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Washington State Presentation re:
Act 53 – Vermont CON reform law
2003

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Title 18: Health

Chapter 221: HEALTH CARE ADMINISTRATION

Act. 53. AN ACT RELATING TO HOSPITAL AND HEALTH CARE SYSTEM ACCOUNTABILITY, CAPITAL SPENDING, AND ANNUAL BUDGETS.

PURPOSE

(1) **strengthen the health planning process, reflect concerns about health care access, quality, and costs;**
(2) **develop tools and resources to assist consumers and payers** with making health care decisions by providing accessible, useful information **comparing hospital costs and performance**;
(3) **require consistent and open dialogue** between hospitals and their communities **regarding** health service **needs, strategic planning, and health policy;**
(4) **increase** opportunities for **public involvement** in health policy planning;
(5) **develop a health resource allocation plan** that can guide health facility planning, capital expenditures, and budget reviews; and
(6) **create an efficient and effective regulatory system** that is **fair, predictable, enforceable, and capable** of achieving Vermont's health care cost containment and other health care policy goals.

STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION PLAN

By January 1, 2005, the secretary of human services, in consultation with the commissioner and health care professionals and after receipt of public comment, shall adopt a state health plan that sets forth the health goals and values for the state.

The plan shall include health promotion, health protection, nutrition, and disease prevention priorities for the state, identify available human resources as well as human resources needed for achieving the state's health goals and the planning required to meet those needs, and

identify geographic parts of the state needing investments of additional resources in order to improve the health of the population. The plan shall contain sufficient detail to guide development of the state health resource allocation plan. Copies of the plan shall be submitted to members of the senate and house committees on health and welfare no later than January 15, 2005.

B**y July 1, 2005, the commissioner, in consultation with the secretary of human services, shall submit to the governor a four-year health resource allocation plan. The plan shall identify Vermont needs in health care services, programs, and facilities; the resources available to meet those needs; and the priorities for addressing those needs on a statewide basis.**

(1) The plan shall include:

(A) A statement of principles reflecting the policies enumerated in sections 9401 and 9431 of this chapter to be used in allocating resources and in establishing priorities for health services.

(B) Identification of the current supply and distribution of hospital, nursing home, and other inpatient services; home health and mental health services; treatment and prevention services for alcohol and other drug abuse; emergency care; ambulatory care services, including primary care resources, federally qualified health centers, and free clinics; major medical equipment; and health screening and early intervention services.

(C) Consistent with the principles set forth in subdivision (A) of this subdivision (1), **recommendations for the appropriate supply and distribution of resources, programs, and services** identified in subdivision (B) of this subdivision (1), **options for implementing such recommendations and mechanisms which will encourage the appropriate integration of these services on a local or regional basis.** To arrive at such recommendations, the commissioner shall **consider at least the following factors: the values and goals reflected in the state health plan; the needs of the population on a statewide basis; the needs of particular geographic areas of the state,** as identified in the state health plan; **the needs of uninsured and underinsured populations; the use of Vermont facilities by out-of-state residents; the use of out-of-state facilities by Vermont residents; the needs of populations with special health care needs; the desirability of providing high quality services in an**

economical and efficient manner, including the appropriate use of midlevel practitioners; **the cost impact of these resource requirements** on health care expenditures**; the services appropriate for the four categories of hospitals** described in subdivision 9402(12) of this title**; the overall quality and use of health care services** as reported by the Vermont program for quality in health care and the Vermont ethics network**; the overall quality and cost of services** as reported in the annual hospital community reports**; information from the hospital community needs assessments; individual hospital four-year capital budget projections; the unified health care budget; and the four-year projection of health care expenditures prepared by the division.**

COMMUNITY NEEDS ASSESSMENT AND STRATEGIC PLANNING

On or before January 1, 2005, **each hospital shall conduct a four-year community needs assessment.** The assessment shall **identify and prioritize the health care needs of the service area or patient population for which a hospital provides services, and engage the public in the hospital's strategic planning process.** It shall be **accomplished in collaboration with community members,** including other health care professionals in the community, local government officials, community organizations, and local businesses.

