STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

AMENDMENT #1 TO FY23 ACCOUNTABLE CARE ORGANIZATION BUDGET ORDER

In re: OneCare Vermont Accountable Care Organization, LLC Fiscal Year 2023)	Docket No. 22-001-A

INTRODUCTION

OneCare Vermont Accountable Care Organization, LLC (OneCare) is a multi-payer accountable care organization based in Vermont. OneCare is a subsidiary of the University of Vermont Health Network (UVMHN) and the chair of OneCare's Board of Managers must be a Manager appointed to the OneCare Board by UVMHN.[1] The Green Mountain Care Board (GMCB or the Board) voted to establish a fiscal year 2023 (FY23) budget for OneCare on December 21, 2022, which was reflected in a budget order entered on March 30, 2023 (FY23 Budget Order).. On March 31, 2023, OneCare submitted its revised budget for FY23 (Revised Budget), and on May 30, 2023, OneCare requested that the Board amend its budget approval to reflect the changes in OneCare's revised FY23 budget. The Board considered OneCare's revised budget at public meetings on May 3, May 5, May 17, and June 14, 2023. For the reasons set forth below, the Board voted on June 14, 2023, to approve OneCare's Revised Budget, subject to the conditions set forth in this Order.

LEGAL FRAMEWORK

In its review of an ACO's budget, the Board must consider statutory factors that generally fall into the following categories:

- Historic and future expenditures and the effects of care models on utilization, including the provision of innovative services;
- The ACO's efforts to strengthen and provide resources to primary care, address social determinants of health and the impacts of childhood trauma, integrate community providers, improve care coordination, and reduce duplication of services in partnership with the Blueprint for Health;
- Health resource allocation priorities;
- Transparency of the ACO's costs;

[1] *See* Eleventh Amended and Restated Operating Agreement of OneCare Vermont Accountable Care Organization, LLC (August 29, 2022), Sections 4.1(a)(i) and 4.4(a).

- Effects of Medicaid reimbursement on other payers;
- Solvency and ability to assume financial risk;
- Administrative costs;
- The character, competence, fiscal responsibility and soundness of the ACO and its leaders; and
- The Office of the Health Care Advocate's (HCA) feedback and public comment.

See 18 V.S.A. § 9382(b)(1). In addition to these statutory criteria, the Board will consider the requirements of the Vermont All-Payer Accountable Care Organization Model Agreement (APM Agreement) between the State of Vermont and the Centers for Medicare & Medicaid Services (CMS), any benchmarks established in the Board's ACO budget guidance, and the elements of the ACO's payer programs. GMCB Rule 5.000, § 5.405(b).

The APM Agreement provides for Medicare's participation in a statewide health care payment and delivery system reform effort referred to as the "All-Payer ACO Model" (hereafter "the Model"). The Model relies on private-sector health care providers voluntarily working together, as part of an ACO, to reduce health care spending and improve health care quality and outcomes for Vermonters. Relevant requirements of the APM Agreement include:

- **Total Cost of Care (TCOC) Growth Targets.** The State is responsible for limiting per person spending growth over the five performance years of the agreement.
  - The target for Medicare TCOC per Beneficiary Growth is a compounding rate that is at least 0.2% below projected national Medicare growth.
  - The target for All-Payer TCOC per Beneficiary Growth is a compounding rate of 3.5% or less over the five performance years of the APM Agreement.
- **Statewide Health Outcomes and Quality of Care Targets.** The State is responsible for meeting a series of targets tied to three overarching population health goals:
  - Improving access to primary care;
  - Reducing deaths due to suicide and drug overdose; and
  - Reducing the prevalence and morbidity of chronic disease.
- **Scale Targets.** Over the five performance years of the agreement, the State is responsible for steadily increasing the percentages of Vermont Medicare Beneficiaries and Vermont All-Payer Scale Target Beneficiaries that are aligned to a Scale Target ACO Initiative.
  - By the end of 2022, the fifth performance year of the APM Agreement, the State is expected to have 70% of All-Payer Scale Target Beneficiaries and 90% of Vermont Medicare Beneficiaries aligned to a qualifying initiative under the terms of the APM Agreement.
  - On October 12, 2021, the State of Vermont received a letter from Centers for Medicare and Medicaid Services (CMS) temporarily waiving enforcement of the ACO Scale Targets in the APM Agreement. This waiver of enforcement for the remainder of the APM Agreement, including any extension years, was codified on November 30, 2022, when an extension to the APM Agreement was executed.
- **Alignment.** Scale Target ACO Initiatives offered by payers must reasonably align with the Medicare program, referred to as the Vermont Medicare ACO Initiative.

APM Agreement, §§ 6-9, Appendix 1.

Under GMCB Rule 5.000, § 5.407(b), the Board may, upon request of an ACO, adjust an ACO's previously approved budget.

FY23 REVIEW PROCESS

The review process for OneCare's FY23 budget is reflected in the following timeline:

07.01.22: The Board issued FY23 ACO budget guidance and reporting requirements to OneCare.
10.01.22: OneCare submitted its proposed FY23 budget to the Board.
10.24.22: Board staff and HCA requested additional information from OneCare regarding its proposed FY23 budget.
11.04.22: OneCare responded to Oct. 24, 2022 questions from Board staff and HCA.
11.09.22: OneCare presented its proposed FY23 budget to the Board at a public hearing.
11.12.22: Board staff and HCA sent second round of questions to OneCare regarding its proposed FY23 budget.
11.18.22: OneCare responded to Nov. 12, 2022 questions from Board staff and HCA.
11.21.22: Board staff and payer representatives presented data at a public Board meeting regarding OneCare's 2021 financial settlement and quality performance under payer programs.
12.07.22: Board staff presented their analysis and preliminary recommendations regarding OneCare's proposed FY23 budget.
12.14.22: Board staff presented additional analysis and updated recommendations regarding OneCare's proposed FY23 budget.
12.21.22: Board voted to approve OneCare's FY23 budget on the terms and subject to the conditions described in the FY23 Budget Order, which included a budget modification – a $303,799 reduction in operating expenses that was based on and tied to the amount of executive incentive compensation.
01.30.23: OneCare submitted to the GMCB an updated FY23 budget showing its budget without a contract with BCBSVT.
02.09.23: GMCB Chair Foster wrote OneCare with regards to its failure to comply with its approved budget order and directed OneCare to comply with the order by funding primary care support payments at approved levels.
03.02.23: GMCB convened a special meeting to address OneCare's post-BCBS withdrawal level of funding for its primary care provider support payments. Board members unanimously indicated that OneCare needs to continue supporting primary care providers at levels approved by the Board in December 2022.
03.31.23: In response to a Board mandate, OneCare submitted a benchmarking report that compares its network's performance against that of other national, peer ACOs.
03.31.23: OneCare submitted its revised FY23 budget to the GMCB. OneCare's revised budget accommodated the Board mandated downward administrative budget adjustment but not primarily by adjusting executive incentive compensation.
04.17.23: As reported in a GMCB public meeting on May 17, 2023, GMCB legal counsel advised OneCare legal counsel that OneCare needed to request a budget amendment in order for OneCare's approved budget to be consistent with OneCare's actual operations, which varied substantially from its approved budget.

05.03.23: GMCB staff presented analysis of OneCare's revised FY23 budget to the Board at a public meeting.
05.05:23: OneCare presented its revised FY23 budget to the GMCB at a public meeting.
05.17.23: The GMCB determined that OneCare's performance in FY23 varied substantially from its approved FY23 budget.
05.30.23: OneCare submitted a request to GMCB to modify OneCare's approved FY23 budget consistent with OneCare's Revised Budget.
06.14.23: The GMCB voted to approve OneCare's Revised Budget for FY23 subject to the conditions in this Amendment to the FY23 Budget Order.
08.09.23: The GMCB voted to modify one of its conditions on OneCare's Revised Budget to clarify how the condition would be calculated and enforced.

The written materials from this process are posted on the Board's website[2] and video recordings of the meetings are available from Onion River Community Access (ORCA) Media.[3]

FINDINGS

1. OneCare submitted its Revised Budget on March 31, 2023. On May 17, 2023, the GMCB made a finding that OneCare's performance varied substantially from its approved budget, as reflected in its FY23 Budget Order. On May 30, 2023, OneCare submitted a request to the GMCB to modify the FY23 Budget Order to reflect OneCare's Revised Budget.

