

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: University of Vermont Medical Center)
 Inpatient Bed Replacement Project)
)
_____)

**STATEMENT OF DECISION
AND ORDER APPROVING NON-MATERIAL CHANGE**

Introduction

In this Decision and Order, we review the University of Vermont Medical Center’s request to reopen 32 medicine beds on McClure 5 in connection with the Miller Building Project. For the reasons set forth below, we approve the request and issue an addendum to the certificate of need (CON) to reflect the change.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9444(b)(2).

Findings of Fact

1. In August 2013, the Board approved a conceptual development certificate of need that allowed the University of Vermont Medical Center (UVMMC) to spend just over \$3.7 million on planning and design work related to a future bed replacement project. The following year, the Board increased the amount of the conceptual development certificate of need to just over \$5.3 million. Statement of Decision (“SOD”) (July 1, 2015), Findings, ¶ 2.
2. UVMMC submitted its application for the bed replacement project (the Miller Building Project) to the Board in the fall of 2014. The Miller Building Project involved the construction of a seven-story building above UVMMC’s existing emergency department parking lot that would house 128 single-occupancy inpatient medical/surgery beds. The total cost of the project was estimated to be approximately \$187.3 million. SOD, Findings, ¶¶ 3, 21, 32.
3. The beds that would be constructed as part of the Miller Building Project were intended to replace outdated inpatient rooms in Shepardson 3 and 4 North, which were built in 1960, and would permit many of UVMMC’s remaining double occupancy rooms in the McClure and Baird buildings to be converted to single occupancy. UVMMC was going to use the vacated space in Shepardson 3 and 4 North for non-patient care and administrative needs. SOD, Findings, ¶ 21. The number of physical beds would decrease from 509 to 496. *Id.* at ¶ 24.
4. When UVMMC applied for a CON for the Miller Building Project, only 30% of its inpatient beds were single occupancy (i.e., private); the remaining 70% were double occupancy

(i.e., semi-private). With the Miller Building Project, UVMMC planned to achieve at least an 85% single occupancy rate. SOD, Findings, ¶ 33.

5. In planning the project, UVMMC worked with a contractor to model future bed demand. Weighing factors such as demographics, market share, length of stay, utilization, and the impact of health care reform and changes in care delivery, the contractor calculated that there would be no increased need for inpatient beds by 2022. SOD, Findings, ¶¶ 39, 41; Transcript (“Tr.”) (May 19, 2015), 10-20.

6. Assessing the condition of different units, UVMMC’s contractor found that while the Neonatal Intensive Care Unit (NICU) was the most deficient, from a clinical perspective, the NICU would be more appropriately relocated adjacent to the labor and delivery unit, rather than in the new Miller Building. The medical/surgery beds in Shepardson North were identified as the second most deficient units. SOD, Findings, ¶ 42.

7. The Board approved UVMMC’s application and issued a CON for the Miller Building Project on July 1, 2015. In the CON, the Board required UVMMC to develop and operate the project in strict compliance with the project’s scope as described in the application, in other materials in the record, and in strict conformance with the conditions of the CON. One of the conditions of the CON was that UVMMC attain a minimum of 85% single occupancy inpatient beds at the end of the construction period. Certificate of Need, Condition B.1.

8. The Miller Building opened for patient care on June 1, 2019. Implementation Report No. 15 (July 9, 2019), 2.

9. Before it opened the Miller Building, UVMMC operated a significant “surge space” in its post-anesthesia care unit. UVMMC closed that surge space when it opened the Miller Building. However, due to unprecedented census levels, it quickly realized that a different short-term solution was necessary and continued to operate Shepardson 3 North, first as a mixed-use surge space and then as a medicine unit. Request for Approval of Non-Material Change (“Request”) (Feb. 13, 2020), 2. UVMMC notified the Board of its continued use of beds in Shepardson 3 North shortly after the Miller Building opened. Testimony of Dr. Steve Leffler (Aug. 26, 2019), 60; Implementation Report No. 16 (Oct. 2, 2019).

