a federally qualified health center (FQHC), testified about the problem prescription drug abuse poses for primary care clinicians and noted how helpful it was to have the guidance from the Department of Health for suboxone prescribing and from the Vermont Board of Medical Practice (VBMP) for prescribing for chronic pain.

The committee also heard testimony from a number of witnesses about the administration's proposal to permit the Department of Public Safety's drug diversion investigators to access the VPMS database when they are conducting an investigation with a reasonable, good faith belief that the investigation could lead to arrest or filing criminal proceedings. Currently there are three investigators who would be entitled to search the database if this provision was incorporated in the law. The Vermont Psychiatric Association submitted a statement opposing law enforcement access to information from the VPMS without a warrant.

The committee will take more testimony on H. 745 next week on Tuesday and Wednesday and plans to mark it up and vote it out by next Friday, March 2. VMS is testifying on Wednesday, Feb. 29. The bill will then go to House Judiciary committee and then to the House floor.

Provisions from other bills being considered for incorporation in H. 745 include:

- A requirement that individuals picking up controlled substances at a pharmacy show a valid and current identification and provide a signed sworn statement certifying that they are the patient; the patient's representative or the owner of the animal for which the prescription was written;
- A requirement that prescribers include the patient's date of birth on prescriptions for controlled substances and write out the quantity in numeric and word form;

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Vermont health benefit exchange legislation passes House -- goes to Senate

After two full days of debate the Vermont House of Representative on Feb. 24, approved legislation establishing state-specific characteristics for the federally-mandated health insurance exchange required in all states beginning in 2014. H.559 was approved and sent to the Senate on an 88-38 vote. The legislation would create a new Vermont health benefit exchange where individuals and all small businesses would be required to purchase their health insurance plans.

The House concurred with its Health Care Committee's recommendations that all individual and small group insurance plans be offered through the exchange, thus eliminating any benefit choices outside the exchange. The Governor and Democratic leaders had earlier made concessions on the size of employers in the exchange and added a lower cost option to the selection of products offered on the exchange.

As passed by the House, individuals and employer-sponsored groups with less than 50 employees will be required to purchase their benefits through the exchange beginning Jan. 1, 2014. The bill also clarifies the role of the new Green Mountain Care Board for hospital budget reviews, certificate of need applications, and insurance rate reviews. The bill establishes a limit on prescription drug out-of-pocket costs in benefit plans, and other provisions unrelated to the exchange.

The health exchange will be a mechanism enabling individuals and employers to compare and enroll in "Qualified Health Plans." The duties of the health exchange will include: certifying qualified health plans; allowing for comparison of qualified health plans, including a rating system based on quality and price; allowing consumers to enroll in qualified health plans on-line, by phone, or by mail using a uniform paper form; and, helping consumers determine eligibility for premium tax credits and cost-sharing subsidies.

Since the Vermont Health Benefit Exchange will be run by the Department of Vermont Health Access (DVHA), its duties also include screening and enrolling eligible individuals in Medicaid and Dr. Dynasaur. However, Medicaid beneficiaries will not be part of the Exchange pool.

The Exchange will be open to individuals who do not have employer-sponsored insurance and small employers that offer coverage to all full-time employees and it merges the individual and small group health insurance markets into one market. For 2014 and 2015, H.559 has defined small employers as businesses with 50 or fewer employees. In 2016 the definition of small employer must be 100 or fewer, and starting in 2017 large employers will also have the option of purchasing through the Exchange.

Currently, the Administration estimates that the Exchange could include as many as 96,000 Vermonters; however, there are a number of variables that will have an impact on the number of people in the Exchange.

Premium tax credits and cost sharing subsidies are available only to individuals who purchase coverage through the Exchange. Individuals and families with incomes below 400 percent of the federal poverty level (FPL) ($89,808 for a family of four) and above 133 percent of FPL ($29,861 for a family of four) who purchase coverage through an Exchange are eligible for a refundable premium tax credit to reduce the cost of coverage. Individuals and families with incomes below 250-percent FPL are also eligible for cost-sharing subsidies to reduce their out-of-pocket exposure. Those under 133-percent FPL will remain enrolled in Medicaid and those 65 years and older would continue to receive Medicare. Beginning in 2014, VHAP and Catamount would be repealed.

Small employers that pay at least half the cost of self-only health coverage for their employees, have fewer than 25 full-time equivalent employees (FTEs), and have an average wage of less than $50,000 a year are eligible for small business tax credits on a sliding scale. The credits are available to eligible employers during the period from 2010 through 2013, and for two years after 2014, when the amount of the credits increases.

The federal Affordable Care Act imposes deductible limits of $2,000 individual/$4,000 family for small group market and out-of-pocket maximums in the individual and small group markets that are the same as for high-deductible plans ($6,050 individual/$12,100 family for 2012).

