

DELIVERED ELECTRONICALLY

March 14, 2023

Sara Barry, MPH
Chief Operating Officer
OneCare Vermont Accountable Care Organization, LLC
356 Mountain View Drive, Suite 301
Colchester, VT 05446

RE: GMCB Review of OneCare's Proposed Transfer of its Data Analytics to University of Vermont Health Network

Dear Ms. Barry,

This letter is to inform OneCare Vermont Accountable Care Organization, LLC (OneCare) that the Green Mountain Care Board (GMCB) is reviewing OneCare's planned transition of its data analytics functions to the University of Vermont Health Network (UVMHN) under GMCB Rule 5.503 for compliance with applicable Vermont antitrust and data privacy laws, including 9 V.S.A. § 2453, and with respect to federal and State antitrust laws to ensure that the GMCB's regulatory oversight and budget review satisfies the GMCB's duties under 18 V.S.A. § 9382(e). During the GMCB's review of OneCare's FY23 budget, the GMCB decided to separately review OneCare's new data analytics arrangement. The review was prompted by concerns of the GMCB regarding the planned transition, and also concerns expressed by the Health Care Advocate and BlueCross BlueShield of Vermont.¹ We appreciate OneCare's responses to GMCB questions to date regarding the data analytics transition. Attached to this letter as Appendix 1 are a list of documents the GMCB requests that OneCare provide, and attached as Appendix 2 are a list of questions, including question from the Health Care Advocate, that the GMCB requests OneCare respond to in writing. The GMCB may have follow up or additional questions and document request after reviewing OneCare's responses. Please provide the requested documents by March 31, 2023 and responses to the questions by April 15, 2023.

Under GMCB Rule 5.503(d) and Green Mountain Care Board Guidance re: Referrals of Potential Violations of State or Federal Antitrust Laws to the Vermont Attorney General,² if the GMCB has reason

¹ See GMCB Rule 5.503(a)(4). The Health Care Advocate concerns are expressed in a letter to the GMCB, available at ([link](https://gmcboard.vermont.gov/sites/gmcb/files/documents/FINAL_HCA%20Post-Hearing%20Written%20Comments%20on%20OCV%20FY2023%20Budget.pdf)): https://gmcboard.vermont.gov/sites/gmcb/files/documents/FINAL_HCA%20Post-Hearing%20Written%20Comments%20on%20OCV%20FY2023%20Budget.pdf and concerns from BlueCross BlueShield of Vermont are expressed in the payer's statement regarding its decision not to contract with OneCare for FY23 and in a letter to the GMCB, available at ([link](https://gmcboard.vermont.gov/sites/gmcb/files/documents/BCBSVT%20PC%20on%20OCV%20Revised%20Budget%20Documents%2002-02-2023%20FINAL.pdf)): <https://gmcboard.vermont.gov/sites/gmcb/files/documents/BCBSVT%20PC%20on%20OCV%20Revised%20Budget%20Documents%2002-02-2023%20FINAL.pdf>. See also 18 V.S.A. § 9382(e).

² Available at ([link](https://gmcboard.vermont.gov/sites/gmcb/files/GMCB%20Guidance%20re%20AGO%20Referrals_05.01.18.pdf)) https://gmcboard.vermont.gov/sites/gmcb/files/GMCB%20Guidance%20re%20AGO%20Referrals_05.01.18.pdf.



to suspect that OneCare or any entity working with OneCare is engaging in anticompetitive behavior without the specific behavior creating a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs, then the GMCB may, after notice to OneCare and an opportunity for OneCare to be heard, refer the anticompetitive conduct to the Vermont Attorney General for appropriate action. The review under GMCB Rule 5.503 does not in any way limit the authority or discretion of the Vermont Attorney General or the federal antitrust agencies with respect to their enforcement of state and federal laws.

Sincerely,

Russ McCracken, Staff Attorney GMCB
Michelle Sawyer, Health Policy Project Director GMCB

cc: Vicki Loner, OCV
Tom Borys, OCV
Amy Bodette, OCV
Joan Zipko, OCV
Rachel Pilcher, OCV
Health Care Advocate Policy Team

Owen Foster, GMCB
Susan Barrett, GMCB
Michael Barber, GMCB
Marisa Melamed, GMCB
Sarah Kinsler, GMCB
Michele Degree, GMCB
Jennifer DaPolito, GMCB



Appendix 1

1. All amendments, supplements, or other modifications to the Master Service Agreement dated as of October 28, 2022 by and between OneCare Vermont Accountable Care Organization, LLC and the University of Vermont Health Network Inc.
2. All exhibits and appendices to the Master Service Agreement dated as of October 28, 2022 by and between OneCare Vermont Accountable Care Organization, LLC and the University of Vermont Health Network Inc.
3. All amendments, supplements, or other modifications to the Service Order for Data and Analytics Services dated as of October 28, 2022 by and between OneCare Vermont Accountable Care Organization, LLC and the University of Vermont Health Network Inc.
4. All exhibits and appendices to the Service Order for Data and Analytics Services dated as of October 28, 2022 by and between OneCare Vermont Accountable Care Organization, LLC and the University of Vermont Health Network Inc.
5. Any service orders under the MSA other than the service order referenced in item 3 above.
6. All amendments, supplements, or other modifications to the Business Associate Subcontractor Addendum dated as of October 28, 2022 by and between OneCare Vermont Accountable Care Organization, LLC and the University of Vermont Health Network Inc.
7. The prior version of the Business Associate Subcontractor Addendum referenced in the OneCare's November 15, 2022 letter to the GMCB ("Please note that we re-executed a modified BAA this week to reflect anticipated operational practices. This was the cause of the delay in sending these documents.")
8. All other contracts or written agreements between OneCare and the University of Vermont Health Network related to the data analytics transition.
9. Copies of all OneCare policies referenced in Sections 4.18, 4.41, and 5.2 of the Service Order for Data and Analytics Services. To the extent such policies have already been provided to GMCB, please identify the relevant policies by policy number and effective date.