Shall include at least one public meeting held solely for soliciting public comment.

The needs assessment shall be prepared in a uniform format approved by the commissioner and shall be summarized in the hospital's community report.

Each hospital shall develop a mechanism for receiving ongoing public comment, including an annual public meeting, regarding the community needs assessment and for revising it biannually so that the assessment will continue to project a four-year vision.

HOSPITAL COMMUNITY REPORTS

(a) The commissioner, in consultation with representatives from the public oversight commission, hospitals, and other groups of health care professionals shall adopt rules establishing a standard format for community reports, as well as the contents, which shall include:

(1) **measures of quality, including process and outcome measures**, that are valid, reliable and useful, including comparisons to appropriate national benchmarks for high quality and successful outcomes;

(2) **measures of patient safety** that are valid, reliable, and useful, including comparisons to appropriate industry benchmarks for safety;

(3) **measures of the hospital's financial health**, including comparisons to appropriate national benchmarks for efficient operation and fiscal health;

(4) **a summary of the hospital's budget**, including revenue by source and quantification of cost shifting to private payers;

(5) measures that provide valid, reliable, useful, and efficient **information for payers and the public for the comparison of charges** for higher volume health care services;

(6) **the hospital's process for achieving openness, inclusiveness, and meaningful public participation** in its strategic planning and decision-making;

(7) **the hospital's consumer complaint resolution process**, including identification of the hospital officer or employee responsible for its implementation;

(8) **information concerning recently completed or ongoing quality improvement and patient safety projects**;

(9) **a summary of the community needs assessment**, including a description of strategic initiatives discussed with or derived from the assessment; **the one-year and four-year capital expenditure plans**; and the **depreciation schedule** for existing facilities; and

(10) **information on membership and governing body qualifications**, a listing of the current governing body members, and means of obtaining a schedule of meetings of the hospital's governing body, including times scheduled for public participation.

(b) On or before January 1, 2005, and annually thereafter, the board of directors or other governing body of each hospital licensed under

chapter 43 of this title shall publish its community report in a uniform format approved by the commissioner

Hospitals shall hold one or more public hearings to permit community members to comment on the report.

Hospitals located outside this state which serve a significant number of Vermont residents, as determined by the commissioner, shall be invited to participate in the community report process

The commissioner shall publish the reports on a public website and shall develop and include a format for comparisons of hospitals within the same categories of quality and financial indicators.

Certificate of Need:

§ 9435. Exclusions

(a) Excluded from this subchapter are offices of physicians,
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(c) The provisions of subsection (a) of this section shall not apply to offices owned or operated by a hospital or its subsidiary, parent, or holding company, outpatient diagnostic or therapy programs, kidney disease treatment centers, independent diagnostic laboratories, cardiac catheterization laboratories, radiation therapy facilities, ambulatory surgical centers, and diagnostic imaging facilities and similar facilities owned or operated by a physician, dentist, or other practitioner of the healing arts. (Added 1979, No. 65, § 1; amended 1981, No. 233 (Adj. Sess.), § 14a, eff. May 4, 1982; 1985, No. 234 (Adj. Sess.), § 3; 1989, No. 180 (Adj. Sess.), § 3; 2003, No. 53, § 11.)

§ 9440a. Applications, information, and testimony; oath required

(a) Each application filed under this subchapter, any written information required or permitted to be submitted in connection with an application or with the monitoring of an order, decision, or certificate issued by the commissioner, and any testimony taken before the public oversight commission, the commissioner, or a hearing officer appointed by the commissioner shall be submitted or taken under oath. The form and manner of the submission shall be prescribed by the commissioner. The authority granted to the commissioner under this section is in addition to any other authority granted to the commissioner under law.

(b) Each application shall be filed by the applicant's chief executive officer under oath, as provided by subsection (a) of this section. The commissioner may direct that information submitted with the application be submitted under oath by persons with personal knowledge of such information.

