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April 11, 2023

To: Rep. Lori Houghton, Chair
House Committee on Health Care

From: S. Lauren Hibbert, Deputy Secretary of State
Lauren Layman, General Counsel, Office of Professional Regulation

Re: S. 37 – An act relating to access to legally protected health care activity and regulation of health care workers

Dear Committee,

Thank you for the opportunity to provide testimony on S. 37. The Office of Professional Regulation (OPR) and the Secretary of State strongly support the goals of S. 37. Today, we hope to offer support for Sections 11 and 11a, and to provide a suggestion for ensuring amendments made by S. 37 are consistent with current law.

Section 6: Amends 3 V.S.A. § 129a regarding Unprofessional Conduct

Planned Parenthood’s national counsel contacted OPR to recommend additional changes to 3 V.S.A. § 129a regarding what constitutes unprofessional conduct. The proposed amendments would make it unprofessional conduct for a licensed professional to

- Willfully provide inaccurate health or medical information to a patient, including purposeful misrepresentation of health status, unprofessional conduct; or
- Provide or claim to provide services or medications that will result in a medication abortion reversal. “Medication abortion reversal” is then defined in the proposed amendment to mean administering, dispensing, distributing, or delivering a drug with the intention to interfere with, reverse, or halt a medication abortion.

OPR supports these amendments and have provided this language to legislative counsel for review.

Section 8: Creates new provisions in the consumer fraud statutes that apply specifically to pregnancy service centers.

Planned Parenthood also recommended an amendment to the consumer protection provisions in S. 37, specifically the provisions in § 2493(b) addressing the responsibilities of licensed professional staff working at a pregnancy services center. Under the current language of S. 37, a medical director of a pregnancy services center is responsible for ensuring that the center's employees and volunteers complied with Vermont laws.

The proposed amendment would obligate all health care providers who are licensed under Title 26 (i.e., all health care professionals regulated by OPR and the Board of Medical Practice) and who are providing services to a pregnancy services center to comply with Vermont's laws and standards of practice. Those health care providers who fail to do so could be subject to unprofessional conduct charges.

OPR supports these proposed changes and has shared the proposed amendments with legislative counsel.

Section 11: Amends 26 V.S.A. chapter 36, subchapter 1

Section 11 amends Vermont law to define and permit pharmacists to prescribe emergency contraception, subject to a state protocol. OPR strongly supports this provision and can administer it.

Section 11a: Amends 26 V.S.A. § 2077

This section authorizes retail and institutional drug outlets and postsecondary schools to make emergency contraception and other nonprescription drugs or articles for the prevention of pregnancy or conception available through a vending machine or similar device. OPR fully supports this provision.

OPR seeks clarification, however, on how subpart (b) of Section 11A relates to 26 V.S.A. § 2032(h).

Subpart (b) of Section 11A authorizes the Board of Pharmacy to adopt rules regulating the location, operation, use, and oversight of the vending machines and similar devices.

(b) The Board may adopt rules in accordance with 3 V.S.A. chapter 25 to regulate the location, operation, utilization, and oversight of the vending machines and similar devices described in subsection (a) of this section in a manner that balances consumer access with appropriate safeguards for theft prevention and safety.

On the other hand, 26 V.S.A. § 2032(h) seemingly prohibits the Board of Pharmacy from adopting rules or regulations that “apply to or interfere with the sale and distribution” of nonprescription medications.

“A rule or regulation shall not be adopted by the Board under this chapter that shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.”

26 V.S.A. § 2032(h).

Given that over-the-counter emergency contraception and other nonprescription drugs are nonprescription drugs, the prohibition on rulemaking in 26 V.S.A. § 2032(h) seems to conflict with the rulemaking authority granted in Section 11a, subpart (b) of S. 37. OPR would appreciate any guidance regarding this issue.

Legislative counsel has suggested a solution that OPR believes will address this concern: adding the phrase “Notwithstanding any provision of subsection 2032(h) of this chapter to the contrary,” to the beginning of subpart (b). If the committee is amenable to that revision, OPR’s concerns are resolved.

Section 14: Amends 18 V.S.A. § 1881

This section creates exemptions and requirements for the disclosure of protected health information (PHI) related to the provision of legally protected health care services. OPR supports the adoption of this section and appreciates an amendment made in the Senate permitting OPR investigators to access limited PHI in connection with a bona fide investigation in Vermont of a licensed, certified, or registered health care provider. (See page 25-26, Sec. 14, amending 18 V.S.A. § 1881(c)(5).)

OPR, in collaboration with the Board of Medical Practice, requests that this provision be expanded slightly to permit disclosures connected to bona fide investigations, in Vermont, of individuals who are practicing in Vermont but are not licensed, registered, or certified (i.e., those individuals engaged in unauthorized practice in Vermont). We believe this amendment will provide additional protection to Vermont’s patients and providers from unlicensed health care providers or individuals engaged in unprofessional conduct in Vermont.

Thank you again for the opportunity to provide testimony on this essential legislation.