VERMONT

Green Mountain Care Board
89 Main Street
Montpelier, VT 05620

[phone] 802-828-2177
www.gmcboard.vermont.gov

Senator Claire Ayer, Chair Senate Health and Welfare
Representative Bill Lippert, Chair House Health Care
Representative Janet Ancel, Chair House Ways and Means
Senator Jane Kitchel, Chair Senate Appropriations
Representative Mitzi Johnson, Chair House Appropriations
Senator Tim Ashe, Chair Senate Finance

Dear Committee Chairs,

In recent days, legislators, legislative staff, and the HCA itself have been raising questions about the GMCB's use in our FY17 budget of Global Commitment dollars, rather than dollars collected via the Board's billback authority, to fund a portion of the HCA's budget. There seems to be confusion about our selection of a funding source for the HCA. We are frankly confused by this confusion, because the law is clear that our authority to use billback to fund the HCA expires on June 30, 2016 (the end of the current fiscal year).

During the 2013 session, the Legislature was faced with the problem of how to cover expenses projected to exceed revenue in the HCA's budget for that fiscal year (FY14) and the related question of how to provide stable funding going forward. The GMCB and DFR stepped up and helped plug the FY14 hole; that is reflected in Section 37d(b) of Act 79 of 2013, which authorized the GMCB and DFR to treat up to $300,000 of HCA expenses as eligible to recover through the agencies' statutory billback authority. The Board then followed through and provided the HCA with $300,000 to cover its FY14 expenses.

In order to stabilize the HCA's budget and not find itself looking for a stopgap each successive year, the Legislature also made clear in Act 79 that the Board could treat HCA expenses "related to the Green Mountain Care Board's and Department of Financial Regulation's regulatory and supervisory duties" as acceptable expenses to bill back to industry under the agencies' statutory bill back authority. See Act 79, Section 37d(a). That authority expires on June 30, 2016. *Id.* Absent the authority provided in Section 37d, the Board could not use its billback authority to fund the HCA; the billback statute allows the Board to bill industry for 60% of the following: "expenses incurred to obtain information, analyze expenditures, review hospital budgets, and for any other contracts authorized by the Board." 18 VSA 9374(h). The statute does not encompass the HCA's activities.

As a result, when we built our FY17 budget, we followed the law described above. Aware that the Legislature determined, in 2013, that our ability to use our billback authority to fund the HCA would expire at the end of FY16, we did not use that funding source. Our conclusion, based on the clear words of Act 79, was (and remains) that doing so would have exceeded the bounds of the authority delegated to us by the Legislature. Therefore, we turned to Global Commitment, the most (and perhaps only) logical

funding avenue. In light of the above, we are puzzled by the confusion being expressed by legislators, legislative staff, and the HCA itself about our FY17 budget's approach to providing funds to the HCA.

Finally, while we understand Act 79's intent to use our billback authority as a stopgap for the HCA, we believe that it is far from ideal to expect the Board the fund the HCA. As to the funding relationship which currently exists, the GMCB does not see it as appropriate to fund the entity charged in statute with advising the Board on policy matters and with representing the interests of Vermont patients and health care consumers before the Board. *See, e.g.*, 18 V.S.A. § 9374(f); 18 V.S.A. § 9440(c)(9); 8 V.S.A. § 4062(c)(3), (g). The relationship between the HCA and the board is one of a check and balance. In addition, we believe that a funding relationship potentially compromises, or creates the appearance of compromising, the HCA's ability to carry out the duties and authority outlined in 18 V.S.A. § 9603:

Duties and authority

(a) The Office of the Health Care Advocate shall:

> (1) Assist health insurance consumers with health insurance plan selection by providing information, referrals, and assistance to individuals about means of obtaining health insurance coverage and services. The Office shall accept referrals from the Vermont Health Benefit Exchange and Exchange navigators created pursuant to 33 V.S.A. chapter 18, subchapter 1, to assist consumers experiencing problems related to the Exchange.
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> (2) Assist health insurance consumers to understand their rights and responsibilities under health insurance plans.
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> (3) Provide information to the public, agencies, members of the General Assembly, and others regarding problems and concerns of health insurance consumers as well as recommendations for resolving those problems and concerns.
>
> (4) Identify, investigate, and resolve complaints on behalf of individual health insurance consumers, and assist those consumers with filing and pursuit of complaints and appeals.
>
> (5) Provide information to individuals regarding their obligations and responsibilities under the Patient Protection and Affordable Care Act (Public Law 111-148).
>
> (6) Analyze and monitor the development and implementation of federal, State, and local laws, rules, and policies relating to patients and health insurance consumers.
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> (7) Facilitate public comment on laws, rules, and policies, including policies and actions of health insurers.
>
> (8) Suggest policies, procedures, or rules to the Green Mountain Care Board in order to protect patients' and consumers' interests.
>
> (9) Promote the development of citizen and consumer organizations.
>
> (10) Ensure that patients and health insurance consumers have timely access to the services provided by the Office.

(11) Submit to the General Assembly and the Governor on or before January 1 of each year a report on the activities, performance, and fiscal accounts of the Office during the preceding calendar year.

(b) The Office of the Health Care Advocate may:

(1) Review the health insurance records of a consumer who has provided written consent. Based on the written consent of the consumer or his or her guardian or legal representative, a health insurer shall provide the Office with access to records relating to that consumer.

(2) Pursue administrative, judicial, and other remedies on behalf of any individual health insurance consumer or group of consumers.

(3) Represent the interests of the people of the State in cases requiring a hearing before the Green Mountain Care Board established in chapter 220 of this title.

(4) Adopt policies and procedures necessary to carry out the provisions of this chapter.

(5) Take any other action necessary to fulfill the purposes of this chapter.

(c) The Office of the Health Care Advocate shall be able to speak on behalf of the interests of health care and health insurance consumers and to carry out all duties prescribed in this chapter without being subject to any retaliatory action; provided, however, that nothing in this subsection shall limit the authority of the Agency of Administration to enforce the terms of the contract. (Added 2013, No. 79, § 35a, eff. Jan. 1, 2014.)

It is the GMCB's opinion that more sustainable funding mechanisms be sought out for the work of the HCA and a contract be issued from a suitable state entity who can purely monitor their work without any conflict, perceived or actual. The GMCB's FY17 proposed budget holds $350,000 in total for the HCA, which is a $50,000 decrease from FY16 due to the expiration of federal funds to the Board.

Please let us know if you have specific questions about the above.

Sincerely,

Al Gobeille
Chair, Green Mountain Care Board