

VERMONT MEDICAL SOCIETY

Date: May 7, 2018

To: House Health Care

From: Jessa Barnard, VMS Executive Director

Re: H. 912, Section 18, Composition of the Green Mountain Care Board

On behalf of our 2,000 physician and physician assistant members of the Vermont Medical Society (VMS) we write to strongly support the language in H. 912, Section 18, as passed the Senate Health & Welfare Committee.

As you know, this language would require that at least one member of the Green Mountain Care Board be a practicing health care professional. The language as passed Senate Health & Welfare is as follows:

(2) The Chair and the members of the Board shall be nominated by the Green Mountain Care Board Nominating Committee established in subchapter 2 of this chapter using the qualifications described in section 9392 of this chapter and shall be otherwise appointed and confirmed in the manner of a Superior judge. The Governor shall not appoint a nominee who was denied confirmation by the Senate within the past six years. At least one member of the Board shall be an individual licensed to practice medicine under 17 26 V.S.A. chapter 23 or 33, an individual licensed as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as a registered nurse or an advanced practice registered nurse under 26 V.S.A. chapter 28.

(c)(1) No Board member shall, during his or her term or terms on the Board, be an officer of, director of, organizer of, employee of, consultant to, or attorney for any person subject to supervision or regulation by the Board; provided that for a health care ~~practitioner~~ professional, the employment restriction in this subdivision shall apply only to administrative or managerial employment or affiliation with a hospital or other health care facility, as defined in section 9432 of this title, and shall not be construed to limit generally the ability of the health care ~~practitioner~~ professional to practice his or her profession.

Currently, the state of Vermont is in the process of transforming our entire health care system and at the center of this substantial reform is the Green Mountain Care Board. The Board is responsible for regulating hospital budgets and health insurance rates, implementing the ACO/All Payer Model and embarking on a completely new way of paying providers.

Each decision the GMCB makes stands to have considerable impact on every health care provider and most importantly, every patient in the state. Health care professionals have been trained to take care of patients and their clinical experience can be invaluable when grappling with critical health care reform issues. The Board benefitted from a physician member at its inception and most recently a primary care doctor and nurse provided the clinician perspective. That clinician perspective is unique, and having someone who's been in the exam room with patients and managed patient care and seen how health care works on the ground is a necessary and valuable perspective.

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Like all Vermonters, we are dependent on the success of the GMCB in implementing the ACO/All Payer Model, increasing access to quality patient care, controlling the rate of growth of health care costs and other significant health care strategies. Please support the requirement of a health care professional on the GMCB.

To address several concerns we have heard raised with regarding Section 18:

Qualified applicants: The GMCB authorizing statute lists five criteria for determining if an applicant is qualified, 18 VSA § 9392, including: knowledge of or expertise in health care policy; desirable personal characteristics, including integrity, impartiality and regard for the public good; knowledge that complements the remaining members of the Board; and *“impartiality and the ability to remain free from undue influence by a personal, business, or professional relationship with any person subject to supervision or regulation by the Board.”* Only “qualified” applicants are forwarded by the Nominating Committee for consideration by the Governor, 18 VSA §9391, and a health care professional would have to meet the same standards as any other candidate.

Conflicts of interest: The statute creating the Board already provides protection against conflicts of interest. First, 18 VSA § 9392, referenced above, requires that candidates be vetted for conflicts. Second, the authorizing statute creating the Board, 18 VSA 9374, would require recusal for any Board member that has an actual conflict of interest with any matter at hand: *“No Board member shall participate in creating or applying any law, rule or policy or in making any other determination if the Board member, individually or as a fiduciary. . . has an economic interest in the matter before the Board or has any more than a de minimis interest that could be substantially affected by the proceeding.”*

Finally, parallels have been drawn between the GMCB and the Public Utility Commission to suggest that health care professionals should not make decisions as part of the GMCB. Beyond some surface level similarities in structure, the parallel between the GMCB and PUC are inexact. The PUC is a quasi-judicial entity that deliberates behind closed doors. In contrast, GMCB hospital budget deliberations are required to be held in public and are subject to public meeting laws, meaning that all contributions of a health care professional and appropriate decisions regarding recusal, would be subject to public monitoring.

Current Board members: VMS agrees with the intent to allow current Board members to continue to serve and not have the requirement to appoint a health care professional disrupt the current composition of the Board. Section 20 of the bill (effective dates) as passed the Senate clarified that Section 18 shall not be construed to disqualify a non-health care professional serving on the date of passage from being reappointed to serve one or more additional terms. VMS supports this language and believes it addresses the concern with existing Board member being able to continue to serve if successfully reappointed.

VMS has concerns with the language as offered by Senator Pearson and passed the Senate regarding affiliation with a regulated entity. The final language of Section 18 as passed the Senate on a 15-14 vote, states that the health professional cannot be “affiliated in any way with a person subject to supervision or regulation by the Board.” Our concerns include the following:

- Language in the GMCB statute has historically restricted “administrative or managerial employment or affiliation with a hospital” and raised concerns with potential health care professional applicants to the GMCB. Physicians and other clinicians typically seek to continue some health care practice during their term on the Board. However, over the years, VMS has discussed with several candidates challenges interpreting or complying with these restrictions. The language as passed the Senate, is even more restrictive and will severely limit the applicant pool. The GMCB reported in 2017 that approximately 69% of primary care and specialty physicians are employed by a regulated entity versus 31% remaining independent.¹ (It is possible that an even greater percent of advance practice professionals and nurses are employed.) As business owners, independent physicians have great difficulty giving up the majority of their practice for the length of time necessary to serve on the GMCB.
- The language is vague – it is unclear what affiliation means in the case of an individual health care professional – simply being on a medical staff (as many independent practice physicians are), full employment or even making referrals? Further, it is unclear the definition of which entities are “subject to regulation” by the Board. Many entities are subject to CON by the Board including home health entities, ambulatory surgical centers, laboratories and physician offices making equipment or technology investments over certain cost thresholds.² Several Federally Qualified Health Centers in Vermont also own hospitals, likely disqualifying any of their health care professionals from serving. The plain language of Section 18 as passed the Senate could exclude a huge swath of non-hospital based health care professionals from potential service on the Board and undermine the entire intent of the Section.

Thank you for considering our comments. We look forward to the opportunity to discuss these issues with your Committee and ask for your support of Section 18, as passed the Senate Health and Welfare Committee.

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http://gmcboard.vermont.gov/sites/gmcb/files/files/resources/GMCB_Fair%20Reimbursement%20Report_Oct_1_2017_FINAL.pdf

² **Non-Hospital-based Health Care Entities subject to CON by the GMCB from 2015-2018 include:** Kindred Healthcare – Home Health Services; Green Mountain Surgery Center – Vermont’s first Ambulatory Surgery Center; BAART Behavioral Health Services, Inc.; The Pines at Rutland Center for Nursing and Rehabilitation; VNA & Hospice of the Southwest Region; OAS, LLC d/b/a Valley Vista; Wake Robin; Barre Gardens (fka Rowan Court Nursing and Rehab Center); Franklin County Rehab Center; Vermont Veterans' Home; Burlington Labs; Genesis Healthcare, Inc.; Visiting Nurse & Hospice for Vermont and New Hampshire; CCK Holdings, LLC – Nursing Facility; Green Mountain Nursing Home (GMNH) and Brookside Health & Rehabilitation (BHR); VNA of Chittenden and Grand Isle Counties; VT Open MRI, LLC; Green Mountain at Fox Run - Outpatient Eating Disorder Treatment Program

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