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Senate Finance Committee

H. 873 Section 25: Health Care Advocate Funding

Trinka Kerr, Chief Health Care Advocate

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Before I talk about the difference we make on the policy side of our work, I want to emphasize that:

- There is enormous pressure on our office related to the individual consumer assistance we provide, where we continue to be swamped by Vermont Health Connect calls.
- Our funding sources have never aligned well with our statutory duties.
- We don't care what the source of funding is: we just don't want to have to reduce services or staffing at a point in time when so much is changing in health care.

Our policy work makes a difference for Vermont health care consumers.

Our authorizing statute says we are required to “speak on behalf of the interests of health care and health insurance consumers...” 18 V.S.A. § 9693(c). We serve as the consumer voice in multiple forums and multiple ways. A good deal of our work is down in the weeds and details of health care policy. We serve on many boards, work groups and task forces, and frequently submit formal comments on Green Mountain Care Board (GMCB) activities, state regulations and policies issued by the Agency of Human Services, the Department of Vermont Health Access and the Department of Financial Regulation, as well as federal regulations and policies issued by CMS and now the IRS (related to the Affordable Care Act).

We believe having an independent voice for Vermont consumers makes a difference, especially in forums dominated by health care payers and providers.

1. We protect consumers in payment reform initiatives, such as Accountable Care Organizations, the State Innovation Model (SIM grant) and the All-Payer Model.

As the GMCB geared up to reduce the costs of health care by promoting payment reform that will incentivize value-based care rather than volume-based care, we became more involved in policy making related to the new accountable care organizations (ACOs).

The Office of the Health Care Advocate, previously named the Office of Health Care Ombudsman, is a special project of Vermont Legal Aid.

In February 2013 the state received \$45 million in federal SIM grant funds to expand provider payment innovation and health information technology. The Vermont Health Care Innovation Project set up six work groups and a steering committee under the auspices of the GMCB. As payment reform unfolded over the next three years, the HCA served on these committees to protect consumers' rights and to make sure consumers had a significant voice in their governance. Examples of our successes:

- We advocated for ACO standards that require that consumers be adequately represented on ACO boards of directors (one beneficiary for each participating insurer) and that all ACOs have a Consumer Advisory Council.
- We pressed for appropriate quality of care measures and benchmarks for provider payments from shared savings. We were outvoted on many issues, but prevailed on others. Frequently we were the only consumer voice in a room full of providers and payers.
- We made suggestions to GMCB's Data Governance Council, tasked with overseeing releases of information from the state's VCHURES database, which the group accepted. These changes will better protect the privacy of Vermonters and increase the data quality used to improve health policy in Vermont.

We researched and wrote two white papers related to ACOs: "Accountable Care Organizations: What is the Evidence?" (January 2014), and "Consumer Principles for Vermont's All-Payer Model" (November 2015).ⁱ The latter was widely quoted in the press, and used by both the GMCB and the ACOs as they thought about and developed plans for the All-Payer Model and the possibility of a unified ACO.

Since last fall we have been advocating for a bill that includes ACO consumer protections, based on the principles in our white paper. That bill, H.812, passed the House and is now in Senate Health and Welfare. It includes regulatory requirements on ACOs and oversight by the GMCB as well as numerous consumer protections.

2. We improve the way Vermont Health Connect works by working on exchange plan design, eligibility regulations, notices, and tax policy assistance.

Along with other stakeholders we worked on the plan designs for the qualified health plans sold through Vermont Health Connect to ensure they were as affordable as possible. We also submitted voluminous comments on several rounds of eligibility rules and met with AHS attorneys multiple times to improve the state Health Benefit Exchange Eligibility regulations. VHC regularly sends us proposed notices and asks for our input on how to make them more understandable.

Our tax attorney provided advice and policy assistance regarding the Affordable Care Act to tax preparers throughout the state, the state of Vermont, navigators and assistors, and the HCA advocates. She also produced two white papers: “Low-Income Taxpayers and the Affordable Care Act” and “ACA and Tax Procedure: Many Unanswered Questions Still Exist.”

3. We help get commercial insurance rates lowered.

The HCA monitors all insurance carrier requests to the GMCB for changes in premium rates, which are usually (but not always) rate increases. We are an automatic party in all rate review proceedings before the GMCB if we enter a Notice of Appearance, which we do in almost all cases. We submit Memoranda of Law in all the cases where we enter a Notice, and we appear if a hearing is held. We argue for reductions and denials of proposed rates whenever we believe the proposed rate increase is not supported by evidence. In cases where there is a proposed rate decrease, we may argue for a greater rate reduction. Sometimes we are successful. When we request decreases or the elimination of a contribution to surplus included in a requested rate, an issue the GMCB’s actuaries rarely address, the GMCB frequently agrees with our position. This saves money for tens of thousands of Vermont policyholders. Here are two specific examples:

- In a recent large group filing we argued that the GMCB should reduce the carrier’s requested contribution to surplus. The GMCB agreed, and ordered the rate to be reduced by 2.5% from the carrier’s request.
- In the exchange filings last summer we argued for lower rates and a lower contribution to surplus. The GMCB’s order lowered Blue Cross Blue Shield of Vermont’s rate increase by 2.7%. MVPs’ was lowered by 0.6%.

4. We actively participate as interested parties in Certificate of Need proceedings which can lead to the denial of CONs or the imposition of conditions.

The HCA monitors the GMCB’s review of Certificate of Need (CON) applications. We have the statutory right to participate in CON processes as an interested party and we appear in cases that involve major building projects or other large facility expenses. We review all public and confidential materials in the record, submit proposed questions to the applicant, and attend hearings. Here are two specific examples of our CON work:

- The HCA entered an appearance in the CON application of the Attuned Eating and Living Centers to provide clinical services for treating Binge Eating Disorders in September 2014. We provided written and oral testimony detailing our concerns with the project at the CON hearing. These concerns included the lack of evidence demonstrating the effectiveness of the proposed treatment model, the lack of evidence on the cost-effectiveness of the proposed project, the adverse impact the project could have on existing health care facilities in Vermont, and

the lack of significant benefit to Vermont residents likely to arise from the project. The GMCB denied the application.

- The HCA participated as an interested party in UVM Medical Center's Replacement of Inpatient Bed CON project. At the hearing, we focused our questions to UVMC's witnesses on how the project will impact costs and quality control. The HCA submitted a post-hearing memo, where we supported the inpatient bed project from a quality perspective, but voiced our concerns about the affordability of the project to Vermonters. We emphasized that it would be unacceptable if the project caused commercial rates to increase. The GMCB approved the project under several conditions including capping the net patient revenue increases in UVMC's budget for 2016 and 2017 at 3.5%.

For more information on our work see our annual and quarterly reports at:

<http://www.vtlegalaid.org/publications>

ⁱ The HCA also wrote six other policy papers in the past two years. See the full list from our website, www.vtlawhelp.org.