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August 25, 2017

Kevin Mullin, Chair
Green Mountain Care Board
3rd Floor City Center
89 Main Street
Montpelier, VT 05620-3601

Re: GMCB Proposed Rule 5.000: Oversight of Accountable Care Organizations

Dear Chair and Members of the Green Mountain Care Board:

We are writing to comment on the Green Mountain Care Board (the Board) Proposed Rule 5.000: Oversight of Accountable Care Organizations (ACOs). The Office of the Health Care Advocate (HCA) participated in the Board's stakeholder meetings on the draft rule. We thank Mike Barber and the rest of the team for reviewing our previous comments and implementing many of our suggested changes to the rule. Below we outline four outstanding transparency and consumer protection issues that we strongly believe should be addressed in the rule.

1. Require Written Notice of Patient ACO Attribution

We request that the following language (underlined) be added to the rule:

An ACO must ensure that Enrollees are notified annually in writing that they are attributed to the ACO. All ACO notices written by Vermont ACOs, providers, or insurers must be written in plain language in consultation with the Office of the Health Care Advocate.

We ask the Board to promote transparency and patient empowerment by ensuring that patients are well informed. Act 113 requires that the all-payer model ensure that "robust patient grievance and appeal protections are available." 18 V.S.A. 9551(14). The Board cannot ensure these protections if patients are not provided clear notice that they are attributed to an ACO. The current draft rule does not require that enrollees be notified about their attribution to an ACO. Notification posted at a provider's office that the *provider* is participating in an ACO is not sufficient, as it does not give individual patients information about the patient's attribution status.

2. Make Care Models, Mechanisms, and Guidelines Transparent

We request that the following language (underlined) be added under §5.403:

(a) On or before June 1 of each year... The ACO must submit information regarding mechanisms the ACO has established to provide, manage, and coordinate health care services for its patients, including guidelines or best practices adopted, promoted, or implemented by the ACO.

We request that the following language (underlined) be added under §5.207:

(d) An ACO must promote evidence-based medicine, including through the adoption, implementation, and periodic assessment and updating of guidelines or best practices for its Participants covering diagnoses or conditions with significant potential for the ACO to achieve quality improvements. Upon request, an ACO must provide these guidelines to the Board, the Office of the Health Care Advocate, and, unless prohibited under federal law or regulation, to Enrollees.

Act 113 requires the Board to ensure that the ACO has established appropriate mechanisms and care models to provide, manage, and coordinate high-quality health care services for its patients. 18 V.S.A. §9382(a)(2). The current draft rule requires ACOs to provide information on its models of care, and allows the Board and Enrollees to request an ACO's guidelines. We ask the Board to add additional specificity as outlined above to the information the ACO must submit annually, in order to align with Act 113. We further ask the Board to require ACOs to provide copies of its guidelines and best practices to the HCA upon request, as outlined above.

3. Protect Whistleblowers

We request that the following language (underlined) be added under §5.208:

An ACO may not penalize any individual or organization for reporting any act or practice of the ACO that an individual reasonably believes could jeopardize patient health or welfare or for participating in any proceeding arising from such report.

Because Vermont's payment reform model is new and untested, some results may be unforeseen. It is therefore vital that everyone involved is free to express concerns about any negative impact the changes may have on patient health and welfare without fear of retaliation. Open dialogue will allow issues to be identified and problematic practices to be improved.

4. Ensure Antitrust Oversight

We urge the Board to make sure that an independent entity with expertise in antitrust law, such as Vermont's Attorney General's Office, has reviewed the rule. The entity should ensure that the Board's review process, as reflected in the rule, provides sufficient antitrust oversight.

Thank you for considering our comments. Please feel free to contact Julia Shaw with any questions.

Sincerely,

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