THE University of Vermont HEALTH NETWORK

March 15, 2021

Green Mountain Care Board
c/o The Honorable Kevin Mullin, Chair
144 State Street
Montpelier, VT 05602

Dear Chair Mullin:

Vermont has a long and proud history leading the nation in health insurance and innovative payment model reform. Vermont's early work on Community Rating, Dr. Dynasaur, the Blueprint for Health, Catamount Health, and the All-Payer Model (APM) are all separate pieces of a long tradition of Vermont's health care reform leadership. The Green Mountain Care Board is an important component of this tradition. As we plan to carefully emerge from the COVID-19 pandemic in the hopefully not too distant future, it is a timely opportunity to celebrate the many accomplishments Vermont's public-private partnership has achieved in creating arguably the most advanced health care reform strategy in the nation. We have the opportunity to see the glass as more than half full — and we can bring this wisdom and optimism to navigate the challenging times in which we currently find ourselves.

Before we provide feedback on the Board's FY 2022 budget guidance, we want to first recognize and celebrate the progress we have collectively made on important metrics in measuring system access and cost. First, we should take pride in our uninsured rate, which was recently named the lowest uninsured rate in the United States. The household survey comparing 2014 to 2019 also shows progress in this regard. Second, the expenditure analysis provided by the Board shows Vermont's remarkable reduction in health care cost growth over time. And finally, the ability of the APM to have a projected attributed population of over 245,000 lives in 2021 is an exciting and welcome step in the right direction to achieving the scale we all desire. There is currently no other public-private partnership like the APM in the United States, a fact we rarely take the time to remind ourselves of.

Despite the extraordinary challenges presented by COVID-19, as of today, Vermont is ranked ninth in the United States in our vaccination rate. Even Dr. Anthony Fauci called out Vermont's strong pandemic response this past September when he said "Vermont should be a model for the country." These accolades have not come about through policy alone — our collective success has been achieved through long hours of work by many talented people. For over a year, day in and day out, our state's health care providers have been doing the hard work of beating back the virus; Vermont's response to COVID-19 rested on the foundation of our nonprofit hospital system working in close partnership with the State and other health care provider partners. Our statewide pandemic response reflects our years of commitment to public health and population health, and it is our hope that Board members and their staff take this moment to celebrate all that we have accomplished together.

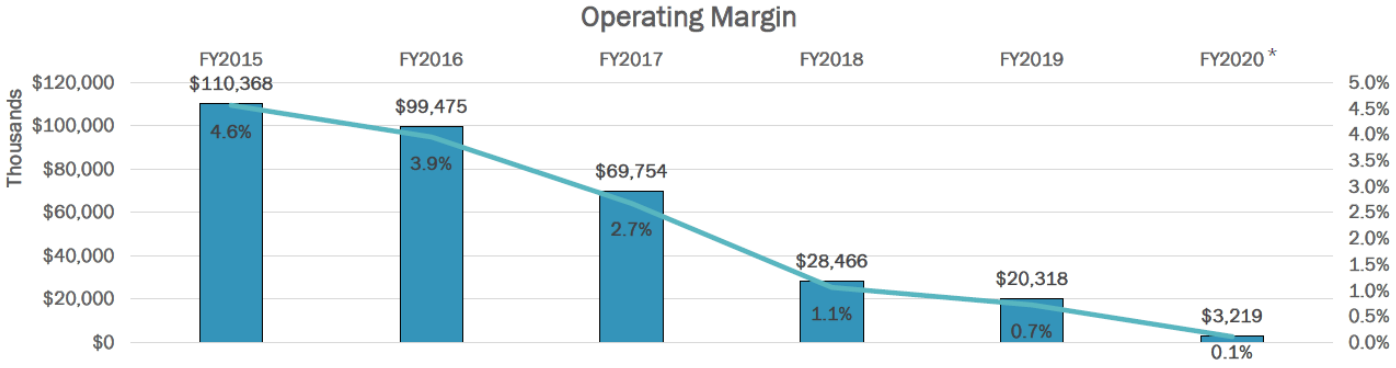
Let us reflect on our shared energy and partnership that led to these accomplishments. All that we have

done, from the early days of health insurance reform to broader health care payment and delivery reform, and now to our statewide response to the pandemic, has all been accomplished together. This work is extremely challenging, but we know that we cannot do it alone. We ask that the Board and staff reflect on whether the draft FY 2022 hospital budget process that was put forward last week reflects that same spirit of collaboration.

