Vermont Developmental Disabilities Council

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TO: Green Mountain Care Board

RE: Comments on the OneCare Vermont budget

FROM: Susan Aranoff, Esq., Senior Planner and Policy Analyst

DATE: December 10, 2018

Introduction

Thank you for providing this opportunity to comment on the OneCare Vermont (hereafter "OCV") budget. These comments set out the Vermont Developmental Disabilities Council's position regarding the regulatory oversight required of the Green Mountain Care Board in the matter of approving OneCare Vermont's budget.

The Vermont Developmental Disabilities Council

The Vermont Developmental Disabilities Council (hereafter "VTDDC") is a statewide board created by the federal Developmental Disabilities Assistance and Bill of Rights (hereafter "the DD Act"), first adopted by Congress in 1970. Our constituents are health care users who have an important stake in the cost, quality, and availability of both traditional healthcare and disability long term services and supports. An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving some type of community-based support through Medicaid.

VTDDC is charged under federal law with engaging at the state level in "advocacy, capacity building and systems change activities that… contribute to the coordinated, consumer-and-family-centered, consumer-and-family directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families." As such, the fundamental changes in the way that health care is provided, funded, and managed in Vermont pursuant to the All Payer Accountable Care Organization Model Agreement (hereafter the "APM ACO Agreement") are of great concern for us.

The Green Mountain Care Board needs to determine if OneCare's operations benefit Vermonters.

Act 113 of 2016 requires that the Green Mountain Care Board establish standards and processes to review, modify, and approve the budgets of accountable care organizations seeking to operate in the State of Vermont. Act 113 also requires the Green Mountain Care Board ensure that its certification and oversight processes constitute sufficient State supervision over accountable care organizations (hereafter "ACOs") to comply with federal antitrust provisions. Further, Act 113 directs the Green Mountain Care Board to refer to the Attorney General the activities of an accountable care organization that may be in violation of State or federal antitrust laws without the countervailing benefits of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

To fulfil its state action supervision duties, the Green Mountain Care Board must first determine if OneCare is improving patient care, improving access to health care, increasing efficiency, and/or reducing costs. As the number of attributed lives and the amount of public investment increases with each performance year, the need to conduct an independent cost benefit analysis also grows.

The Green Mountain Care Board's Conflicts of Interests

The Green Mountain Care Board (hereafter "GMCB") is a party to the All-payer Accountable Care Organization Model Agreement (hereafter "APM ACO Agreement") Vermont entered into with the federal government in October 2016. As a party to the APM ACO Agreement, the GMCB has certain obligations. Some of these obligations create significant conflicts of interest for the GMCB.

As a party to the APM ACO Agreement, the Green Mountain Care Board is required to work **with** OneCare to achieve the targets set out in the APM ACO Agreement. Regulators do not work "with" the entities they regulate. Regulators are expected to be as impartial and objective judges. To comply with the APM ACO Agreement, the Chair of the Green Mountain Care Board is required to submit a letter to CMMI jointly with OneCare attesting to the fact that the GMCB and OneCare are working **together** to achieve the scale targets of the APM ACO Agreement. (See, Letter, Attachment 2). The APM ACO Agreement also obligates the GMCB to encourage providers to join OneCare. These obligations and others establish the GMCB as both a promoter and regulator of OneCare Vermont, which is a serious conflict of interest.

The Legislative Committee on Administrative Rules (LCAR) Recognized the GMCB's Conflicts of Interest

On January 22, 2018, the Legislative Committee on Administrative Rules (hereafter "LCAR") sent a letter to the Chairs of the House Health Care and Senate Health and Welfare Committees informing them that on October 12, 2017, LCAR voted to request the standing committees of jurisdiction review the dual nature of the Green Mountain Care Board's role in both providing regulatory oversight of the ACOs and supporting their pursuit of innovation. (See, Attachment 1). The letter states that "LCAR's request for review is based on the concern that this duality of roles may cause the Green Mountain Care Board to have competing and potentially **conflicting** obligations in regard to ACOs. LCAR's concern is heightened because the State's EB-5 program similarly required the Agency of Commerce and Community Development to have the competing obligations of both promoting and regulating the program, ultimately with negative results." (Emphasis added).