10. In August 2019, UVMMC’s Hospital Operations Committee began analyzing the hospital’s post-Miller Building inpatient bed capacity and placement needs. That analysis involved gathering evidence, reviewing retrospective data, projecting future needs, and forming recommendations. Response to Questions (Nov. 19, 2019), 1. The analysis resulted in several recommendations, including recommendations to open McClure 5 as a 32-bed medicine unit for up to two years and close Shepardson 3 North as a medicine unit. Request, 7.

11. In planning the Miller Building Project in 2014, UVMMC projected that it would have no more than 114,140 inpatient days by 2019 and no more than 119,151 inpatient days by 2022. Instead, UVMMC had 133,511 inpatient days in FY2019, 17% more than the 2014 projections. Request, 1.

12. Even with Shepardson 3 North operational, UVMMC still has many more medicine inpatients than it has medicine inpatient beds on any given day, and therefore many patients are not treated in the most appropriate setting. Request, 2.

13. In FY 2019, 69% of UVMMC's days were categorized as Surge 2 or 3 (the highest two categories of over-capacity), compared to 40% in FY 2018. This increase in utilization has caused significant patient flow challenges and has required UVMMC's Emergency Department to care for large numbers of long-stay patients who are waiting for both medical/surgical and psychiatry beds. This is not an appropriate site of care for these patients. Request, 2, 8.

14. Inpatient care provided to long-stay Emergency Department patients costs almost twice as much as equivalent care provided in an appropriate inpatient bed. Request, 2; Response to Questions (Nov. 19, 2019), 2.

15. The increase in inpatient days has forced UVMMC to geographically distribute patients throughout the hospital in a way that does not facilitate efficient or team-based care. For instance, patients being cared for by the internal and hospital medicine service are only on an appropriate unit 65.2% of the time on average and are sometimes spread across 10 units. This geographic distribution requires providers to travel back and forth across the hospital to care for patients and hinders provider communication. Request, 2.

16. UVMMC expects that once it reopens the 32 beds on McClure 5, it will be able to place its medicine patients in an identified medicine bed 79% of the time, as opposed to 34% currently, resulting in improved care at a lower cost. UVMMC expects that opening these beds will drastically reduce the geographic distribution of patients being treated by a single specialty, allowing for better team-based care by expert nurses and other providers. Request, 3.

17. UVMMC's planned use of McClure 5 as a medicine unit is time-limited. Internal and Board approvals will be sought to pursue an expansion of the hospital's NICU within the next two years. Once that project is underway, it will begin a domino effect in the hospital's space usage that will require the hospital to use McClure 5 for purposes other than general medicine beds. Request, 4.

18. The total capital cost required to reopen McClure 5 is expected to be \$2,698,652; construction costs with contingency are expected to be \$1,708,041; fees are expected to be \$47,852; and furniture and equipment (which can be re-used anywhere in the hospital at a later date) costs with contingency are expected to be \$942,759. Request, 4. In addition, UVMMC estimates it will come in over \$15 million under budget on the Miller Building Project. Implementation Report No. 17 (Jan. 31, 2020), 2 ("We are estimating a total project cost of \$171,266,068, which is well below the \$187,297,729 approved budget").

19. The improvements to the space required to re-open McClure 5 to serve medicine patients will also support nearly any conceivable subsequent use of the same space. Request, 4.

20. The reopening of McClure 5 will allow UVMMC to come into compliance with the condition of the CON requiring closure of Shepardson 3 North. Request, 4.

21. After reopening McClure 5, UVMMC expects 78% of its patient rooms to be private, below the 85% required in the CON, but far better than the 30% UVMMC achieved before the Miller Building. Request, 5.

22. After reopening McClure 5, UVMMC would have 516 beds, more than the 509 beds it had when it submitted its application for the Miller Building Project and the 496 beds it projected it would have after the Miller Building Project. Request, 5; SOD, Findings, ¶ 24.

23. The Board determined that UVMMC's proposal to reopen 32 beds in McClure 5 for a limited time is a non-material change to the Miller Building Project and chose to review it. Letter re Review of Non-Material Change (March 4, 2020).

