

STATE OF VERMONT

DEPARTMENT OF BANKING, INSURANCE, SECURITIES and
HEALTH CARE ADMINISTRATION
Division of Health Care Administration

Rule 7.000 (Revised August 1, 2001)

UNIFIED HEALTH CARE BUDGET

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7.000 General Provisions

7.001 Authority. This rule is promulgated by the Department of Banking, Insurance, Securities and Health Care Administration under the authority of 18 V.S.A. §§ 9404(d)(2), 9453(b), and 9456(e).

7.002 Applicability. This rule shall apply to health care facilities, health care providers, and other persons affected by the unified health care budget adopted by the Commissioner pursuant to 18 V.S.A. § 9406(a) and the hospital budget review process under 18 V.S.A. §§ 9451 – 9457.

7.003 Purpose. Section 9406 of Title 18 requires the Department of Banking, Insurance, Securities and Health Care Administration to adopt a unified health care budget as one means of achieving the policies set forth in 18 V.S.A. § 9401, including quality health care for all Vermonters at an affordable price. The budget is to serve as the basic framework within which health care costs in Vermont can be controlled, resources directed, and quality and access ensured. This rule establishes the procedures through which a unified health care budget will be adopted by the Department.

7.004 Definitions

(A) “Commissioner” means the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration

(B) “Department” means the Department of Banking, Insurance, Securities and Health Care Administration.

(C) “Division” means the Division of Health Care Administration of the Department of Banking, Insurance, Securities and Health Care Administration established under 18 V.S.A. § 9403.

(D) “File” means receipt by the Division of a written document.

- (E) “Fiscal year” or “year” means a twelve-month period designated by the Division under Section 7.900 of this rule.
- (F) “Health care facility” means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, inpatient or ambulatory care to two or more unrelated persons. The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer or healing, but includes all facilities and institutions included in 18 V.S.A. § 9432(10).
- (G) “Health care provider” or “provider” means a person, partnership or corporation, other than a facility or institution, licensed or certified or authorized by law to provide professional health care service in Vermont to an individual during that individual’s medical care, treatment or confinement.
- (H) “Person” means a natural person, partnership, unincorporated association, corporation, municipality, the state of Vermont or a department, agency or subdivision of the state, or other legal entity.
- (I) “Provider bargaining group” means a group of health care providers authorized to negotiate with the Department pursuant to Rule 6.000.
- (J) “Public Oversight Commission” means the commission established pursuant to 18 V.S.A. § 9407(a).
- (K) “Sector” means a part of the unified health care budget as defined by the Commissioner in accordance with Section 7.100 of this rule.
- (L) “Unified health care budget” or “budget” means the annual budget adopted by the Commissioner pursuant to this rule and 18 V.S.A. § 9406.
- (M) “Uniform reporting manual” or “manual” means the uniform reporting manual published by the Division, including appendices and supplements, and any subsequent revisions of the manual.
- (N) “Vermont resident” or “resident” means a person who is domiciled in Vermont and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in Vermont indefinitely, coupled with an act or acts consistent with that intent.

7.005 Timelines. The timelines established in this rule may be changed by the Division as necessary to accommodate the activities of the Division in establishing a unified health care budget from year to year. Any such change shall be effective the budget year following notice by the Division to all hospitals and to all provider bargaining groups approved under Rule 6.000. Notice shall be sent by first-class mail and is deemed given on the date mailed. A copy of such change shall be filed at the same time with the secretary of state's office.

7.006 Confidentiality. The Division and its advisory groups shall handle all confidential information filed with it under this rule in accordance with the Division's Confidentiality Code, its policies governing the release of confidential and proprietary information, and any applicable federal or state statute, rule or regulation that prohibits or otherwise affects the release or disclosure of the information.

7.100 Sectors of the Unified Health Care Budget The Division and its advisory groups shall handle all confidential information filed with it under this rule in accordance with the Division's Confidentiality Code, its policies governing the release of confidential and proprietary information, and any applicable federal or state statute, rule or regulation that prohibits or otherwise affects the release or disclosure of the information.

