Vermont Developmental Disabilities Council

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TO: Green Mountain Care Board

RE: Comments on the OneCare Vermont budget

FROM: Susan Aranoff, J.D., Senior Planner and Policy Analyst

DATE: December 17, 2019

Introduction

Thank you for providing this opportunity to comment on the OneCare Vermont (hereafter "OCV") 2020 Accountable Care Organization Budget submission.

The Vermont Developmental Disabilities Council

The Vermont Developmental Disabilities Council (hereafter "VTDDC") is a statewide board created by the federal Developmental Disabilities Assistance and Bill of Rights (hereafter "the DD Act"), first adopted by Congress in 1970. Our constituents are health care users who have an important stake in the cost, quality, and availability of both traditional healthcare and disability long term services and supports. An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving some type of community-based support through Medicaid.

VTDDC is charged under federal law with engaging at the state level in "advocacy, capacity building and systems change activities that… contribute to the

coordinated, consumer-and-family-centered, consumer-and-family directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families." As such, the fundamental changes in the way that health care is provided, funded, and managed in Vermont pursuant to the All Payer Accountable Care Organization Model Agreement (hereafter the "APM ACO Agreement") are of great concern for us.

The Green Mountain Care Board must determine if OneCare's operations benefit Vermonters.

Act 113 of 2016 requires that the Green Mountain Care Board establish standards and processes to review, modify, and approve the budgets of accountable care organizations seeking to operate in the State of Vermont. Act 113 also requires the Green Mountain Care Board ensure that its certification and oversight processes constitute sufficient state supervision over accountable care organizations (hereafter "ACOs") to comply with federal antitrust provisions. Further, Act 113 directs the Green Mountain Care Board to refer to the Attorney General the activities of an accountable care organization that may be in violation of State or federal antitrust laws without the countervailing benefits of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods.

To fulfil its state action supervision duties, the Green Mountain Care Board must first determine if OneCare is improving patient care, improving access to health care, increasing efficiency, and/or reducing costs before it approves it's 2020 budget. As the number of attributed lives and the amount of public investment increases with each performance year, the need to conduct an independent cost benefit analysis also grows.

Instead of the active state supervision the law requires, the Green Mountain Care Board has been passive in the face of the experiment's disappointing results to date. For instance, the Board resisted scheduling a hearing to examine OneCare's 2018 quality and financial performance results. When the Board did hold a hearing on OneCare's 2018 performance, none of the Board members present asked

OneCare's representatives about the disappointing quality scores and financial losses.

OneCare's Unanticipated Drop in Quality Scores Demands a Regulatory Response

In its 2018 Medicaid program, OneCare's quality score fell in 7 of the 10 measures from 2017. Measures in the following areas all declined:

1. Diabetes Mellitus
2. Hypertension: Controlling High Blood Pressure
3. Adolescent Well Care visits
4. Developmental Screening in the First 3 Years of Life
5. Screening for Clinical Depression and Follow-Up Plan
6. Follow Up After an Emergency Department Visit for Alcohol and Other Drug Dependence within 30 Days
7. Engagement of Alcohol and Other Drug Dependence Treatment

OneCare's 2018 Medicare Quality Performance Score of 100% does not reflect OneCare's actual performance. Rather, OneCare received its 100% score for simply reporting information. However, an examination of OneCare's actual performance reveals a steep drop from last year in several critical areas. OneCare's actual 2018 score of 82.4% is a drop from 2017 (87.9%) and an even steeper drop from 2016 (96.88%).

In light of these troubling results, the GMCB should require OneCare to submit a plan of correction as part of the 2020 ACO Budget approval process detailing how it will reverse the trend in its quality performance.

The Green Mountain Care Board's Conflicts of Interests

The Green Mountain Care Board (hereafter "GMCB") is a party to the All-payer Accountable Care Organization Model Agreement (hereafter "APM ACO Agreement") that Vermont entered into with the federal government in October 2016. As a party to the APM ACO Agreement, the GMCB has certain obligations. Some of these obligations create significant conflicts of interest for the GMCB.

As a party to the APM ACO Agreement, the Green Mountain Care Board is required to "work with" OneCare to achieve the targets set out in the APM ACO Agreement. Regulators do not "work with" the entities they regulate. Regulators are expected to be impartial and objective. Similarly, to comply with the APM ACO Agreement, the Chair of the Green Mountain Care Board is required to submit a letter annually to CMMI jointly with OneCare attesting to the fact that the GMCB and OneCare are working together to achieve the scale targets of the APM ACO Agreement. (See, Letter, Attachment 2). The APM ACO Agreement also obligates the GMCB to encourage providers to join OneCare. These obligations and others establish the GMCB as both a promoter and regulator of OneCare Vermont, which is a serious conflict of interest.

