

TO: Senate Education Committee

FROM: Jeff Fannon, Vermont-NEA Executive Director

DATE: May 8, 2018

RE: Educator Health Care – Draft 7.1

Draft bill version 7.1 moves in a good direction but we do have some suggestions to improve the bill. Some of these suggestions were discussed during your committee meeting on Thursday, May 3 and Friday, May 4, but in order not to mistakenly leave them off, I'll be, perhaps, redundant.

As a threshold matter, the members of Vermont-NEA voted unanimously at their April 7 annual meeting to establish a statewide entity to design and administer a single, comprehensive health benefit plan for all school employees and their dependents, and provide the administrative functions and wellness services to Vermont schools, their employees, and Vermont retired teachers covered by the Vermont State Teachers Retirement System.

- **Transition.** The transition bargaining timeline, that is set to begin August 1, 2018, is unworkable, as a practical matter. The re-balanced VEHI would be required to establish a new health plan effective July 1, 2019 at almost the same time the Commission would be trying to negotiate the cost-sharing arrangements. This seems like an impossible task. Instead, we recommend the current health plans be allowed to continue for another year, i.e., prohibit VEHI from making any plan design changes for two years, but the Commission would begin its work on or about September 1, 2018 for those plans effective January 1, 2020. This would allow for a phased-in transition of both the re-balanced VEHI and the new Commission.
- **Dispute Resolution at VEHI.** The “health benefit association” (a/k/a “VEHI”) needs to have a dispute resolution provision. While it is true that for two decades VEHI operated without any dispute resolution language and never needed anything of the sort, in an abundance of caution we believe there should be some dispute resolution language. VEHI, should, therefore, be required to either use the same process as does the Commission in section 1, 16 VSA § 2104(a)(3)(B), or use binding interest arbitration in a manner consistent with title 16, chapter 57, subchapter 4, if and only if the parties cannot reach agreement about educator health care plan design.
- **Challenging Arbitrators Ruling.** In section 1, 16 VSA § 2105(b)(5)(D), (page 7, line 15) allowing a party to challenge the arbitrator’s ruling “if . . . there is an absence of substantial evidence . . .” is overly broad and invites litigation that will lengthen the process and should, therefore, be deleted. That language is not found in Vermont’s existing Arbitration Act, and the language is contrary to the well settled principle that arbitrator’s decisions are not to be second guessed by courts.

- **Unfair Labor Practices.** The additional language added starting on page 7, line 22, surrounding unfair labor practices (“ULPs”) should be deleted. ULPs would unnecessarily slow-down the process. Instead, if the language would specifically allow the arbitrator to fashion a remedy to address unfair labor practices, especially failures to bargain in good faith, then the need to go to the VLRB would be unnecessary. For example, we suggest deleting, in its entirety, the ULP language found at 16 VSA 2106 starting on page 7 line 22, and inserting the following language to a new 16 VSA section 2105(b)(3)(C):

The arbitrator has authority to address and include in the award any remedy concerning allegations of unfair bargaining practices by any party, including allegations of a party’s failure to bargain in good faith.

- **VEHI Governance.** Section 7’s “health benefit association” (a/k/a “VEHI) governance structure should be reviewed as DFR develops rules for this entity, specifically the mechanism by which bylaw changes and other governance matters are voted on at an annual meeting. We believe that with this new regulatory structure it should be clear in rule that equality in governance goes beyond the board, and equality includes those with the ability to modify the underlying governing bylaws at any annual meeting. In other words, decisions by VEHI need to be made in a setting that maintains equality. We suggest the following language should be added to section 8:

Sec. 8. DEPARTMENT OF FINANCIAL REGULATION; RULEMAKING
 The Department of Financial Regulation shall amend its rules pursuant to 3 V.S.A. chapter 25 as needed to conform to the provisions of 24 V.S.A. § 4947 as amended by this act. Such rules shall be consistent with this act’s equality of governance and administration but only when the parties are operating in a collectively bargained environment as is the case now.

- **Participation in Health Reform Activities.** The “health benefit association” should be directed to look at health care reform measures. These reform strategies can improve health care quality, coordination, and reduce costs for public school employees and tax payers. In doing so, a new subsection (f) should be added to section 7, 24 VSA § 4947(f), as follows:

In designing a single statewide health benefit for school employees, a health benefit association shall examine such initiatives in the realm of health care and its costs as:

- (1) value-based insurance design that prioritizes affordability of high-value care, including primary care and treatment of chronic conditions;
- (2) reference pricing for targeted, high-cost procedures and treatments;
- (3) episode-based payments for medical procedures;
- (4) partnerships with organizations and medical providers, including centers of excellence, focused on improving the quality and affordability of health care and on reducing wasteful care;
- (5) the care coordination work and cost-effectiveness of OneCare Vermont; and

(6) ways to reduce pharmaceutical costs, including where and how they are purchased, and aligning costs with clinical effectiveness, and periodic surveys of employees to measure the effectiveness and affordability of, and potential improvements to, VEHI's health care benefit plan.

- **Retired Teachers.** Retirees should be specifically protected in the language of section 7. Vermont-NEA's original proposal would have allowed retirees to maintain their current coverage and plans and that type of prophylactic language needs to be added to section 7 in a specific manner.
- **Repeal Section H.6(c) of Act 85.** That section terminated all collective bargaining agreements' health care provisions in the summer of 2019, and since this new act would likely need to maintain the status quo beyond 2019, that section of Act 85 should be repealed.