7.101 Definition of Sectors. 18 V.S.A. § 9406(a)(3) requires the Commissioner to define the various health care sectors of Vermont's health care system that will be separately identified in the budget. That health care system consists of a variety of people, assets and services, many combinations of which could be considered sectors for purposes of the unified health care budget. Sectors could be defined in many ways, including but not limited to: by providers, by services offered through a statewide uniform package, by institutions, by integrated systems of care or other managed-care organizations, by geographic region, and by funding source.

(A) New definitions.

- (1) The Division shall periodically publish changes to its definitions of sectors to be separately identified in the following year's unified health care budget.
- (2) Health care facilities, provider bargaining groups, and other interested persons may file with the Division any written responses, comments, or alternatives to the proposed changes to the Division's sector definitions. Prior to adopting the proposed changed sectors, the Division shall consult with health care facilities, provider bargaining groups, and other interested persons and consider their comments.
- (3) The Division shall consider the written submissions and may, in its discretion, hold one or more meetings with health care facilities, provider bargaining groups, and other interested persons to discuss the changes to the sectors to be separately identified in the following year's budget.
- (4) The Division shall then adopt the sectors, and shall distribute copies of the

adopted sectors to health care facilities, provider bargaining groups, and such other persons who request it.

7.200 Data Necessary to Support the Unified Health Care Budget.

7.201 Unified Health Care Data Base. Health care providers, health care facilities and other persons shall comply with the data filing requirements of 18 V.S.A. § 9410 and 9454 and any rules promulgated thereunder.

7.202 Uniform Reporting Manual. In addition to any unified health care data base filing requirements, hospitals shall file the information required by the uniform reporting manual in the time, place and manner described in the manual.

7.203 Supplemental Information. The Division may require health care providers, health care facilities and other persons to file supplemental information deemed necessary to the development of expenditure analyses, expenditure forecasts, or the unified health care budget.

7.300 Indicators

In preparing its budget forecast each year under Section 7.402 and in adopting a final unified health care budget under Section 7.406 of this rule, the Division may use the following indicators:

- (A) Gross state product. The annual change in the gross state product of Vermont.
- (B) Inflation indices. Inflation projections as forecast by the federal Health Care Financing Administration or other economic forecasters built upon a market-basket of goods and services for a given industry.
- (C) Utilization cost. A variable cost indicator established to measure utilization costs related to changes in service usage.
- (D) Service case mix. Variable costs associated with changes in the intensity of services or care to be provided.
- (E) State and federal budgets. Government program reimbursement estimates that affect hospital pricing.
- (F) State economic forecast. The annual economic forecast by the Governor's office.
- (G) Cost-Shift Impacts. The Division's estimate of the impact of cost-shifting.
- (H) Cost per unit. Costs, including adjustments for case mix and units of service.
- (I) Epidemiology measures. Changes to underlying incidence of disease and the demographics of the service area.

- (J) Use Rate. A use rate indicator based upon the population of the service area established for evaluating hospital service area utilization.
- (K) Other factors. Any other factors or considerations deemed appropriate by the Division.

7.400 Process for Establishing the Unified Health Care Budget

The Commissioner shall establish a unified health care budget annually. The process of establishing the budget shall include, but not be limited to, analysis by the Division of the expenditures of health care sectors for the most recent full fiscal year for which data are available, analysis of budget figures submitted by the sectors, and public discussion of the proposed budget forecast.

7.401 Identification of Vermont Expenditures. On or before July 1 of each year, the Division shall publish a health care expenditure analysis. This analysis will identify the total amount of health care expenditures collected by Vermont providers and the total amount of health care expenditures made by Vermont residents for the most recently-ended fiscal year for which data are available.

- (A) Expenditures by Vermont health care providers and categories of services. Using the data obtained pursuant to Section 7.200 of this rule and 18 V.S.A. § 9410, the Division shall identify all funds received in the preceding fiscal year by Vermont health care facilities and providers. To the extent possible, the Division shall identify which portions of this sum were spent by or on behalf of Vermont residents and which portions were spent by or on behalf of residents of other states or countries.
- (B) Expenditures on Vermont residents. Using the data obtained pursuant to Section 7.200 of this rule and 18 V.S.A. § 9410, the Division shall identify all funds spent on health care services in the preceding fiscal year by or on behalf of Vermont residents, regardless of where the services were rendered or obtained. To the extent possible, the Division shall identify which portions of this sum were paid to health care facilities or providers within Vermont, and which portions were paid to health care facilities or providers outside Vermont.
- (C) Other expenses. The Division shall also identify other expenses affecting Vermont's health care system, including but not limited to private and public administrative and governmental expenses.