Hospital Budget Regulation

As you know, the Board has traditionally regulated hospital budgets by setting a ceiling on the growth of NPR, around which hospitals have built their budgets and calculated the commercial rate increase necessary to cover the expenses related to delivering the estimated volume of care. While the Board has not always granted hospitals the revenue and rate growth they request, it has recognized that the two growth rates must move in connection with one another, based on the anticipated volume of care to be delivered. The Board has also left it to the hospitals to determine how best to meet the needs of their communities within those broad budgetary constraints. For instance, some hospitals have chosen to cut services in response to rate cuts; others have chosen to maintain services and instead produce a reduced operating margin, a solution that cannot be continued indefinitely. All hospitals have worked hard to control those expenses that are within their ability to influence. But it has been hospital leaders and hospital boards, not regulators, who have made the difficult decisions about how best to operate hospitals with scarce resources, because it is they who are held accountable by their communities for the care they deliver.

We all recognize that this regulatory approach — which was conceived when fee for service was the dominant payment scheme — has drawbacks, some of which are discussed more fully below. But there can be little doubt that it has been one of the most successful models for cost control employed anywhere in the country. For instance, for each of the past four years, the Board has set a statewide hospital NPR growth cap of between 3.2% and 3.5%. And for each of those years, the actual statewide growth rate has been *below* that cap.



*FY2020 year-end results may change due to stimulus guidance.

However, in this approach to hospital budget regulation, those cost savings have very clearly resulted in the erosion of Vermont hospitals' operating margins. This current path is clearly unsustainable. One Vermont hospital has already declared bankruptcy; almost all of the others are financially stressed to the extreme. If this trend continues, more hospitals may be forced to cut services or close.

Both the State of Vermont and the UVM Health Network believe that the only way to ultimately control costs while also sustaining hospitals' ability to provide the services Vermonters need is to move to value-based total cost of care payment models, such as the APM and others now offered by CMMI. And here, too, the current regulatory model falls short. Regulating NPR, rate, or both is out of step with value-based models. If Vermont is going to continue to succeed in controlling costs without losing its hospitals, it will need to finally begin the hard and complicated work of overhauling the hospital budget, ACO budget, and insurance rate setting processes, and bringing all three into sync with unified processes and supportive goals.

FY 2022 Draft Hospital Budget Guidance

It is against this backdrop that we offer the following thoughts regarding the proposed FY 2022 budget guidance, including the discussion held by the Board on March 10, 2021. We agree with the broad sentiments expressed in the Board's draft budget guidance, stating a desire to temporarily amend the budget process to take account of the extraordinary operational and financial burdens the COVID-19 pandemic has imposed on Vermont hospitals:

- ***"[B]udgeting in a pandemic environment is exceptionally difficult"***;
- ***"[I]t may take multiple years for hospitals to recover from the financial impact of COVID-19"***; and as a result,
- ***"The Board continues to recognize the hospital budget submission challenges created from the . . . pandemic and these uncertain and ever-changing times."*** (FY 2022 Draft Hospital Budget Guidance, pages 4-5).

Many of the Board members expressed similar views at the March 10 meeting. They acknowledged the extraordinary role Vermont's hospitals continue to play in responding to COVID-19. They recognized that no one can accurately predict whether, when, and how Vermonters will seek health care as the world emerges from an unprecedented pandemic. And they agreed that, as a result, it will be all but impossible for hospitals to produce budgets that accurately predict their FY 2022 patient volumes, patient revenue, and expenses. In light of all these factors, Board members and staff alike uniformly expressed a desire to "streamline" this year's hospital budget process, understanding that any effort to regulate hospital budgets at too fine a level of granularity will further tax an overburdened health care system without producing any predictably positive results.

Unfortunately, the substance of the guidance presented and discussed by the Board last week does not seem consistent with those expressions. In fact, as discussed more fully below, changes proposed by Board members at their March 10 meeting, if adopted, would constitute a radical transformation and expansion of the Board's traditional hospital budget regulatory powers from the hospitals' viewpoint. This transformation would not be the product of a considered process inclusive of: broad stakeholder input; a close examination of comparative data and industry benchmarks; analysis of the likely impact of the changes on patient care; or finally, the sustainability of Vermont's hospitals. Nor would it involve other areas of State government, which bear the responsibility of charting the broad course of regulatory reform in Vermont. Instead, the transformative changes could be adopted in the form of Board guidance over the span of eight days in the middle of a pandemic, with only the most limited opportunity for public input and no opportunity for meaningful process.

