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MEMORANDUM

TO: Vermont Judiciary Oversight Committee
FROM: Sharon M. Winn, Esq., MPH, Policy Director
DATE: November 14, 2016
SUBJ: Medical Marijuana Registry

Thank you for the opportunity to provide testimony on Vermont's medical marijuana registry program. I appreciate your willingness to accept written testimony from Bi-State Primary Care Association since I am not able to join you in person.

The Vermont Judiciary Oversight Committee has requested testimony concerning Vermont's medical marijuana registry program and, specifically, the difficulty patients have developing a relationship with a health care professional who is willing to sign the medical verification form required for admission to the registry.

One cause of this difficulty may be the unsettled interplay between federal and state medical marijuana law. Although twenty eight states and the District of Columbia have "comprehensive public medical marijuana and cannabis programs,"[1] the Federal Controlled Substances Act continues to classify marijuana as a Schedule I drug.[2]

In 2002, the United States Court of Appeals for the Ninth Circuit grappled with the tension between federal and state medical marijuana law.[3] On the one hand, the court held that a physician has a first amendment right to make recommendations to her patients regarding medical marijuana. On the other hand, the court noted that first amendment protections might not apply to a prescription of medical marijuana. The decision did not offer clear guidance about the dividing line between a recommendation and a prescription.

The tension between federal and state law likely affects many types of health care providers, but may be especially significant for federally qualified health centers (FQHCs). In order to qualify for FQHC status, health centers must comply with requirements established by the Public Health Service Act (PHSA). Vermont's FQHCs not only meet these requirements, but they also receive grant funds under §330 of the PHSA and are eligible to compete for other Health Resources and Services Administration (HRSA) grants as opportunities arise. FQHCs are also eligible for Medicaid and Medicare prospective encounter-based payments – again pursuant to federal law. Because FQHCs exist under federal law and rely on federal funds to support services they provide to underserved populations, FQHCs may be particularly sensitive to uncertainty in federal law.

Thank you for your consideration of this important issue and for the opportunity to provide testimony.

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[1] National Conference of State Legislatures, *State Medical Marijuana Laws* (November 9, 2016), available at http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (last accessed November 12, 2016).
[2] 21 U.S.C. § 812, 21 C.F.R. § 1308.11(d). Schedule I substances are, by definition, without any "currently accepted medical use". 21 U.S.C. § 812(b)(1)(B).
[3] *Conant v. Walters*, 309 F.3d 629, 639 (9th Cir. 2002), cert denied, 540 U.S. 946 (2003).