7.402 Establishment of a Unified Health Care Budget Forecast. On or before July 1, the Division shall prepare a proposed budget forecast for the next fiscal year based on its analysis of health care expenditures under this section, the letters of intent as to proposed new institutional health services filed under 18 V.S.A. §§ 9431 – 9445, the information filed in the unified health care data base otherwise required under Section 7.200 of this rule, the budgets submitted by the hospitals on July 1, and any other information deemed relevant by the Division. A copy of the proposed budget forecast shall be sent to Vermont hospitals, provider bargaining groups, the Public Oversight Commission, and such other persons who request it.

- 7.403 Health Care Facilities and Health Care Provider Bargaining Groups. The Division may hold one or more meetings with health care facilities, provider bargaining groups, and other interested persons regarding the proposed budget forecast. Negotiations with the provider bargaining groups shall be conducted pursuant to Section 6.500 of the Department rules relating to provider bargaining groups and 18 V.S.A. § 9409(a).
- 7.404 Budget Forecast Review. In establishing the unified health care budget the Commissioner shall take into consideration the proposed budget forecast, the comments and recommendations of the Public Oversight Commission, and the oral and written comments made in the course of the public hearing conducted pursuant to Section 7.504(B), the comments of health care facilities, provider bargaining groups, or other interested persons received under Section 7.403 and any other considerations deemed appropriate by the Division.
- (A) The Public Oversight Commission shall consider the proposed budget forecast in conducting its hospital budget reviews under 18 V.S.A. § 9456 and Section 7.500 of this rule.
- 7.405 Unified Health Care Budget The Commissioner shall establish a unified health care budget for the next fiscal year on or before October 1.

7.500 Application of Unified Health Care Budget to Hospital Budget Reviews

Pursuant to 18 V.S.A. § 9406(b)(3), the unified health care budget shall apply to the hospital budget review process under subchapter 7 of Title 18. The Division shall have primary responsibility for collecting and evaluating hospital financial information and reviewing all hospital budgets in conformity with the provisions of subchapter 7 and this section, and recommending the budgets to be adopted by the Commissioner. At a minimum, the hospital budgets shall include all acute-care hospitals in Vermont and all expenditures and revenues associated with the hospital organizational reporting structure.

- 7.501 Uniform Formats for Data Filings. Hospitals shall use the methods and formats set forth in the uniform reporting manual in reporting their financial, scope-of-services, and utilization data and information to the Division under Section 7.200 of this rule, using the uniform reporting forms and uniform chart of accounts contained in the manual.
- 7.502 Establishing Benchmarks. On an annual basis, the Division will develop benchmarks for the indicators in Section 7.300 for development and preparation of the upcoming fiscal year's hospital budgets. The Division may obtain input from the Public Oversight Commission, the Vermont hospitals, and the Vermont Association of Hospitals and Health Systems prior to establishing the benchmarks. The established benchmarks shall be included in the uniform reporting manual, which shall be provided to the hospitals by March 31.

The uniform reporting manual benchmarks will allow the Division to:

- (1) make a determination whether to waive the need for a hospital to present its budget to the Public Oversight Commission at a public hearing; and
- (2) will be used by the Commissioner to determine whether a budget may be adjusted.

The established benchmarks, as supported under Section 7.300, may include the following:

- 1) growth indicators,
- 2) prior budget performance,
- 3) efficiency or productivity indicators,
- 4) capital investment indicators,
- 5) profitability indicators,
- 6) cost and price indicators,
- 7) liquidity indicators,
- 8) debt structure indicators,
- 9) other financial measures recognized or used in evaluating budgets and/or financial plans.