2. The FY23 budget submitted by OneCare in the fall of 2022 and approved by the GMCB included an anticipated contract with Blue Cross and Blue Shield of Vermont (BCBSVT). *See* GMCB FY23 Accountable Care Organization Budget Order, In re: OneCare Vermont Accountable Care Organization, LLC Fiscal Year 2023, Docket No. 22-001-A (FY23 Budget Order), Findings ¶¶ 3-4. At the time the GMCB approved OneCare's FY23 budget, OneCare "remain[ed] hopeful that negotiations can resume and we can move forward for 2023." *See id.*, ¶ 4.

3. Not having a contract with BCBSVT resulted in the loss of a significant commercial payer program and a substantial decrease of more than 83,000 attributed lives in its commercial payer programs (including additional attributed lives from OneCare's new self-funded program). *See* OneCare Revised Budget Presentation (OneCare Presentation), PowerPoint Slide 4 (May 5, 2023). That decreased attribution represents approximately 81% of the commercial attribution and 28% of total attribution in OneCare's original budget. *See id*. OneCare identified not having a contract with BCBSVT as a "notable change" in its revised FY23 budget. *See* OneCare Presentation, 2.

4. OneCare's approved FY23 budget did not include a self-funded payer program or contract. *See* FY23 Budget Order, ¶¶ 3, 6. OneCare's revised budget includes a new risk contract with the University of Vermont Health Network with an estimated total cost of care of

[2] Written budget materials are available at https://gmcboard.vermont.gov/FY23OneCareVermont. Board presentations are available at https://gmcboard.vermont.gov/board/meeting-information/2022-meetings and https://gmcboard.vermont.gov/2023-meetings.
[3] https://www.orcamedia.net/series/green-mountain-care-board.

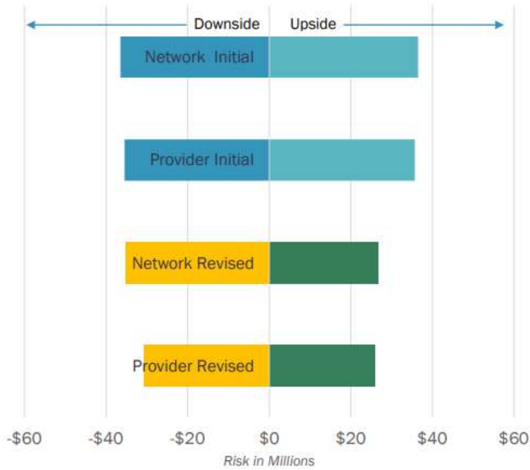
approximately $63 million. *See* OneCare Presentation, 5, 14. OneCare identified the new self-funded program contract as a "notable change" in its revised FY23 budget. *See id.*, 2.

5. As a result of not having a contract with BCBSVT, the addition of the new self-funded payer program, and changes in risk corridors, OneCare's risk model for FY23 is substantially different than the risk model in its approved budget. The graphic below summarizes the impact of the differences:

Initial FY23 Budget
- Network - $36.5M up/down
- Provider - $35.7M up/down

Revised FY23 Budget
- Network - $26.7M up; $35.1M down
- Provider - $25.8M up; $30.7M down

- Loss of BCBSVT risk
- Addition of UVMHN risk
- Changes in risk corridors for Medicaid and MVP



See GMCB Staff Presentation, PowerPoint Slide 15 (May 17, 2023); *see also* FY23 Budget Order, ¶¶ 5, 6, 12, 14.

6. OneCare's revised budget reduced its total risk by approximately $10 million, reflected in the following breakdown:

	Corridor Risk			Blueprint/SASH Risk *		
	Original Budget	Revised Budget	Change	Original Budget	Revised Budget	Change
Medicare	$16,873,874	$15,019,419	($1,854,455)	$9,545,916	$9,545,916	$0
Medicaid - Traditional	$7,922,865	$10,495,437	$2,572,572	$0	$0	$0
Medicaid - Expanded	$839,791	$0	($839,791)	$0	$0	$0
Commercial Programs	$10,895,617	$1,221,228	($9,674,389)	$0	$0	$0
Total	**$36,532,145**	**$26,736,084**	**($9,796,061)**	**$9,545,916**	**$9,545,916**	**$0**

* Risk that the advanced shared savings needs to be refunded to CMMI. OneCare now to hold $3.9M of this risk.

See OneCare Vermont Revised Budget Hearing, PowerPoint Slide 7 (May 9, 2023).

7. Updated full accountability summary income statement:

OneCareVT (Full Accountability Income Statement)	FY2022A	FY2023B	FY2023R2	FY23B vs. FY23R2 ($)	FY23B vs. FY23R2 (%)
Program Target Revenue	808,944,098	974,663,796	526,004,685	(448,659,111)	-46%
Payer Program Support Revenue	455,037,220	448,739,073	451,133,516	2,394,443	1%
State Support	-	-	-	-	
Grant Revenue	-	-	-	-	
MSO Revenues	-	-	-	-	
Other Revenue	25,596,063	25,491,500	23,556,500	(1,935,000)	-8%
Total Revenue	1,289,577,381	1,448,894,369	1,000,694,701	(448,199,668)	-31%
Expenses	793,488,829	965,117,880	516,458,769	(448,659,111)	-46%
Operational Expenses	13,543,183	15,189,971	14,791,715	(398,256)	-3%
PHM/Payment Reform Programs	481,505,645	468,586,518	469,444,217	857,699	0%
Total Expenses	1,288,537,657	1,448,894,369	1,000,694,701	(448,199,668)	-31%
Staffing					
FTEs	63	-	47		
Salaries / Benefits	-	-	8,059,973		

See GMCB Staff Presentation, PowerPoint Slide 33 (May 3, 2023).

8. Updated full accountability revenue:

	FY2022A	FY2023B	FY2023R2	FY23B vs. FY23R2 ($)	FY23B vs. FY23R2 (%)
Program Target Revenue	808,944,098	974,663,796	526,004,685	(448,659,111)	-46%
Payer Program Support Revenue	455,037,220	448,739,073	451,133,516	2,394,443	1%
Other Revenue	25,596,063	25,491,500	23,556,500	(1,935,000)	-8%
Total Revenue	1,289,577,381	1,448,894,369	1,000,694,701	(448,199,668)	-31%

	FY2022A	FY2023B	FY2023R2	FY23B vs. FY23R2 ($)	FY23B vs. FY23R2 (%)
Expenses	793,488,829	965,117,880	516,458,769	(448,659,111)	-46%
Health Services Spending	814,765,963	-	-	-	
OneCare Hospital Payments	-	965,117,880	516,458,769	(448,659,111)	-46%
Expected Spending Under (Over) Claims Target	(23,277,134)	-	-	-	
Other Expenses	2,000,000	-	-	-	
Operational Expenses	13,543,183	15,189,971	14,791,715	(398,256)	-3%
Salaries & Benefits	8,153,830	8,704,465	8,059,973	(644,492)	-7%
Contracted Services	-	3,369,471	3,745,930	376,459	11%
Software	2,259,168	1,871,810	1,734,949	(136,861)	-7%
Insurance	-	261,000	261,000	-	0%
Supplies	-	35,099	31,300	(3,799)	-11%
Travel	-	25,975	25,800	(175)	-1%
Occupancy	-	71,455	50,775	(20,680)	-29%
Other Expenses	1,563,239	850,696	881,988	31,292	4%
Purchased Services	1,566,946	-	-	-	
FPP	444,914,920	438,664,506	443,189,489	4,524,983	1%
PHM/Payment Reform Programs	36,590,725	29,922,012	26,254,728	(3,667,284)	-12%
Total Expenses	1,288,537,657	1,448,894,369	1,000,694,701	(448,199,668)	-31%

See GMCB Staff Presentation, PowerPoint Slide 34 (May 3, 2023).

