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OFFICE OF THE STATE AUDITOR

23 August 2021

Rep. Bill Lippert, Chair,
House Health Care Committee

Sen. Ginny Lyons, Chair,
Senate Health and Welfare Committee

115 State Street
Montpelier, Vermont 05602

Re: GMCB Billback

Dear Bill and Ginny:

As you know, in June my office completed and released the ACO Model Cost [audit report](#). We hope the findings of the audit will be useful to the Administration, the Board, and the Legislature as each considers future action related to the All Payer ACO Model.

The report included factual information regarding the use of billback to support the GMCB's regulatory oversight functions concerning OneCare. As we compiled the necessary information for the audit, we encountered an application of statute governing the GMCB's use of billback to support its activities that appears contrary to the plain language of the law. It was outside the scope of the audit itself, so I am sending this letter to you both instead.

Our concern is with the billback methodology the Board is using to support its work. This issue presented itself when we reviewed the [GMCB's "Report on the Total Amount of All Expenses Eligible for Allocation Pursuant to 18 V.S.A. § 9374\(h\) and the Total Amount Actually Billed Back to Regulated Entities During State Fiscal Year 2020"](#) which was submitted to the Legislature on September 15, 2020.

The consequences of the GMCB's billback methodology are not insignificant. The statute clearly states in [18 V.S.A. § 9374\(h\)\(1\)](#) that "The Board may assess and collect from each regulated entity the **actual costs** incurred by the Board, including staff time and contracts for professional services, in carrying out its regulatory duties for health insurance rate review under 8 V.S.A. § 4062; hospital budget review under chapter 221, subchapter 7 of this title; and accountable care organization certification and budget review under section 9382 of this title." (emphasis added)

The next subsection reads: "In addition to the assessment and collection of actual costs pursuant to subdivision (1) of this subsection and except as otherwise provided in subdivisions (2)(C) and (3) of this subsection, all **other expenses** of the Board shall be borne as follows." (emphasis added) The 60/40 allocation is then presented to address these "other expenses."

I will use a simple example to illustrate the impact of the difference between the statute and the GMCB’s current billback methodology.

Assume the GMCB regulates Hospital A, Insurer B, and ACO C, and also expends funds developing innovative policies that are not associated with any specific regulated entity. The direct costs associated with regulating Hospital A, Insurer B, and ACO C are \$100,000 for each entity. The policy development work also costs \$100,000, for a total of \$400,000

The statute says that the GMCB can directly bill Hospital A, Insurer B, and ACO C \$100,000 each. It requires no additional billback mechanism for those direct expenditures. The policymaking “other expense” would be billed using the 60/40 allocation, so the state would pay \$40,000, Hospital A \$30,000, Insurer B \$24,000, and ACO C \$6,000.

The results of each approach for the hypothetical are shown below. The Board’s current methodology results in the State paying 40% of the total costs rather than 10% when following the statute.

Payer	Distribution of Costs		
	Per Statute	Current GMCB Practice	Effect of GMCB Practice Per Payer
State of Vermont	\$40,000	\$160,000	\$120,000
Hospital	\$130,000	\$120,000	-\$10,000
Insurer	\$124,000	\$96,000	-\$28,000
ACO	\$106,000	\$24,000	-\$82,000
	\$400,000	\$400,000	

The Board’s report says the Board “must utilize its discretion when appropriate to limit the burden on regulated entities.” It is noteworthy that the Board failed to express concern about the “burden” on taxpayers as a result of shifting costs. In any event, the Legislature gave the Board the authority to assess and collect money from regulated entities to fund the “actual costs” of the Board’s regulatory duties, not a portion of those costs. There is no mention of discretion.

The result of the Board’s implementation of statute has, per the example above, significant impacts on the extent to which taxpayers or regulated entities fund to the Board’s activities. As a result, Appendix A almost certainly inaccurately communicates the industry portion of each year’s billback potential.

In addition, I believe the annual report to the Legislature provides statements which are not accurate, or which might lead a legislator to misunderstand what the statute says.

For instance, in the discussion of the billback changes legislated in 2012, the report says the “60/40 allocation has not changed and remains in effect at present.” While it is true that the 60/40 allocation remains for “other expenses” beyond the “actual costs” associated with

regulating an individual entity, the entire section has been re-written since 2012 to distinguish between two uses of GMCB funds – “actual costs” associated with a specific entity (which may only be billed directly to that entity) and “other expenses” for activities which are in addition to and other than those entity-specific regulatory “actual costs”.

The discussion of legislative action in 2018 provides greater context for the existing statute, and properly delineates between “actual costs” and “other expenses,” but in doing so it amplifies the concern I am raising as the entirety of the report communicates the importance of the 60/40 allocation provision for “other expenses” without indicating that the billback for “actual costs” is not being used as written in statute.

If you have any questions about these issues, please do not hesitate to let me know.

Respectfully,

A handwritten signature in black ink that reads "DOUG HOFFER". The letters are in all caps and have a slightly cursive, informal style.

Doug Hoffer

CC: Rep. Janet Ancel, Chair, House Ways and Means Committee
Sen. Ann Cummings, Chair, Senate Finance Committee
Rep. Mary Hooper, Chair, House Appropriations Committee
Sen. Jane Kitchel, Chair, Senate Appropriations Committee