MEMORANDUM

TO: Senate Finance Committee

FROM: Jeff Fannon, Vermont-NEA Executive Director J.F.

DATE: February 1, 2019

RE: Regulation of Third-Party Administrators – S.41

Thank you for allowing me the opportunity to speak with you about S.41 and the regulation of third-party administrators ("TPAs")

To start, however, some background about how we got to this place of needing to regulate TPAs. Health care is a huge issue for Vermont-NEA's members, and it is a unique benefit. Most Vermonters, our members too, do not try to use health care, nobody wants to go to the emergency room or get an x-ray, etc. People must use health care services because they are in pain or otherwise not well.

I'd like to start with why we are here in support of S.41. starting very early last year, we heard from many of our members about their difficulties with their new health plans. We surveyed all school employees in early December 2018 and I think some data points will paint a better picture of how badly the TPA mess really is to all school employees. Indeed, our survey was completed by more than 2,000 school employees, including 141 school administrators.

- 51% did not fill prescriptions, go to the doctor, or skipped treatment because of OOPs
- 56% had a moderate to strong impact on their ability to pay for essential services because of OOPs
- 85% experienced some form of problem with the TPA—late payments, for example)
    - of which, the amount was between $500 - $5,000
- 37% were sent or threatened to be sent to collections
- 43% cancelled or did not schedule medical care because they were concerned with reimbursement of their OOPs

Please allow me to step even further back in time. For some two decades labor (Vermont-NEA) and management (the Vermont School Boards Insurance Trust a/k/a "VSBIT") equally operated the Vermont Education Health Initiative ("VEHI"). The jointly administered VEHI provided Vermont school districts with health care for school employees. While schools were not required to purchase health insurance from VEHI, the vast majority did purchase health care from VEHI. VEHI self-insured but purchased administrative services from Blue Cross Blue Shield of Vermont, and BCBSVT processed VEHI's claims and provided other administrative services.

This VEHI arrangement went on, as I say, for some two decades. The Department of Financial Regulation ("DFR") regulated VEHI in its small group regulatory marketplace but the

Affordable Care Act ("ACA") eliminated the small group market entirely; thus, DFR had to find a regulatory home for VEHI. That home was the intermunicipal association marketplace, but that regulatory framework required municipalities to be a majority of the VEHI board. In response, in 2014, the VEHI board became a 3-2 board consisting of 3 management members and 2 labor members. In the fall of 2016 the board majority changed the VEHI board composition to 4-1 with labor having but one seat on the VEHI board.

During this same period, VEHI decided to end its then current health plans and transition to plans with higher deductibles (out-of-pocket expenses or "OOPs") that were compatible with health reimbursement arrangements ("HRAs") and health savings accounts ("HSAs"). These new plans all came online at the same time, January 1, 2018. There were two third-party administrators ("TPAs") that had all of the school VEHI business—Future Planning Associates had about 80% of the schools and Health Equity had the remaining 20% of Vermont school TPA business.

The transition to these new plans has been difficult to say the least. School employees, including administrators, have had problems from the very start in their ability to obtain the benefits they deserved. Future Planning had administrative troubles from the outset and just two months after it began providing services to 80% of Vermont schools and the schools' employees, Future Planning announced that it was terminating all of its TPA contracts with every Vermont school. The Future Planning notice to schools was dated March 7, 2018 and by May 2018 Future Planning was no longer providing TPA services to any schools. Into the breach stepped DataPath to clean up the mess. That mess continues and likely will affect my members into the spring; thus, the TPA mess has been ongoing some twelve months after VEHI rolled-out its new plans.

We sought to assist our members but learned we could not because TPAs were not regulated by any agency of state government. Indeed, so bad was the TPA mess, that some 30 local Vermont-NEA affiliated unions representing thousands of Vermont teachers and educational support staff employees have sued Future Planning seeking damages for Future Planning's administrative failures. That lawsuit will only address past wrongs and has not bearing on future regulations of TPAs. The survey results above reflect just how bad it was and remains.

Fourteen states regulate TPAs but Vermont does not. We know of the upwards of 7 TPA that have contracted with Vermont schools, including: csONE, DataPath, HealthEquity and Healthy Dollars.

Certainly, DFR seems to be the best regulatory home for the regulation of TPAs. In addition to Vermont-NEA members and school employees generally affected by the unregulated TPAs, we think S.41 should be expanded to cover not just health reimbursement accounts ("HRAs") but also health savings accounts ("HSAs"), flexible spending accounts ("FSAs"), and dependent care accounts. All of these accounts were affected by the Future Planning mess and need to be regulated going forward.

Thank you.