

October 10, 2016

VIA EMAIL AND FIRST CLASS MAIL
Donna Jerry, Senior Health Policy Analyst
Green Mountain Care Board
89 Main Street
Montpelier, Vermont 05620
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RE: Docket No. GMCB-010-15con, Proposed Ambulatory Surgery Center

Dear Donna:

We are writing in response to the Green Mountain Surgery Center's ("GMSC" or the "Applicant") letter dated October 5, 2016 asking that its responses to Questions 16 and 17 ("Questions") from the Green Mountain Care Board's (the "Board") request for additional information sent on August 26, 2016 (Q0006) remain confidential. The Vermont Association of Hospitals and Health Systems ("VAHHS"), on behalf of its members, and Northwestern Medical Center ("NMC") as interested parties in the GMSC CON application disagree that information pertaining to the identities of the investors in the GMSC and their respective investments and ownership interests in the Applicant should remain confidential.

First, the identity of those investing in the GMSC is public information. To enroll in Medicare, the Applicant will be required to disclose the names of those with ownership interests in the GMSC and that information is publicly available. *See Medicare Form 855B and 42 CFR § 420.206.* Per Medicare regulations, the public has a right to know the identities of the physician owners of an ambulatory surgery center – 6 out of the 7 minority owners in the GMSC are physicians. 42 CFR § 416.50(b).

Further, in any other context, and in order to meet the criteria set forth in 18 V.S.A. § 9437(2)(A), this same applicant would not be able to pursue a CON from the Board without being transparent about the identity and qualifications of the owners. For example, in order to obtain a CON for the ownership and operation of a nursing home, an applicant is required to provide the following as it relates to each member of the LLC/owner with an ownership interest over a certain percentage: (1) a Curriculum Vitae, (2) a personal financial statement, (3) a description of the member's relevant experience in owning or operating a facility; and (4) the quality ratings and measures for each facility owned or operated by the member. CON applicants for nursing homes are also required to provide a list of key personnel and their respective qualifications. This information is used to assess the ability of the applicant to own and operate the facility in a healthy and safe manner and to ensure that the project has adequate capital and financial viability for long-term success.

Second, VAHHS and NMC, as interested parties, must have access to financial information about the Applicant, including percentage of ownership, amount of the capital investment, and the terms of that investment. By granting VAHHS and NMC interested party status, the Board has recognized that VAHHS and NMC will be “substantially and directly affected” by the establishment of the GMSC, which includes an impact on the financial and business interests of NMC and the members of VAHHS. Additionally, VAHHS and NMC are parties to the Certificate of Need proceedings and have a right to fully participate in the review process. Anything less than complete access to information submitted by the Applicant in response to the Board’s questions will impair VAHHS’ and NMC’s ability to evaluate the impact the GMSC will have on VAHHS’s members and NMC. This lack of transparency will also hinder VAHHS’ and NMC’s ability to respond to GMSC’s conclusions that the ambulatory surgery center will meet the Certificate of Need Standards.

VAHHS and NMC understand that GMSC does not want its responses to the financial portions of the Questions (percentage of ownership, amount of capital investment and the terms of the investment) to be widely disseminated. To accommodate this interest, VAHHS and NMC would be willing to review this financial information subject to the confidentiality agreement negotiated and executed by VAHHS’ members and NMC in January, 2016. This would permit the interested parties to review the financial information provided in response to the Questions without releasing the information to the general public.

Thank you for your consideration.

Best Regards,



Anne Cramer
Lauren Layman

Cc: Judy Henkin, Esq., General Counsel, Green Mountain Care Board (via e-mail)
Eileen Elliot, Esq., Dunkiel Saunders, Elliott, Raubvogel & Hand (via e-mail)
Julia Shaw, Health Policy Analyst, Office of the Health Care Advocate (via e-mail)
Jeffrey Tieman, President and CEO, VAHHS (via e-mail)
Jill Berry Bowen, CEO, NMC (via e-mail)