Office of the Health Care Advocate
264 North Winooski Ave., Burlington VT 05401
Toll Free Hotline: 800-917-7787
www.vtlawhelp.org/health ▪ Fax: 802-863-7152

November 15, 2023

Owen Foster
Chair, Green Mountain Care Board
144 State Street, Montpelier, VT 05602

RE: Office of the Health Care Advocate Comments on FY2024 Lore Budget Submission

Dear Chair Foster and Members of the Green Mountain Care Board:

The Office of the Health Care Advocate (HCA) would like to thank the Green Mountain Care Board (Board) and its Accountable Care Organization (ACO) budget staff for their careful review of Lore Health's (Lore) FY24 budget submission.

As a public advocate, our top priority is to evaluate whether regulated entities have provided sufficient evidence that they will improve the health care issues most important to Vermonters: affordability, access, and quality. The HCA does not believe Lore will meaningfully address any of these issues for Vermonters, for several reasons:

1. Lack of evidence: Lore's budget submission and public materials do not provide rigorous evidence of the efficacy of their model of care. Lore's approach also appears to be predicated on faulty assumptions, from the claim that simply being "defined" as an ACO is somehow sufficient evidence that it can successfully address "care equity gaps"[1] to the fact that it does not track participant engagement on its lifestyle medicine application.[2] Lore's submission is also laden with vague marketing language while lacking in qualitative or quantitative data to support its claims of improving health. For example, Lore claims to "support coordination across the care continuum by helping people focus on lifestyle (e.g., nutrition, physical activity, sleep, stress management)"[3] which reflects a problematic presupposition that poor health is due to insufficient individual "focus" rather than systemic social determinants—which are well documented in the literature as the primary causal drivers of poor health.[4]

2. Lack of transparency: Lore made a comprehensive confidentiality request one hour before the public hearing, which effectively denied the Board, the HCA, and the public the ability to ask basic questions about Lore's business in the public hearing. While the HCA does not question that there can be information that meets the standard for confidential treatment under Vermont's Public Records Act, it is not credible that

[1] Lore Health. "Budget Narrative." October 2nd, 2023. Page 11.
[2] Green Mountain Care Board. Lore Public Hearing. November 1st, 2023.
[3] Narrative, 9.
[4] Whitman A., et al. "Addressing Social Determinants of Health: Examples of Successful Evidence-Based Strategies and Current Federal Efforts." Office of Health Policy: Assistant Secretary for Planning and Evaluation. 1 April 2022.

discussing Lore's budget performance year-over-year or model of care would put them at a competitive disadvantage, particularly when they provided no evidence that other entities have or would use this information to secure a competitive advantage.

3. Profit-priority motive: Lore operates in a ACO contracting space that views the shared savings program as a profit-making opportunity.[5] Such entities implicitly market themselves as offering a "win-win"—making money, "saving" CMS money, and improving health—but Vermonters and the Board should be aware of the inevitable conflicts that arise when profit is placed at the center of managing patient care.

The HCA recognizes that the Board cannot deny Lore Health's ability to operate in Vermont because of its limited statutory authority to regulate non-certified Medicare-only ACOs. With this major limitation in mind, the HCA makes the following recommendations:

1. Require Lore to annually submit a Vermont-specific report on how its line of business is performing year-over-year regarding shared savings/losses and the quality metrics it established with CMS.

2. Following the conclusion of the FY24 ACO budget review and certification process, the HCA recommends the Board update the Medicare-only budget guidance to establish a firm deadline that all confidentiality requests from regulated entities shall be filed no later than two weeks before the public hearing. The Board should exercise its right to levy fines on regulated entities that do not comply with this deadline.

3. Given that the number of Medicare-only ACOs seeking to operate or expand in Vermont appears to be increasing over time, the HCA believes that it is important for the Board consider its current limitations to meaningfully regulate these entities. The HCA therefore recommends that the Board initiate a new rule-making process to expand the scope of the Board's authority under Rule 5.000 to establish the right to deny Medicare-only ACOs from operating in the state if they are found to have provided insufficient evidence of alignment with the goals of the All-Payer Model.

Thank you,

The HCA Policy Team

s\ Sam Peisch, Health Policy Analyst
s\ Mike Fisher, Chief Health Care Advocate
s\ Charles Becker, Staff Attorney
s\ Eric Schultheis, Staff Attorney

[5] Richard Gilfillan, Donald Berwick. "Medicare Advantage, Direct Contracting, and the Medicare 'Money Machine,' Part 2: Building on the ACO Model." *Health Affairs.* 30 September 2021.