(c) A person who knowingly makes a false statement under oath or who knowingly submits false information under oath to the commissioner or the public oversight commission or a hearing officer appointed by the commissioner or who knowingly testifies falsely in any proceeding before the commissioner or the public oversight commission or a hearing officer appointed by the commissioner shall be guilty of perjury and punished as provided in section 2901 of Title 13. (Added 2003, No. 53, § 16.)

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§ 9441. Fees

(a) The commissioner shall charge a fee for the filing of certificate of need applications. The fee shall be calculated at the rate of 0.125 percent of project costs.

(b) The maximum fee shall not exceed $20,000.00 and the minimum filing fee is $250.00 regardless of project cost. No fee shall be charged on projects amended as part of the review process.

(c) The commissioner may retain such additional professional or other staff as needed to assist in particular proceedings under this subchapter and may assess and collect the reasonable expenses for such additional staff from the applicant. The commissioner, on petition by the applicant and opportunity for hearing, may reduce such assessment upon a proper showing by the applicant that such expenses were excessive or unnecessary. The authority granted to the commissioner under this section is in addition to any other authority granted to the commissioner under law. (Added 1985, No. 234 (Adj. Sess.), § 7a, eff. Oct. 1, 1986; amended 1991, No. 160 (Adj. Sess.), § 33, eff. May 11, 1992; 1995, No. 180 (Adj. Sess.), §§ 30, 38(a); No. 186 (Adj. Sess.), § 16; 1999, No. 49, § 223; 2003, No. 53, § 17, eff. June 4, 2003.)

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§ 9442. Bonds

In any circumstance in which bonds are to be or may be issued in connection with a new health care project subject to the provisions of this subchapter, the certificate of need shall include the requirement that **all information required to be provided to the bonding agency shall be provided also to the commissioner within a reasonable period of time**. The commissioner shall be authorized to obtain any information from the bonding agency deemed necessary to carry out the duties of monitoring and oversight of a certificate of need. The bonding agency shall consider the recommendations of the commissioner in connection with any such proposed authorization. (Added 1979, No. 65, § 1; amended 1985, No. 234 (Adj. Sess.), § 8; 1987, No. 96, §§ 15, 21(a), 22; 1991, No. 160 (Adj. Sess.), § 34, eff. May 11, 1992; 1995, No. 180 (Adj. Sess.), § 38(a); 2003, No. 53, §§ 18, 26.)

§ 9445. Enforcement

(a) Any person who offers or develops any new health care project within the meaning of this subchapter without first obtaining a certificate of need as required herein, or who otherwise violates any of the provisions of this subchapter, shall be subject to the following sanctions:

(1) The state shall not issue a license to any health care facility to operate, offer, or develop any new health care project in

violation of this subchapter and without a certificate of need or certificate of exemption issued pursuant thereto.

(2) The state shall not furnish from any reimbursement program administered by the state, nor shall any entity chartered under the laws of this state or any person doing business in the state provide reimbursement for any new health care project offered or developed in contravention of the requirements of this subchapter.

(3) In addition to all other sanctions, if any person offers or develops any new health care project without first having been issued a certificate of need or certificate of exemption therefore, or violates any other provision of this subchapter or any lawful rule or regulation promulgated thereunder, the commissioner and health care providers or consumers located in the state shall have standing to maintain a civil action in the superior court of the county wherein such alleged violation has occurred, or wherein such person may be found, to enjoin, restrain, or prevent such violation. Upon written request by the commissioner, it shall be the duty of the attorney general of the state to furnish appropriate legal services and to prosecute an action for injunctive relief to an appropriate conclusion, which shall not be reimbursed under subdivision (2) of this subsection.

(b) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule or order adopted pursuant to this subchapter or section 15 of Title 8, a civil administrative penalty of no more than $40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than $100,000.00 or one-tenth of one percent of the gross annual revenues of the health care facility, whichever is greater, which shall not be reimbursed under subdivision (a)(2) of this section. A person aggrieved by a decision of the commissioner under this subdivision may appeal the commissioner's decision to the supreme court. (Added 1979, No. 65, § 1; amended 1991, No. 160 (Adj. Sess.), § 36, eff. May 11, 1992; 1995, No. 180 (Adj. Sess.), § 38(a); 2003, No. 53, § 19.)