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Agency of Human Services

April 6, 2023

To: House Committee on Health Care
From: David Herlihy, Executive Director

Re: Written Testimony on S.37 - An act relating to access to legally protected health care activity and regulation of health care providers

1. This is in reply to your written request for an abbreviated summary of my testimony to the Committee on April 5, 2023 on Sections 7, 10, and 10a of S.37 as passed by the Senate.
2. Comments were offered on Section 7 regarding two points.
 - (a) It was pointed out the section borrows the definition of “health care provider” in 18 V.S.A. § 9496, which defines the term as: “a person, partnership, or corporation, including a health care facility, that is licensed, certified, or otherwise authorized by law to provide professional health care services in this State to an individual during that individual’s medical care, treatment, or confinement.” I questioned whether that definition works with regard to the provision about applicants at line 6 to 7 of page 10 of the bill. Applicants are not licensed so that sentence does not seem to make sense. That is because it refers to the applications of “a qualified health care provider,” which per subsection (d)(2) at line 15 is a person who holds a Vermont license.
 - (b) I provided the Committee background about interstate issues in the regulation of medicine. I noted that it has long been established law that the states have the sovereign right to regulate the practice of medicine within their borders, and that it has long been accepted that a physician must be licensed in the state where the patient is located when care is provided, Also care must be provided in accordance with the laws governing practice in that state. Section 7 incorporates the definition of “legally protected health care activity” stated in Section 1 of the bill. There is a conflict between the above-stated concepts regarding regulation of medicine and the definition of “legally protected health care activity.” The definition in Section 1 of the bill (proposed 1 V.S.A. § 150) includes the following: “Notwithstanding subdivision (2) of this subsection, the provision of a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient’s location or whether the health care provider is licensed in the state where the patient is located at the time the service is rendered.” (Underline added for emphasis). There is a general



concern that the underlined language would tend to erode the strong tradition of interstate cooperation among states in regulating the practice of medicine. That cooperation helps to protect Vermont patients. More specifically, if other states were to model legislation based on this bill, but targeted at matters of public policy reflected in Vermont law, there could be negative impacts on Vermonters. For example, a state with different views could be prompted to pass a law modeled on this, with similar language regarding license status and patient location, but instead creating a right for parents to obtain conversion therapy treatment for their minor children, which is banned in Vermont. 18 V.S.A. §§ 1851-1853. While provision of conversion therapy would still be banned in Vermont, and the actions would still constitute unlicensed practice in Vermont, it would be very difficult or impossible to take the actions necessary to prevent an out-of-state professional from engaging in such practice from a remote location in a state that passed a law modeled on S.37.

3. Comments were also provided regarding Sections 10 and 10a. Those sections relate to the Interstate Medical Licensure Compact and provisions in the IMLC law and rules that address impact of other state disciplinary actions on licenses obtained through the Compact.

- (a) Section 10 calls on OPR and the Board to report to the legislature with findings and recommendations to address concerns about compact licensees and other state actions. There are no objections to or concerns with this requirement.
- (b) Section 10a directs Vermont's representatives to the compacts to seek amendments to laws, rules, or bylaws as necessary to avoid Vermont needing to take disciplinary action against licensees for providing legally protected health care. There are no objections to or concerns with this requirement. Information was also shared with the Committee about actions already taken beginning in 2022 to bring about changes to the IMLC rules.

4. Thank you for the opportunity to address the Committee.