

March 18, 2015

Dear Advisory Committee Members,

The following is an overview of the Green Mountain Care Board's response to the Administration's health care proposal, H. 203, *An act relating to advancing Vermont's health care reform initiatives*. The Board discussed the draft bill over several public Board meetings and has agreed on the following positions regarding the proposed legislation.

Secs. 2-6. Note: These sections all relate to delegating to the Board the "powers of a court of record in the determination and adjudication of all matters of which it has jurisdiction."

We thank the administration for their thoughtful consideration of our current statutory role in the regulation of health care. The Administration's proposal presents a potential evolutionary structure to formalize the role of the Board in our regulatory duties. We recognize the directional significance the Administration advocates for and believe that a robust conversation about the practicalities and benefits of this scheme is important. The Board realizes the necessity to continuously improve the performance of our regulatory, innovative, and evaluative duties to deliver real results for Vermonters.

The Board currently has regulatory authority over major medical health insurance rate review, certificate of need, hospital budgets, provider reimbursement rate-setting, and payment reform. This array of powers and duties enables the Board to provide strong oversight of Vermont's health care system in its current, fragmented configuration, and to foster innovation aimed at creating a more fully integrated and unified health care system in the future. While such a system might warrant delegating court of record powers to the Board, at this time the added formality those powers bring could impede the Board's efforts, as directed by Act 48, to work with stakeholders and the public on innovative payment and delivery system reform.

Further, the Board would require significant additional resources—not currently reflected in our proposed FY16 budget—in order to carry out the duties of a court of record. For example, the Public Service Board (PSB) operates as a court of record and requires a clerk's office to administer their work. The Green Mountain Care Board, as a court of record, would also require a clerk's office similar to the PSB, which currently employs six full time employees.

There are structural differences between PSB practice and GMCB practice as envisioned by the Administrations' proposal. The Department of Public Service (DPS) is charged with representing "the interests of the people of the state" in cases requiring hearings before the PSB. 30 V.S.A. § 2(b). As a result, there is a party other than the regulated entity in every proceeding. Additionally, DPS brings strong institutional knowledge and capacity to bear on each proceeding. Currently, there is no existing DPS analogue able to play that public advocacy role before the Green Mountain Care Board.

In its proposal, the Administration requests and the Board agrees to investigate whether the public good would be served by regulating health care reimbursement as a public utility. Moreover, we believe that the inquiry into a public utility should include an analysis into the court of record powers given to the Board. The exploration into the court of record will enable us to identify the fundamental changes necessary to regulate the health care system moving forward. The Board requests that it is given the

additional resources it will need to perform these inquiries effectively and in the best interest of the State, as reflected in our proposed FY16 budget.

Finally, with respect to the interplay between a Court of Record and to regulating health care reimbursement as public utility, The Board believes that it is most appropriate to first investigate the regulation of health care reimbursement as a public utility, and then to consider whether the tools of a Court of Record are necessary. An inquiry into regulating health care as a public utility is likely to identify multiple avenues, options, and challenges. The Board is willing to undertake this inquiry and investigation, provided that it is given the additional resources it will need to perform this task effectively and in the best interest of the State, as reflected in our proposed FY16 budget.

#### Sec. 6. 18 V.S.A. 9375(b)(2) VITL Oversight

The Board is in favor of direct oversight of Vermont Information Technology Leaders (VITL). As the state's legislative designated operator of the Vermont Health Information Exchange, VITL assists Vermont health care providers with adopting and using health information technology to advance health care reform. The Board's existing statutory authority related to VHCURES and the state's Health Information Technology plan will work in conjunction with VITL oversight, to enable the Board to encourage a holistic approach to health information technology planning.

The Board understands this is an important conversation, and we are working with the legislature and Administration to ensure appropriate management of VITL. There is no closure yet on whether VITL will have Board oversight, however, we know in order to properly oversee VITL the Board would need additional resources.

#### Sec. 7. PROVIDER RATE-SETTING

The Board does not support putting a deadline on its rate-setting authority. The Board needs flexibility to determine when and how to exercise this authority to the Board's discretion. Such an approach allows the complex policy planning and scaling-up of capacity that is necessary to implement provider rate setting prudently. The language currently in statute, *see* 18 V.S.A. § 9376, gives the Board the flexibility it needs to move towards value-based payment. Current authority also allows principles for provider reimbursement to be thoughtfully developed and scrutinized prior to the setting of actual rates. Such a process should not be confined and driven by time constraints.

The Board welcomes your advice and input on these proposed changes to the Board's structure and oversight role. We look forward to discussing this proposal as well as other legislative initiatives that could impact the future regulatory, innovative, and evaluative roles of the Green Mountain Care Board.

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