9. Updated full accountability expenses:

	FY2022A	FY2023B	FY2023R2	FY23B vs. FY23R2 ($)	FY23B vs. FY23R2 (%)
Expenses	793,488,829	965,117,880	516,458,769	(448,659,111)	-46%
Operational Expenses	13,543,183	15,189,971	14,791,715	(398,256)	-3%
PHM/Payment Reform Programs	481,505,645	468,586,518	469,444,217	857,699	0%
FPP	444,914,920	438,664,506	443,189,489	4,524,983	1%
Population Health Mgmt Pymt	9,469,594	-	-	-	
Complex Care Coordination Program	5,901,304	-	-	-	
Value-Based Incentive Fund	1,569,923	-	-	-	
Comprehensive Payment Reform Program	1,750,164	1,510,492	1,617,513	107,021	7%
Program Match	82,500	-	-	-	
Amplify Grants	34,521	-	-	-	
DULCE	204,485	145,366	145,366	-	0%
Longitudinal Care	365,120	399,000	399,000	-	0%
Chronic Kidney Disease	23,166	-	-	-	
Mental Health Initiatives	64,553	-	-	-	
Innovation Fund	54,236	69,667	69,667	-	0%
Mental Health Screening Initiative	-	-	1,638,140	1,638,140	
PCMH Legacy Payments	2,050,951	2,163,158	2,062,850	(100,308)	-5%
CHT Funding Risk Communities	2,739,498	2,874,062	2,974,370	100,308	3%
SASH Funding Risk Communities	4,285,796	4,508,696	4,508,696	-	0%
PCP Engagement Medicaid Expanded	(12,500)	-	-	-	
PCP Engagement BCBSVT Primary	-	-	-	-	
VBIF Reinvestment Expense	6,000	296,240	296,240	-	0%
Settlement Expense	7,999,389	-	-	-	
PHM Base Payment	-	15,274,117	11,425,898	(3,848,219)	-25%
PHM Bonus Potential	-	2,329,915	765,689	(1,564,226)	-67%
Specialist Funding	2,025	150,000	150,000	-	0%
SNF Support	-	201,299	201,299	-	0%
Total Expenses	1,288,537,657	1,448,894,369	1,000,694,701	(448,199,668)	-31%

See GMCB Staff Presentation, PowerPoint Slide 35 (May 3, 2023).

10. OneCare's revised budget showed a large increase in the amount of operational expense per attributed life over the initial budget. Indeed, operational expense per attributed life jumped from $53 to $77, a 45% increase.

	2018	2019	2020	2021	2022	2023 Initial	2023 Final
Average Attributed Lives	109,914	163,340	230,765	242,758	228,459*	285,548	190,642
Pop Health Spending	$22.6M	$29.5M	$32.7M	$28.2M	$36.6M	$29.9M	$26.3M
Pop Health Exp per Attributed Life	$206	$181	$142	$116	$160	$105	$138
Operating Expenses	$13.7M	$15.3M	$14.0M	$13.6M	$13.5M	$15.2M	$14.8M
Operating per Attributed Life	$125	$94	$61	$56	$59	$53	$77

*estimated
Note: Rounding may cause slight variations in calculations above

See GMCB Staff Presentation, PowerPoint Slide 41 (May 3, 2023).

11. OneCare's revised budget includes a decrease in operating expenses of $398,255, as seen in the table below:

■ Changes stem from:

- 2% admin cut
- Evaluation strategy
- Deletion of BCBSVT contract
- Other budgetary updates based on latest information available

	Original Budget	Revised Budget	Change	Primary Driver
Wages & Fringe	$8,704,465	$8,059,973	($644,492)	Positions lost due to 2% admin cut
Purchased Services	$3,369,471	$3,745,930	$376,459	Evaluation strategy; contract updates
Contract & Maintenance	$0	$0	$0	
Software	$1,871,810	$1,734,949	($136,860)	2% admin cut; accounting changes
Insurance	$261,000	$261,000	$0	
Food & Beverage	$18,710	$18,710	$0	
Advertising	$114,000	$50,000	($64,000)	2% admin cut
Travel	$25,975	$25,800	($175)	
Books, Dues, Subscriptions and Licenses	$67,478	$67,478	$0	
Mail & Production	$30,000	$21,750	($8,250)	No contract with BCBSVT
Office Supplies	$35,099	$31,300	($3,799)	
Other Operating Expenses	$508,887	$607,800	$98,913	GMCB billback update
Professional Development	$104,220	$103,349	($871)	
Lease & Rental	$71,455	$50,775	($20,680)	Accounting changes
Utilities	$7,401	$12,901	$5,500	Accounting changes
Risk Protection	$0	$0	$0	
Total	**$15,189,971**	**$14,791,715**	**($398,255)**	

See OneCare Vermont Revised Budget Hearing, PowerPoint Slide 10 (May 9, 2023). *See also* FY23 Budget Order, ¶¶ 12, 13.

The reduction in wages and fringe of $644,492 consists of a reduction of $105,180 in budgeted executive compensation and a reduction of $539,312 in budgeted non-executive compensation. See GMCB Staff Analysis (May 3, 2023), Slide 36.

12. OneCare's revised budget includes a decrease of approximately $3.7 million in population health management (PHM) expenses from its approved FY23 budget, which is reduced to $1.7 million, with $2 million paid directly by the Department of Vermont Health Access (DVHA) to providers, as set forth in the following table:

PHM Expenses

- Fewer attributed lives leads to less PHM Program expense
- Incorporation of DVHA funding model
- Incorporation of CPR modification
- New MH Screening and Follow-Up initiative

	Original Budget	Revised Budget	Change	Notes
PHM Base Payments - PCP	$13,156,767	$9,733,548	($3,423,219)	Fewer BCBSVT lives
PHM Base Payments - HH	$882,300	$882,300	$0	
PHM Base Payments - DA	$1,065,050	$640,050	($425,000)	Change in DVHA funding model
PHM Base Payments - AAA	$170,000	$170,000	$0	
PHM Bonus Potential - PCP	$2,030,995	$1,537,459	($493,536)	Fewer BCBSVT lives
PHM Bonus Potential - PCP (DVHA Funding)	$0	($912,514)	($912,514)	Change in DVHA funding model
PHM Bonus Potential - HH	$124,560	$124,560	$0	
PHM Bonus Potential - HH (DVHA Funding)	$0	($8,719)	($8,719)	Change in DVHA funding model
PHM Bonus Potential - DA	$150,360	$590,360	$440,000	Change in DVHA funding model
PHM Bonus Potential - DA (DVHA Funding)	$0	($589,456)	($589,456)	Change in DVHA funding model
PHM Bonus Potential - AAA	$24,000	$24,000	$0	
Longitudinal Care	$399,000	$399,000	$0	
DULCE	$145,366	$145,366	$0	
CPR Program Cost	$1,510,492	$2,106,823	$596,330	MVP transition into CPR
CPR Program Cost (DVHA Funding)	$0	($489,310)	($489,310)	Change in DVHA funding model
Specialist Fund	$150,000	$150,000	$0	
Innovation Fund	$69,667	$69,667	$0	
MH Screening and Follow-Up Program	$0	$1,638,140	$1,638,140	New Initiative
SNF Initiative	$201,299	$201,299	$0	
Quality Improvement Initiatives	$296,240	$296,240	$0	
PCMH Payments	$2,163,158	$2,062,850	($100,308)	Updated to reflect info from State
Community Health Team Payments	$2,874,062	$2,974,370	$100,308	Updated to reflect info from State
SASH	$4,508,696	$4,508,696	$0	
Total	**$29,922,012**	**$26,254,729**	**($3,667,284)**	

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See OneCare Vermont Revised Budget Hearing, PowerPoint Slide 9 (May 9, 2023); *see also* FY23 Budget Order, ¶¶ 54-56; GMCB Staff Presentation, PowerPoint Slide 16 (May 17, 2023).

13. OneCare's revised budget altered payments made to the network's primary care providers. The loss of the BCBSVT contract resulted in a decrease in the number of attributed lives for which independent primary care providers were able to earn payments through the Comprehensive Payment Reform (CPR) program. In February and March of 2023, Board Chair Foster sent a letter to OneCare and the Board convened a special hearing to address OneCare's failure to commit to continue level funding of primary care provider initiatives. OneCare later migrated lives attributable through the MVP payer program into the CPR financial model, thereby lessening the impact for some providers. *See* OneCare Presentation, 15. OneCare responded by creating a new population health program entitled the Mental Health Screening and Follow-Up Initiative. *See* OneCare Presentation, 43. Overall, PHM payments to primary care providers decreased by $1.68M from the initial to the revised budget.