24. After UVMMC submitted its request, the COVID-19 pandemic hit Vermont. On Friday, March 13, 2020, Governor Phil Scott issued Executive Order 01-20, declaring a state of emergency for the State of Vermont in response to COVID-19. The course of the pandemic is uncertain, but additional hospital beds may be needed in the state in the near future.

Conclusions of Law

The Board has determined that UVMMC's proposal to reopen 32 beds in McClure 5 for a limited time involves a non-material change to the project. Letter re Review of Non-Material Change (March 4, 2020). The Board has discretion in how it reviews non-material changes to an approved project. Given the circumstances, the Board chose to analyze UVMMC's proposed non-material change for compliance with the second and third statutory CON criteria only.

I

Under the second criterion, an applicant must demonstrate that the cost of the project is reasonable because the applicant's financial condition will sustain any financial burden likely to result from completion of the project and because 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. The Board must consider and weigh relevant factors, such as "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." Under the second statutory criterion, the applicant must also demonstrate that less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate. . . ." 18 V.S.A. § 9437(2).

The cost of UVMMC's proposed change is reasonable. UVMMC expects to be able to reopen the 32 beds in McClure 5 for a total capital cost of approximately \$2.7 million, which is a small fraction of the cost of the Miller Building Project and below the jurisdictional threshold for CON review. In addition, UVMMC estimates it will come in over \$15 million under budget on the Miller Building Project. Findings, ¶¶ 2, 18; 18 V.S.A. § 9434(b).

Given UVMMC's financial strength and the relatively small cost involved, the proposed change is unlikely to increase the cost of medical care or unduly impact the affordability of medical care for consumers. On the contrary, because patients will be placed in more appropriate settings and care will be more delivered in a more efficient manner, we expect the reopening of beds on McClure 5 to decrease the cost of medical care and improve quality of care and patient satisfaction. *See Findings, ¶ 14.*

It is unlikely that the proposed change will negatively impact hospitals or other clinical settings either. Reopening the beds on McClure 5 is a temporary measure that will allow UVMMC to better care for patients who are already showing up at the hospital and receiving care in suboptimal settings at a higher cost. Findings, ¶¶ 13, 16-17.

Finally, the proposed change was the result of a data-driven analysis conducted by UVMMC's Hospital Operations Committee. Findings, ¶ 10. Given the scope of that review and the relatively small cost involved in bringing 32 new beds online, we are satisfied that less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate.

II

Under the third criterion, an 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).

UVMMC has demonstrated that it needs additional medicine beds to cope with unprecedented and higher-than-projected census levels. In FY 2019, 69% of UVMMC's days were categorized as Surge 2 or 3 (the highest two categories of over-capacity), compared to 40% in FY 2018. Findings, ¶ 13. This increase in utilization has caused significant patient flow challenges and has required UVMMC's Emergency Department to care for large numbers of long-stay patients waiting for beds. *Id.* This is an inappropriate and costly location in which to care for these patients. Findings, ¶¶ 12-14. The reopening of 32 beds in McClure 5 is expected to allow UVMMC to place its medicine patients in an identified medicine bed 79% of the time, as opposed to 34% currently. Findings, ¶ 16.

The increase in inpatient days and lack of appropriate capacity has forced UVMMC to geographically distribute patients throughout the hospital in a way that does not facilitate efficient or team-based care. The reopening of 32 beds in McClure 5 is expected to drastically reduce the geographic distribution of patients being treated by a single specialty, allowing for better team-based care by expert nurses and other providers. Findings, ¶¶ 15-16.

In addition, while UVMMC has not cited it as a rationale for its proposed change, we cannot ignore the fact that additional hospital beds may be required in the state in connection with the COVID-19 pandemic. *See Findings, ¶ 24.* We are hopeful that the beds can be opened in time to be useful in addressing any needs resulting from this public health emergency.

Conclusion

Based on the above, we approve the proposed change to the Miller Building Project and issue an addendum to the CON to reflect the change.

SO ORDERED.

Dated: March 20, 2020 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)

)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

s/ Jessica Holmes)

)

s/ Robin Lunge)

)

s/ Tom Pelham)

)

s/ Maureen Usifer)

)

Filed: March 20, 2020

Attest: Jean Stetter, Administrative Services Director