



Governor Should Prioritize Workers' Health Over Industry Interests

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Healthcare Is A Human Right Campaign
Vermont AFL-CIO
Vermont Workers' Center
Vermont Federation of Nurses & Health Professionals Local 5221
United Electrical Workers Northeast Region



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Response to the Report on the Integration or Alignment of Vermont's Workers' Compensation System with Green Mountain Care (Jan 15th 2013)

As Vermont moves toward a universal healthcare system based on human rights principles, the Vermont Workers' Center has called for the inclusion of all people, including injured and ill workers, in Green Mountain Care (GMC). We need a workers' compensation system that delivers on the promise of protecting workers' rights, including their right to health.

Therefore, the Vermont Workers' Center deeply regrets that the administration, in its report on Workers' Compensation mandated by Act 48, recommends not to pursue integration or alignment of workers' compensation with GMC at this time and merely suggests minimal administrative reforms. Although the administration has kept the door open to revisit this issue once GMC is in place, we strongly believe that the process of integrating/aligning workers' compensation must start now. Any delays are unacceptable in light of the suffering caused to workers in the current workers' compensation system.

We appreciate that the administration reflected on the integration/alignment of workers' compensation with GMC at this challenging time, as it navigates building an entirely new healthcare system. Taking on additional challenges such as integration or alignment at this time might be seen as overstressing limited capacities, particularly given the complexity of workers' compensation.

Yet this does not justify the report's lack of consideration for workers' health and suffering. It is unacceptable that a report produced in the context of healthcare reform does not seriously consider the barriers posed by the current workers' compensation system to workers' access to healthcare. Moreover, we do not understand why Act 48's core principles of universality, equity and provision of healthcare as a public good were ignored in the preparation of this report.

We have strong grounds to believe - based on literature review and expert testimony - that integration or alignment, designed appropriately, will substantially improve access to healthcare for injured and ill

workers, in addition to saving costs for the system. Such integration or alignment would better protect workers' existing rights under workers' compensation and lead to significantly improved access to care.

As the report repeatedly references information gaps as an obstacle to integration/alignment, we recommend that rather than postponing the issue until GMC becomes operational (as the report suggests), the administration initiate the information gathering process without further delay. This could be done by setting up a study group of experts and workers' rights stakeholders who would:

- Examine through workers' surveys and testimonials how the system is working for workers, especially in terms of access to healthcare
- Analyze and model costs and savings in the Vermont context
- Develop technical design options for integration or alignment consistent with workers' rights

In the following, we respond in more detail to the arguments made in the administration's report.

1 Workers' access to health care

The report fails to consider workers' needs and rights. It focuses overwhelmingly on system-wide costs and savings, rather than workers' health.

But does the system fulfill its purpose? Does it ensure access to care for injured or ill workers and enhance workplace safety? In fact, to maximize cost containment, private insurance carriers and employers aggressively contest injured/ill workers' claims. This is particularly problematic given that workers' compensation is a system where access to care is linked to proof of causation at work. Workers with legitimate claims can face repeated denials, long delays or receive inadequate medical care for occupational injuries and illnesses with devastating effects on their health and well-being. Additionally, workers frequently face retaliation for filing claims, which can also impede their access to care. These are only some of the core problems that the administration's report fails to consider.

Instead, the report appears to assert that workers' compensation is advantageous to workers and that provider payments "are often more generous" than regular insurance. The report simply assumes that the workers' compensation system works as designed, yet offers no evidence for this assertion. A large body of research – some of which was made available to the administration – emphatically demonstrates that this is not the case.

Vermont's move to a universal healthcare system is guided by the principles of universality and equity in Act 48 and requires the provision of healthcare as a public good. We do not understand why the administration is taking a different approach on the issue of occupational health. Act 48 required the preparation of this report, and the law's principles must be applied to any issue in its purview. In addition to the legal mandate, the administration has in fact confirmed in public statements that a publicly funded healthcare system will provide better access to care at lower costs than a private, market-based system. It is astonishing that this finding is ignored when it comes to workers' compensation. The contested, market-driven workers' compensation system is not working for workers just as the current market-based healthcare system is failing the people of Vermont. Workers' access to healthcare must be guaranteed, along with any other resident's access to care, regardless of disputes about causality.

Given the suffering of injured and ill workers, exploring pathways to improve workers' access to care is not just a legal, administrative and technical question, but an urgent moral imperative. We collectively need to advance a political culture that puts people first and does not elevate market considerations over people's needs. Reform options for workers' compensation should not solely be predicated on cost analysis and other ancillary concerns but on whether such a system would better meet the needs of injured and ill workers.

2 The Models Evaluated by the Administration's Report:

Exclusive Public Insurer; Publicly-Funded Health Benefits, Privately-Funded Indemnity Benefits: The Exclusive Public Insurer model, and the Publicly-Funded Health Benefits and Privately-Funded Indemnity Benefits model that the administration examines as potential options are promising for what they offer in terms of better access to care for workers.

