

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Application of Rutland Regional Medical )  
Center, Renovations and Remediation ) GMCB-009-19con  
Of Ligature Risks )  
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**STATEMENT OF DECISION AND ORDER**

Introduction

In this Decision and Order, we review the application of the Rutland Regional Medical Center (RRMC, or the applicant) for a certificate of need to renovate its Psychiatric Services Inpatient Unit (PSIU or Unit) and remediate recognized ligature risks for patients at a high risk for self-harm, for a total cost of \$4,067,353.

For the reasons set forth below, we approve the application and issue the applicant a certificate of need, subject to the conditions set forth therein.

Procedural Background

On April 26, 2019, RRMC filed a letter seeking leave from the Green Mountain Care Board to submit an application for an emergency certificate of need (CON), conceding CON jurisdiction by acknowledging that the proposal is subject to the Board's jurisdiction under 18 V.S.A. § 9434(b). In a letter dated May 7, 2019, the Board concluded that the proposed project was appropriate for emergency review under 18 V.S.A. § 9440(e).

On May 9, 2019, due to the urgency of the project, the applicant sought leave from the Board to engage in the following activities prior to the Board issuing a CON: 1) order \$169,576 for furniture to remedy ligature risks, which requires eight to twelve weeks of lead time; and 2) initiate development of construction level documents at a cost of \$294,000 for the renovations to the PSIU. By letter dated May 13, 2019, the Board approved RRMC's request in an effort to reduce delays in the project and the associated risk of patient self-harm.

On May 23, 2019, RRMC submitted the CON application. The Board requested that RRMC provide additional information regarding the project on May 24, 2019, and June 3, 2019, which RRMC provided on May 30 and June 5, 2019. The application was closed on June 19, 2019.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(1) and 18 V.S.A. § 9434(b)(1).

## Findings of Fact

1. RRMC seeks to renovate the PSIU to remediate recognized ligature risks for patients at high risk for self-harm and suicide. Application (App.) at 4. RRMC's PSIU is one of only five Designated Hospitals, hospitals designated by the Vermont Department of Mental Health to provide inpatient psychiatric services. RRMC is one of only three hospitals that provide Level One services to psychiatric patients. RRMC's PSIU serves more than 650 patients annually from across the state. App. at 14.

2. The project involves remediation of ligature risks throughout 9,950 square feet of space at the PSIU, which currently houses 20 patient beds in 13 rooms. The project does not expand services. However, included in the renovation is the creation of three new rooms which will allow RRMC to maintain current capacity during the renovation phase of the project. With completion of the project the PSIU will have one new bed overall and will have more single rooms, with 21 patient beds in 17 patient rooms. The room renovations include changing a variety of hardware and furniture, renovating bathrooms, replacing toilets and changing materials for flooring and walls. Renovations to the PSIU also include changes to the nursing station to improve safety and line of sight and changes to walls and activity rooms to improve safety. App. at 5 and Exhibit B.

3. The Centers for Medicare and Medicaid (CMS) and the Joint Commission have developed new guidelines to reduce the risk of suicide by making the environment of care more ligature resistant. A ligature risk is defined as a fixed point to which a ligature can be tied for the purpose of hanging or strangulation such as handles, pipes, radiators, window and door frames, ceiling fittings, hinges, shower rails, bedsteads, metal bed frame arms, chair/table legs, sprinkler heads, and ventilation grills, etc. App. at 4.

4. RRMC is accredited by The Joint Commission (TJC), a national accrediting organization that establishes and enforces standards that meet the federal Conditions of Participation for the Centers for Medicare and Medicaid Services (CMS). Due to changes in the guidelines relative to ligature risks, RRMC must make substantial changes to be compliant with the new guidelines. RRMC is aware of enforcement actions against two hospitals in Vermont and New Hampshire for deficiencies relative to the new ligature risk guidelines. To avoid being cited for deficiencies and enforcement action, RRMC retained two experts to assess and provide guidance for implementation of changes to achieve compliance with TJC's new ligature risk guidelines and has been working with architects and a construction company which have experience implementing similar projects. App. at 4-5; Exhibit A.

