

Health Reform Update- **June 2011**

### **Implementation Begins for VT Health Care Reforms**

The i's have been dotted and the t's crossed: H. 202, Vermont's latest version of comprehensive health care reform has been signed by the Governor and given the name **Act 48 of 2011**. In its final form, Act 48 has three areas of focus:

1. Enabling and setting the terms for the federally required Health Insurance Exchange, to start in 2014
2. Creating the Green Mountain Care (GMC) Board
3. Assigning duties to the Green Mountain Care Board

ACT 48 of 2011 is 141 pages long. There is one section of the new law that has consumed the most attention from the general public and the press: the section that lays out the GMC Board's duties. Included in the list is the task of conducting additional studies on the financing and design for a single payer system. Most employers however, are shifting their focus on what the legislature plans to set up for the Exchange. Why? Because many believe there are too many obstacles, both federal and financial that will prevent Vermont from truly initiating a single payer system. There is widespread concern that the Vermont health care system will become the Exchange indefinitely, a system that excludes private insurance. There is worry about how this will impact Vermont's consumers and the economy. There is worry about the consequences that will occur.

The federal reform law (the Accountable Care Act or ACA) gives states many options for how the state Exchange will operate. As Governor Shumlin proposed his legislation, the Exchange was clearly identified as a "bridge to the single payer." The clear intention of their proposed design (regardless of their claims otherwise) would be to collapse the private insurance market into a single plan and single carrier. As proposed:

- The Exchange would serve individuals and all employers of up to 100 employees. (That covers nearly 98% of employers and 93% of employees; all people on Catamount, in individual plans and the uninsured. Effectively, that's everyone except those on government plans, in self-insured plans, or in an employer group over 100 but not self-insured yet.
- The intention was stated to have only one carrier offering a plan in the Exchange.
- The intention was stated to prohibit sale of insurance outside the Exchange to any of these covered groups/individuals.
- The intention was stated to have one benefit design, with two levels of copayment.
- The state would issue regulations requiring all self-insured plans to "align" with the standards set for the Exchange. This could mean, for example, requiring the self-insured plans to use the same claims payment administrator as the Exchange. (In other words, a single ASO/payer, selected by the government, for all non-government plans.)

While some members of the legislature tried to soft-peddle what was proposed, claiming it wasn't going to collapse the private market into a single carrier, the Commissioner of BISHCA did tell two CEOs ( while they were in Montpelier to lobby), "Make no mistake: this is the government take-over of health care." My view was that all you had to do was read the bill to know that the intent was clearly to end private insurance.

Another rather breath-taking aspect of the legislature's action this year was the extent the legislature gave power to the Administration to drive the legislation and decision-making. On health care, at least, there was only one branch of

government this session (staff from BISHCA and the governor's office) who did the vast majority of drafting of amendments for the legislators, (as an example). Even those legislators trying to change the bill had to ask the governor's staff to draft their amendments. So even before the amendment could be proposed, the proposer was often being lobbied by the governor's staff and legislative leadership to weaken or even pull back the proposal.

It reminded me of the way a parliamentary system of government works, where a political party runs on a platform, and once they have the majority, the Prime Minister and his/her ministers set the agenda and the parliament passes what is necessary for the PM to implement the initiative. Our system of two separate branches of government involved in creating and implementing laws, is designed to provide "checks and balances."

With all the focus on the single payer issues, the steps taken by the House to create the Exchange in the image desired by the Governor's office passed without much controversy, and without most employer plan-sponsors paying much attention. A few of us were allowed to testify literally in the last hours, raising objections, but it was too little too late. Not a single significant amendment to the bill was passed by the full House, even though the most far-reaching amendments were proposed by a Democrat (Rep. Cynthia Browning, D-Arlington).

Any issue that employer objections made controversial was put off until next year. As it stands now, the Administration is to bring back recommendations on these questions:

- Will Association plans be forcibly disbanded?
- Will the Exchange include employers up to 50 or up to 100? (ACA allows the state the choice)
- Will employers eligible for the Exchange (50 or 100) also be allowed to buy insurance outside of the Exchange?
- What exactly will the Exchange plans look like? Will HSA/HRA eligible plans be available on the Exchange? How much will the plans cost?
- Will the Exchange plans cover all of Vermont's benefit mandates? If not, will other plans be allowed to not cover all the mandates?

All of these issues will have to be settled during the next session of the legislature. But if the past session was any indication, then absent a huge groundswell of opposition to their plan, action will merely be a formality – their intention is clear to use the Exchange to compress or collapse as much of private insurance as they can into a single plan and carrier selected by the state.

The legislature seemed to spend as much time setting up the nominating process for the Green Mountain Care Board as they did on the tasks assigned. For example, there are few measurable outcomes for the Board (what you might call: performance-based contracting...) The GMC have a raft of duties that give them control over virtually all aspects of health care:

- Oversee the development, implementation, and evaluation of health care payment and delivery system reforms designed to control the rate of growth in health care costs and maintain health care quality.
- Review and approve:
  - ◆ Vermont's statewide health information technology plan.
  - ◆ Health care workforce development strategic plan
  - ◆ Rates for health care professionals
  - ◆ Insurance rate increases
  - ◆ Hospital budgets
  - ◆ Payment reform pilot project

Obviously, we need five very smart, very honest and wholly incorruptible people to take these jobs. The recruitment

started before the session even ended, with Administration representatives calling in-state and out-of-state experts. The legislature settled on a nominating process that gives the House, Senate and Governor's office each three people to sit on a nominating committee. (Given the "parliamentary" way health care is being dealt with already, with one shared view among the three entities, how much "check and balance" will this committee provide?)

Act 48 extended blanket privacy to all the work of the nominating committee, so the public will never know who applied for one of the jobs but was rejected by the committee. The explanation given was that people who want to apply might not want their current employer to know; it could be embarrassing to be known as "rejected." But frankly, isn't the job of the Green Mountain Care Board member just a tad different than a typical job? Don't we want to know whether partisan, doctrinaire-driven decisions were made that may have trumped candidates with expertise and stature Vermont needs for this job? It's a shame, but the legislature did not see fit to give us that level of transparency and accountability; we might want to be more careful reading the fine print of next year's bills.\*

Next month: Appointments to the Green Mountain Care Board and more on their assigned duties.

An Act 48 timeline, copy of the entire law and more are posted on the legislature's website at:

[Health Care Reform - Vermont Legislative Joint Fiscal Office \(JFO\)](#)

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