7.503 Hospital Duties and Obligations. On or before July 1 of each year, each Vermont hospital shall file the following information with the Division, in addition to any other information required by the uniform reporting manual:

- (A) its proposed budget for the next fiscal year, including expenditures and revenues for Vermont residents and non-Vermont residents;
- (B) financial information, including but not limited to its costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of service, and wage and salary data;
- (C) scope-of-service and volume-of-service information, including but not limited to inpatient services, outpatient services, and ancillary services, by type of service provided;
- (D) utilization information;
- (E) a description of new hospital services and programs proposed for the next fiscal year, regardless of whether they are or may be subject to the certificate of need review process under subchapter 5 of Title 18;
- (F) a projected three-year capital expenditure budget;
- (G) the financial condition of the hospital;

- (H) the nature of the services offered by the hospitals that are subject to the budget;
- (I) the needs of the populations served by the hospital;
- (J) the specialized or franchised services offered by the hospital; and
- (K) such other information as may be required by the Division or Public Oversight Commission.

7.504 Division Review Process After the financial information required under Section 7.503 is filed with the Division, the Division shall conduct reviews of all proposed hospital budgets, as follows:

- (A) Information available to the public. The Division shall make the financial information filed under Section 7.503 available to all persons upon request. The Division may charge the actual copying costs incurred in providing such information to the persons requesting the information.
- (B) Public Hearing. Upon receipt by the Division of all financial information filed under Section 7.503, the Division shall arrange for the Public Oversight Commission to hold public hearings concerning the hospitals' budgets. The hospitals, except for those hospitals exempt from the hearing pursuant to Section 7.504(D), shall provide testimony and respond to questions raised by the Public Oversight Commission, the Division, or the public. The Public Oversight Commission shall advise and make recommendations to the Commissioner concerning the hospital budgets.
- (C) Use of Benchmarks. The Division's established benchmarks, outlined in Section 7.502, shall guide the Commissioner in his/her decision to adjust or not to adjust a hospital's budget.
- (D) Exemption from Public Hearing. Hospitals that meet the established benchmarks may be exempt from the Public Oversight Commission public hearing outlined in Section 7.504(B) in the following instance only:

1. A hospital may be exempt from the public hearing when they meet established benchmarks. Notwithstanding a hospital's budget meeting the benchmarks, no hospital may be exempt from the public hearing process for more than one year consecutively. In any given year, only four hospitals may be waived from attending a public hearing; hospitals that are waived from attending the public hearing will not have their budgets adjusted.

The four (4) largest hospitals, as measured by the hospitals' previous year's net patient revenue, shall not be exempt from the public hearings in any year.

- (E) Budget Adjustments. Hospitals that do not meet the established benchmarks outlined in Section 7.502 may be subject to budget adjustments.
- (F) Review process. The Division shall meet with hospitals to review and discuss their proposed budgets, as to which the hospitals have the burden of persuasion. The Division's budget reviews shall take into consideration the following, as well as the advice and recommendations of the Public Oversight Commission:
 - (1) the proposed unified health care budget forecast for the next fiscal year;
 - (2) utilization information;
 - (3) the goals and recommendations of the state health plan and CON Guidelines adopted under 18 V.S.A. § 9405, 9556(b)(2), and 9437(5);
 - (4) the actual performances of hospitals with respect to past budgets;
 - (5) reports from professional review organizations relating to Vermont hospitals or health care services provided through Vermont hospitals (excluding hospital internal quality and utilization review reports);
 - (6) the established benchmarks; and
 - (7) any other information it deems relevant or appropriate to hospital budgets.
- (G) Establishment of Hospital Budgets. On or before September 15, the Commissioner shall establish Vermont hospital budgets for the next hospital fiscal year based on the review of the proposed budgets by the Division, the advice and recommendations of the Public Oversight Commission, and the comments of the public. On or before October 1, the Commissioner shall issue a written decision establishing the hospitals' budgets for the next fiscal year. The hospital budgets established by the Commissioner shall modify or supplement the proposed unified health care budget forecast.

7.600 Application of Unified Health Care Budget to Certificate of Need Review

Pursuant to 18 V.S.A. § 9436(a)(2), the unified health care budget shall apply to the certificate of need (CON) review process under subchapter 5 of Title 18 and any regulations promulgated thereunder.