The Legislative Committee on Administrative Rules (LCAR) Recognized the GMCB's Conflicts of Interest

On January 22, 2018, the Legislative Committee on Administrative Rules (hereafter "LCAR") sent a letter to the Chairs of the House Health Care and Senate Health and Welfare Committees informing them that on October 12, 2017, LCAR voted to request the standing committees of jurisdiction review the dual nature of the Green Mountain Care Board's role in both providing regulatory oversight of the ACOs and supporting their pursuit of innovation. (See, Attachment 1). The letter states that "LCAR's request for review is based on the concern that this duality of roles may cause the Green Mountain Care Board to have competing and potentially *conflicting obligations* in regard to ACOs. LCAR's concern is heightened because the State's EB-5 program similarly required the Agency of Commerce and Community Development to have the competing obligations of both promoting and regulating the program, ultimately with negative results." (Emphasis added).

The letter from LCAR states that the Chair of the Green Mountain Care Board indicated on the record that he would welcome a discussion of the conflict of interest and EB-5 issues with the appropriate legislative committees. To my knowledge, neither the Green Mountain Care Board nor the legislature has ever addressed these important issues at a public meeting. Nor has the Green Mountain Care Board informed its own Advisory Board of the existence of the

LCAR letter and LCAR's concerns regarding the GMCB's potential conflicts of interests.

It must be noted that the legislature directed the Green Mountain Care Board to promulgate regulations for accountable care organizations that balance support for innovation with oversight. As innocuous as this mandate sounds, it has placed the Board in a difficult position. It is not tenable for the Green Mountain Care Board both to regulate OneCare and work with OneCare to achieve the scale targets set out in the APM ACO Agreement.

This issue has been highlighted recently by the Green Mountain Care Board's active lobbying for increased Medicaid funds to support OneCare and the All-payer Accountable Care Organization Model Agreement. It is axiomatic that an impartial regulator should not petition the Governor, Secretary of Human Services, and the Legislature for increased Medicaid funds for a regulated entity, but that is precisely what the Chair of the Green Mountain Care Board has done.

Medicaid is Funding OneCare's Start-up and Operations

The VT Developmental Disabilities Council is particularly concerned about the use of Medicaid funds to support OneCare. Public funds flowing to the for-profit ACO have exceeded $20 million. Vermont has authority under its Global Commitment waiver to spend Medicaid funds on delivery system reform investments (hereafter "DSR Funds"). To date, the Vermont Department of Health Access (hereafter "DVHA") has given delivery system reform funds only to OneCare, even though community-based organizations such as designated agencies are eligible to receive these funds as well. DVHA has not created a fair and transparent process for accessing these Medicaid dollars.

OneCare's 2020 ACO Budget includes an additional $13 million of Medicaid funds. In order to quantify the cost of the APM ACO Agreement, the Green Mountain Care Board must identify the total cost to the public of operating OneCare. Before approving its budget, the Green Mountain Care Board should conduct a cost/benefit analysis to determine the effectiveness of this expenditure on improving health outcomes and containing costs.

ACO Administrative Expenses

In its 2018 OneCare Budget Order, the Board stated the following:

"While we believe the All-Payer ACO Model holds great promise for controlling health care cost growth and improving quality of care in Vermont, we understand the concern expressed by some that ACOs add another layer of complexity and expense to an already complicated and expensive health care payment system. *ACOs should provide a net benefit to the system and we will monitor OneCare's administrative expenses to ensure they are less than the total health care savings generated through the All-Payer ACO Model.*" (Emphasis added).

Accordingly, the Board mandated that OneCare's administrative expenses should be less than the health care savings generated through the All-Payer Accountable Care Organization Model.

In 2017, OneCare's administrative expenses exceeded $10 million and it generated health care savings of $2.4 million. Rather than citing OneCare for violating the clear terms of its Budget Order, the Green Mountain Care Board moved the goal posts. Instead of assessing the net benefit annually, an assessment will occur only once, at the end of the All-Payer ACO Model Agreement. Unfortunately, by that time it will be too late to correct course or find OneCare out of compliance with the terms of its Orders.

The GMCB further diminished the strength of its clear standard that OneCare's administrative expenses should be less than the health care savings generated through the Model by adding this provision to last year's order: "Over the duration of the agreement, OneCare's administrative expenses should be less than the savings, including cost avoidance and the value of improved health, projected to be generated through the Model."

This loose and nebulous standard makes it impossible for the Green Mountain Care Board to hold OneCare accountable for its costs and quality. It also presumes there will be improved health outcomes when in fact the quality scores in OneCare's programs are declining. If quality metrics continue to move downward during the

tenure of the Model, will OneCare be held accountable for the costs of the decline in health outcomes?

