



Green Mountain Care Board

Discussion of Statutory Duties

April 4, 2018

Establishment of the GMCB

Act 48: The GMCB was established by the Legislature in 2011 with the passage of Act 48. Its authority and duties were defined in 18 V.S.A. §§ 9371 – 9392.

18 V.S.A. § 9372. Purpose: The Legislature's intent in establishing the GMCB was to create an independent board to promote the general good of the State by (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 delivery.

Scope of Authority

18 V.S.A. § 9374. Board membership; authority: This statute sets member terms and compensation, contains restrictions regarding conflicts of interest, and sets forth other requirements regarding, for example, the establishment of advisory group(s), input from the HCA, the formula for billback. The statute also grants the GMCB authority to issue subpoenas to compel testimony and documents.

18 V.S.A. § 9375. Duties: Subsection (a) requires the board to execute its duties consistent with the 14 principles in § 9371; (b) lists a series of twelve duties; (c) lists duties related to Green Mountain Care, (d) requires that the GMCB submit an annual report to the house health care and senate health and welfare committees; (e) requires that it make all its reports publicly available.

Fundamental Legal Tenets

Vermont Constitution, Chapter II, Sec. 5: “The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.”

Vermont Supreme Court case law:

- The Board, like other administrative bodies, “has only such powers as are expressly conferred upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted.”
- “The enabling legislation of virtually every administrative agency must include a certain degree of discretion . . . to deal with issues unforeseen by its creators . . . [but the Vermont Supreme Court] has consistently held that such discretion delegated by the legislature ‘must not be unrestrained and arbitrary.’”
 - *See In re: MVP Healthcare:* GMCB’s authority to approve health insurance rates was not an unconstitutional delegation of legislative power; its discretion was “curtailed” by requirement that it consider more specific, enumerated review standards

Framework for the GMCB's work

18 V.S.A. § 9371. Principles for health care reform:

This statute sets forth 14 principles to “serve as a framework for reforming health care in Vermont.”

- The principles are intended to guide the GMCB in executing its statutory duties. *See* 18 V.S.A. § 9375(a) (the Board shall execute its duties *consistent with the principles* expressed in 18 V.S.A. § 9371) (emphasis supplied).
- The GMCB is not tasked with effectuating each of the 14 principles.
- The principles do not expand scope of GMCB's authority or duties or confer additional powers.

Specific Duties in § 9435(b)

The duties in this section fall within the three core areas of the GMCB's work:

Examples

➤ **Regulation** health insurance rate review, hospital budget

➤ **Innovation** payment and delivery reform

➤ **Evaluation** evaluation of system reforms, HIT plan

Duties: QHP Benefit Packages

18 V.S.A. § 9375(b)(9): Review and approve, with recommendations from the Commissioner of Vermont Health Access, the benefit package or packages for qualified health benefit plans and reflective silver plans pursuant to 33 V.S.A. chapter 18, subchapter 1. The Board shall report to the House Committee on Health Care and the Senate Committee on Health and Welfare within 15 days following its approval of any substantive changes to the benefit packages.

- Language added re: reflective silver plans eff. Feb. 20, 2018.

Duties: Rate Review

18 V.S.A. § 9375(b)(6): Approve, modify, or disapprove requests for health insurance rates pursuant to 8 V.S.A. § 4062, taking into consideration the requirements of the underlying statutes, changes in health care delivery, changes in payment methods and amounts, protecting insurer solvency, and other issues at the discretion of the Board.

- The GMCB promulgated Rule 2.000

Duties: Hospital Budget Review

18 V.S.A. § 9375(b)(7): Review and establish the budgets of general hospitals pursuant to 18 V.S.A. §§ 9451 – 9458.

- The GMCB promulgated Rule 3.000.
- Annual Reporting Requirements and Budget Guidance.
- Enforcement Policy.

Duties: Certificate of Need Program

18 V.S.A. § 9375(b)(8): Review and approve, approve with conditions, or deny applications for certificates of need pursuant to 18 V.S.A. §§ 9431 – 9446.

- The GMCB promulgated Rule 4.000.

Duties: Oversee Accountable Care Organizations

18 V.S.A. § 9375(b)(13): Adopt by rule such standards as the Board deems necessary and appropriate to the operation and evaluation of accountable care organizations, including reporting requirements, patient protections, and solvency and ability to assume financial risk.

- The GMCB promulgated Rule 5.000.

18 V.S.A. § 9382(a): Certify ACOs to operate in the state.

- Certified OneCare Vermont.

18 V.S.A. § 9382(b)-(c): Review, modify, and approve the budgets of ACOs.

- 2019 Budget Guidance being developed.

Duties: Medicaid Advisory Rate Case

Act 113 of 2016 and Act 3 of 2017: Requires GMCB to review any all-inclusive population-based payment arrangements between DVHA and an ACO, including the elements of the per member, per month payment and any other nonclaims payments. Review is advisory and is not binding on DVHA.

- Pending legislation (H.912) would codify duty and make it an ongoing responsibility of GMCB.

