

April 28, 2023

House Committee on Government Operations  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

**Re: S.9, Authority of the State Auditor to examine the books and records of any contractor providing services to the State**

Dear Chair McCarthy and Committee,

We are writing to you as a coalition of health care associations in opposition to S. 9, which would significantly expand the existing authority of the State Auditor by allowing a direct audit of nongovernmental entities providing services to the State under [GAO's 247-page Government Auditing Standards](#). We appreciate the State Auditor's goal of fiscal responsibility, however, this bill will impact almost every organization in the State that contracts with state government.

Currently, the State Auditor can audit the performance of contracts and how agencies and departments are managing those contracts by auditing the governmental entity overseeing the contract. If the Auditor identifies a concern, it can be raised with the agency or department to inform ongoing and future management of state contracts.

The State Auditor does not and has not had authority under the Vermont Constitution, statute, or Bulletin 3.5 to directly audit nongovernmental entities. The Vermont Supreme Court concluded that "[t]he Auditor is empowered to conduct governmental audits of departments, institutions, and agencies of the state. Nothing in these provisions authorizes the Auditor to audit private nongovernmental entities." Vermont State Auditor, Douglas R. Hoffer v. OneCare Accountable Care Organization, LLC, d/b/a OneCare Vermont. 2022 VT 29, 8-10. The Vermont Supreme Court noted that the Auditor did not attempt to obtain the documents being sought through the department responsible for managing the contract. This bill is a significant expansion of the Auditor's powers.

While the Senate narrowed the scope of an audit of a nongovernmental entity to performance of the contract, it leaves open to interpretation and debate what information, records, documents, etc. is relevant to performance. This will result in costly litigation in instances where there is a dispute between the Auditor and the contractor over whether something is relevant to the performance of the contract.

In addition, as health care provider associations we remain very concerned about an inadvertent release of HIPAA-protected and other sensitive information. The Senate provided helpful clarity around application of the Public Records Act to information made available to the Auditor. However, to our knowledge, the Office of the State Auditor has not undergone a HIPAA security compliance audit. Given concerns over cyber security and data breaches currently under discussion in the legislature, this is an important consideration.

Thank you for your attention to this issue. Please feel free to contact any of our coalition members for further information.

Jessa Barnard  
Vermont Medical Society

Devon Green  
Vermont Association of Hospitals and  
Health Systems

Matthew Houde  
Dartmouth Health

Georgia Maheras  
Bi-State Primary Care Association

Jill Mazza Olson  
VNAs of Vermont

Helen Labun  
Vermont Health Care Association

Patrick Gallivan  
Vermont State Dental Society

Julie Tessler  
Vermont Care Partners: VT Council

Stephanie Winters  
Vermont Academy of Family Physicians  
American Academy of Pediatrics – Vermont Chapter