

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

re: Application of Vermont Open MRI, LLC)
 Replacement of MRI System and)
 Related Renovations)
)
_____)

GMCB-014-19con

STATEMENT OF DECISION AND ORDER

Introduction

In this Decision and Order, we review the application of Vermont Open MRI, LLC (Vermont Open MRI or “applicant”) for a certificate of need (CON) to purchase and install a new Hitachi Oasis 1.2T open MRI system and associated renovations at a new location at 3000 Williston Road in South Burlington for a total cost of \$1,853,185.

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

Procedural Background

On October 28, 2019, Vermont Open MRI applied for a CON and requested expedited review of its application. On November 26, 2019 and January 7, 2020, the applicant submitted revisions to the application narrative and corrected financial tables and on February 20, 2020, final revised financial tables were submitted. The Board requested that the applicant provide additional information regarding the project on November 15 and December 12, 2019, and January 17 and February 10, 2020. Vermont Open MRI provided responses on November 26, 2019, and January 7, January 22, and February 20, 2020. The Board granted the applicant’s request for expedited review on February 14, 2020 and closed the application on February 25, 2020.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) and 18 V.S.A. § 9434(a)(4).

Findings of Fact

1. Vermont Open MRI is currently located in leased space at 620 Hinesburg Road in South Burlington. With this project, Vermont Open MRI will be moving the facility to 3000 Williston Road in South Burlington, replacing its Philips Panorama 0.6T open MRI system with a Hitachi Oasis 1.2T open MRI system, and performing related renovations to accommodate the new MRI system at the new location. Response to Questions (Resp.) (Jan.7, 2020), Revised Application (Revised App.), at 1.

2. The existing Philips Panorama 0.6T open MRI system was installed at 620 Hinesburg Road in South Burlington in 2005 by Vermont Radiologists, the then owner of the imaging facility. Resp. (Jan. 7, 2020), Revised App. at 2, 7.

3. Mr. Todd Kummer is the sole shareholder and President of Minglewood Medical Imaging Management Company (Minglewood) and is the managing member of Vermont Open MRI. Since 2011, Vermont Open MRI has been owned and operated by Minglewood, which was founded in 2007 and specializes in outpatient MRI imaging. Minglewood also owns another outpatient MRI imaging facility in West Lebanon, NH. Resp. (Jan. 7, 2020), Revised App. at 2.

4. Minglewood will own the building located at 3000 Williston Road in South Burlington and will lease approximately 4,400 square feet of the 8,400 square foot building to Vermont Open MRI. The remaining square footage of the building will be leased to another entity. The space leased to Vermont Open MRI includes offices, patient care areas, and shielded space to accommodate the MRI unit and equipment rooms. Resp. (Jan. 7, 2020), Revised App. at 3.

5. Vermont Open MRI will move its existing computers, software RIS and PACS systems to the new location. New furnishings will be purchased at a projected cost of \$12,840. Resp. (Jan. 7, 2020), Revised App. at 3-4.

6. The existing MRI system is 15 years old and has reached the end of its useful life. While the existing MRI scanner is currently under a service contract, the scarcity of replacement parts has begun to lengthen the amount of down time the scanner experiences. Between January 1 and July 31, 2019, the existing scanner was inoperable 8.5 days. Increased down time is expected as components continue to fail. Resp. (Jan. 7, 2020), Revised App. at 3.

7. The new replacement scanner will improve patient experience and comfort, increase quality, and maintain access for all populations. The open configuration of the new MRI scanner will reduce the need for sedation of patients during scans and accommodate bariatric and claustrophobic patients. The new scanner also has twice the field strength of the current scanner, which will decrease scan times, increase patient comfort, and reduce the incidence of movement by patients during scans, resulting in improved image resolution. Resp. (Jan. 7, 2020), Revised App. at 3, 9.

8. The new location at 3000 Williston Road is located on a bus route with a stop 287 feet from the facility's main entrance. Resp. (Nov. 26, 2019) at 5.