14. During OneCare's hearing for the revised budget on May 5, the Board questioned OneCare about how it ensured OneCare PCP incentive payments paid to hospitals for hospital-owned primary care-earned funds were being utilized for the intended purpose of

supporting primary care. *See* Hearing Transcript (May 5, 2023), Testimony of Thomas Borys, 132:20-135:5. Mr. Borys testified that OneCare did not track those payments beyond payment to the hospital: "It's not trackable for us unless we were to ask for specific reporting" and that, to date, OneCare has not asked for that reporting. See Hearing Transcript, Testimony of Thomas Borys, 134:12-134:19. OneCare's approach is to inform the hospital of the intended use of the payments, but without tracking or other obligation: "Certainly a challenging dynamic for us at OneCare where our authority effectively ends at the [TIN] level, once you make that payment. One of the strategies is through communication and also communication on the payment statements to really make it clear that this payment is for the purposes of, you know, primary care support or care coordination, things like that to help direct the funds to the correct part of the organization. But that is ultimately the responsibility of the organization to use the funds in the appropriate spirit." Hearing Transcript, Testimony of Thomas Borys, 133:9-133:20.

15. Between May 5th and the Board's decision to modify OneCare's FY23 budget on June 14th, OneCare did not communicate with the Board regarding its concerns that OneCare could not confirm whether the entirety of the hospital-based primary care provider support payments were utilized to support primary care. As of the date of this opinion, OneCare has yet to provide the Board with any further information relating to this open issue.

16. On March 31, 2023, OneCare submitted its most recent Medicare ACO Performance Benchmarking report. *See* OCV Medicare FFS Benchmarking Analysis (March 31, 2023) (Benchmarking Report).[4] This was the second version of the report, following the first submission on October 31, 2022. *See* OneCare Medicare Benchmarking Report – October 2022.[5] The methodology in the initial report submitted required clarification from OneCare's vendor and additional modification, and some required elements of the report needed additional refinement necessary for usability. *See* GMCB Memo to OneCare Re: Status of Medicare ACO Performance Benchmarking Report and report guidance for March 31 budget resubmission (FY23 Budget Condition #1) (February 27, 2023); *see also* GMCB Staff Analysis and Preliminary Recommendations (December 7, 2022), 88-93. The new version included updates to the report required by the GMCB in a memo dated February 27, 2023. In their presentations on May 3 and May 17, 2023, GMCB staff outlined required updates to the next version of the report, due October 1, 2023.

17. The Executive Summary of the March 31 report notes that while OneCare attributed lives tend to generate lower cost outcomes relative to the national comparison groups, that gap is shrinking. *See* OneCare March 2023 Medicare Benchmarking Report – Executive Summary (March 31, 2023), 2. At the same time, results for OneCare attributed lives show unfavorable results relative to national comparison groups for key ACO measures such as high Emergency Department utilization and cost of care, and low primary care utilization:

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[4] Available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fgmcboard.vermont.gov%2Fsites%2Fgmcb%2Ffiles%2Fdocuments%2FOCV_FY23_Benchmarking-Attachment-D-Medicare-FFS-Benchmarking-Report_Sent-03-31-2023.xlsx&wdOrigin=BROWSELINK

[5] Available at: https://gmcboard.vermont.gov/sites/gmcb/files/documents/OCV_FY22-Benchmarking-Report_10-31-22.pdf

- High emergency department utilization and cost across all measured years
    - ED Visits/1000:
        - 36.6% higher than the National Peer ACO Comparison Cohort Average in 2021
        - 45.4% higher than National All ACO Comparison Cohort 50th percentile in 2021
    - ED Cost of Care PBPM
        - 35.1% higher than the National Peer ACO Cohort Average in 2021
        - 49.2% higher than the National All ACO Cohort 50th percentile in 2021

- Low primary care utilization and rate of annual wellness visits *across all measured years*
    - Percent of members with a primary care visit
        - 13.6% lower than the National Peer ACO Cohort Average in 2021
        - 3.4% lower than the National All ACO Cohort 10th percentile in 2021 (shows up as the 90th percentile on the report due to the inverse nature of the measure)
    - Primary Care Visits/1000:
        - 18.7% lower than the National Peer ACO Comparison Cohort Average in 2021
        - 36.3% lower than the National All ACO Cohort 90th percentile in 2021 (shows up as the 10th percentile on the report due to the inverse nature of the measure)
    - Percent of members with an annual wellness visit (AWV):
        - 13.0% lower than the National Peer ACO Comparison Cohort Average in 2021 (Note a pattern of decreasing utilization of AWV from pre-pandemic (3.2% lower in 2019) to during pandemic (2020-2021))
        - 34.4% lower than the National All ACO Cohort 90th percentile (shows up as the 10th percentile on the report due to the inverse nature of the measure)

See OneCare March 2023 Medicare Benchmarking Report – Executive Summary (March 31, 2023), 2.

18. The benchmarking report also shows OneCare's total cost of care per beneficiary per month has increased from 11.6% less than the peer cohort average in 2019 and 13.8% less than the peer cohort average in 2020 to 8% less than the peer cohort average in 2021. *See* OneCare March 2023 Medicare Benchmarking Report (March 31, 2023).

19. As part of the FY23 Certification Eligibility Verification process for OneCare, OneCare provided the UVMHN Executive Compensation Philosophy, which OneCare follows. *See* FY23 Certification Follow-up: Executive Compensation (May 19, 2023), 3-4. This document outlines that the executive compensation program includes salaries targeted at

the 50th percentile (median) of the national peer group, and that individual salaries will be administered within ranges structures with midpoints set at the median and a 50% spread from minimum and maximum, with consideration of regional data. *See* UVMHN Executive Compensation Philosophy, 3.[6] Performance-based variable pay "sufficient to provide total compensation opportunities at the 65th percentile" of the national peer group based on meeting strategic and operational network objectives is also an element of the philosophy. *See id*. Actual total cash compensation for executives may be below, at, or above the 65th percentile of the market depending on the positioning of an executive's salary within the appropriate salary range, performance of the network and its affiliates, and other criteria. *See id.*

20. The GMCB requested and OneCare provided a description and supporting documentation for its process for establishing base and variable compensation, the benchmark sources that OneCare uses to determine its compensation reference indices, corporate goals upon which executive variable pay is based, as approved by the OneCare Board of Managers for FY23 and prior years. *See* OneCare responses to February 27, 2023 Memorandum from GMCB to OneCare regarding Executive Compensation and OneCare responses to May 9, 2023 Memorandum from GMCB to OneCare regarding Executive Compensation.[7] OneCare's responses included a statement compensation philosophy that OneCare follows, a description of its salary benchmarks, its FY22 and FY23 corporate goals, OneCare board of manager meeting agenda and minutes, and responses to questions including the amounts of variable pay possible and awarded for executives from 2018 through 2022. *See id*.

21. OneCare's corporate goals for FY23, along with the metrics OneCare intends to use to evaluate the goals are set out below:

[6] Available at: https://gmcboard.vermont.gov/sites/gmcb/files/documents/Attachment%20D%20-%20UVMHN%20Executive%20Compensation%20Philosophy.pdf.
[7] Available under FY2023 Certification Eligibility Verification at: https://gmcboard.vermont.gov/FY23OneCareVermont

Domain(s)	Goal	Weight	Metrics/Measurement*	
			Threshold**	Target***
All	Financial Management	Gate	Manage within the FY23 administrative budget and meet quality reporting requirements	N/A
Payment Reform; Network Performance Management	Develop a plan for future (2024+) value based care contracts, to include: • Payer contracts • CPR program • PHM Accountability advancements	40%	Engage network and key stakeholders to inform strategic planning process. Research and present draft findings of public and private value based future program options to the Board	Complete strategic planning with 75% or more of identified stakeholders completing structured interview and survey. Board approved 3-5 year strategic plan to begin 2024. Plan will include viable value based programs for execution and business structures needed to execute on any new or enhanced value based care program offerings
Network Performance Management	Integrate health disparities findings into PHM model for 2024 to align incentive structure to minimize health disparities	10%	A report to the Board on how OneCare has incorporated disparities scorecards findings into HSA Consultations	All HSAs select and incorporate selected areas of focus in QI efforts. OneCare reports to the Board on HSA engagement in focused QI efforts.
Data & Analytics	Successfully transition to a new data platform	30%	New baseline population health data reports are created and socialized with participants	By Q3, foundational population health reports are generated in the new analytics platform and pushed to the network electronically
Data & Analytics	Develop comprehensive OneCare evaluation strategy and action plan for CPR and PHM programs	20%	Evaluation Plan approved by governance committees	Evaluation findings incorporated into program planning and budget for 2024. Key findings made available publically.

