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MEMORANDUM

To: Senator Claire Ayer, Chair
Senate Committee on Health and Welfare

From: Phil Keller
Director of Insurance Regulation
Department of Financial Regulation (DFR)

Re: S.53

Date: February 14, 2018

The following is a summary of my testimony yesterday concerning S. 53 ("An Act Relating to a Universal, Publicly Financed Primary Care System"). As noted in my testimony, DFR has significant operational and legal concerns about the legislation. This summary addresses those concerns but does not address the equally difficult funding questions posed by the bill, which are outside of DFR's statutory authority.

1. State Government Would Assume the Role of an Insurer

DFR's major operational concern is that, in its current version, the bill would make state government the largest health insurer in the state of Vermont, in terms of covered lives, with responsibility for ensuring the payment of primary care services for over 600,000 Vermont residents.

The bill would make the state a health insurer because the Universal Primary Care Fund created by the bill would be a risk bearing entity in the sense that it would be financially

responsible for paying primary care claims covered by the bill. The amount of money placed in the fund each year would need to be calculated based upon an actuarial projection of the following year's claims costs. In order protect the solvency of the fund against the possibility of actual claims exceeding projected claims (such as in a flu epidemic), the state would need to purchase reinsurance, as other insurers do, or, alternatively, create some mechanism to generate additional revenue for the fund, even in the middle of a plan year.

Another insurer-like responsibility the bill would impose on the state is claims administration, i.e., the processing and payment of claims received from providers. Claims administration is an important service that Blue Cross Blue Shield of Vermont (BCBSVT) and MVP provide for their subscribers and providers. Operationalizing S.53 would require a detailed analysis of how the state would discharge this responsibility, including funding the necessary human resources and computer systems.

Other insurer functions the state would be required to provide are creating provider networks, credentialing and negotiating discounts with providers (including hospitals), and complaint resolution. All of these functions, would require significant in-house expertise and human resources, unless contracted out to a third party administrator (which would entail its own costs).

2. **The Need to Clarify What's Covered**

DFR believes that S.53 needs to be clearer about the kinds of services that are covered. This is important for three reasons. First, knowing the universe of covered services is essential to determining the plan's projected claims costs and funding needs each year. Second, health care consumers need to know what services will be covered. Third, if the line between primary care and major medical care isn't clearly defined, there is likely to be a coordination of benefits

problem with both the state and major medical insurers being uncertain as to who is responsible for paying a claim.

An example of the bill's current lack of clarity is its treatment of colonoscopies and mammograms. Vermont law requires insurers to provide qualifying policyholders with access to cost-free mammograms (8 V.S.A. §4100a) and colonoscopies (8 V.S.A. §4100g). The theory underlying these statutory mandates is that mammograms and colonoscopies are important aspects of preventive care. Yet while §1852(a)(1)(C) of the bill states that it covers "other preventive services," §1852(b) fails to include radiologists and gastroenterologists in its list of eligible providers.

Another question about the bill's scope is whether services provided by naturopathic physicians are covered. Section 4088d of Title 8 requires coverage of medically necessary services provided by a licensed naturopath and specifically requires insurers to recognize naturopathic physicians as "primary care physicians." However, naturopathic physicians are also not included on the list of eligible providers in §1852(b).

These and similar coverage issues need to be resolved in order to accurately predict the bill's costs and avoid coordination of benefits problems, but inclusion of these services within the bill's scope is also likely to significantly increase its costs.

3. **The Status of Health Savings Accounts**

One of the most significant legal questions that needs to be considered is S.53's impact on the tax-favored status of health savings accounts (HSAs). HSAs are used with qualifying high deductible health insurance plans and allow consumers to pay for medical services below the amount of the plan's deductible on a tax free basis. An increasing number of health insurance plans (e.g., the Vermont Education Health Initiative's FY 19 plans) are using HSAs as a funding mechanism. The IRS has published a list of preventive services that can be paid by an insurer on

a first dollar basis without invalidating the tax-favored status of the HSA. The Department is uncertain what the IRS's position would be if a governmental insurer, rather than a commercial insurer or ERISA plan, provided first dollar coverage for preventive or primary case, but the issue needs to be carefully examined to ensure that there are no unintended consequences affecting a large number of Vermont consumers. Absent clearly-applicable legal precedent in another state or an advisory opinion from the IRS, it may not be possible to answer definitively the question of whether the bill will have negative tax consequences unless it is actually implemented.

Please do not hesitate to contact me or the staff at DFR if you have any follow-up questions. Thank you for the opportunity to testify about the legislation.

/s/ Phil Keller
Phil Keller
Director of Insurance Regulation
DFR

cc: Michael Pieciak, Commissioner, DFR
Kendal Smith, Director of Legislative Affairs, Governor's Office