Duties: Payment and Delivery System Reforms

18 V.S.A. § 9375(b)(1): Oversee the development and implementation, and evaluate the effectiveness, of health care payment and delivery system reforms designed to control the rate of growth in health care costs; promote seamless care, administration, and service delivery; and maintain health care quality in Vermont, including ensuring that the payment reform pilot projects set forth in this chapter are consistent with such reforms.

- The Board adopted a payment reform pilot policy.

Duties: HIT & VITL

18 V.S.A. § 9375(b)(2)(A): In consultation with VITL, review and approve statewide HIT Plan pursuant to 18 V.S.A. § 9351 to ensure the necessary infrastructure is in place to enable the State to achieve the principles expressed in 18 V.S.A. § 9371.

- HIT Plan to be submitted later this year.
- Pending legislation (H.901) would make plan due on or before Nov. 1.

18 V.S.A. § 9375(b)(2)(B): Review and approve connectivity criteria (criteria required for health care providers and health care facilities to create or maintain connectivity to VHIE).

- Criteria will be reviewed in conjunction with HIT Plan.

18 V.S.A. § 9375(b)(2)(C): Annually review the budget and all activities of VITL and approve the budget, consistent with available funds, and the core activities associated with public funding . . . The review shall take into account VITL's responsibilities pursuant to 18 V.S.A. § 9352 and the availability of funds to support those responsibilities.

- GMCB to review VITL budget in May.
- Pending legislation (H.901) would limit review and approval to VITL's budget only.

Duties: Databases

18 V.S.A. § 9410: Vermont Health Care Uniform Reporting and Evaluation System (VHCURES).

- Data set consists of claims and eligibility data from private and public insurers (GMCB has agreements with DVHA and CMS to allow integration of Medicare and Medicaid data).
- To the extent allowed by HIPAA, the data is available as a resource for State agencies and others to review health care utilization, expenditures, and performance in Vermont. GMCB enters into DUAs with data recipients.

Duties: Databases

18 V.S.A. §§ 9410, 9453, 9454: Vermont Uniform Hospital Discharge Data Set (VUHDDS).

- Data set consists of inpatient discharge data, outpatient procedures and services data, and emergency department data. It is managed by VDH, which uses the data to create the Vermont Hospital Utilization Report.
- Data is available to state agencies, researchers, etc.

Duties: Evaluation

18 V.S.A. § 9375(b)(3): Review and approve the Health Care Workforce Development Strategic Plan created in chapter 222 of title 18.

- Last approved Jan. 9, 2013 by vote of GMCB.

18 V.S.A. § 9375(b)(4): Review the Health Resource Allocation Plan (HRAP) created in chapter 221 of title 18.

- Last updated July 1, 2009 by BISHCA.
- Pending legislation (H.912) would provide flexibility in updating HRAP.

Duties: Planning

18 V.S.A. §§ 9375(b)(11), 9375a(a): Develop a unified health care budget that identifies the total amount of money that has been and is projected to be expended annually for all health care services provided by health care facilities and providers in Vermont and for all health care services provided to residents of the State.

- Pending legislation (H.912) would eliminate duty to develop budget.

18 V.S.A. § 9375a(b): Prepare a three-year projection of health care expenditures made on behalf of Vermont residents, based on the format of the health care budget and expenditure analysis adopted by the Board, projecting expenditures in broad sectors such as hospital, physician, home health, or pharmacy.

- Pending legislation (H.912) would require GMCB to do expenditure analysis and develop “health care spending estimate” covering at least a 2-year period.

Duties: Evaluation

18 V.S.A. § 9375(b)(10): Develop and maintain a method for evaluating systemwide performance and quality, including identification of the appropriate process and outcome measures:

- for determining public and health care professional satisfaction with the health system;
- for utilization of health services;
- in consultation with the Department of Health and the Director of the Blueprint for Health, for quality of health services and the effectiveness of prevention and health promotion programs;
- for cost-containment and limiting the growth in health care expenditures;
- for determining the adequacy of the supply and distribution of health care resources in this State;
- to address access to and quality of mental health and substance abuse services; and
- for other measures as determined by the Board.

Duties: All-Payer Model Reporting

- Annual Scale Target and Alignment Report
- Annual Health Outcomes and Quality of Care Report
- Quarterly Total Cost of Care Reports
- Adjustments/Flexibility

Duties: Mental Health

18 V.S.A. § 9375(b)(12): Review data regarding mental health and substance abuse treatment reported to the Department of Financial Regulation pursuant to 8 V.S.A. § 4089b(g)(1)(G) and discuss such information, as appropriate, with the Mental Health Technical Advisory Group established pursuant to subdivision 18 V.S.A. § 9374(e)(2).

- 8 V.S.A. § 4089b(g) was repealed eff. July 1, 2015. Data is no longer being collected.

Duties: Provider Rate Setting

18 V.S.A. § 9382(b)(5): Set rates for health care professionals pursuant to 18 V.S.A. § 9376 of this title, to be implemented over time, and make adjustments to the rules on reimbursement methodologies as needed.

Other duties

There are other duties, including those relating to Green Mountain Care, that are not active obligations for the Board at this time.

In addition, there are numerous duties and obligations that stem from our core statutory responsibilities.