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Agency of Human Services

March 31, 2025

To: House Committee on Health Care  
From: David Herlihy, Executive Director

Re: Written Testimony on S.28 - An act relating to access to certain legally protected health care services

1. This is to memorialize my anticipated testimony on S.28. Thank you for allowing me to present input on behalf of the Vermont Board of Medical Practice. My comments are limited to the sections that more directly affect the Board. The Board supports sections 1, 2, 3, 9, 10, 11, and 12. The Board supports most of section 7, but opposes one specific part of section 7 -- the changes to 26 V.S.A. § 1354(a)(33) found at lines 4-5 and lines 14-17 on page 13. That will be the focus of my testimony today.

2. The language that concerns the Board would permit prescribing medication to end a pregnancy through use of an adaptive questionnaire only without any back-and-forth communication between the provider and the patient. The Board unanimously passed a motion clarifying its position on this proposal at their February 5, 2025, meeting. (The language in question was originally in Section 3 of the bill when introduced, so the Board's position below refers to section 3.)

*Section 3 creates a carve out to the statutory standard for prescribing via telemedicine. The current law, consistent with the Board's longstanding position, is that it is unacceptable for a prescriber to rely on only a questionnaire when prescribing by telemedicine. The bill proposes to amend 26 V.S.A. § 1354(a)(33)(A) by adding an exception that would apply to only prescriptions of drugs to terminate a pregnancy.*

*The Board opposes that provision because Board members believe that prescribing by questionnaire alone, with no interaction between the patient and prescriber, does not constitute quality care. The Board's position is that there must be some form of iterative communication – some back and forth between the prescriber and patient – as reflected in the Board's policy on Telemedicine. Allowing a patient to obtain a prescription by only answering an online questionnaire with no exchange with the prescriber deters communication. Ironically, the findings at page 3, lines 17-18 of the bill include the following*



*language describing the aspiration to “cultivate an environment where best practices in shared decision-making can flourish.” (emphasis added). The Board agrees with that aspiration and believes that two-way communication supports better care. Communication with the prescriber, even if only by a text exchange, allows the prescriber a better basis on which to prescribe. Allowing a prescription to be issued based on just a questionnaire deters communication and thus avoids shared decision-making.*

Section 7, if passed as presented, would permit a patient to obtain a prescription with **no interaction with the prescriber**. Filling out a form or having a chat with a “bot” are not communication between a patient and prescriber. A physician reading a form is not communicating with a patient. Other witnesses have pointed out that there are questionnaire-based prescribing platforms that allow a patient or the prescriber to “opt in” to communication. That is very different from a situation in which there is interaction between the two and there is no need to request it. The Board is not asking a lot. Vermont’s legal minimum for issuing a prescription should not be dictated by the choices made by a prescribing business when designing its computer system. Quality care is supported by a requirement for some form of iterative communication between the patient and prescriber.

Some of the witnesses who’ve testified on this issue emphasized the concept of prescribers being able to prescribe based upon asynchronous communication with patients. It is important to note that **Vermont law and the Board’s policy both currently allow a licensed health care professional to issue a prescription for medication to end a pregnancy based upon asynchronous communication**. However, as previously discussed, this provision in the bill would go beyond prescribing based on asynchronous communication. The Board’s concerns are not with the use of asynchronous telemedicine technologies, but only about whether Vermont should authorize prescribing based solely on a questionnaire.

3. The Board asks you to carefully consider quality of care when deciding this issue. Encouraging communication between the physician and patient encourages quality of care.