The Legislative Bulletin

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H. 350 passes House, addresses changes to Vermont Board of Medical Practice procedures

Legislation that addresses many of VMS' concerns about Vermont Board of Medical Practice (Board) investigative procedures was passed by the House on Friday, Jan. 24th.

- **Requires removal of web-posted disciplinary information when a case is dismissed**
- **Sets training requirements for Board investigators**
- **Requires review of Board investigation policies and procedures**

The bill, H. 350, was introduced by Reps. Kate Webb and George Till, MD. It clarifies what information about disciplinary actions taken against licensees is posted on the Board's "Actions" website and the Department of Health's (Department) physician profiles site. The bill requires the Board and the Department to remove information from the public websites when a charge filed against a licensee is dismissed by the Board or the court, or when a licensee is found to be not guilty of unprofessional conduct. Information about disciplinary charges dismissed by other states is also required to be removed on request of a licensee, and the Board will post a summary of the final disposition of cases indicating any charges that were dismissed and any charges resulting in a finding of unprofessional conduct. Currently even when a charge is dismissed, the information about the entire history of the case is retained on the Board Actions site and on the physician profiles.

H. 350 also sets standards for Board investigators. Investigators who are not currently certified as law enforcement officers must take 25 hours of relevant continuing education every year, which is comparable to the 25 hours required to maintain certification for those investigators who are law enforcement certified. In addition, investigators will be required by the bill to "obtain and maintain certification from a national or regionally recognized entity regarding investigation of licensing cases as approved by the Board." One example is the medical and osteopathic board investigator certification program offered by the national organization for directors of medical and osteopathic boards, Administrators in Medicine (AIM) in collaboration with the Federation of State Medical Boards (FSMB). The program for the board investigator certification program provides comprehensive, subject-specific education and training for state medical and osteopathic board investigators. VMS supports this requirement for training since the investigation of medical professional licensing and discipline cases differs from the investigation of criminal cases.

Finally, the bill requires the Board to review and revise as appropriate its policies and procedures for conducting unprofessional conduct investigations. As part of this review, the Board is required to accept suggestions from interested stakeholders, such as VMS. The bill also requires the Board to report to the legislature next year on the outcome of its review and any changes made to its investigation policies and procedures.

VMS supported H. 350 throughout its legislative process.

- Link to H. 350 as passed by the House: *http://bit.ly/1jBC29x*
- Link to Board Actions section of VBMP site: *healthvermont.gov/hc/med_board/actions.aspx*
- Link to licensee profile section of VDH site: *healthvermont.gov/hc/med_board/profiles.aspx*
- Link to information about AIM board investigator certification: *www.docboard.org/aim*

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Fiscal Year 2015 Budget Recommendations

On January 15th, Governor Peter Shumlin presented his state fiscal year 2015 Budget recommendation to the Vermont General Assembly. He proposed a General Fund (GF) budget of $1.444 billion, an increase in GF spending of 3.56 percent, after accounting for the replacement of one-time funds used in the FY 2014 budget.

The budget includes more than $10 million to support the Governor's opiate treatment initiatives, including $8 million in ongoing funding for the Care Alliance for Opioid Addiction. In addition, he proposed adding $200,000 in the FY 2014 Budget Adjustment Act to be put toward eliminating the opiate treatment wait list throughout Vermont. The money will allow treatment centers to bring on additional resources to serve a growing number of patients.

The budget recommendation includes a 2-percent increase, starting Jan. 1, 2015, in Medicaid reimbursement rates for many Medicaid providers, to recognize inflation and to minimize cost shifts to private payers. The increase is proposed to be paid for through an increase in the Health Care Claims Assessment of 0.8 percent. The budget also includes funding for the opening of the Vermont Psychiatric Care Hospital in Berlin and continues the implementation of community based mental health programs.

For more information, please go to: *http://bit.ly/1aP1aS4*.

Update on VMS work on involuntary non-emergency medication

At the VMS Council meeting on Oct. 29, 2013, the Council formed a working group of physicians to develop a position for VMS to address: (1) the shortage of beds for involuntary treatment; (2) the periods of time acutely mentally ill patients are waiting for admission to a Level 1 involuntary psychiatric bed in a designated hospital; and (3) the time it takes to obtain an order of commitment and if necessary, an involuntary medication order for an acutely ill patient.

The VMS workgroup includes two psychiatrists, Drs. Margaret Bolton and Jonathan Weker; two emergency department physicians, Drs. David Clauss and William Nowlan; two internists, Drs. John Leppman and Marilyn Hart; and Dr. Dan Walsh, VMS President. The workgroup is in the process of reviewing a VMS Council Policy that will be presented to the VMS Council at its next meeting on Saturday, February 8th, in Burlington.

System wide the four hospitals that serve Level 1 Acute Involuntary psychiatric patients have been over-capacity every month from April 2013 through October 2013, according to a report of the Joint Meeting of the Mental Health and Health Care Oversight Committees in November 2013. The hospitals admitted patients to between 39 and 48 Level 1 acute beds, an overflow of between four and 13 beds on top of the 35 contracted beds during these months. This overflow may be alleviated when an additional 10 Level 1 beds open later this year at the Vermont Psychiatric Care Hospital in Berlin.