For any model, two principles are particularly important: that access to care is guaranteed by delinking it from causality and that healthcare is provided to everyone as a public good. While an exclusive public insurer would be the optimum option, both of the above models can be designed in a way that could reasonably meet the two principles.

Exclusive Public Insurer Model:

As the administration presents in its report, this model is a feasible option and would lead to lower expenses and better injury prevention efforts. However the administration recommends further evaluation of this model only after GMC is implemented.

From studying the model in practice in Canada and also in different states within the United States, it is our understanding that such an option would lead to better health access and medical outcomes for injured and ill workers. While we recognize that implementation of this model would take some time, we find the report's focus on avoiding "market disturbance" entirely misplaced. The purpose of health care reform is not to stabilize a failing private market system but to develop a system that protects the health of Vermont's population.

The report states that in the current system 80% of costs are shifted from insurance companies and employers to government, workers and taxpayers. This underlines the reality that the "market" in workers' compensation is failing both workers and the public at large, and does not merit propping up at the cost of worker's health and taxpayer's money.

Given the huge potential of the public insurer model to improve workers' access to care, the administration, at the very least, should now begin the process of gathering information and designing implementation options and not wait till GMC becomes operational.

Publicly-Funded Health Benefits, Privately-Funded Indemnity Benefits (mixed model):

After a cursory evaluation of this model, the administration rejects it as a possibility at this time. The report asserts that private insurers would not be willing to offer an indemnity-only product. It is disturbing that the administration, instead of considering a serious option for reform, appears to bow to pressure from the industry. Clearly, private insurers already offer such products in the case of disability insurance. Whatever industry representatives may have indicated to the administration, it is highly probable that when the time comes, they will not want to miss out on such a business opportunity, especially if encouraged by appropriate regulation.

Finally, two issues the administration's report uses to justify rejecting a mixed model are predicated on problematic premises and false assumptions:

- The assumption that offering indemnity without any oversight over health benefits creates a disconnect and subsequent risk that would be difficult for private insurers to manage: Effective coordination established through system design could ensure that private insurers receive the information they need to appropriately manage indemnity benefits. Further oversight should not be necessary. Medical treatment of injured and ill workers should be based on medical conditions and not the amount or duration of cash benefits for which insurers may be liable, as this can lead to pressures within the system and produce bad health outcomes.
- The assumption that such a model would make it difficult to ensure that workers receive first dollar coverage or equivalent benefits: Integration or alignment models can preserve existing workers' rights under the current workers' compensation system through appropriate system design. As regards first dollar coverage, even in the current market-based health care system, an integration of the health aspect of workers' compensation would be possible without "cost-sharing" as demonstrated by the model the AFL-CIO put forward in the 1990s. More importantly, in a publicly financed universal system that satisfies the principle of equity, there is no role for charging user fee for accessing medically necessary care, as this would discriminate against sick people by shifting costs to them.

Since the mixed model delinks access to care from causality, it has significant potential to improve workers' access to care. The administration's recommendation to not consider the model at this time is premature. Further study on possible system design and mechanisms to overcome perceived obstacles is needed.

Administrative Alignment

While the report's administrative alignment recommendations do not appear to impact the workers' access to health care in any meaningful way, they could potentially lead to some increased efficiencies and perhaps greater transparency. However, to ensure outcomes consistent with workers' rights, it is imperative that any data collection is guided by a rights-based purpose and framework. We are concerned that collecting data and imposing measures in the context of claims management and low loss costs could lead to claims suppression and other barriers for workers to access benefits. We request that the administration provide more details on its plan to expand filing requirements and impose cost reduction measures, so that stakeholders can evaluate more thoroughly the implications these reforms may have on workers' health and other rights.

Considering Integration in light of 24-hour care pilot programs

Regarding the report's review of Oregon and California as providing background for integration we believe there is a substantive difference between 24 hour coverage and universal health care, as well as between pilot programs and state run health care systems. We hold that while some lessons may be transferable, overall the contexts are very different. What emerges, however, from the analysis of the pilot programs is the need for more Vermont related study and research, and we support that conclusion.

3 Conclusion

The human right to healthcare requires that all individuals, including all workers who have become injured or ill from work-related causes, must have access to patient-oriented, quality and timely healthcare. There must be no delayed, partial or second class system of healthcare for injured and ill workers. The need to prove the work-relatedness of a medical condition must be delinked from access to needed health care and healthcare must be provided to all as a public good.

The report and its annexes make clear that private insurers oppose any kind of reform to the failing workers' compensation system. The arguments they provide against structural reform are blatantly misleading. While we see no need to engage in a point-by-point rebuttal in this letter, we are happy to meet with the administration to counter the industry's "concerns." We invite the administration to shift its attention from the interests of industry to workers' health.

The Vermont Workers' Center calls on the administration to begin the systematic collection of further information and set up a study group to develop design options for integrating or aligning workers' compensation with Green Mountain Care. The ongoing health reform effort offers an opportunity for the state of Vermont to lead the way in guaranteeing access to care for injured and ill workers. We would be pleased to work with you and provide whatever assistance we can to include workers' compensation in the transition to a universal healthcare system.

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