* Metric completion is determined by validating completion of each component of measurement in each category (i.e. Threshold completion = 50% x Weight). The Board has latitude to adjust goals and weights if circumstances or priorities change during the year.

**Meeting Threshold indicates modest reward for good, "satisfactory performance" marked by substantial progress or improvement and noteworthy achievements. P50 represents median salary within pay band.

*** Meeting Target indicates reward for "strong performance" marked by achieving the target goal; multiple goals within each performance category may be weighted. P65 represents competitive salary (e.g. 65th %ile) within pay band.

OneCare FY23 Certification Follow-up: Executive Compensation – Attachment A, 2023 Corporate Goals.

22. In response to Board request, OneCare provided the following break down of base pay, potential variable pay, and awarded variable pay for previous years, including 2021 and 2022 as set forth below:

2021	Base Pay	Potential Variable Pay	Awarded Variable Pay *	% Variable of Pay Awarded
CEO	$375,000	$93,750	$77,813	83%
VPs	$499,600	$99,920	$84,214	84%
Directors	$646,485	$64,648	$55,956	87%
Total		$258,318	$217,982	84%

2022	Base Pay	Potential Variable Pay	Awarded Variable Pay *	% of Variable Pay Awarded
CEO	$384,375	$96,094	$96,094	100%
VPs	$805,963	$161,193	$161,193	100%
Directors	$995,322	$99,532	$99,532	100%
Total		$356,819	$356,819	100%

* Impacted by the date of hire in the position and whether the previous position was eligible for variable pay. For example, if a position was filled mid-year the employee is eligible for a prorated portion of variable pay.

^ Reduced to help accommodate the pandemic-related financial stresses on the health care system that funds OneCare.

~ Eliminated to help accommodate the pandemic-related financial stresses on the health care system that funds OneCare.

OneCare Vermont FY23 Certification Follow-up: Executive Compensation (May 19, 2023), 3.

23. OneCare's budgeted FY23 compensation, in its revised FY23 budget, for executives is set forth below:

Appendix 6.7: ACO Management Compensation (FY 2023 projected) [updated]

Position Title	Base Pay/Benefits	Variable Pay	Variable Pay Range (% of base pay)*	Budgeted Gross Compensation
Board Chair	$0	$0	n/a	$0
Board Trustees (18)	$0	$0	n/a	$0
CEO	$387,979	$96,094	0% - 25%	$484,072
CCO	$163,404	$16,189	0% - 10%	$179,593
VP/COO	$305,834	$60,599	0% - 20%	$366,432
VP/Finance	$255,727	$50,670	0% - 20%	$306,398
VP/CMO	$199,993	$39,627	0% - 20%	$239,620
Chief Legal Officer	$178,995	$11,963	0% - 10%	$190,958
Director, ACO Operations	$178,815	$17,715	0% - 10%	$196,530
Director, Strategy/Planning	$178,814	$17,715	0% - 10%	$196,530
Director, Value Based Care	$175,875	$17,424	0% - 10%	$193,299
Director, Payment Reform	$168,149	$16,659	0% - 10%	$184,808
Director, Finance and Accounting	$157,463	$13,000	0% - 10%	$170,463
Director, Public Affairs	$162,375	$16,087	0% - 10%	$178,462
Total Compensation Reported			n/a	**$2,887,165**

* Please note that the actual percentage of Variable Pay to Base Pay is slightly less than the maximum pay range noted. This is due to timing between the variable pay year (October - September) and OneCare's fiscal year (January - December).

OneCare Revised FY23 Budget, App. 6.7.

24. OneCare's awarded variable pay for its executives at the VP-level and above increased from $162,027 in 2021 to $257,287 in 2022, a 59% increase. *See* OneCare Vermont FY23 Certification Follow-up: Executive Compensation (May 19, 2023), 2-3. The potential variable compensation increased in OneCare's budgeted FY23 to $275,142, which is a 70% increase from FY21. *See* OneCare Revised FY23 Budget, App. 6.7. The percentage of total possible variable compensation awarded for executives at the VP-level and above increased from 52% in 2019 to 84% in 2021 and 100% in 2022. *See id*.

25. OneCare's total compensation for its executives at the VP-level and above increased from $1,092,582 in FY21 to $1,547,157 in FY22 to $1,767,073 budgeted in FY23, which reflects a 62% increase from FY21 to budgeted FY23. *See* OneCare Revised FY23 Budget, App. 6.7, OneCare Vermont FY23 Certification Follow-up: Executive Compensation (May 19, 2023), 2-3.

26. Base pay and variable pay are not the entirety of OneCare's executives' compensation and benefits package, which is reported by OneCare on its Form 990 filed with the IRS. The following is from OneCare's 2021 Form 990:

Schedule J (Form 990) 2021 ONECARE VERMONT ACCOUNTABLE CARE 45-5399218 Page 2

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that aren't listed on Form 990, Part VII.

Note: The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W-2 and/or 1099-MISC and/or 1099-NEC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
VICTORIA LONER	(i)	371,308.	77,813.	9,870.	20,300.	31,614.	510,905.	NONE
1 CHIEF EXECUTIVE OFFIC	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
THOMAS BORYS	(i)	210,872.	35,471.	4,612.	14,937.	25,853.	291,745.	NONE
2 VP OF FINANCE, ACO	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
GREGORY DANIELS	(i)	153,404.	12,490.	4,480.	11,163.	27,908.	209,445.	NONE
3 CHIEF COMPLIANCE OFFI	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
NORMAN WARD, MD	(i)	214,203.	NONE	44,775.	26,426.	3,049.	288,453.	NONE
4 CHIEF MEDICAL OFFICER	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
SARA BARRY	(i)	285,767.	48,742.	5,148.	20,154.	13,465.	373,276.	NONE
5 VP & CHIEF OPERATING	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
JOAN ZIPKO	(i)	168,866.	15,458.	13,262.	12,345.	28,149.	238,080.	NONE
6 DIRECTOR ACO OPERATIO	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
MARTITA GIARD	(i)	165,574.	15,019.	6,544.	13,609.	21,640.	222,386.	NONE
7 DIRECTOR ACO STRATEGY	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
AMY BODETTE	(i)	140,694.	12,990.	294.	10,260.	28,822.	193,060.	NONE
8 DIRECTOR PUBLIC AFFAI	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
KIMBERLEY DOUGLAS	(i)	129,404.	NONE	3,207.	12,291.	30,638.	175,540.	NONE
9 MANAGER ACO FINANCE&A	(ii)	NONE	NONE	NONE	NONE	NONE	NONE	NONE
	(i)							

See OneCare Vermont Accountable Care Organization, 2021 Form 990, Schedule J, available at: https://www.onecarevt.org/wp-content/uploads/2022/12/OCV-2021-Form-990_FINAL-FOR-PUBLIC-DISCLOSURE.pdf.

