Vermont Medical Society

To: Senate Committee on Health and Welfare
From: Jessa Barnard, Vermont Medical Society
Date: February 19, 2020
RE: S. 290, Health Reform Implementation

The Vermont Medical Society is the State's largest physician membership organization, representing approximately 2,400 physicians, physician assistants and medical students of all practice types and locations. VMS has comments on several sections of the bill.

Sections 1-3, ACO Oversight & Reporting

According to CMS, at the most basic level, "ACOs are groups of doctors, hospitals, and other health care providers, who come together voluntarily to give coordinated high-quality care to their Medicare patients." Vermont's All-Payer Model promises to extend that definition beyond Medicare. VMS's support for the All-Payer Model has in part been premised on the fact that ACOs are provider led and provider directed – allowing those who care for patients to design they ways to improve patient care and reduce costs. While VMS supports oversight and transparency for Vermont's ACO, VMS does not see an added benefit of the requirements proposed in S. 290 and has a concern that some of the requirements could add another administrative burden to already overburdened health care providers.

Section 6, Health Care Professional on Green Mountain Care Board

VMS does support a requirement that at least one member of the Green Mountain Care Board be a licensed health care professional.

Each decision the GMCB makes stands to have considerable impact on every health care provider and most importantly, every patient in the state. Health care professionals have been trained to take care of patients and their clinical experience can be invaluable when grappling with critical health care reform issues. The Board benefitted from a physician member at its inception and most recently a primary care doctor and nurse provided the clinician perspective. That clinician perspective is unique, and having someone who's been in the exam room with patients and managed patient care and seen how health care works on the ground is a necessary and valuable perspective.

As you know, this language has already passed this Committee this biennium. Alternatively, VMS also supports a part-time or full-time Chief Medical Officer staff position on the GMCB. This individual would be able to obtain information and inform many internal Board decisions on issues ranging from rate review to CON to hospital budgets – in a way that is well beyond the scope of the current advisory committees.

Sections 7-9 & 11, Provider rate/contract review

VMS fully appreciates and shares the concern with the balance in negotiating power between providers and payers. Vermont physicians are often provided "take it or leave it" contracts with

payers, without the leverage or ability to negotiate the terms. A prime example is the BCBS out of network referral policy issued this summer, the subject of S. 309, pending in the Senate Finance Committee. While insurers can employ attorneys, actuaries and other experts to determine contract terms, individual physician practices have neither the staff, finances nor capacity to engage in lengthy negotiations. Further, under federal antitrust law, independent physicians cannot negotiate collectively with health insurers. This imbalance in relative size leaves most physicians with a weak bargaining position relative to commercial payers.[1]

VMS suggests that submitting all contracts for review by the Green Mountain Care Board is not the most direct mechanism for addressing this concern. For example, provider practices may enter hundreds of contracts each year and requiring them all to be submitted and delaying implementation before review may in fact add to practice administrative burden. Further, individual physician practices will lack the staff and time to provide back up data or information to the Green Mountain Care Board in such a process. Rather, VMS request that the Committee consider extending existing provider bargaining group provisions to private payers. This would allow physicians and other health providers to collectively enter negotiations with insurers when and if such a need arises, rather than with every contract entered. While further antitrust analysis would be required, private "anticompetitive" activity may be permissible under a state action doctrine if it is shown that the activity was pursuant to a clearly announced state policy and was actively supervised by the state.

18 V.S.A. § 9409. Health care provider bargaining groups

(a) The Green Mountain Care Board may approve the creation of one or more health care provider bargaining groups, consisting of health care providers who choose to participate. A bargaining group is authorized to negotiate on behalf of all participating providers with health insurers as defined in § 9402, the Secretary of Administration, the Secretary of Human Services, the Green Mountain Care Board, or the Commissioner of Labor with respect to any matter in this chapter; chapter 13, 219, 220, or 222 of this title; 21 V.S.A. chapter 9; and 33 V.S.A. chapters 18 and 19 with respect to provider regulation, provider reimbursement, administrative simplification, information technology, workforce planning, or quality of health care.

(b) The Green Mountain Care Board shall adopt by rule criteria for forming and approving bargaining groups, and criteria and procedures for negotiations authorized by this section.

(c) The rules relating to negotiations shall include a nonbinding arbitration process to assist in the resolution of disputes. Nothing in this section shall be construed to limit the authority of the Secretary of Administration, the Secretary of Human Services, the Green Mountain Care Board, or the Commissioner of Labor to reject the recommendation or decision of the arbiter.

Thank you for considering VMS' comments on S. 290 and we look forward to participating in further discussions regarding the bill and health reform in Vermont.

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[1] American Medical Association, Competition in Health Insurance: A Comprehensive Study of U.S. Markets *2019, available at:* https://www.ama-assn.org/system/files/2019-09/competition-health-insurance-us-markets.pdf