The letter from LCAR states that the Chair of the Green Mountain Care Board indicated on the record that he would welcome a discussion of the conflict of interest and EB-5 issues with the appropriate legislative committees. To our knowledge, neither the Green Mountain Care Board nor the legislature has ever addressed these important issues at a public meeting. Nor has the Green Mountain Care Board informed its own Advisory Board of the existence of the LCAR letter and LCAR's concerns regarding the GMCB's potential conflicts of interests.

It must be noted that the legislature directed the Green Mountain Care Board to promulgate regulations for accountable care organizations that balance support for innovation with oversight. As innocuous as this mandate sounds, it placed the Board in a difficult position. It is not tenable for the Green Mountain Care Board regulate OneCare and work **with** it to achieve the scale targets set out in the APM ACO Agreement at the same time.

The Green Mountain Care Board needs to determine what it costs Vermonters to operate OneCare Vermont

To fulfill its Act 113 supervision mandates, the Green Mountain Care Board must determine if Vermont's ACO is achieving the goals set out in both Act 113 and the APM ACO Agreement of improving care and reducing costs. It is VTDDC's position that to date, the Green Mountain Care Board has not exercised sufficient state supervision of OneCare to satisfy the state supervision requirement of the state action doctrine. The Green Mountain Care Board has not tracked or evaluated the total cost of operating the ACO. Nor has the Green Mountain Care Board determined what it costs Vermont taxpayers to regulate and supervise OneCare. Finally, the Board has failed to properly evaluate the quality and financial performance of the ACO for which it has pilot authority.

It is incumbent upon the Green Mountain Care Board to objectively evaluate the financial and quality performance of OneCare Vermont. The Green Mountain Care Board has an affirmative obligation to determine that the benefits of the ACO outweigh its harms, including the possible negative impacts of health care price coordination and the impact of a monopoly on the bargaining power of Medicaid and Vermont's commercial insurers.

Medicaid is Funding OneCare's Start-up and Operations

The VT Developmental Disabilities Council is particularly concerned about the use of Medicaid funds to support OneCare's start-up costs. Public funds flowing to the for-profit ACO are approaching $20 million. Vermont has authority under its Global Commitment waiver to spend Medicaid funds on delivery system reform investments (hereafter "DSR Funds"). To date, the Vermont Department of Health Access (hereafter "DVHA") has given delivery system reform funds only to OneCare, even though community-based organizations such as designated agencies are eligible to receive these funds as well. DVHA has not created a fair and transparent process for accessing these Medicaid dollars.

The Vermont Developmental Disabilities Council is also concerned that Medicaid overpaid OneCare 2.4 million dollars for the 2017 Medicaid Next Generation services. In the past, if DVHA underspent in one area of the Medicaid budget, it could use its savings to provide other Medicaid services, including investing in critical health infrastructure at our relatively under-funded community agencies. Under the contract it has with OneCare, DVHA does not have the opportunity to reinvest these dollars for the public's benefit.

OneCare's 2019 ACO Budget includes a request for an additional $10.8 million of Medicaid DSR public funds. In order to quantify the cost of the APM ACO Agreement, the Green Mountain Care Board must identify the total cost to the public of starting and operating OneCare, a for-profit ACO partially owned by the UVM Health Care Network. Before approving its budget, the Green Mountain Care Board should conduct a cost/benefit analysis to determine the effectiveness of this expenditure on improving health outcomes and containing costs.

Other public monies that are flowing to OneCare include funds to operate programs started under the auspices of the State such as the Blueprint for Health and SASH (Supports and Services at Home). OneCare claims these public dollars as its largest investments in public health and in the social determinants of health. Arguably, however, these programs represent a "pass through" of federal and general fund appropriations without a value add on the part of OneCare.