Patients in Vermont are experiencing significant wait times for Level 1 Acute Involuntary psychiatric beds, in both emergency departments and at correctional facilities, with the average wait for an individual who needs an involuntary Level 1 inpatient bed being three days. The Department of Mental Health does not provide psychiatric treatment for individuals who are waiting for a bed, although they do pay for sheriff coverage for patients in emergency departments on request. Treatment is at the discretion of the emergency department director or the Department of Corrections, and many patients do not receive treatment for their psychiatric illness during this waiting time. In one community hospital emergency department, one patient waited for admission to an acute Level 1 psychiatric bed for 13 days and another patient waited for seven days.

VMS will work to ensure the mental health care system and designated hospitals in Vermont include sufficient overflow capacity to ensure that no acutely ill psychiatric patient waits for an Acute Level 1 inpatient bed at an emergency department or correctional facility for more than 24 hours.

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.

S. 287 – Involuntary Treatment Timelines and Procedures

S. 287 is a bill designed to expedite treatment for acutely ill patients who have been admitted to designated hospitals for involuntary treatment. VMS agrees with the Department of Mental Health's policy that the use of coercion is the least-preferred method to foster recovery from mental illness. As the Department of Mental Health observes in its annual report on the implementation of involuntary non-emergency medication: "A trusting relationship between the provider and individual may, in fact, be more effective in a person's decision to take medication as prescribed. Medication, whether voluntary or involuntary, is often a component of recovery and symptoms can be alleviated through its use." In some cases however, involuntary treatment and involuntary medication is necessary, particularly when patients, even when hospitalized, create a significant danger to themselves, other patients or hospital staff. Psychosis is not good for patients' lives and when patients refuse medication, they are subject to more frequent seclusion and restraint.

VMS supports S. 287, which would modify the procedures for involuntary treatment and medication. The Department of Mental Health and the Vermont Association of Hospitals and Health Systems (VAHHS) also support the bill. Currently, after patients are admitted to a designated hospital, it takes on average 48 days to obtain a commitment order and an additional 21 days after that to obtain a medication order.

Details of the legislation include:

- Requiring a mandatory court review of the emergency examination paperwork, which includes attestations by a physician, interested person and psychiatrist, that a patient is mentally ill and dangerous to him or herself or to others. This paperwork authorizes designated hospitals to admit patients and hold them involuntarily for 72 hours;
- Permiting a petition for involuntary non-emergency medication to be filed at the same time or any time subsequent to the time a commitment application (application for involuntary treatment –AIT) is filed with the court. Current law does not permit a non-emergency involuntary medication petition to be filed until after commitment is ordered by the court;
- Permitting an expedited hearing to be held for good cause if the patient presents a significant risk of harm even while hospitalized. The expedited hearing may be held within five or 10 days if a psychiatric examination is ordered;
- Repealing an automatic 30-day stay of an involuntary medication order, but allows the court to order a stay on request; and,
- Finally, the bill asks the Agency of Human Services to determine if the Mental Health Law Project is contracting with a sufficient number of psychiatrists to conduct psychiatric examinations in the times established in the law.

While all the time frames and provisions of S. 287 occur after a patient has been admitted to a designated hospital, the bill will be helpful to patients who are admitted and may lead to shorter times for recovery.

Link to bill:
http://www.leg.state.vt.us/docs/2014/bills/Intro/S-287.pdf

Link to DMH data on timing of commitment orders and medication orders:
http://bit.ly/1jXJcTm

Link to Dr. Robert Macauley's testimony on ethically and clinically relevant issues in determining if and when to involuntarily medicate a patient: *http://bit.ly/1fi8RVI*

Act 68: Vermont Concussion Management Guidelines and Toolkit 2013

Act 68 requires that these materials, guidelines and protocols be available to all and that schools have a Concussion Management Plan in place. This plan includes, when indicated, referrals of students to health care providers who have been trained in concussion management in the last five years. Please become familiar with these tools, particularly if you see children and youth in your practice setting who have been reported to have sustained some sort of head injury, and/or follow-up.

Below are links to the complete toolkit and Act 68 language:
Complete toolkit: *http://www.biavt.org/index.php/learn-more/concussion-toolkit.html*
Act 68: *http://www.biavt.org/concussion-kit-documents/Section%204b%20ACT068_7_2013.pdf*

You may find the Centers for Disease Control and Prevention review of concussion management helpful at: *http://www.cdc.gov/concussion/HeadsUp/clinicians/*. A certificate of CME for medical providers can be produced at completion.

Updates

Department of Health Draft Chronic Pain Rules
The Department of Health is working on a new draft of the chronic pain rules that VMS commented on in December. The new draft should be available for comments soon. Thanks to VMS members who reviewed and commented on the first draft of the rules.

Payment for Copies of Electronic Medical Records
A Green Mountain Care Board report found, consistent with the comments VMS received from members, that Vermont "seems to fall on the lower end of the spectrum in its pricing a base fee statutory scheme" for copies of electronic medical records. Thanks to VMS members who sent comments on this issue.
Link to report: *http://www.leg.state.vt.us/reports/2014ExternalReports/296053.pdf*

Dual Eligible Waiver
Vermont has decided not to pursue a waiver for coverage of low income elderly or disabled patients who are eligible for both Medicare and Medicaid. Vermont will continue to address coordination and enhancement of services for the dually-eligible population and other Vermonters who have serious health needs and/or disabilities through the Medicaid ACO program and health care reform to achieve improved quality of care, improved beneficiary experience and reduced costs for this population.