

MEMORANDUM

TO: Senate President Pro Tempore, Tim Ashe
Speaker of the House, Mitzi Johnson
Senator Virginia Lyons
Senator Richard Westman
Representative William J. Lippert Jr.
Representative Anne B. Donahue

FROM: Susan Barrett, Executive Director, GMCB

RE: Act 91 Implementation

DATE: May 29, 2020

Last month the Green Mountain Care Board (GMCB or Board) shared an update on our implementation of Act 91 of 2020 *An act relating to Vermont's response to COVID-19*. This memo serves as a follow-up on that work and illustrates how the Board continues to balance the appropriate regulation of Vermont's health care entities with the provision of flexibilities necessary for them to respond to- and recover from the COVID-19 pandemic. In striking this delicate balance, the Board maintains its key principles and objectives: (1) improving the health of the population (2) reducing the per-capita rate of growth in expenditures for health services in Vermont across all payers while ensuring that access to care and quality of care are not compromised (3) enhancing the patient and health care professional experience of care (4) recruiting and retaining high-quality health care professionals and (5) achieving administrative simplification in health care financing and delivery¹.

Under Act 91 the Board was granted to following: *Sec. 5 of H.742 (Act 91) states: Notwithstanding any provision of 18 V.S.A. chapter 220 or 221, 8 V.S.A. § 4062, 33 V.S.A. chapter 18, subchapter 1, or the Green Mountain Care Board's administrative rules, guidance, or standards to the contrary, during a declared state of emergency in Vermont as a result of COVID-19 and for a period of six months following the termination of the state of emergency, the Green Mountain Care Board may waive or permit variances from State laws, guidance, and standards with respect to the following regulatory activities, to the extent permitted under federal law, as necessary to prioritize and maximize direct patient care, safeguard the stability of health care providers, and allow for orderly*

¹ 18 V.S.A. § 9372 and 2011, No. 48, § 3, eff. May 26, 2011



regulatory processes that are responsive to evolving needs related to the COVID-19 pandemic: (1) hospital budget review; (2) certificates of need; (3) health insurance rate review; and (4) accountable care organization certification and budget review.

Hospital Budget Review

Under 18 V.S.A. § 9375(b)(7) the Board shall review and establish hospital budgets pursuant to chapter 221, subchapter 7 of 18 V.S.A., taking into consideration the requirements in the underlying statutes, changes in health care delivery, changes in payment methods and amounts, and other issues at the discretion of the Board.

On March 11, 2020 the Board received a presentation from GMCB staff on the [proposed FY 2021 Hospital Budget Guidance](#). Shortly thereafter, the COVID-19 crisis erupted, and the Governor declared a state of emergency. Thanks to Act 91 the Board was able to respond swiftly and set in motion a series of decisions that allow for a more flexible and less onerous FY 2021 hospital budget process:

1. The Board waived the March 31, 2020 deadline for hospital budget guidance;
2. The Board waived the May 1, 2020 due date for nonfinancial reporting;
3. The Board directed Staff to recommend an abbreviated FY 2021 Budget Guidance that is less onerous to the hospitals; and
4. The Board requested the Health Care Advocate's Office to similarly streamline questions as part of the hospital budget process.

The Board voted to adopt an [abbreviated FY 2021 Hospital Budget Guidance](#) at the GMCB public meeting on May 27, 2020, which incorporated the following:

1. Postponed submission due date from July 1st to July 31st, 2020;
2. Reduce the granularity of financial detail required for the 2021 budget submission;
3. Postpone the collection of ACO-participation details until Fall 2020;
4. Eliminate Part One, "Non-Financial Reporting" requirement for 2021;
5. Focus Board and Staff questions on those of a technical or clarifying nature; and
6. Collect information on the impact of COVID-19 on hospital budgets.

The Board also continues to work internally on hospital sustainability planning. Now more than ever the sustainability of Vermont's health care system is a core objective of providers, state entities, and communities. During this pandemic, hospitals have learned what works, like telemedicine and fixed payments, and what no longer works, like fee for service payments. As we transition through this pandemic the Board will work with our hospitals and other health care providers to ensure that our health care system is sustainable and prepared to meet the needs of Vermonters now and into the future, even if such a system should come under stress, as our current system has with COVID-19.



Certificates of Need (CON)

On April 9, 2020, the Board used its authority under Act 91 to temporarily waive the need for health care facilities to obtain a CON for certain new health care projects that will enhance or support the State's ability to respond to the COVID-19 public health emergency. Health care facilities must still provide the Board with a Notice of Waiver (or documentation in lieu thereof) prior to implementing such projects. To date, the Board has not received a Notice of Waiver under the new policy.

Insurance Rate Review

The Board has not yet used its authority under Act 91 with respect to insurance rate review.

Accountable Care Organization Certification and Budget Review

Under 18 V.S.A. § 9382 and GMCB Rule 5.000, each Accountable Care Organization (ACO) shall obtain and maintain certification from the GMCB, and for those with 10,000 or more attributed lives in Vermont, the GMCB shall review, modify, and approve their budgets pursuant the standards and processes outlined in GMCB Rule 5.000.

While ACOs may not be on the front lines of COVID-19, providing direct care, Vermont's ACO, OneCare Vermont, has been cited as a valuable part of our health delivery system, especially during this unprecedented time, providing mechanisms for stable cash flow, and coordinating care across providers and patients, with the hope of reducing ED visits and non-essential services². OneCare Vermont, like our hospitals, is enduring a time of uncertainty, especially as it renegotiates payer contracts and contemplates the appropriate approach to hospital dues, its main source of funding for administrative costs. For these reasons, OneCare Vermont has requested operational relief and flexibilities as it relates to the timelines for producing their revised 2020 budget. GMCB Staff have also been working to review the proposed 2021 ACO Budget guidance to reflect the current conditions and ensure that the Board has a holistic view of the financial health of our health care delivery system as they move through their regulatory processes.

Conclusion

In summary, the Board has worked diligently to find the appropriate balance of upholding our statutory role of regulating Vermont's private sector health care entities while reducing the administrative burden on our health care delivery system, especially on our hospitals and front-line workers. Among others, the flexibility under Act 91 will allow the Board to dramatically reduce the requests made from Vermont hospitals during the 2021 budget cycle. We thank the Legislature for their swift action on passing Act 91

² Stephen Leffler to Legislature on FPP during COVID



so that we can accommodate the needs of our health care delivery system during this unprecedented time, and so that providers may continue to care for their communities and patients for the duration of the COVID-19 crisis and beyond.