The Green Mountain Care Board Needs to Determine If OneCare is Benefitting Vermont and Vermonters

The Green Mountain Care Board is required to ensure that accountable care organizations that operate in Vermont meet the standards set out in the State's laws and regulations. OneCare's reporting of its quality and financial performance results for 2017 are incomplete and lack the details needed for the Board and the public to adequately assess OneCare's performance and understand its impact on Vermont's health care expenditures and quality.

One measure of public benefit which would permit OneCare to engage in anti-competitive behavior would be improved quality. The limited data available would indicate that the quality is declining. For the 2017, Vermont Medicare Quality Measures, OneCare scored 9.26% worse than the previous year.

OneCare's quality results for its 2017 Medicaid ACO reveal that OneCare received full credit for merely reporting its performance on 40% of its Medicaid quality measures. The points OCV received on 40% of its Medicaid quality measures have nothing to do with the quality of OCV's services – yet OCV and DVHA are treating the 85% score as the equivalent of an 85% score on the quality of OCV's services. The fact is a full 40% of the 85% score is not connected to the quality of OCV's services.

In addition to revealing that OneCare received full credit and financial compensation for simply reporting results, the Medicaid results also reveal that in one area, OneCare's performance was particularly poor. For ***Initiation of alcohol and other drug dependence (AOD) treatment,*** OneCare performed below the 25th percentile and received zero points. This is noteworthy because it pertains to one of the most important issues in health care in Vermont today.

ACO Administrative Expenses

The VTDDC commends the Green Mountain Care Board for the concern it has expressed about OneCare's administrative expenses. In its 2018 OneCare Budget Order, the Board wrote the following:

"While we believe the All-Payer ACO Model holds great promise for controlling health care cost growth and improving quality of care in Vermont, we understand the concern expressed by some that ACOs add another layer of complexity and expense to an already complicated and expensive health care payment system. ACOs should provide a net benefit to the system and we will monitor OneCare's administrative expenses to ensure they are less than the total health care savings generated through the All-Payer ACO Model."

The Board also included the following mandate in its final budget Order: [O]neCare's administrative expenses should be less than the health care savings generated through the All-Payer Accountable Care Organization Model.

While the Board's concern about administrative expense is commendable – it issued an unenforceable mandate. Clearly, OneCare's $2.4 million dollar Medicaid "savings" in 2017 savings pale in comparison with its $10.5 million in projected 2017 Administrative Costs. How and when will the GMCB determine whether OneCare met this provision in its 2018 Order regarding OneCare's 2018 budget? What are consequences for violating the Order? What can the GMCB do in 2019 if it discovers that OneCare violated the terms of its 2018 Order? What can the GMCB do now to rein in OneCare administrative expenses?

ACO Governance

As required, OneCare Vermont identified the members of its executive leadership team and provided a list of its employees and their titles. In addition, OCV should identify executives and other key employees who are also employed by its principal investors or providers. It is in the public's interest to know if the same person is serving as Medical Director for both OneCare Vermont and the University of

Vermont's Medical Center. OneCare should also identify the salary contributions to employees who serve both OneCare and UVM.

OneCare's Patient Information Fact Sheet

OneCare Vermont's new patient information statement is inadequate. OneCare does not inform attributed Vermonters that their health care providers are being paid on their behalf regardless of how much care they receive or do not receive. When a provider receives fixed or capitated payments, a clear incentive to withhold care is created. Patients have a right to know that their providers are receiving capitated payments as the providers behavior is likely to be influenced by such payments. Patients also have a right to know if their provider's pay is contingent on the patient's behavior- e.g. whether or not they lose weight or manage their diabetes. Patients also need to understand that the APM ACO Agreement may create an incentive for providers to treat healthier patients.

ACO Contracts

Clearly, OneCare's contracts with all payers including DVHA, Medicare, BlueCross and Blue Shield and the self-funded programs are essential to the analysis of its budget. OneCare's budget cannot and should not be approved in the absence of finalized contracts from each payer.