27. The GMCB received seven written public comments during a special comment period on OneCare's revised FY23 budget submission.[8] Several commenters reflected on OneCare's executive compensation: "For most of OneCare's Management staff, total compensation included almost the full 100% Variable Payment suggesting exceptional performance. Yet, OneCare has failed to reduce health care costs, slow the rate of growth, improve quality, address the shortage of primary care physicians and community mental health services, or increase the number of Vermonters served by the ACO." Comments from Julie Wasserman to GMCB Re: OneCare Vermont's 2023 Revised ACO Budget (April 14, 2023), 3. "After amassing $83 million in total operating costs since its inception (approximately $13 million of which was absorbed by administrative services with lucrative compensation packages for certain executives), OCV still encompasses only a sliver of the commercially insured market and, in the immediate future, predicts it will serve just 29 percent of all Vermonters." Letter from Mark Hage, Director of Benefit Programs, Vermont-NEA to GMCB (June 13, 2023), 1. And "Except for the 2020 pandemic year, it is notable that the median total variable compensation awarded to OCV's Vice Presidents and Directors rose from 68.5% in 2018 to 100% in 2022. From 2018-2022, Vermonters have now paid OneCare executives over $10 million dollars in base salary and over a million dollars in variable pay. These payments must be considered in the context that there has been no causal evidence that the ACO has reduced cost growth or improved the quality and overall care of its enrollees, as required by Board rule." Letter from Health Care Advocate to GMCB RE: Office of the Health Care Advocate Comments on FY2023 OneCare Budget Resubmission (May 23, 2023) 1-2.

[8] Public comments received during the special public comment period are available at: https://gmcboard.vermont.gov/board/comment/previous.

CONCLUSIONS

OneCare's operations for FY23, as reflected in its Revised Budget, differ substantially from the FY23 budget that the GMCB approved in December 2022. First, the loss of the largest commercial payer in BCBSVT reduced OneCare's attribution by approximately 83,000 lives. Findings, ¶ 3. Not having a contract with BCBSVT also resulted in fewer dollars flowing through OneCare. Findings, ¶¶ 7-8. Whether OneCare or BCBSVT is to blame for the failure to contract is irrelevant and the result is the same: the scope of OneCare's operations, with fewer attributed lives, fewer dollars, and one less payer contract, is narrower and with less potential impact of its operations.

OneCare's operating expenses, however, did not reflect the fact that OneCare is serving fewer Vermonters and managing one less payer contract in FY23. Operating expense per covered life jumped from $53 per life in OneCare's originally approved FY23 budget – similar to its prior two years of $59 and $56 per life – to $77 per covered life in OneCare's revised FY23 budget. Findings, ¶ 10. As part of the approval of OneCare's original budget, the GMCB ordered OneCare to reduce its operating expenses by at least 2%. *See* FY23 Budget Order, Condition 13. OneCare reduced its operating expenses by 2.6%, which is only approximately $91,140 more than was ordered in our original FY23 Budget Order. Findings, ¶ 11. OneCare reduced its wages by a budgeted total of $644,492 – of which $539,312 was a reduction in non-executive compensation, largely through an elimination of budgeted positions. *See id*. OneCare's operating budget also decreased by approximately $137,000 from a reduction in software charges, a $64,000 reduction in its advertising budget, and an $8,250 reduction in mailing and production costs as a result of not having a contract with BCBSVT. *See id*. OneCare's revised operating budget reductions were partially offset by operating budget increases of approximately $377,000 in purchased services and $99,000 in other operating expenses. *See id*.

Additionally, OneCare's risk model changed from $36.5 million upside and downside network risk and $35.7 million upside and downside provider risk in its original approved FY23 budget to more limited risk: network risk of $26.7 million upside and $35.1 million downside and provider risk of $25.8 million upside and $30.7 million downside. *See* Findings, ¶¶ 5-6. The change reflects not only the absence of a contract with BCBSVT but also a change in the risk corridors for the other commercial insurer that OneCare contracts with. *See id*.

With the changes in OneCare's revised budget, the ACO's total population health payments declined by approximately $3.7 million, largely driven by the approximately $3.4 million reduction in primary care base payments. *See* Findings, ¶ 12. Despite these significant changes, OneCare failed to request a budget amendment despite twice being advised that one was needed under applicable rule. Indeed, OneCare only requested a budget amendment following a Board vote and determination made under GMCB Rule 5.000, § 5.407(a) that OneCare's FY23 performance varied substantially from OneCare's FY23 budget as approved by the GMCB.

At the end of March, OneCare provided the GMCB with results of its benchmarking analysis of OneCare's performance against a peer group of ACOs with data from 2019-2021.[9] Findings, ¶¶ 15-16. OneCare attributed lives tend to generate lower cost outcomes relative to the national comparison groups, but that gap shrank in 2021, indicating a decline in OneCare's performance that year. *See id*. The benchmarking report also showed higher than average ED utilization, with ED visits per 1,000 lives 36.6% above average and 45.4% above the median. The ED cost of care was similarly above the average and median. *See id*. The benchmarking data also shows primary care visits per 1,000 lives at 18.7% below average for OneCare's peer group, and the percent of members with a primary care visit was in the bottom 10% for the peer group. *See id*.

During OneCare's presentation to the GMCB in May 2023, OneCare couldn't confirm that PCP incentive funds earned by hospital-owned PCP were in fact spent to support primary care practices. Findings, ¶¶ 13-14. A key statutory criterion for our review of ACO budgets is "the extent to which the ACO provides incentives for systemic health care investments to strengthen primary care, including strategies for recruiting additional primary care providers, providing resources to expand capacity in existing primary care practices . . . ." 18 V.S.A. § 9382(b)(1)(G). The fact that OneCare's position is that use of these funds is "not trackable for [OneCare] unless we were to ask for specific reporting," which OneCare has not done, raises serious questions about whether the funds presented as PCP funding actually support PCPs. This open issue is particularly concerning in light of OneCare's poor—and declining—performance as compared to peer ACOs. Indeed, OneCare's primary care visit and wellness visit rates went from 15.2% and 3.2% below average, respectively, in the Medicare benchmarking report in 2019 to 18.7% and 13.0% below average, respectively, in 2021. As has been widely recognized, access to primary care is a critical component of a strong healthcare system, and an area where Vermont faces challenges. *See generally*, *e.g.*, GMCB Roundtable: Sustainability of Primary Care in Vermont (April 19, 2023). Providing incentives for investment that expands primary care by adding providers and expanding capacity in existing practices is a statutory factor the Board must evaluate in reviewing OneCare's budget. *See* 18 V.S.A. § 9382(b)(1)(G).

Addressing these concerns, we impose two additional conditions on OneCare's revised budget. First, OneCare must obtain attestations from hospitals that receive PCP incentive payments that provide a historical use and accounting of PCP funds that the hospital has received from OneCare in prior years. The attestation will also address prospective use of these PCP funds. OneCare must provide GMCB the affidavits from its applicable hospital participants by October 1, 2023.

Second, we conclude that a further reduction in OneCare's operational expenses is warranted based on the changes in OneCare's budget and its performance, and OneCare is required to achieve that operational expense reduction by capping the total compensation paid in FY23 to its top executives (VP-level and above, which covers OneCare's top six executives) at the median (50th percentile) of the benchmark that OneCare uses to establish compensation to those executives, which is the target for the base salaries based on OneCare's compensation philosophy.

[9] OneCare provided a benchmarking report to the GMCB in October, but the methodology limited the comparison cohort and the utility of the comparisons. The methodology was changed to provide more useful comparisons and the report resubmitted to the GMCB in March, 2023. See Findings, ¶ 16.

Findings, ¶ 17. OneCare notably elected in FY22 to pay 100% of possible variable compensation to its CEO, VP, and Director level executives, for a total of $356,819. *See* Findings, ¶ 25. This exceptional payment is not justified by OneCare's performance that year. Nor does OneCare's performance justify a 70% increase in variable compensation from FY21 to FY23 and a 62% increase in total compensation from FY21 to budgeted FY23. *See* Findings ¶¶ 24-25. While the Board did not specifically vote on or make a finding that OneCare's FY22 or FY23 variable compensation was structured to achieve specific and measurable goals that support the ACO's efforts to reduce cost growth or improve the quality and overall care of its attributed lives, the majority is doubtful that OneCare's variable compensation passes muster.

The GMCB received several public comments regarding OneCare's revised FY23 budget, many addressing executive compensation. Findings, ¶ 27. These comments highlight the disconnect between OneCare's executive pay structure, particularly its decision to award full bonuses to its executives in 2022, and OneCare's results. As the Office of the Health Care Advocate states in their comments, "Put simply, OCV's executive pay structure signals a disappointing lack of understanding of the lives of thousands of Vermonters who cannot afford the care that they need."