9. As Vermont Open MRI is a referral facility only, licensed health care providers determine that scans performed at the facility are needed and appropriate. In addition, most insurers, including Vermont Medicaid, require review and prior authorization to assure the appropriateness of the imaging prior to performing the scan. Vermont Open MRI also performs reviews of each patient's medical history prior to scheduling scans, which includes the review of any previously scheduled scans to reduce the incidence of duplicate or unnecessary scans. Resp. (Jan. 7, 2020), Revised App. at 7-9. Vermont Open MRI maintains accreditation by the American College of Radiology to ensure that imaging meets quality standards. *Id.* at 6. The

results of all scans are shared electronically with the referring entity, enabling seamless follow-up care. *Id.* at 7- 8. \

10. Vermont Open MRI conducted 1,543 scans in 2016, 1,910 in 2017, 2,017 in 2018 and approximately 2,100 in 2019. *Id.* The facility projects 2,100 scans in year 1 of operation at the new location with the new scanner, 2,205 in year 2, and 2,315 in year three. Resp. (Feb. 20, 2020) at Table 8, *Utilization Projections*.

11. The project does not expand services, increase staff, or substantially change the payer mix of the applicant; the applicant expects imaging volumes will increase at the same rate (5% increase in volumes annually) with the new MRI as with the existing equipment; and as an existing service, the replacement will not have a negative impact on hospitals' or other clinical settings' services, expenditures or charges. *Id.* at Table 6 A, B, C and Tables 8 and 9.

12. Medicare reimburses Vermont Open MRI at a lower rate than hospitals and Vermont Open MRI is a lower cost provider of MRI imaging services, which in turn provides savings for insurers and patients who pay out-of-pocket. Resp. (Jan. 7, 2020), Revised App. at 9-10.

13. The existing MRI system was fully depreciated as of 2016. Resp. *Id.* at 8. The total cost of the project is \$1,853,185, which will be financed with a \$1,846,685 84-month finance lease with Highland Capital Corporation and an equity contribution of \$6,500. *See* Resp. (Nov. 26, 2019) at 2 and Resp. (Jan. 22, 2020) and (Feb. 20, 2020) at Table 1, *Project Cost* and Table 2, *Debt Financing Arrangement, Sources and Uses of Funds*. Because Vermont Open MRI was unable to renegotiate a long-term lease to remain at the current location, seeking a new location to house the facility was the only option to remain in business. Resp. (Jan. 7, 2020), Revised App. at 2-3, 7 and Resp. (Feb. 20, 2020) at 2. No less costly alternative exists. Resp. (Jan. 7, 2020), Revised App. at 3, 7, 10. The project, which involves routine equipment replacement, will not result in any increase in the cost of medical care, and will require no increase in staffing. Resp. (Jan. 7, 2020), Revised App. at 4, 10 and Resp. (Jan. 22, 2020) at Table 9.

14. The applicant has represented that the renovation work will include appropriate energy efficiency measures and that it will seek input from Efficiency Vermont once final design plans are completed. Resp. (Jan. 7, 2020), Revised App. at 7, 10. The applicant represents All Access Building, LLC based in Canton, CT, will perform all renovation work and that the renovations will comply with all applicable FGI Guidelines. The scope of work to be performed includes the installation of new shielding to accommodate the new MRI. Resp. (Feb. 20, 2020) at 2. All Access Building has extensive experience constructing and renovating space for health care providers and has performed 23 renovation/fit-up projects for MRI scanners identical to the one proposed by Vermont Open MRI. Resp. (Jan. 7, 2020), Revised App. at 6-7.

15. The applicant expects that the newly located facility will be fully operational by July 2020. *Id.* at 5.

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 of demonstrating 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 proposed project 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). 18 V.S.A. § 9437(1).

We conclude that the project aligns with statewide health care reform goals and principles. This project does not expand services or increase projected volumes or charges but will improve the MRI imaging services offered to patients. Findings of Fact (Findings) ¶¶ 6, 7. We further note that Vermont Open MRI has implemented safeguards to prevent inappropriate and overutilization of these services. Findings ¶ 9.

As required by 18 V.S.A. § 9437(1), the project is also consistent with the HRAP,¹ which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. *See* HRAP Standards 1.4 (applicant will maintain appropriate volumes and will not erode volumes at other facilities); 1.6 (applicant will collect and monitor data relating to health care quality and outcomes); 1.7 (project is consistent with evidence-based practice); 1.8 (applicant has a comprehensive evidence-based system for controlling infectious disease); 1.9, 1.10, and 1.12 (project is cost-effective, energy efficient and conforms with applicable FGI Guidelines); 3.5 (MRI capacity shall not be increased until capacity is in excess of valid state, regional and/or national benchmarks for medically necessary exams); 3.7 (existing equipment is fully depreciated); 3.20 (address appropriateness of such distribution as compared to population, the availability of appropriately trained personnel, urgent versus non-urgent use and appropriate protocol to reduce the risk of repetitive testing); and 3.23 (that equipment reduces costs and/or increases quality).

