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November 28, 2023

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

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

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

The Office of the Health Care Advocate (HCA) thanks the Green Mountain Care Board (Board) and its Accountable Care Organization (ACO) budget staff for their careful review of Vytalize Health 9 ACO's (Vytalize) FY24 budget submission.

The HCA believes that it is most important that regulated entities improve affordability, access, and quality. Guided by this priority, our comment describes five issues with Vytalize's FY24 budget submission and provides three actionable recommendations to the Board.

First, Vytalize, like any private equity backed entity, has the primary goal of generating a monetary return for investors. Large private equity firms like Enhanced Healthcare Partners[1] would simply not invest in a company like Vytalize if they did not feel there was an opportunity to make a profit.[2] This is not speculation—firms sometimes say as much even in filings with the Securities and Exchange Commission. For example, Bright Health Group (backed by Cigna Ventures) recently wrote in its "Our Market Opportunity" section of its SEC filing that: "The Medicare FFS market is expected to represent an approximately $430 billion opportunity in 2021."[3] The HCA has not seen any evidence to distinguish Vytalize from these types of entities.

Our concerns around private equity backed entities managing Vermonters' health care align with statements contained in the most recent resolution adopted by the Vermont Medical Society: "Addressing Ethical Dilemmas in Some of CMS's Pay for Performance and Value Based Care Programs." The adopted resolution states: "For-profit corporations including but not limited to venture capital firms should be excluded from serving as contracting intermediaries in CMS-sponsored value-based care programs" and "Medicare beneficiaries who enroll in the original Medicare program should not be unwillingly or unwittingly assigned to managed care or capitation systems that contract with corporate intermediaries, such as allowed in the ACO

[1] Businesswire, Enhanced Healthcare Partners Deepens Relation with Vytalize, Adding on Independent Physician Association of New York and Leading $100 Million Financing Round, (April 13, 2023).
[2] Blackstone Securities Partners, The Life Cycle of Private Equity, (August 2020).
[3] Bright Health Group, 2021 Filing with the United States Securities and Exchange Commission – Form S-1, (May 19, 2021).

REACH and Primary Care First programs; rather beneficiary participation should be selected voluntarily by each individual patient."[4]

National actors are also concerned about the involvement of private equity backed entities in patient care. Kaiser Health News recently reported that "Companies owned or managed by private equity firms have agreed to pay fines of more than $500 million since 2014 to settle at least 34 lawsuits filed under the False Claims Act, a federal law that punishes false billing submissions to the federal government with fines. Most of the time, the private equity owners have avoided liability."[5] Senators Bernie Sanders, Elizabeth Warren, and other members of Congress also recently wrote in a report that "CMS permitted at least ten entities to participate in their "value based" programs despite knowing that they were either under direct investigation for fraud or previously convicted of fraud.[6] Placing profit at the center of managing patient care is problematic for many reasons, but the most relevant question for the Board to keep in mind is: what happens when for-profit corporations decide that primary care providers or the ACO is no longer making them a return on their investment? While providers may see short term financial benefits to their practices of contracting with Vytalize, the Board and Vermont's independent providers should be wary that these short-term benefits could come at a significant cost to their long-term independence and financial stability. Further, given the documented issues with Medicare-only ACOs and CMS's regulation of them, the Board should not rely solely on CMS to ensure Medicare-only ACOs seeking to operate in Vermont are acting in the best interests of Vermonters.

Second, the Board should be skeptical of claims made by Medicare-only ACOs that they create savings or cause reduced spending. The non-partisan Congressional Budget Office (CBO) recently completed an extensive evaluation of the Center for Medicare and Medicaid Innovation (CMMI), which administers Medicare ACO programs, and found that CMMI's programs *increased* rather than decreased overall spending: "Specifically, CMMI spent $7.9 billion to operate models, and those models reduced spending on health care benefits by $2.6 billion."[7] Said differently, the CBO concluded that CMMI spent three times more than it saved by operating models like REACH. The academic literature is similarly skeptical of the cost savings achieved by Medicare ACO programs, generally, and private equity backed health care entities, in particular. For instance, the only published systemic review of the evidence of the impact of private equity ownership shows that they consistently increased cost and lowered

[4] Vermont Medical Society. Addressing Ethical Dilemmas in Some of CMS's Pay for Performance and Value Based Care Programs, (Nov. 8, 2023).
[5] Fred Schulte, Sick Profit: Investigating Private Equity's Stealthy Takeover of Heal Care Across Cities and Specialties, KFF Health News (Nov. 14, 2022).
[6] Senator Bernie Sanders et al., Letter to the Honorable Chiquta Brooks-Lasure (Dec. 8, 2022).
[7] Congressional Budget Office, Federal Budgetary Effects of the Activities of the Center for Medicare Innovation (Sept. 2023).

quality.[8] As the lead author of the review said recently: "Our most unequivocal evidence is that private equity is associated with increased costs."[9]

Third, Vytalize's FY24 budget submission does not provide sufficient evidence of the efficacy of its model of care. For example, in response to a written pre-hearing question from the Board regarding "access to care," Vytalize responded that "through analysis of data available to the ACO, Vytalize can identify which patients are not up to date with their Annual Wellness Visits" and "support access to care through proactive outreach to patients to schedule this yearly visit."[10] It is dubious that Vermont's primary care providers are currently unable or unwilling to determine which of their patients have not received a wellness visit. Vytalize also stated that it "provides Primary Care providers resources to communicate with patients [about] their availability, including office hours during the holidays, and contacting the primary care providers in non-emergent situations (instead of going directly to the emergency room)" which reflects an ill-conceived assumption that patients want another intermediary to talk through about their own providers office hours, rather than just contacting them directly or using Google. Unfortunately, when asked at hearing to explicate how the performance results Vytalize lauds on its public website were calculated, Vytalize stated it would provide an explanation to us after the hearing.[11] To date, we have received no such explanation.

Lastly, Vytalize stands to be a competitor to OneCare Vermont—a competitor with more resources, capital, and scale. While the Board may be receptive to theoretical arguments that such competition could improve innovation, reduce spending, and keep independent providers solvent, these promises from private equity backed entities such as Vytalize are at best risky and unsupported by existing evidence. While the HCA does not dispute that some independent providers have and will contract with Vytalize, the Board should be aware of the potential risks Vytalize poses to Vermont's health care system.

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[8] Alexander Boars et al., Evaluating Trends in Private Equity Ownership and Impacts on Health Outcomes, Costs, and Quality: Systematic Review, 8392 BMJ 282, (2023).
[9] Haley Weiss, What Happens When Private Equity Buys Your Doctor's Office?, Time (July 31, 2023).
[10] Green Mountain Care Board, Vytalize Health Responses to Pre-Hearing Questions.
[11] Green Mountain Care Board, November 21, 2023, Hearing on Vytalize Health.

The HCA recognizes that the Board cannot deny Vytalize’s ability to operate in Vermont because of the Board’s limited statutory authority to regulate non-certified Medicare-only ACOs. Given this limitation, the HCA makes the following recommendations regarding Vytalize’s FY24 budget approval and the larger Medicare-only ACO regulatory schema:

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

2. Revise the Medicare-only ACO budget guidance to establish a firm deadline that all confidentiality requests 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. Initiate a rule-making process to clarify that the Board has the authority under Rule 5.000 to deny Medicare-only ACOs from operating in the state if the entity provides insufficient evidence of alignment with the goals of the All-Payer Model.

Thank you for considering these comments.

Signed:

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