The guidance, as currently drafted, would also exacerbate rather than ameliorate the concerns the Board has recently expressed. It would add to, rather than diminish, the regulatory burden on hospitals, requiring more and different data, rather than less. It would require hospitals and regulators to make impossibly precise decisions regarding FY 2022 budgets in a time of unprecedented uncertainty, all but guaranteeing unintended consequences. It would inhibit, rather than advance, the hospitals' multi-year efforts to return to financial health after the pandemic. Finally, none of what the Board is considering in this guidance is in service to our State's established health care reform plan and our mechanism for achieving a health care system Vermonters can afford.

As just one example, the Board announced for the first time on Wednesday that it would consider setting pre-determined and independent "ceilings" on both NPR/FPP *and* hospitals' change in charge, rather than solely setting an NPR/FPP growth limit as it has always done. The Board's historical approach, whatever its other advantages and disadvantages, recognizes the inalterable mathematical relationship in the fee for service world among patient volume, rate, and revenue: (patient volume) x (rate) = (patient revenue). If the Board were to set independent statewide ceilings on both rate *and* revenue, it will be effectively dictating — under threat of judicial enforcement — both the volume and types of care that each of Vermont's hospitals provide in the coming year. That form of indirect care rationing would go well beyond what is legal or wise, and it would do great damage to the availability of necessary health care services upon which Vermonters depend. It also would be antithetical to the mission of the UVM Health Network, where we are committed to serving every patient who walks through our doors. We create our hospital budgets by determining the needs of the community (volumes), what access to specific services are needed, and what the cost of delivering the services will add up to (including inflation factors) — we then solve for the revenue rate increase required, not the other way around.

As another example, there was discussion of considering a retroactive two-year cap on change in charge of 7%, covering FY 2021 and FY 2022. Under this proposal, if a hospital received a 5% increase in charge for FY 2021, for instance, it would only be eligible for a 2% increase in FY 2022. As the Board will recall, last year many of Vermont's hospitals opposed making any portion of last year's rate increase temporary, for several legitimate reasons that the Board ultimately approved. All of the UVM Health Network's hospitals' submissions made clear that no portion of their FY 2021 revenue or rate requests were caused by COVID-19, but were all instead related to anticipated FY 2021 inflationary expenses which would be imposed on the hospitals and necessary to account for multiple prior years of sub-inflationary increases. None of the hospitals' submissions or the Board's rulings contemplated a two-year cap. The Board's own recent examination of Vermont hospitals' consistently declining operating margins only reinforces that fact and highlights the importance of addressing the previous five-year trend, which, unless reversed, will result in the loss of hospitals and needed health care services in the State of Vermont.

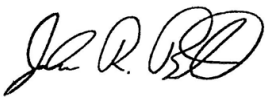
Finally, one of the most consequential proposed changes to this year's budget guidance went unmentioned by the Board members or staff at the March 10 public meeting. For the first time that we are aware, the proposed budget guidance would give the Board the explicit authority to regulate not only a hospital's revenue (through NPR/FPP and commercial rate increases), but also to directly "adjust the hospital's proposed operating expenses." (FY 2022 Draft Hospital Budget Guidance § 1.A.) This newly proposed power to set hospital expenses has not been subject to any transparent policy analysis, and it was not the product of any dialogue between the Board and the hospitals regarding its likely consequences. Nor does the draft guidance identify any benchmarks or criteria that would guide the Board's exercise of its newfound power. The Board's proposed expense-setting power would nonetheless

be sweeping in its effect. The power to set both patient revenue and operating expenses is, by definition, the power to set hospital operating margins. The power to set hospital operating margins would, in turn, provide the Board with extraordinarily far-reaching influence over hospitals' decisions on patient care offerings, strategic decisions, operations, debt issuance, and labor negotiations, among many other things. The job of making those difficult and detailed spending decisions, and then being held accountable for them by our communities, is the essence of what it means to run a hospital, not to regulate a statewide health care system. When taken together with the other powers the Board is considering granting itself through its guidance, the Board would literally be assuming the ability to set the rate, patient volume, patient revenue, expenses, and operating margin of every hospital in Vermont — effectively deciding what health care services Vermonters are able to receive and where, which could have unintentional and harmful effects on our entire statewide health care system.

We have so much to be proud of in Vermont's health care reform history, and a lot of great work has been accomplished. With all this in mind, we ask that the Board adopt a streamlined FY 2022 hospital budget process. This will allow hospitals to continue to focus on our pandemic response and recovery.

As always, please let me know if you have any questions.

Sincerely,



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