Ultimately, OneCare could have complied with the 2% administrative expense reduction required by the GMCB by reducing its executives' compensation, but OneCare instead chose to reduce its administrative expenses primarily through other changes in its budget. *See* Findings, ¶ 11.

OneCare's performance, including the changes that OneCare elected to make to its budget and its failure of accountability that comes from failing to adequately track PCP payments, warrant this salary cap. OneCare must use the money realized by the reduction in executive compensation for its population health programs. The reduction in executive salaries and redirection of those funds to support population health initiatives utilizes that money in a way that is fundamentally more beneficial to Vermonters. While the dissent raises potential downside impacts of capping salaries for OneCare's top executives to market median levels, we find those concerns unpersuasive here given OneCare's Interim CEO indicated in public comment that "none of us are here for the money; we are here for the mission and what we want to accomplish in this role." More fundamentally, the Board's decision reallocates actual dollars to a use that is more beneficial to Vermont – direct investment in a healthcare system desperate for scarce financial resources. Leaving OneCare to determine the best of the eligible population health programs to apply the additional funds to does not negate the value to the State of spending the money to serve patients and providers rather than its executives' paychecks.

Subject to those conditions, as set out in the Order below, we approve OneCare's Revised Budget.

With respect to the concerns raised in the dissenting opinion regarding process, there is no requirement that the Board refrain from voting on proposals, even significant proposals, without first opening a special comment period or providing specific notice of the proposal to the regulated entity. Proposals for Board action necessarily arise out of discussion and deliberation amongst Board members, as was the case here. There was also no request that a public comment period be

opened, and OneCare's executive compensation, its performance, and its support of primary care, have long been areas of concern for the Board and the subjects of public comment. *See* Findings ¶ 26. Similarly, with respect to the dissent's concern for the lack of specific targets or direction on executive compensation in the FY23 ACO budget guidance, the Board may – but is not required – to establish benchmarks in ACO budget guidance. Under GMCB rule, the Board "may establish benchmarks for any indicators to be used by ACOs in developing and preparing their proposed budgets," and those benchmarks "will assist the Board in determining whether to approve or modify an ACO's proposed budget." GMCB Rule 5.000, § 5.402. The rule does not require a specific target or direction be established in guidance for the Board to modify an ACO's budget.

While our colleagues may have preferred additional process, no more was required by statute, rule, regulation, or practice. Indeed, there was ample public comment on this issue and the process here was consistent with procedural due process. OneCare was well aware of the nature of the proceedings and should not have been surprised that the Board took action on executive compensation. *See* In re Vt. Health Serv. Corp., 155 Vt. 457, 460-61 (1990). OneCare had a meaningful opportunity to be heard on the issue. For instance, OneCare had an opportunity to comment on the Board's decision to modify the FY 2023 budget – a modification that was based on and tied to executive incentive compensation – and OneCare's Interim CEO was present at the Board's meeting on June 14, 2023, and spoke against imposing a cap on executive compensation. Among the things that the Interim CEO said in his comments was that "none of us are here for the money; we are here for the mission and what we want to accomplish in this role." We therefore have less concerns about the consequences of reducing executive compensation to the market median according to OneCare's own target for base salary, as expressed by our colleagues in their dissent. That said, we support getting additional information from OneCare, although accomplishing that has proved difficult.

ORDER

Based on our Findings and Conclusions above, and pursuant to 18 V.S.A. § 9382, we hereby approve OneCare's FY23 Revised Budget subject to the following conditions (and without modification of the conditions in OneCare's FY23 Budget Order):

1. OneCare shall obtain affidavits/attestations from its applicable hospital network participants to establish the use of PCP funds, both on a historical basis and prospectively, consistent with the intent of the GMCB discussed in its meeting on June 14, 2023 to be provided by October 1, 2023. OneCare shall additionally require its applicable hospital network participants to provide a historical accounting of use of such funds. GMCB staff shall prepare the affidavit/attestation form and review the form with OneCare.

2. OneCare shall modify its FY23 budget by capping the total combined compensation in the aggregate for OneCare's executives (VP-level and above) at the total combined amount of the median (50th percentile) of the benchmark used by OneCare to establish the compensation for those executives. Amounts budgeted by OneCare for executive compensation in excess of the median must be allocated instead to OneCare population health activities.

3. After notice and an opportunity to be heard, the GMCB may make such further orders as are necessary to carry out the purposes of this Order and 18 V.S.A. § 9382.

So ordered.

Dated: August 9, 2023 at Montpelier, Vermont

s/ Owen Foster, Chair	)	
	)	
s/ David Murman	)	GREEN MOUNTAIN
	)	CARE BOARD
s/ Thom Walsh	)	OF VERMONT

Holmes and Lunge, concurring in part and dissenting in part.

We concur in the approval of OneCare's amended budget request and the condition requiring OneCare to collect information from network hospitals on their use of population health payments. We write separately to dissent from the budget condition capping total compensation mid-year for OneCare's executives. This condition was adopted without adequate notice or opportunity for public comment and its justification lacks a sufficient factual basis. While we share our fellow Board members' concern that providers in OneCare could perform better on some quality and cost metrics and while we would like to ensure accountability for progress on the State's cost and quality goals, there was not sufficient evidence that capping compensation of OneCare's executives midway through the year and redirecting it to other programs is an effective way to achieve stronger ACO performance.

I. *Lack of Adequate Notice or Opportunity for Public Comment*

In reviewing an ACO's budget, 18 V.S.A. § 9382(b)(1)(M) requires the Board to review and consider "information on the ACO's administrative costs, as defined by the Board." However, the Board's FY 2023 Budget Guidance and Reporting Requirements for OneCare does not include specific targets or direction related to executive compensation as an administrative expense.[10] Nor did the process that preceded the vote on June 14, 2023, provide adequate notice that the Board, in amending OneCare's budget, might effectively override the ACO's executive compensation policy and impose a cap on total executive compensation. This is a significant change in the Board's policy that warrants explicit notice, a full discussion of the new policy and its implications, and an opportunity for written public comment.

Pursuant to GMCB Rule 5.000, § 5.407, the Board issued a letter to OneCare on May 22, 2023, notifying OneCare that its fiscal year (FY) 2023 performance varied substantially from its

[10] *See* Green Mountain Care Board (GMCB), FY 2023 Budget Guidance and Reporting Requirements for OneCare Vermont, ACO, LLC.

approved budget.[11] Several specific areas of variation were identified, including the lack of a contract with Blue Cross and Blue Shield of Vermont (BCBS) and a decrease in OneCare's population health management payments. The letter suggested that OneCare should request an amendment to its "FY23 budget to reflect OneCare's actual FY23 operations."[12] The letter did not request a modification to administrative expenses, beyond the 2% reduction provided for in the Board's FY2023 Budget Order.[13] Nor did the letter give any indication that executive compensation was a subject of Board inquiry or potential action.[14] OneCare responded with a request to amend its budget to reflect FY23 operations on May 30, 2023.[15]

During this process, the only analysis of executive compensation policy was included in the assessment of OneCare Vermont's continued eligibility for certification;[16] specifically, whether OneCare's policy complied with the Board's certification guidance[17] that requires an ACO to "structure its executive compensation to achieve specific and measurable goals that support the ACO's efforts to reduce cost growth or improve the quality and overall care of Enrollees, or both." In this guidance, the Board left discretion to OneCare's Board of Managers to design and approve the specific parameters of the compensation policy for the organization and to assess whether the employees' performance meets those goals.

