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MEMORANDUM

To: Representative Kitty Toll, Chair, House Committee on Appropriations
From: Representative Bill Lippert, Chair, House Committee on Health Care
Date: March 1, 2017
Subject: House Health Care Committee's response to Governor's Proposed FY18 State Budget

The House Committee on Health Care appreciates the opportunity to provide recommendations on the Governor's FY18 budget proposals. We have reviewed and responded to the sections included in the House Committee on Appropriations' February 7, 2017 budget memo, as requested. The Committee supports some of the proposals, recommends modifications to others, and would like to propose some additional language for inclusion in the budget bill. We have addressed only those sections of the budget language on which we wish to provide feedback; to the extent that we do not comment on a section, our silence should be taken as our acceptance of the proposed language.

Recommendations regarding agency and department budgets

Department of Mental Health (DMH): Vermont Legal Aid Mental Health Law Project

The Governor's budget proposes to cut \$44,500 from the DMH budget that represents rent funding for Vermont Legal Aid's Mental Health Law Project (MHLP). DMH testified that it had offered office space to MHLP but that MHLP rejected the offer. MHLP has a different recollection and testified that it would welcome the opportunity to receive office space from DMH. MHLP is obligated by contracts with the Agency of Human Services and DMH to provide services to Vermonters and will continue to do so, which means Vermont Legal Aid will have to cut the funds from elsewhere in its budget. The Committee can support the proposed \$44,500 reduction in the DMH budget, but only if DMH will actually make appropriate office space available to MHLP.

Department of Vermont Health Access (DVHA): Vermont Health Connect

The Governor's budget proposes to save \$2.8 million in General Fund dollars by encouraging all Exchange plan applicants and enrollees who are not eligible for premium tax credits or cost-sharing subsidies to enroll directly in Exchange plans through the insurance carriers, BlueCross BlueShield of Vermont (BCBSVT) and MVP Health Care (MVP). The Committee generally supports the idea of direct enrollment but questions whether the projected savings are realistic. DVHA acknowledged in testimony that the projections are optimistic. The Committee is skeptical about whether each and every Vermonter enrolling in an Exchange plan without financial assistance for plan year 2018 will actually choose to enroll directly with

the carriers; each individual who enrolls through Vermont Health Connect instead **will result in the reduced savings to the State budget**. We are also concerned that Vermonters who may be eligible for premium tax credits or cost-sharing subsidies, or both, will enroll directly through the carriers, thus forgoing the financial assistance that they should have received. The Committee encourages DVHA to ensure that it directs sufficient resources to educating consumers who enroll directly through the carriers that they may be eligible for financial assistance and that that eligibility may only be assessed through Vermont Health Connect. **We also recommend that DVHA provide appropriate links and contact information for the carriers on the Vermont Health Connect website to enable Vermonters who are not eligible for financial assistance to complete their enrollment through the carriers.**

In addition, **as part of the \$2.8 million in projected savings**, DVHA's proposed budget would cut \$50,000 in funding to the Office of the Health Care Advocate. DVHA attributes much of the rationale for this cut to a reduced need for the Office's services if Vermonters are enrolling in Exchange plans directly with the carriers. While the Committee acknowledges the possibility that the Office may **continue to** receive fewer calls related to Exchange plan enrollment, we anticipate a likely **increase** in calls to the Office of the Health Care Advocate as a result of consumer confusion regarding direct enrollment and subsidies, implementation of the all-payer model, and the uncertain future of the Affordable Care Act. 2016 Acts and Resolves No. 113 also added roles in accountable care organization (ACO) budget review and ACO grievance and appeals processes to the duties of the Office. DVHA's proposed cut to the Office would result in the loss of an advocate position. Until such time as DVHA can produce **sustained** evidence to support the reduction to the Office of the Health Care Advocate, the Committee recommends restoring the \$50,000 to the Office that was cut in the Governor's proposed budget, thus maintaining funding at the same level as in FY 2017.

DVHA - DSH payment reductions

The Committee supports DVHA's proposal to reduce disproportionate share hospital (DSH) payments in recognition of reductions in uncompensated care. The Committee recommends increasing the DSH payment reduction from 10% to 20% and using the additional funds to restore the \$50,000 cut from the Office of the Health Care Advocate and for the mental health initiatives described later in this memo.