Appendix 2

1. Please provide an update on the current status of implementation of the data analytics transition and a current projected timeframe for the transition.
2. Will all data received by OneCare from its provider network be covered by the arrangement set out in the Service Order? If not, please specify.
3. As outlined in Service Order Attachment C, Section IIb, is it correct to assume that this data could include commercial payer data?
4. Please explicitly confirm or deny that ACO data will not be used for business purposes, including but not limited to UVMHN's Medicare Advantage Plan with MVP or other planned business ventures in the future under any circumstances.
5. Please explicitly confirm or deny that ACO data will not be sold to other business partners or entities under any circumstances.
6. Was this contract approved and supported by other participating providers in OneCare's network? If so, why is it in their interest to do so? Please provide all communications between OneCare's provider network and OneCare in support of or in opposition to the data analytics transition to UVMHN.
7. OneCare's Policy 01-02, Section VI C 1 states: "Recusal. In all cases, an Interested Person with a Personal Interest relating to a specific Network Member, Subcontractor, Vendor, or other third party should refrain from voting, or participating on behalf of OneCare, or from exercising influence or control, with respect to decisions or actions affecting or benefiting that Network Member, Subcontractor, or Vendor." Please indicate whether any members of OneCare's Board of Managers who are also employed by and/or associated with UVMHN participated in a vote to approve the data analytics contract with UVMHN. If so, please explain why the decision not to recuse was made and how it complies with this policy.
8. Are there any other contracts or written agreements between UVMHN and OneCare related to the data transition other than what was shared with the HCA and the GMCB on November 15th or covered by the document requests in Appendix 1?
9. Given that ACO data from all participants is to be shared with UVMHN, is it correct that there are no plans to have these non-UVMHN participants represented in the Data Committee? (Refer to Section 3.1.2 of the Service Order).
10. Will this contract with UVMHN continue indefinitely? (Refer to Section 4.2 of the Service Order)
11. What is the third party in the potential future 2023 contract with VITL? What services will be performed by UVMHN for this work? (Refer to Section 4.14 of the Service Order)
12. Regarding segregation, sequestration and access as outlined in Section 4.18 of the Service Order, please provide a list of all OneCare policies, including policy number and effective date, for "policies regarding permissible access to ACO Data." If not already provided to the GMCB, please provide as specified in Appendix 1.
13. During the November 9th hearing, Ms. Barry stated "There is some remaining work to be done before any data are shared under the new arrangement, and that involves ensuring that the final policies and procedures that dictate at the granular level the detail around how data are handled are well spelled out" and also that "In terms of data storage and protection, we have required the



UVM Health Network to establish some additional policies and procedures”. Are there any other procedures applicable to handling of data in addition to the OneCare data policies referenced in the Service Order.

14. Please explain how OneCare will audit UVMHN’s compliance with the requirements of Section 4.18 of the Service Order.
15. Please elaborate on what would make adherence be classified as “impracticable,” thus rendering UVMHN not responsible for adherence to policies outlined in Section 4.18 of the Service Order.
16. As outlined in 5.3, is it correct to assume that if OneCare’s Single Point of Contact were to provide written authorization to use ACO data for uses currently prohibited in the contract – which include “market analysis, research purposes, or formal research outside the terms of OneCare’s Data Use Agreements, Associate Agreements, and OneCare Data-Related Policies,” these same activities could be permitted? Is this Single Point of Contact, Sara Barry? What are OneCare’s Data Related Policies referenced in this section?
17. Why are audit rights under Section 6.2 of the Service Order only provided to public payers and not to commercial payers?
18. As outlined in Section 10.6 of the Service Order, will there be a role or need for a contract with UVMHN after January 2024, given a full transition to having data analytics work completed by UVMHN is expected to be completed by this time? How does this work intersect or interact with UVMHN’s planned Population Health Services Organization proposal as discussed in their FY23 hospital budget narrative submission?
19. In the event that OneCare were dissolved or cease to operate, which could be affected by UVMHN as holder of more than 75% of OneCare’s membership interests, would ACO data become property of UVMHN? In that scenario how would the procedures outlined in Section 11.8 of the Service Order about how and when data is to be “returned” operate?
20. If there is a possibility that OneCare may decide not to operate as an ACO and/or may decide to only serve UVMHN providers in FY24 or beyond, explain why the data analytics transition should occur.
21. Has OneCare had any communication with CMS, CMMI, or any other federal agency regarding the data analytics transition?
22. How does OneCare’s new data analytics arrangement improve patient care, improve access to health care, increase efficiency, or reduce cost?