The staff analysis indicated that "[t]he GMCB does not need to vote in order to continue OneCare's certification. Action would be needed if the GMCB concludes that OneCare no longer meets the requirements to be eligible for certification. In that case, the Board would provide notice to the ACO and an opportunity to respond before requiring corrective action."[18] In addition, the presentation indicated that additional information was requested from OneCare about executive compensation on May 9, 2023, and that the entity's response may "inform staff recommendations for FY 2024 Certification and Budget Guidance."[19]

Throughout the process, it was clear that for FY2023, the policy of the Board was to review executive compensation in the review of OneCare's certification, using the established guidance. With its vote on June 14, the Board moved forward with a significant change in its approach to executive compensation and in the expectations of the regulated entity, without clear notice of its intent to do so. A significant change in policy should be done thoughtfully, with an opportunity

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[11] Letter from GMCB to OCV – GMCB Meeting May 17, 2013 (May 22, 2022)
[12] *Id* at 3.
[13] *See* FY2023 Budget Order.
[14] *See* Letter from GMCB to OCV – GMCB Meeting May 17, 2013 (May 22, 2022)
[15] Letter from OCV to GMCB – Revised Budget Amendment Request (May 30, 2023)
[16] *See* GMCB Staff Presentation, PowerPoint Slides 9-15 (May 3, 2023) (reviewing executive compensation requirement in certification); GMCB Staff Presentation, PowerPoint Slide 5(May 17, 2023) (noting that additional information had been requested about executive compensation and that the response may inform "staff recommendations for FY 2024 Certification and Budget Guidance."); GMCB Staff Presentation (June 14, 2023) (making no reference to executive compensation).
[17] GMCB Guidance re Rule 5.000, § 5.203(a) (May 12, 2021) (providing guidance on the certification standard that "[a]n ACO must have a leadership and management structure that aligns with and supports the ACO's efforts to improve Quality of Care, improve population health, and reduce the rate of growth in health care expenditures.")
[18] GMCB Staff Presentation, PowerPoint Slide 5(May 17, 2023).
[19] *Id.*

for analysis of the policy, its implications, and whether the proposed policy will meet its stated goals. This did not happen prior to the Board's vote.

With respect to public comment, it is customary for the Board to err on the side of robust public comment and, unless there is an imminent statutory deadline limiting the Board's ability to do so, to provide a written comment period for significant new proposals. For example, the Board's certification guidance on executive compensation was preceded by a public comment period that ran from May 5 to May 10, 2021.[20] In contrast, there was no comment period opened for the proposal to impose a mid-year cap on OneCare's executive compensation. Although there was a brief opportunity for public comment during the June 14, 2023 meeting prior to the motion, since there was no advance notice of the proposal outlined in the motion, the public and OneCare could not have been prepared to deliver meaningful comments about the impact of a mid-year cut to executive compensation.

In sum, we do not believe the process provided adequate[21] notice of the possibility of a cap on executive compensation or an opportunity for meaningful input from OneCare or the public. Without this, and without an adequate analysis of the intended and unintended consequences of imposing such a cap, we could not vote in favor of a proposal that significantly changed the Board's policy and approach.

II. *Lack of Sufficient Factual Basis*

The majority concludes that establishing a new executive compensation policy for OneCare, arguably when the existing policy meets the requirements of the Board's certification guidance, was a justifiable mid-year budget adjustment based on the loss of the BCBS commercial ACO program and OneCare's performance in the Medicare program as outlined in the March 31, 2023 benchmarking report. We do not believe this justification is supported by the facts.

First, the loss of the BCBS program was the result of a private negotiation between two parties that the Board was not privy to. We do not support laying blame on one side of the negotiation without full information or evidence. Second, the ACO's relative performance on ED visits and cost as well as primary care access presented in the March 31, 2023 benchmarking report was evident in the October 2022 benchmarking report submitted to the Board. The ACO's relative performance on the majority's cited measures was known at the time of the initial ACO budget approval in December and therefore does not constitute new substantive information that justifies a mid-year budget adjustment. Furthermore, the evidence on OneCare's 2019-2021 Medicare performance is mixed, with some areas needing improvement and others where performance is good.[22] No evidence on FY22 performance was presented or requested. Third, the current Chief Executive Officer, who is subject to the Board's mandate, was not even in place during the

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[20] *See* GMCB, Previous Special Public Comment Periods, https://gmcboard.vermont.gov/board/comment/previous.

[21] We do not opine on whether OneCare received notice consistent with procedural due process.

[22] In addition, the conclusion on 2021 performance ignores the confounding impacts of the pandemic and evidence related to Vermont versus national performance, where actual Vermont per member per month costs fell significantly more than the decline nationally in 2020, and CMS projections indicated and expected a significant increase in trend in 2021. *See* GMCB, 2022 Medicare Benchmark Recommendation, PowerPoint Slides 16-17 (December 15, 2021). In fact, the Medicare ACO benchmarks in 2021 were computed retrospectively due to COVID-19. *See,* GMCB, 2023 Medicare Benchmark Recommendation, PowerPoint Slide 6 (December 19, 2022).

performance period referenced by the majority, nor at the time the BCBS negotiations terminated. Finally, there is no evidence that a cap on executive compensation would improve ACO performance. In fact, there is no evidence of the potential consequences, positive or negative, as further explored below.

In Finding 17, the majority relies on the University of Vermont Health Network's (UVMHN) executive compensation philosophy as outlined in the FY23 Certification Follow-up on Executive Compensation (May 19, 2023). Specifically, that document describes how base salaries will be targeted at the 50th percentile (median) of the national peer group, and that individual salaries will be administered within ranges with midpoints set at the median and a 50% spread from minimum and maximum, with consideration of regional data. At the time of the decision to cap executive total compensation at the 50th percentile, the Board had no information about the peer group used to set that benchmark and thus could not adequately determine whether it was an appropriate benchmark against which to cap total compensation for executives of an ACO in Vermont.

The UVMHN compensation philosophy further indicates that performance-based variable pay should be "sufficient to provide total compensation opportunities at the 65th percentile" of the national peer group, based on meeting strategic and operational network objectives. Actual total cash compensation for executives may be below, at, or above the 65th percentile of the market, depending on the positioning of an executive's salary within the appropriate salary range, performance of the network and its affiliates, and other criteria. Based on this document and information available at the time, capping total compensation at the 50th percentile likely would have cut some employees' compensation mid-year, depending on where the employees' salaries and total compensation fall within the range, although that was impossible to know at the time given the lack of evidence. An organization could respond to the Board's action by either reducing executives' base salary below the 50th percentile or eliminating variable compensation. Reducing base salary below the 50th percentile could impact recruitment and retention of high performing, more experienced leaders and eliminating variable compensation would reduce the ability to incentivize employee performance. Neither response is likely to improve ACO performance, but there was no analysis of this possibility prior to the Board's vote. Furthermore, it is entirely possible that by capping executive compensation only, there are directors at the organization whose compensation could now exceed some executives. Without complete information on the salary and compensation distribution, the Board could not understand the full impact of its decision.

The lack of evidence is problematic because without an understanding of the factual situation in its entirety, it is possible that the caps (and likely cuts) in total compensation may worsen ACO performance to the extent they reduce executive performance, impede recruitment and retention of high performing, experienced employees, increase turnover costs, and/or negatively impact morale and productivity. As noted above, the possibility that pay scale hierarchy could be disrupted may force caps to trickle down to lower levels or create wage compression that might unleash further unintended consequences. We do not know, because there was no evidence to address these potential issues.

While we support population health initiatives, with an unknown amount of dollars being redirected and no discussion of which programs or initiatives would receive the redirected funds, it is difficult to evaluate whether this mandated reallocation will improve ACO performance or whether it would be better to reduce the overall budget and return dues to hospitals, which would in turn reduce hospital expenses. In addition, since this is a mid-year budget adjustment and would not apply beyond the remainder of this year, this onetime redirection could lead to future disruption to the providers if the redirected funds are not included in the budget in FY 2024 and beyond. Again, we do not know, because there was no evidence to address these potential issues.

In conclusion, we cannot support the majority's action in establishing a mid-year cap on executive compensation in this manner and without a sufficient evidentiary basis. There are ways the Board could cap executive compensation with sufficient evidence, notice and opportunity for comment, including by revising the Board's ACO Guidance for the Fiscal Year 2024; revising the existing guidance to Rule 5.203; or modifying Rule 5.000 to more clearly articulate the desired policy. Any of these processes could provide a more robust way to ensure a full and fair discussion of the policy with sufficient notice for thoughtful input from the regulated entity and the public, and an analysis of both intended and unintended consequences.

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s/ Jessica Holmes)
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s/ Robin Lunge)

Filed: August 9, 2023

Attest: */s/ Jean Stetter*
Green Mountain Care Board
Administrative Services Coordinator

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