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To: Senate Education Committee
From: Nicole L. Mace, Executive Director
Re: Statewide Health Insurance - Draft 4.2
Date: May 2, 2018

The General Assembly received the report of the Health Benefits Commission in December of 2017, which recommended the transition to a statewide benefit. We have concerns that this discussion is unfolding in the final weeks of the session without ample time for analysis.

That said, I want to offer some specific feedback on Draft 4.2 and some of the testimony submitted yesterday.

First, we are pleased that the language that would have combined the entity responsible for designing and administering health plans and bearing the risk for the decisions it makes with the entity responsible for establishing the cost exposure for employers and employees has been eliminated. Draft 4.2 properly separates the role of negotiating cost-sharing arrangements with the role of VEHI.

Composition of the VEHI Board

The 1996-2015 board dynamics Mark Hage referenced in his testimony yesterday came at a time when health insurance was not consuming ever-growing portions of school district budgets, and the health insurance marketplace was very different. We believe the current VEHI board composition effectively serves member municipalities and school employees, and reinforces the proper role of fiduciaries of a trust managing several hundred million dollars, and health benefits impacting tens of thousands of lives.

The Vermont-NEA has a unique role within VEHI. They provide an important voice for school employees on the board. The few instances in my tenure on the board where there has not been a unanimous board vote have had to deal with board operational issues, including conflict of interest policies and consensus-based decision making protocols. There was one

instance where the Vermont-NEA suggested an exploration of extending the deadline for transitioning to the new plans; after receiving information from BCBSVT about the inability to administer two sets of plans at once, no motion was made to take action to delay the plans.

The Vermont-NEA is also the recipient of a substantial service agreement so that Mark Hage can serve as a co-trust administrator with Laura Soares. The board receives recommendations from the trust administrators before making any decision. In my experience as a VEHI board member, the trust administrators typically present a unified recommendation and the board supports the direction recommended by Mark and Laura.

It can be challenging for board members who serve two organizations – the organization they advocate for and are employed by and the organization they govern as a board member – to fulfill their fiduciary obligations. The duties of a non-profit board are clearly spelled out in state statute – board members are required to be loyal to the organization and exercise due care in protecting its assets. If members of a board are appointed by advocacy organizations, then whose interests do they ultimately represent? The interests of their employers (or entity that nominated them), or the interests of the organization they govern?

Under draft 4.2 VEHI board members would be appointed by advocacy organizations – the VSBA and the Vermont-NEA. Under the current bylaws, only one seat is designated to an advocate from each side. Vermont-NEA selects its representative, and the VSBA selects its representative. The bylaws direct the members of the trust (school districts) to elect board members that do not represent advocacy organizations at their annual meeting (when terms expire or a vacancy occurs). These board members are elected representatives of school districts – school board members, superintendents, or business managers.

If the legislature wants to include additional teacher representation on the VEHI board, then it should state that one additional seat would go to a teacher whose name should be approved by the full membership just as it is for all other representatives. This signals to the board members that their allegiance is to the organization they serve (VEHI through its members), and not the advocacy organization that appointed them.

Again, we have serious concerns about the legislature dictating equal representation on the VEHI board, when school districts bear the risk associated with decisions that are made by that board.

Definition of “School Employee”

This proposal combines licensed employees with non-licensed employees for the purpose of school employer health benefits. It would expand health insurance coverage and increase the benefits available to thousands of school district employees, without any fiscal analysis. I strongly encourage you to hear from Joyce Manchester of the JFO who has done a lot of analysis on the current level of benefits and the disparities that exist between school districts and classes of employees.

While we agree that moving towards a common benefit for all school employees should be a goal of the parties to the negotiation, I am concerned that doing so overnight would lead to significant cost increases. Given the limited time frame for negotiating this new benefit for FY 2020, combining the two employee groups also increases the complexity of the negotiation.

I recommend eliminating the definition of school employee as drafted and maintain the current definitions in law. If the committee does not support the creation of two separate bargaining units, as I recommended, language should be added to clarify that a single benefit will apply to all non-licensed staff and a single benefit will apply to licensed staff. If the parties to the state negotiation determine that a single benefit for licensed and non-licensed staff is feasible and cost-effective, then nothing would prohibit them from having it apply to all employees.

Ratification Procedures

In Ontario, they have separate ratification processes for “central” bargaining and “local” bargaining. The parties at the central bargaining table who represent employers are the school boards associations. They are required to establish policies and procedures for performance of their duties under the law. The Ontario law requires that the ratification of “central” contract provisions must be decided by the approval of a majority of the school boards that are represented by the association, with their votes weighted to reasonably reflect, for each school board, the size of the bargaining units containing employees of the school board. We think this process could work

for the ratification of health benefits by school boards; we envision a similar process for ratification by employees.

What happens if the parties do not ratify in a timely manner? The parties would have to go back to the table and continue to negotiate. If they are unable to do so and meet the deadlines in statute, impasse procedures would be triggered, which could ultimately result in an arbitrator deciding the benefit.

Duration of the Agreement

Two years will require school districts to re-negotiate contracts every two years, which they have been doing for several years now. Negotiation fatigue on both sides is real. Would the committee consider leaving the duration of the agreement to “no less than two years” so that if the parties decide to agree to a longer-term arrangement (which could have different benefit levels over the duration of the agreement) if they so chose?

Health Insurance Training & Information

We think the Commission should be required to receive an information session from VEHI prior to negotiations commencing. The same is true for factfinders and arbitrators. There are actuarial implications for decisions that get made that go beyond cost exposure to employees and employers during the agreement.