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TO: Sen. Virginia Lyons, Chair, Senate Comm. on Health and Welfare
FROM: Alex McCracken, Communications Director, Department of Vermont Health Access
DATE: Jan. 26, 2024
RE: DVHA's Legal Position on FQHC Reimbursement Requirements

Under the federal Benefits Improvement and Protection Act of 2000 ("BIPA"), state Medicaid agencies are required to set up prospective encounter rates for all FQHCs and Rural Health Centers. BIPA directed states to set these rates beginning in 2001, to cover 100% of the average of those FQHC/RHC costs that were deemed "reasonable and related" to furnishing Medicaid covered services during fiscal years 1999 and 2000. SSA § 1902(bb)(2). BIPA then directed states to increase those rates each subsequent year using a Medicare Economic Index ("MEI") inflation factor. SSA § 1902(bb)(3)(A). Finally, BIPA required states to further adjust these prospective encounter rates to "take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year." SSA § 1902(bb)(3)(B).

To date, only one FQHC has provided DVHA with the complete information needed to assess a change in the scope of services – Little Rivers Health Center.

BIPA also allows states to develop new models to reimburse FQHCs and RHCs ("alternative payment methodologies" or "APMs"), so long as those models pay the centers at least the same as what they would have received under the prospective encounter rate BIPA generally requires. SSA § 1902(bb)(6). Vermont and the health centers must agree to any APM. SSA § 1902(bb)(6)(a).

Because BIPA constructs its prospective encounter rate by using 1999/2000 costs as the initial floor, and then applying MEI and any identified changes in the scope of services, DVHA's legal position is that any model that changes how facilities are reimbursed from that baseline methodology establishes an APM that facilities can choose to accept or reject. Facilities are not entitled to the change, and Vermont can, under Federal law, stop offering the APM at any time. Accordingly, when DVHA and Bi-State worked in 2015 and 2016 to set a new baseline of costs based on each entity's 2016 fiscal year costs (sometimes referred to as a "rebase"), instead of using each FQHC's 1999/2000 costs, as directed to by BIPA, the parties were agreeing to an APM. Facilities could choose to accept the new encounter rate based on their 2016 fiscal year costs, or they could choose to continue receiving the original baseline based on their 1999 and 2000 costs.

DVHA's assessment of the current FQHC payment structure shows that, because of the 2016 rebase, as well as the Legislature's 2023 directive to increase payment to FQHCs by a factor of 10%, most FQHCs currently receive payment in excess of the amount they would receive under BIPA's prospective encounter rate.