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 cost of the project is reasonable because the applicant's financial condition will sustain any financial burden likely to

¹ The Vermont legislature in Act 167 (2018) made several changes to the State's CON law. *See* <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT167/ACT167%20As%20Enacted.pdf>. As amended by Act 167, 18 V.S.A. § 9437(1)(C) continues to reference the HRAP, which is in the process of being updated. In the interim, we consider the current HRAP standards.

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; 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 \$1,853,185 for the replacement of standard and necessary MRI equipment and the specified renovations is reasonable. The project will not create an unreasonable financial burden to the applicant, which will finance the project with a capital lease from Highland Capital Corporation and \$6,500 in equity, and will not have a negative impact on hospitals or other clinical settings. Findings ¶¶ 11, 13.

We further find that the project will not unduly increase the costs of care, will not unduly impact the affordability of care for consumers, and any fiscal impact is outweighed by the benefit of the project to the public. The project includes a straight replacement of existing MRI equipment that is 15 years old and has begun to fail, is not available for use at all the times it is needed, and the new equipment, being an open aperture, accommodates bariatric and claustrophobic patients. Findings ¶¶ 1, 6-7. Medicare reimburses Vermont Open MRI at a lower rate than hospitals and Vermont Open MRI is a lower cost provider of MRI imaging services, which in turn provides savings for insurers and patients who pay out-of-pocket. The applicant will not increase its rates as a result of the project, there are no changes in staffing levels, the payer mix changes little, and there are no changes in staffing. Findings ¶¶ 12-13.

The new open bore replacement equipment will benefit both patients and providers; it is more technically advanced, will not experience the significant down time that occurs with the current equipment that has exceeded its useful life, and will improve the quality of patient care. Additionally, the new replacement equipment has an open aperture that accommodates bariatric and claustrophobic patients, and improves patient comfort, experience and ultimately quality of the image. Findings ¶ 7. We are also persuaded that there are no viable, cost-effective alternatives to the project; the 15-year old MRI equipment has reached the end of its useful life and must be replaced. Findings ¶¶ 6, 13.

We further find that the applicant intends to incorporate appropriate energy efficiency measures and we impose conditions in the CON to ensure that this happens. Findings ¶ 14.

We conclude that the applicant has demonstrated that the cost 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).

This project involves the replacement of existing, critically needed medical equipment in an outpatient setting and does not add new services or expand the applicant’s service offerings. MRI imaging is a standard diagnostic tool used for imaging organs, soft tissues, bones and virtually all other structures inside the body. The equipment being replaced has outlived its useful life, experiences frequent down time, and delays in patient care. Findings ¶¶ 1, 6-7.

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 equipment is experiencing symptoms typical of equipment that is past its useful life, including increasing down time and unavailability for needed patient care. The new equipment will increase access to care because it will be available for use on a regular and predictable basis. Findings ¶¶ 6, 7. The new equipment will also provide improved image quality for the diagnosis of diseases; and will accommodate bariatric and claustrophobic patients, thus improving quality of care and maintaining access. *Id.*

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. § 9437(5). The project is primarily a straight replacement of essential MRI equipment, plus related renovations. Findings ¶¶ 1, 11. The project does not expand or offer new services; rather, the project upgrades needed 15-year-old equipment to ensure that critical diagnostic services will continue to be available to patients in on an outpatient basis at this free-standing facility. Findings ¶¶ 10-12. As the project simply improves an existing service and does not adversely impact any other services offered by Vermont Open MRI, 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. 18 V.S.A. § 9437(7). As the project is located 287 feet from an existing bus stop, we find that this criterion has been met. Findings ¶ 8.

VIII.

The eighth criterion requires that 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(a). 18 V.S.A. § 9437(8). This criterion is not applicable to this project.

IX.

Last, the ninth criterion requires that the applicant 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 neither involves mental health care services nor poses any barriers to mental health treatment, and this criterion is therefore not applicable.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each 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: March 9, 2020 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)
)
s/ Jessica Holmes)
)
s/ Robin Lunge)
)
s/ Tom Pelham)
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s/ Maureen Usifer)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: March 9, 2020

Attest: Jean Stetter, Administrative Services Director