Conclusion

The Vermont Developmental Disabilities Council is concerned that Medicaid is the most burdened payer participating in the All Payer ACO Agreement. Medicaid is the only payer providing OneCare millions of dollars in delivery system reform funds. Medicaid is paying OneCare for reporting on measures as opposed to achieving quality disproportionately to other payers. Medicaid is the only payer paying a per member per month administrative fee.

The impact of the All Payer ACO Agreement on Medicaid is likely to get worse. The Green Mountain Care Board has pledged to support Medicaid rate increases such that Medicaid will reimburse providers at rates that are closer to Medicare's. The

more Medicaid funds are spent on the services covered in the All-Payer ACO Agreement, the less Medicaid funding is available to support long terms services and supports for home and community-based services, such as developmental disability support services.

It is imperative that the Green Mountain Care Board exercise its regulatory authority to the benefit of Vermonters by prioritizing Vermonters' needs for Medicaid-funded services over OneCare's desires for Medicaid-funded administrative expenses.

Attachment 1 Letter from the Legislative Committee on Administrative Rules

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SEN. JOSEPH BENNING
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SEN. MARK MACDONALD
SEN. MICHAEL SIROTKIN

REP. ROBIN CHESNUT-TANGERMAN
REP. LINDA MYERS
REP. AMY SHELDON
REP. MICHAEL YANTACHKA

Legislative Committee on Administrative Rules (LCAR)

To: Sen. Claire Ayer, Chair, Senate Committee on Health and Welfare
Rep. William J. Lippert, Jr., Chair, House Committee on Health Care
CC: Jennifer Carbee, Legislative Counsel
From: Sen. Mark MacDonald, Chair, LCAR
Date: January 22, 2018
Subject: Request for review of Green Mountain Care Board roles regarding ACOs

On October 12, 2017, LCAR approved with modifications Rule 17-P15, regarding the Green Mountain Care Board's oversight of accountable care organizations (ACOs). Although LCAR approved this rule, LCAR also voted pursuant to 3 V.S.A. § 817(e) to request that the standing committees of jurisdiction review the dual nature of the Green Mountain Care Board's role in both providing regulatory oversight of ACOs and supporting their pursuit of innovation.

LCAR's request for this review is based on the concern that this duality of roles may cause the Green Mountain Care Board to have competing and potentially conflicting obligations in regard to ACOs. LCAR's concern is heightened because the State's EB-5 program similarly required the Agency of Commerce and Community Development to have the competing obligations of both promoting and regulating that program, ultimately with negative results. The Chair of the Green Mountain

Care Board indicated on the record at LCAR's October 12 meeting that he would welcome a discussion with your committees about the Board's role and its duties.

Thank you for your consideration of LCAR's request for this review. Please feel free to contact our committee if you would like to discuss this issue further.

Attachment 2 Letter from Chairman Mullin to CMMI

VERMONT

Green Mountain Care Board
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To: Stephen Cha, M.D., Director
Center for Medicare and Medicaid Innovation
State Innovations Group

From: State of Vermont, Green Mountain Care Board
OneCare Vermont, Accountable Care Organization, LLC

Re: Section 8.b.i. Attestation

Dear Dr. Cha,

The Green Mountain Care Board (GMCB) will be submitting for CMS's approval a growth rate of 3.5% for the Vermont Modified Medicare Next Generation Program under section 8.b.ii of the All-Payer Accountable Care Organization Model Agreement. The Board of Managers of OneCare Vermont, Accountable Care Organization, LLC (OneCare) has authorized the ACO to participate in the Vermont Modified Medicare Next Generation ACO program for 2018. The GMCB and OneCare understand that a manual adjustment will be made to the benchmark of $7.5 million, trended forward, to be distributed quarterly during 2018. The GMCB and OneCare will work together to achieve the ACO Scale Targets, Statewide Financial Targets, and Statewide Health Outcomes and Quality of Care Targets of the Vermont All-Payer ACO Model.

Kevin J. Mullin

Kevin Mullin
Chair
Green Mountain Care Board

12/22/2017
Date

Todd B. Moore

Todd Moore
Chief Executive Officer
OneCare Vermont Accountable Care Org., LLC

DECEMBER 22, 2017
Date