5. As designed, the project will align services with new regulatory requirements and evidence-based practices to reduce the risk of self-harm and suicide. App. at 8. If the project is not completed, and the PSIU received an adverse survey finding by either TJC or CMS, limits on the number of patients admitted could be imposed, resulting in a substantial negative impact on patients and hospital emergency departments throughout the state. App. at 13. Patients will benefit from the project, as a safely designed physical environment facilitates freedom of movement and affords an appropriate level of personal privacy and autonomy. Since the existing facility is not fully compliant with current safety standards, the primary interim risk mitigation

strategy is to increase staffing to provide continuous direct observation and monitoring of patients in all high-risk areas. This intensive level of direct continuing observation and monitoring of patients even when sleeping, bathing and toileting, is countertherapeutic and interferes with a patient's experience of care that is respectful, welcoming and safe. It is especially challenging for patients who present with trauma histories or whose mental illness includes a mistrust of people. App. at 11. Remediation of all ligature risks makes it possible to resume normal staffing and provide patients with an appropriate level of personal privacy, significantly improving quality of care for patients. App. at 5-6, 11. The project will be completed in three phases and is expected to take 262 days to complete with completion by September 30, 2020. App. at 5-6 and Exhibit E.

6. The design of the new building will meet or exceed all applicable Guidelines for Design and Construction of Health Care Facilities (FGI Guidelines) as certified by the architect. App. at 9 and Response to Questions (Resp.) (June 5, 2019) at 3. As the facility is accredited by TJC, FGI Guidelines must be met as part of that accreditation process. App. at 9. RRMC believes that construction costs of \$266 per square foot is reasonable considering the extent of work required for renovating an occupied inpatient psychiatric unit and implementation of extensive remediation of existing ligature risks. App. at 8-9. To ensure the project is carried out in a cost-effective manner, RRMC will obtain multiple competitive bids from all trades. App. at 9.

7. RRMC is collaborating with Efficiency Vermont to ensure that appropriate energy efficiency components are incorporated to reduce energy costs. App. 9, 13 and at Exhibit C.

8. There are no viable, cost-effective alternatives. The project involves renovation of the existing footprint and remediation of features that pose a ligature risk to patients; there are no less expensive alternatives that would correct the risks posed by features that are not in compliance with current requirements to prevent self-harm and suicide. App. at 13.

9. The cost of the project is \$4,067,353. App. at 6 and Exhibit F, Table 1. RRMC will include this project in its overall budget strategy and funding plan for 2020, will finance the project with working capital, and does not expect to issue any debt for this or any 2020 capital project. App. at 12, and Exhibit F, Table 2. RRMC plans to initiate a \$550,000 fundraising campaign in 2020 to support this project. App. at 12 and Exhibit F, Table 3B and Resp. (June 5, 2019) at 2.

10. For the 2020 budget, RRMC intends to include 6.0 additional FTEs for necessary interim staffing to mitigate ligature risks identified by its consultants at a projected cost of \$284,181. App. at 11; *see supra* Findings of Fact (Findings) ¶ 5. Once renovations and remediations are completed, staff will return to normal levels, eliminating the additional \$284,181 in staffing costs. App. at 5, 12.

11. In its 2019 budget submission, RRMC included a psychiatric renovation project (Renovation Project) for \$8,450,690 and included an additional \$50,000 for capital planning. RRMC identified this as a CON project but did not submit a letter of intent until April of 2019. RRMC has since delayed the Renovation Project from 2019 to 2020. RRMC has changed the

scope of the Renovation Project to align the renovation and remediation work to address ligature risks that must be corrected to retain accreditation from TJC. App. at 10.

12. The project alone does not require a change in gross revenues or payor mix. However, as background, RRMC's FY 2020 budget assumptions project a rate increase between 2.5% and 3%, which RRMC states is the result of increased cost pressures related to pharmaceutical expenditures, labor costs associated with recruitment and retention of nursing and physician staff, and an increase in bad debt and free care related to increases in the uninsured and underinsured populations. Resp. (May 30, 2019) at 1.

### Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden to demonstrate that each of the criteria set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3).

### Conclusions of Law

#### I.

Under the first statutory criterion, the applicant must show that the application aligns with statewide health care reform goals and principles because the project takes into consideration health care payment and delivery system reform initiatives; addresses current and future community needs in a manner that balances statewide needs (if applicable); and is consistent with appropriate allocation of health care resources, including appropriate utilization of services, as identified in the Health Resource Allocation Plan (HRAP) developed pursuant to 18 V.S.A. § 9405.

We conclude that the application meets this criterion and aligns with statewide health care reform goals and principles. This project does not expand services, adds one new bed, and allows RRMC to maintain access to critically needed inpatient psychiatric beds in the state. Findings ¶¶ 1-2. One of the population health goals of the All Payer Accountable Care Organization Model Agreement is the reduction of rates of death due to suicide and conclude this project aligns with this goal.

The application is also consistent with the HRAP, which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). Although not updated since 2009—the HRAP is currently being revised—the applicant has demonstrated that this project is consistent with the relevant HRAP standards.<sup>1</sup> See HRAP Standards 1.7 (applicant has explained how the project is consistent with evidence-based practice); 1.9, 1.10, 1.12 (project is cost-effective, energy efficient

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<sup>1</sup> The Vermont legislature in Act 167 (2018) made several changes to the State's CON law, which continues to reference the HRAP. See <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT167/ACT167%20As%20Enacted.pdf>. While the HRAP is in the process of being updated, we continue to apply applicable standards from the current HRAP.

and conforms with applicable FGI Guidelines); and 3.4 (project has been included in hospital budget submissions).

Based on the above, we conclude that the applicant has met the first criterion.

## II.

Under the second criterion, an applicant must demonstrate that the project cost is reasonable because the applicant's financial condition will sustain any financial burden likely to result from completion of the project, and that the project will not result in an undue increase in the costs of medical care or an undue impact on the affordability of medical care for consumers. In evaluating a project against this criterion the Board must consider and weigh relevant factors, "including the financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures and charges [and whether such impact] is outweighed by the benefit of the project to the public." The applicant must show that less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate; and if applicable, that the project has incorporated appropriate energy efficiency measures." 18 V.S.A. § 9437(2) (A-D).

After reviewing the record, we believe that the project's total cost of \$4,067,353 for the renovations and extensive remediation of ligature risks is reasonable and necessary. The project will not create a financial burden to the applicant, which will finance the project with existing capital and will not take on additional debt. Findings ¶ 9.

We further find that the project will not unduly increase the costs of care or unduly impact the affordability of care for consumers. The project adds one new additional bed and maintains critical access to needed inpatient psychiatric care services for Vermonters. Findings ¶¶ 2, 8-9. In its FY 2020 budget, RRMC expects it will propose NPR growth of 3.5% from 2019 to 2020. However, the project alone does not require a change in gross revenues or any changes in payor mix. Findings ¶ 12. Following completion of the project, staffing levels in the PSIU will be reduced to normal levels, eliminating the additional \$284,181 in staffing costs. Findings ¶ 10.

Furthermore, we find that the fiscal implications of the project are outweighed by the benefit of the project to the public. The project remediates ligature risks and affords an appropriate level of personal privacy and autonomy for patients, allows RRMC to maintain full capacity during the construction and remediation phases of the project, ensures compliance with the new guidelines, and adds one additional critically needed bed. Findings ¶¶ 1-5. We therefore find that the project improves the quality of patient care and access to care. We are also persuaded that there are no viable, cost-effective alternatives to the project; the renovations and ligature remediations are required due to changes in guidelines implemented by TJC, RRMC's accrediting organization, and are necessary to avoid adverse survey findings and subsequent enforcement actions. Findings ¶¶ 3-6, 8. Lastly, we find that RRMC is incorporating appropriate energy efficiency measures. Findings ¶ 7.

We conclude that the applicant has demonstrated that the cost of the project is reasonable and has satisfied the second criterion.

