



## **Proposed Rule 5.000: Oversight of Accountable Care Organizations**

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# Topics

1. **Statutory Charge**
2. **Rulemaking Process**
3. **Rule Overview**

# Statutory Charge, Act 113

- **Act 113 of 2016 directs the GMCB to adopt rules regarding the**
  - certification of ACOs;
  - review, modification, and approval of ACO budgets; and
  - monitoring/evaluation of ACOs.

# Statutory Charge, Certification

- **Certification: 18 V.S.A. § 9382(a)**
  - To be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each ACO shall obtain and maintain certification from the GMCB.
  - The GMCB shall adopt rules to establish standards and processes for certifying ACOs. To the extent permitted under federal law, the GMCB shall ensure its rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation.
  - In order to certify an ACO to operate in Vermont, the GMCB must ensure that 16 criteria are met. The criteria cover a range of subjects, including governance, care coordination, quality evaluation and improvement, patient protection, and the sufficiency of an ACO's financial guarantee.

# Statutory Charge, ACO Budgets

- **Review, Modification, and Approval of ACO Budgets: 18 V.S.A. § 9382(b)**
  - The GMCB shall adopt rules to establish standards and processes for reviewing, modifying, and approving ACO budgets. To the extent permitted under federal law, the GMCB shall ensure its rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation.
  - In its review of an ACO's budget, the GMCB shall consider 15 criteria, including, for example, the ACO's efforts to prevent duplication of services, the ACO's investments in primary care, and the ACO's work with community-based providers to promote seamless coordination across the continuum of care. The GMCB has discretion regarding which of these criteria to consider when reviewing the budget of an ACO with fewer than 10,000 attributed lives in Vermont.

# Statutory Charge, Monitoring/Evaluation

- **Monitoring/Evaluation: 18 V.S.A. § 9373(b)(13) and 18 V.S.A. § 9382(c) & (e)**
  - The GMCB shall adopt by rule such standards as it deems necessary and appropriate to the operation and evaluation of ACOs, including reporting requirements, patient protections, and solvency and ability to assume financial risk.
  - The GMCB's rules shall include requirements for submission of information and data by ACOs and their participating providers as needed to evaluate an ACO's success. They may also establish standards as appropriate to promote an ACO's ability to participate in applicable federal programs for ACOs.
  - The GMCB shall ensure that its certification and oversight processes constitute sufficient State supervision over the entities operating or participating in ACOs to comply with federal antitrust provisions and shall refer to the Atty. Gen. for appropriate action the activities of any individual or entity that the GMCB determines, after notice and an opportunity to be heard, may be in violation of antitrust laws.

# Statutory Charge, Timing

- **Timing: Act 113, §§ 6 & 8**
  - Rules need to be in effect on or before January 1, 2018.
    - On or before January 1, 2018, the GMCB shall adopt rules governing the oversight of ACOs pursuant to 18 V.S.A. § 9382.
    - On or before January 1, 2018, the GMBC shall begin certifying ACOs that meet the criteria established in 18 V.S.A. § 9382 and shall only approve ACO budgets after review and consideration of the criteria set forth in 18 V.S.A. § 9382(b).

# Rulemaking Process, Overview

1. GMCB pre-files proposed rule with Interagency Committee on Administrative Rules (ICAR).
2. GMCB files proposed rule with Secretary of State.
3. Notice of proposed rule is published online and in the newspaper.
4. GMCB holds public hearing and receives public comment.
5. GMCB files final proposed rule with Secretary of State and Legislative Committee on Administrative Rules (LCAR).
6. GMCB responds to any objections from LCAR.
7. GMCB adopts final rule and files it with Secretary of State.
8. Rule takes effect.



# Rulemaking Process, Timing

- Pre-filing w/ ICAR → Filing w/ Sec. of State
  - At least 15 days
- Filing w/ Sec. of State → Notices
  - Online notice: one week
  - Newspaper notice: two weeks
- Public hearing(s)
  - Must wait at least 30 days after notice is published online
- Public comment period
  - Must accept at least through 7th day following public hearing
- LCAR review
  - Up to 45 days + 14 days for any agency response to LCAR objection
- Adoption → Effective date
  - 15 days
- Total: 5 ½ months or longer.

# Rulemaking Process, Status of Rule

- Stakeholder group has been meeting to provide input on draft for past several months.
- Not all the feedback we received in this process has been incorporated, but we have tried to be responsive to concerns raised by stakeholders.
- Having incorporated stakeholder and internal feedback, we now have a draft we feel comfortable taking forward to the statutory process.
- We are still “on track” to have the rule in effect prior to 1/1/18, but we need to begin the statutory process soon.
- We are asking for approval to pre-file the proposed rule with ICAR.

# Rule Overview, Goals/Tensions

- The GMCB needs to ensure that the 16 statutory certification criteria are met.
- The GMCB needs to have enough information to evaluate ACO budgets against the 15 statutory criteria.
- The GMCB needs to have timely, accurate information to monitor and evaluate ACO performance, solvency, etc. and needs to have processes that enable it to take action where necessary.
- The processes and standards in the rule need to be meaningful, but also flexible. The GMCB will be learning as it goes and ACOs and their relationships to payers will continue to evolve. Rule amendments go through same, lengthy process.
- The rule needs to avoid inconsistency with other requirements that will be imposed on ACOs (e.g., requirements in Medicaid MCO rules that apply to DVHA and which are reflected in Medicaid's Next Generation ACO agreement).

# Rule Overview, Subjects

- Part I. General Provisions
  - Definitions, Purpose, etc.
- Part II. Certification and Monitoring
  - Certification Requirements (governance, care coordination, patient protections, etc.)
  - Application Procedures
  - Monitoring and Enforcement
- Part III. Review of ACO Budgets and Payer Programs
  - Establishing Benchmarks and ACO Reporting
  - Review Procedures, Public Hearing, Establishment of Budgets
  - Budget Adjustment