Green Mountain Care Board - use of bill back authority

The Green Mountain Care Board's proposed budget would shift some of its funding from using MCO investment dollars to making greater use of the Board's bill back authority. The Committee has concerns about the impacts of the Board's increased use of bill back on health insurance premium rates. While General Fund exposure would be reduced by using the bill back mechanism instead of MCO investment funds, the insurance plans would take on additional financial burdens that would be passed through to premiums. The Board's statutory authority to allocate its expenses for obtaining information, analyzing expenditures, reviewing hospital budgets, and for any other Board contracts specifies that the State pays 40%, hospitals pay 15%, nonprofit hospital and medical service corporations (BCBSVT falls into this category) pay 15%, health insurance companies (MVP and Cigna are in this category) pay 15%, and health maintenance organizations (MVP and BCBSVT are also in this category) pay 15%. The Committee received preliminary estimates from BCBSVT and MVP about the impacts to their respective health insurance products, and somewhat different estimates from the Board. The projections show a total premium increase across all MVP plans of between \$5 and \$6 per member per month, and across all BCBSVT plans of between

\$0.88 and \$1.56 per month, because of their respective market shares. We asked the Board to explore ways to adjust the industry allocations going forward in order to allocate bill back liabilities more equitably across the regulated entities. We also asked the Board to consider whether ACOs should be included as regulated entities to which a portion of the Board's expenses should be allocated in the future. We expect to hear back from the Board with options for the Committee's consideration within the next two weeks, and request an opportunity to provide additional recommendations to the House Committee on Appropriations after reviewing these options.

Recommendations regarding proposed language

Sec. E.111.1 - Employers' Health Care Fund contribution assessment

While the Committee does not object to the transfer of authority over the Health Care Fund contribution assessment from the Department of Labor to the Department of Taxes, we do have concerns with parts of the language:

- The definition of “part-time employee” in proposed 32 V.S.A. § 10502(5) says it means “an employee who works for an employer for fewer than 30 hours a week and fewer than 390 hours in a calendar quarter.” The last part of the sentence is not in existing language and the Committee thought perhaps the language should say “or” instead of “and.” In addition, the Committee recommends clarifying whether the employee must have worked for the employer for fewer than 30 hours a week *on average, at least once during the quarter, or every week of the quarter.*
- There are two errors in proposed 32 V.S.A. § 10503(b). The amount of the contribution should be \$158.77 per quarter, which is the current 2017 rate. And the index that increases the contribution should begin in calendar year 2018; the index for calendar year 2017 has already occurred.

Secs. E.300.3 and E.300.4 - Director of Health Care Reform

The Committee has no objection to the Governor's proposal to transfer the Director of Health Care Reform position from the Agency of Administration to the Agency of Human Services. But we recommend that the Agency of Human Services review and revise the language in E.300.4, specifically in proposed 3 V.S.A. § 3027(c). That subsection lists Vermont's health care system reform efforts and includes, for example, a reference to “the consumer price and quality information system pursuant to 18 V.S.A. § 9410,” which was in former subdivision 9410(a)(2) and was repealed by 2015 Acts and Resolves No. 54, Sec. 35. In addition, subsection (d) refers to the expired “Health Care Oversight Committee”; that reference should be changed to the “Health Reform Oversight Committee.”

Secs. E.300.6

There are two sections designated as “Sec. E.300.6.” In addition, the second Sec. E.300.6 makes a conforming change to a statute relating to the Office of the Health Care Advocate to reflect the transfer of the Office's contract from the Agency of Administration to the Agency of Human Services. Similar conforming changes should also be made to 18 V.S.A. §§ 9603(c) and 9604.

Sec. E.300.7 - Funding for Office of the Health Care Advocate

As mentioned in the section on DVHA and Vermont Health Connect above, the Committee recommends restoring the \$50,000 proposed to be cut from the the Office of the Health Care Advocate's budget in light of the anticipated increased demands on the Office related to direct

enrollment, the all-payer model, ACOs, and the potential repeal and/or replacement of the Affordable Care Act.

Sec. F.100 - Effective dates

Proper language for a retroactive effective date, as envisioned for Sec.E.602.0.2 (summit on substance abuse workforce), requires notwithstanding 1 V.S.A. § 214.

Additional language proposal

Use of restraints during transports

18 V.S.A. § 7511(d) declares that “[i]t is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to [voluntary or involuntary admission procedures] unless circumstances dictate that such methods are necessary.” 33 V.S.A. § 5123 uses similar language in the context of transporting children involved in juvenile judicial proceedings. Nevertheless, some sheriffs’ departments persist in using mechanical restraints in many or all such transports in this State. The Committee therefore recommends language for addition to the budget bill as follows:

Beginning on July 1, 2017, the Agency of Human Services shall only enter into contracts with designated professionals or law enforcement officers for the transport of persons pursuant to 18 V.S.A. § 7511 or the transport of children pursuant to 33 V.S.A. § 5123 if, by entering into the contract, the designated professionals or law enforcement officers affirmatively agree to comply with the Agency’s policies on the use of restraints.

Supplemental memo under development

The Committee will submit to the House Committee on Appropriations a supplemental memo by Friday, March 3 with additional comments and recommendations as the result of the work of our mental health subcommittee. That subcommittee has collaborated with a member of the House Committee on Appropriations to develop proposals intended to reduce pressures on the mental health system. The supplemental memo will also make recommendations regarding the Governor’s proposal to reduce disproportionate share hospital (DSH) payments (which is relevant to the mental health subcommittee’s work) and on extension of the Health-IT Fund (which requires coordination among several House committees).