Employers with 50 or more full-time equivalent employees (FTEs) are subject to a penalty of $2,000 per employee (beyond the first 30) if they do not offer health insurance coverage and at least one employee receives subsidized coverage in the Exchange. Importantly, there are no penalties for employers with less than 50 employees for not offering insurance coverage to their

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Prescription Drug Abuse

(contd from pg. 1) • Permitting the Office of the Chief Medical Examiner and the Medical Director of the Department of Vermont Health Access to access the VPMS database;
• Permitting the Department of Health to enter agreements with other states about reciprocal use of monitoring systems, that would enable physicians to check data bases from other states;
• Creation of an advisory council to develop "evidence-based training modules and minimum requirements" for CME for all health care providers who treat chronic pain or addiction, or prescribe controlled substances; and,
• Creation of an advisory council to develop and recommend principles and components of a unified pain management system, including use of controlled substances in treating non-cancer related pain and addiction and preventing drug abuse.

VMS will oppose any legislative mandate that requires physicians to check the database and will focus instead on recommending that the Vermont Board of Medical Practice (VBMP) and other licensing boards create guidance and tools for prescribers and dispensers similar to the VBMP's current Policy for the *Use of Controlled Substances for the Treatment of Pain (http://healthvermont.gov/hc/med_board/documents /pain_policy.pdf)*, which includes several tools as appendices. The guidance could include recommendations on when to check the database for patients with various diagnoses.

VMS may recommend that pain treatment and substance abuse be incorporated into the Blueprint, and that the Department of Health use the VPMS data to create public health alerts that could be provided to prescribers and dispensers, and aggregated, de-identified data to the public. Finally we may recommend clarification of the confidentiality laws that limit reporting drug fraud to law enforcement and increased capacity for pain management and substance abuse treatment and increased funding for law enforcement specializing in the investigation of drug diversion.

The seven VMS amendments are intended to address the following concerns:

1. Instead of a state mandate requiring prescribers to use the VPMS, the Board of Medical Practice would be required to issue recommended clinical guidelines on the use of the VPMS;

2. Any Board of Medical Practice guidelines on the use of the VPMS would be tied to the state improving the functionality of the VPMS;

3. Since the CDC finds only 3 percent of opioid prescription misuse is from physician prescribing, in order to improve efforts to address criminal activity associated with the abuse and diversion of prescription drugs the state would double from 3 to 6 the number of state drug enforcement officers;

4. The VPMS would be used by the DOH to send out public health alerts to prescribers;

5. The DOH and DPS would recommend amendments to state statutes to clarify when prescribers and dispensers can lawfully report regulated drug fraud to law enforcement consistent with Vermont law, the HIPAA Privacy Rule and 42 CFR Part 2;

6. The VMS proposes that the Blueprint for Health disseminate evidence-based, nationally recognized clinical quality and performance measures for chronic pain management, and similar measures for assessment and treatment of substance use disorders to participants in its primary care medical homes; and

7. VMS proposes to add to the mandate of the Unified Pain Management System Advisory Council the identification of the current resources in Vermont for specialty pain and substance abuse treatment and a requirement to assess the need for additional resources.

Please contact the members of the House Human Services Committee to express thoughts and concerns about H. 745. Contact information for the House Human Services Committee members, including phone and e-mail addresses is available on the VMS website at *http://www.vtmd.org/advocacy-and-policy/become-an-advocate.*

S. 209 – Inclusion of Naturopaths as Patients' Medical Homes in the Blueprint for Health

In the Senate, the Commissioner of Health, Harry Chen, MD and the Director of the Blueprint for Health, Craig Jones, MD supported a bill that would require health insurers to cover naturopaths as primary care providers and medical homes under the Blueprint for Health.

VMS opposes naturopaths serving as medical homes. VMS is concerned that naturopaths' training and scope of practice are not comparable to the training or typical scope of practice of physicians or other primary care practitioners who are serving as medical homes. Many of the treatment modalities in naturopaths scope of practice, such as homeopathy, botanical medicine, naturopathic manipulation, diet and nutrition, Chinese medicine, hydro-therapy, and naturopathic physical medicine, have limited or no scientific evidence-based support. Additionally, naturopaths may not follow the same evidence-based guidelines that primary care physicians follow, particularly with respect to preventive care such as immunizations.

H. 524 – Expansion of Prescribing Authority for Naturopaths: License Endorsement for Unlimited Prescriptive Authority; Grandfathering 2009 Formulary

With support of the Commissioner of Health, Harry Chen, MD and the Director of the Office of Professional Regulation, the House Government Operations Committee has voted to permit the naturopaths to obtain a license endorsement to prescribe all drugs once they have passed a test to be administered by the office of professional regulation. The Commissioner of Health testified that he believes that the naturopaths will only use drugs within their scope of practice and consistent with their training.

H. 524 eliminates the requirement that naturopaths prescribe consistent with a formulary. It requires the director of OPR to adopt rules creating a license endorsement that would authorize naturopathic physicians to prescribe all prescription medicines, without limitation. The rules would require the naturopaths to take an examination that would test licensees' knowledge of pharmacology, clinical use, side effects, and drug interactions of prescription medicines. Naturopaths seeking to obtain the license endorsement to prescribe drugs would be required to pass a yet to be designed naturopathic pharmacology examination.