### III.

Under the third criterion, the applicant must show that “there is an identifiable, existing, or reasonably anticipated need for the proposed project that is appropriate for the applicant to provide.” 18 V.S.A. § 9437(3).

Lack of sufficient capacity of inpatient psychiatric beds and waits in hospital emergency departments due to the lack of an inpatient bed when needed are well recognized in the state. RRMC’s PSIU serves as a resource for the entire state. Findings ¶ 1. As discussed above, the project must be carried out as RRMC’s PSIU is not compliant with TJC’s changes to guidelines relative to ligature risks for patients at risk of self-harm or suicide. The project will allow RRMC to maintain full capacity during the construction and remediation phases of the project, ensure compliance with the new guidelines, and add one additional critically needed bed. Findings ¶¶ 2-4. We find that the project is necessary to maintain inpatient psychiatric treatment capacity in the safest environment feasible and to minimize stays for psychiatric patients in hospital emergency departments due to a lack of inpatient beds. Findings ¶¶ 1-2, 5.

Based on these facts, we conclude that applicant has satisfied the third criterion.

### IV.

The fourth criterion requires that the applicant demonstrate that the proposed project will improve the quality of health care in Vermont, provide greater access to health care for Vermonters, or both. 18 V.S.A. § 9437(4).

As already discussed, the existing PSIU is not in compliance with changes in the guidelines relative to ligature risks for patients at high risk of self-harm or suicide. Findings ¶ 4. If RRMC does not remediate the ligature risks, patients first and foremost, would remain at risk in an unsafe environment in the PSIU and be subject to continuous direct observation by staff (reducing patient privacy and autonomy). Findings ¶ 5. Additionally, there is a high likelihood that the PSIU would be subject to negative survey findings, which could lead to a reduction its capacity to serve patients in need of acute inpatient psychiatric services and enforcement actions, both of which are detrimental to the patient and costly to the hospital. The project is designed to remove the ligature risks, increase the number of rooms by one, and create an environment of care that is respectful, welcoming and safe and creates an appropriate level of personal privacy and autonomy. Findings ¶¶ 1-2, 5. We find that the project will provide greater access to critically needed inpatient psychiatric care services and improve the quality of the care received.

We therefore find that the applicant has met this criterion.

### V.

The fifth criterion requires that the applicant demonstrate that the project will not have an undue adverse impact on any other services it offers. 8 V.S.A. § 9737(5). The project is designed to correct significant ligature risks to patients, enhance and maintain access to critically needed inpatient psychiatric services, and reduce waits in hospital emergency departments. Findings ¶¶

1-3, 5. Given that the project does not negatively impact any other hospital services, but simply improves an existing service, we find that the criterion has been satisfied.

VI.

The sixth criterion was repealed during the 2018 legislative session. *See* 18 V.S.A. § 9437(6) (repealed).

VII.

The seventh criterion requires that the applicant adequately consider the availability of affordable, accessible transportation services to the facility, if applicable. As the project does not relocate inpatient psychiatric care services, we find that this criterion is not applicable.

VIII.

Next, if the application is for the purchase or lease of new Health Care Information Technology, it must conform to the Health Information Technology Plan established under section 18 V.S.A. 9351 (8). The criterion is not applicable to this project.

IX.

Last, the applicant must show the project will support equal access to appropriate mental health care that meets the Institute of Medicine’s triple aims. 18 V.S.A. § 9437(9). The project corrects dangerous ligature risks throughout the PSIU, increases access to these needed services by Vermonters, and does not pose any barriers to mental health treatment. We find this criterion has been met.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

**SO ORDERED.**

Dated: June 20, 2019 at Montpelier, Vermont.

s/ <u>Kevin Mullin, Chair</u> )	GREEN MOUNTAIN CARE BOARD OF VERMONT
)	
s/ <u>Jessica Holmes</u> )	
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s/ <u>Robin Lunge</u> )	
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s/ <u>Tom Pelham</u> )	
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s/ Maureen Usifer )

Filed: June 20, 2019

Attest: Jean Stetter, Administrative Services Director