7.700 Application of Unified Health Care Budget to Other Sectors [Reserved.]

7.800 Enforcement

The Division shall enforce those portions of the unified health care budget affecting hospital budgets and the certificate of need review process as follows.

7.801 Hospitals. The Division shall periodically review the performance of hospitals under the budgets established for them. This review may occur at any time through independent review by the Division of a hospital's performance.

(A) Review criteria. The Division's review of a hospital's performance under an established budget shall take into consideration the following factors:

- (1) the variability of a hospital's actual revenues, which depend on the resources of payers and the methods of payment used by the payers;
- (2) the hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients;
- (3) the financial position of the hospital in relation to other hospitals and to the health care system as a whole, using the statistics developed from information submitted in compliance with the uniform reporting manual;
- (4) any other considerations deemed appropriate by the Division, including but not limited to other instances in which a hospital has less than full control over the expenditures limited by the budget; and
- (5) the hospital's performance under budgets identified or established under subchapter 7 of Title 18 for the previous three years and its budget projections for the next three years.

(B) Adjustment methods. After making a determination of a hospital's performance under an established budget, the Division may recommend to the Commissioner an adjustment to the hospital's budget. Any such adjustment shall take into account the factors set forth in subsection 7.801(A).

- (1) Where a determination is made that a hospital's performance has differed substantially from its budget, the Commissioner may adjust its budget by:
 - (a) changing hospital rates or prices by the amount of net revenues exceeding the budgeted net revenues;
 - (b) changing the net revenue and/or expenditure levels of future budgets.
 - (c) allowing hospital rates to be increased for a hospital with a deficit caused by revenues that were less than projected, but whose actual expenditures were within the budget limits;
 - (d) allowing a hospital to retain surplus funds if the surplus was achieved while the hospital stayed within its established budget;

- (e) allowing a hospital to retain a percentage of surplus generated primarily by volume in excess of that projected for a particular year; or
- (f) any other circumstance the Commissioner deems appropriate.

(C) Application. Adjustment methods based on past performance shall be applied by the Division in the course of establishing a new budget and may be imposed over a multi-year period. In recommending adjustment of a hospital's budget, the Division shall consider the financial condition of the hospital and any other factor it deems appropriate.

7.802 Certificate of Need Reviews. Adjustment methods available as to persons subject to the certificate of need review process may be set forth in the Department's certificate of need regulations.

7.803 Exceptional or Unforeseen Circumstances. In determining the appropriate adjustments that will be applied to a person or sector that the Division has determined is not in compliance with the unified health care budget, the Commissioner must consider any exceptional or unforeseen circumstances that may have affected the person's or sector's ability to comply.

(A) The person or sector whose compliance is at issue has the burden of proving the existence of exceptional or unforeseen circumstances, as well as the effect those circumstances had on his or her ability to comply with the applicable portion of the unified health care budget.

(B) Any person or sector relying on the existence of an exceptional or unforeseen circumstance as a reason for a failure to comply with the budget shall also recommend to the Division a proposed course of action that will bring its budget into compliance. Such a course of action includes, but is not limited to, review of the person's budget compliance over a span of years or an adjustment to the person's base for the succeeding fiscal year.

7.900 Fiscal Year

7.901 Definition. The fiscal year is initially defined as the twelve-month period beginning on October 1 of each year.

7.902 Modification of Fiscal Year. The Division may change the fiscal year as it applies to the unified health care budget or to individual sectors within the budget from time to time. Public notice of such a change shall be made in newspapers of record in the manner provided for the publication of proposed rules under 3 V.S.A. § 839, and notice shall also be given by the Division by first-class mail to all provider bargaining groups approved under Rule 6.000. The change shall be effective 90 days after notice has been given.

7.903 Conforming Amendments to Rule. The Division, upon adoption of a different fiscal year,

shall promptly file the necessary proposed changes to this rule so as to conform to the new fiscal year. Proposed changes shall be temporarily effective upon filing of the proposal with the secretary of state under 3 V.S.A. § 838 until the adoption of the final changes.