VMS opposed this expansion of prescribing for naturopaths. Naturopaths' training is very different from physicians training. Their naturopathic college curricula generally appear to include only one or two courses in pharmacology that are typically taught by naturopaths. Much of their training focuses on natural treatment modalities such as botanical medicine, naturopathic manipulation, diet and nutrient therapy, herbs and supplements, homeopathy, Chinese medicine, and hydrotherapy.

As introduced and supported by the Department of Health and the Office of Professional Regulation, H. 524 would have indefinitely grandfathered the 2009 formulary. The House Government Operations Committee, after hearing from VMS and others limited the grandfathering provision to three years. The bill also authorizes the director of the office of professional regulation, in consultation with the commissioner of health and the naturopath advisors to review and eliminate prescription medicines on the 2009 formulary in the meantime. In the testimony, a concern was raised about the inclusion of silver on their formulary when the FDA has warned consumers that supplements containing silver may cause argyria, permanent discoloration of skin and mucous membranes.

VMS opposed grandfathering the 2009 formulary indefinitely. The 2009 formulary was intended to be available for use only after the naturopaths passed a validated national examination similar to the tests that physicians take. Instead two Vermont naturopaths designed an open-book examination that they took along with the other Vermont naturopaths at the time of re-licensure. A young person who works in a coffee shop and has no medical training, testified in the House Government Operations committee that he took and passed the examination.

Bill eliminating philosophical exemptions to immunizations advances in senate

S.199, a bill that would eliminate the philosophical exemption allowing parents to enroll children in public school without immunizations, has been passed by the Senate Health and Welfare Committee. The bill now moves to the full Senate for a likely vote on Friday.

In passing the bill as first written, the committee rejected attempts to water it down by amending the bill with a "compromise." The amendment would have allowed philosophical exemptions after a discussion between a parent and a child's primary care provider about immunizations had taken place and if the provider then "signed off" on the parents' decision to forgo immunizations. VMS argued that the compromise would not adequately protect school children and would lend credence to vaccine objections despite scientific evidence overwhelmingly supporting their effectiveness and importance.

While the bill's first hurdle has been cleared, VMS urges its members to actively support its passage, as written and without compromise, in both the Senate and its most likely destination if passed by the Senate, the House Health Care Committee.

Contact information for members of the Vermont State Senate be found at:
http://www.leg.state.vt.us/lms/legdir/alpha.asp?Body=S
(if you don't know who your senators are go to *http://www.leg.state.vt.us/legdir/findmember3.cfm*),
while a roster of the House Health Care Committee is available at *http://www.leg.state.vt.us/lms/legdir/comms.asp?Body=H*
(with contact information available at *http://www.leg.state.vt.us/lms/legdir/alpha.asp?Body=H&Session=2012*).

Vermont health benefit exchange legislation

(contd from pg. 2) employees. According to VPR, this led BISHCA Commissioner Steve Kimball to say that he thinks businesses with fewer than 50 employees should drop their coverage beginning in 2014 because they can save a lot of money and their employees would be eligible for the federal subsidies.

H.559 as introduced contained language allowing the state to implement a Basic Health Plan (BHP) for adults with income between 133 and 200 percent of FPL. Under the BHP, states would receive 95 percent of what the federal government would have spent on tax-credits and subsidies for out-of-pocket costs for these individuals had they been enrolled in the Exchange.

In its testimony, VMS strongly opposed the creation of a BHP for two reasons. First, removing the 133 percent to 200 percent of FPL population from the exchange could lead the failure of exchange due to its low enrollment and high administrative cost. In addition, in order to achieve cost savings for the state of Vermont, the BHP would likely reimburse physicians and other health professionals at the Medicaid rate. With Medicaid's below cost reimbursement for physicians and other health professionals, the BHP policy to expand Medicaid for uninsured adults with incomes up to 200 percent of FPL would further jeopardize patient access to physicians and acerbate efforts to attract and retain the physicians needed in the future to care for an aging population.

The House Health Care Committee agreed with the opposition voiced by both VMS and the Vermont Association of Hospitals and Health Systems and dropped the provision from the bill as it was voted out of committee. VMS will closely monitor the issue as the legislation moves to the Senate.

Of great interest to VMS, Section 24 of the bill expands the officials with whom health care provider bargaining groups may negotiate with to include the Secretary of Administration and the GMC Board and it expands the topics on which they may negotiate to include administrative simplification, information technology, medical malpractice reform, and workforce planning.

In addition, Section 27 moves responsibility for payment reform pilot projects from the Director of Payment Reform in DVHA to the GMC Board and it delays dates payment reform pilot projects start from one by Jan. 1, 2012 and two or more by July 1, 2012, to one by July 1, 2012 and two or more by Oct. 1, 2012.

The Vermont Medical Society is the leading voice of physicians in the state and is dedicated to advancing the practice of medicine by advocating on behalf of Vermont's doctors and the patients and communities they care for.

Rosters of Key Legislative Committees

You can reach legislators by using the contact information listed below, by mailing correspondence to their attention to 115 State Street, Montpelier, VT 05633, or by leaving a message at the statehouse by calling (802) 828-2228.

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