Herbert W. Olson

Hillsboro Mountain PLC

4577 Ireland Road, Starksboro, VT 05487 • 401-829-1678 • herb.olson123@gmail.com

February 21, 2018

Senator Claire Ayer, Chair
Senate Committee on Health and Welfare
State House
Montpelier, VT 05602

Re: S. 53, An Act Relating to Universal Primary Care

Dear Senator Ayer:

First, I want to thank you and the Committee for taking my testimony on this legislation during the week of February 5th. It felt like a class reunion of sorts!

On a more substantive note, I have been made aware of the testimony of others suggesting that the Universal Primary Care program envisioned by S.53 would constitute "insurance", and that therefore the UPC program should be regulated as insurance, and should have the operational attributes of insurance.

The law is quite clear, in my opinion, that a program such as UPC does not constitute "insurance". The term "insurance", and "health insurance" in particular, is defined in Vermont's Insurance Code, at 8 V.S.A. §§ 3301, 3301a, and 4061. Section 3301a of the Vermont Insurance Code defines the term "insurance" in a general manner:

> As used in this title, "insurance" means ***an agreement*** to indemnify or otherwise assume an obligation, provide services or any other thing of value on the happening of a particular event or contingency, or to provide indemnity for loss with respect to a specified subject by specified circumstances in return for a consideration. Without limiting the generality of the term, "insurance" shall include any business defined in section 3301 of this title, annuity contracts, and the business of health maintenance organizations and continuing care retirement communities.
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> (Emphasis added)

As is clear from the statute, the definition of "insurance" is based, in a very fundamental way, on the concept of an "agreement", which then becomes the written contract of insurance, and which is reflected in the insurance policy. An insurance contract or agreement can be entered into between an individual and an insurance company, or between an

employer and an insurance company for the benefit of employees or employee beneficiaries. See 33 V.S.A. § 1811 (individual and small group insurance), and 8 V.S.A. § 4079 (group insurance).

In a similar manner, Section 4061 of the Vermont Insurance Code (health insurance defined) speaks to "any policy or contract" covering insurance described in 8 V.S.A. § 3301a(2). Section 3301(a)(2) defines "health insurance" so as to distinguish "health insurance" from other types of insurance, such as life insurance, or casualty insurance (e.g. home insurance or car insurance), but the Section 3301(a)(2) definition of "health insurance" does not define the term "insurance" in any different or conflicting manner than is already defined in Section 3301a. The statutes establishing the Vermont Health Benefits Exchange are in accord with the above-referenced provisions of the Vermont Insurance Code. See 33 V.S.A. § 1811(a)(1).

I cannot foresee any circumstances where an individual Vermont resident would be required to enter into an insurance contract or agreement (as defined by Vermont law) with the UPC program as a pre-condition to receiving primary care services, and I cannot foresee circumstances in which an insurance policy would be issued to the individual receiving primary care services under the UPC program.

Rather than using the private insurance system as the model for the Universal Primary Care program, the UPC program is much more comparable to the Medicaid program, and would be administered in a similar straightforward, traditional and well-known manner. Consequently, the following arguments asserted by those opposed to S.53 either have no merit, or are the types of questions which should be addressed by the operational plans that will be developed under the proposed amendment to S.53.

- Insurance reserves or other insurance solvency measures. As discussed above, the UPC program is not insurance, and therefore the program does not assume any insurance risk. There is a huge difference between the insurance risk assumed by an insurance company such as Blue Cross Blue Shield, and the financial risk inherent in the operations of a public agency (or any private business entity for that matter). Mitigating financial risk for the UPC program is not uniquely complex or significant. Primary care costs are relatively stable year over year compared to more volatile health segments such as prescription drugs, hospital care, or an Accountable Care Organization (when it assumes risk for future costs). Options for mitigating financial risk for the UPC program should be developed under the operational plans of the proposed S.53 amendment.

- Enrollment. Enrollment is an area where the UPC program is clearly less complex and more straightforward. Any Vermont resident would be able to schedule an appointment and see a primary care provider upon a sufficient showing of Vermont residency (cross-border issues are not insurmountable, and should be explored in the proposed operational plans). Why issue an insurance enrollment card when a driver's license or other similar existing proof of residency is sufficient for purposes of the UPC program?
- Claims administration. There is no good reason why the UPC program would need to duplicate the claims administration function already in place through other agencies or entities. Primary care providers within the UPC system would either submit claims to a public agency such as Medicaid for services included in the list of UPC's primary care payment codes, or claims would be submitted to other insurers for claims not within the UPC's primary care payment code list. Claims administration in the UPC program would be much less complex for providers and patients than existing claims administration, because under the provisions of S.53 patient cost sharing and insurer utilization review would disappear.
- Medicaid. To the extent that the UPC program might rely on Vermont's Medicaid program to administer particular functions of the UPC program, the State of Vermont may need to negotiate an amendment to its existing waiver to address those functions. Alternatively, the operational plans developed under the proposed S.53 amendment may suggest ways to segregate those functions in a manner that does not affect federal rules or expectations.
- Medicare. It is assumed for purposes of the development of operational plans under the proposed S.53 amendment that Medicare would not be integrated into the UPC program, for the time being. UPC primary care providers would bill Medicare for primary care services provided to Vermont residents enrolled in Medicare.
- Reimbursement methodologies. While the details of primary care reimbursement under the UPC, and reimbursement levels, should be left to the proposed operational plans, the basics are straightforward. Primary care providers would be reimbursed either on a fee for service basis, or on a per capita basis, as is the current situation. Per capita reimbursement appears to be a preferable direction for the future, however there are systems and infrastructure issues that need to be addressed. This is not an issue unique to the UPC program, but rather is an issue facing the entire Vermont health system.

- Reimbursement levels. Reimbursement levels for primary care providers may be much higher than current reimbursement levels if Vermont chooses to adopt the Rhode Island approach of ensuring that spending for primary care in Vermont represent a fair allocation of total Vermont health care spending (in RI the allocation percentage is 10%, much higher than the current Vermont allocation of roughly 6%).
- Integration with the All Payer Model. There is no fundamental reason why the UPC program would conflict with the All Payer Model. It is encouraging that One Care appears to be willing to work with others to address any issues that may arise while developing operational plans.

I urge the Committee to not become distracted from achieving the public benefits of Universal Primary Care by those who oppose S.53. Those "naysayers" want to convince you that the operational features of the UPC program are somehow unique, complex, or in need of regulation as an insurance company. Instead, I urge the Committee to move forward with its proposed S.53 amendment calling for stakeholders to develop options for operational plans implementing the UPC program. I believe the proposed amendment is the best way forward, in the interests of Vermonters, and in the interests of a Vermont health care system that is both universally accessible and affordable.

I am happy to answer any questions the Committee may have concerning these matters.

Sincerely,

Herbert W. Olson

cc: Faith Brown, Committee Assistant
Jennifer Carbee, Legislative Counsel