OneCare's Patient Information Fact Sheet

OneCare Vermont's patient information statement is inadequate. OneCare does not inform attributed Vermonters that their health care providers are being paid on their behalf regardless of how much care they receive or do not receive. When a provider receives fixed or capitated payments, a clear incentive to withhold care is created. Patients have a right to know that their providers are receiving capitated payments as the providers behavior is likely to be influenced by such payments. Patients also have a right to know if their provider's pay is contingent on the patient's behavior- for example, whether or not they lose weight or manage their diabetes. Patients also need to understand that the APM ACO Agreement may create an incentive for providers to treat healthier patients.

ACO Contracts

Clearly, OneCare's contracts with all payers including DVHA, Medicare, BlueCross and Blue Shield and the self-funded programs are essential to the analysis of its budget. OneCare's budget cannot and should not be approved in the absence of finalized contracts from each payer.

Conclusion

The Vermont Developmental Disabilities Council is concerned that Medicaid is the most burdened payer participating in the All Payer ACO Agreement. Medicaid is the only payer providing OneCare millions of dollars in delivery system reform funds. The impact of the All Payer ACO Agreement on Medicaid is likely to increase. As promised in the All-Payer Model Agreement, the GMCB has supported rate increases in the Medicaid program for primary care. The more Medicaid funds are spent on the services covered in the All-Payer ACO Agreement, the less Medicaid funding is available to support long terms services and supports for home and community-based services, such as developmental disability support services.

However, these are precisely the types of services that address the social determinants of health, keeping vulnerable populations out of costly hospital settings.

It is imperative that the Green Mountain Care Board exercise its regulatory authority to the benefit of Vermonters by prioritizing Vermonters' needs for Medicaid-funded services over OneCare's desires for Medicaid-funded administrative expenses.

Attachment 1 Letter from the Legislative Committee on Administrative Rules

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REP. ROBIN CHESNUT-TANGERMAN
REP. LINDA MYERS
REP. AMY SHELDON
REP. MICHAEL YANTACHKA

Legislative Committee on Administrative Rules (LCAR)

To: Sen. Claire Ayer, Chair, Senate Committee on Health and Welfare
Rep. William J. Lippert, Jr., Chair, House Committee on Health Care
CC: Jennifer Carbee, Legislative Counsel
From: Sen. Mark MacDonald, Chair, LCAR
Date: January 22, 2018
Subject: Request for review of Green Mountain Care Board roles regarding ACOs

On October 12, 2017, LCAR approved with modifications Rule 17-P15, regarding the Green Mountain Care Board's oversight of accountable care organizations (ACOs). Although LCAR approved this rule, LCAR also voted pursuant to 3 V.S.A. § 817(e) to request that the standing committees of jurisdiction review the dual nature of the Green Mountain Care Board's role in both providing regulatory oversight of ACOs and supporting their pursuit of innovation.

LCAR's request for this review is based on the concern that this duality of roles may cause the Green Mountain Care Board to have competing and potentially conflicting obligations in regard to ACOs. LCAR's concern is heightened because the State's EB-5 program similarly required the Agency of Commerce and Community Development to have the competing obligations of both promoting and regulating that program, ultimately with negative results. The Chair of the Green Mountain

Care Board indicated on the record at LCAR's October 12 meeting that he would welcome a discussion with your committees about the Board's role and its duties.

Thank you for your consideration of LCAR's request for this review. Please feel free to contact our committee if you would like to discuss this issue further.

Attachment 2 Letter from Chairman Mullin to CMMI

VERMONT

Green Mountain Care Board
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To: Stephen Cha, M.D., Director
Center for Medicare and Medicaid Innovation
State Innovations Group

From: State of Vermont, Green Mountain Care Board
OneCare Vermont, Accountable Care Organization, LLC

Re: Section 8.b.i. Attestation

Dear Dr. Cha,

The Green Mountain Care Board (GMCB) will be submitting for CMS's approval a growth rate of 3.5% for the Vermont Modified Medicare Next Generation Program under section 8.b.ii of the All-Payer Accountable Care Organization Model Agreement. The Board of Managers of OneCare Vermont, Accountable Care Organization, LLC (OneCare) has authorized the ACO to participate in the Vermont Modified Medicare Next Generation ACO program for 2018. The GMCB and OneCare understand that a manual adjustment will be made to the benchmark of $7.5 million, trended forward, to be distributed quarterly during 2018. The GMCB and OneCare will work together to achieve the ACO Scale Targets, Statewide Financial Targets, and Statewide Health Outcomes and Quality of Care Targets of the Vermont All-Payer ACO Model.

Kevin J. Mullin

Kevin Mullin
Chair
Green Mountain Care Board

12/22/2017
Date

Todd B. Moore

Todd Moore
Chief Executive Officer
OneCare Vermont Accountable Care Org., LLC

DECEMBER 22, 2017
Date