

# VERMONT LEGAL AID, INC.

## OFFICE OF THE HEALTH CARE ADVOCATE

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May 2, 2017

Green Mountain Care Board  
3rd Floor City Center  
89 Main Street  
Montpelier, VT 05620

Re: HCA Comments on CON GMCB-010-15con Green Mountain Surgery Center

Dear Members of the Green Mountain Care Board,

The Office of the Health Care Advocate (HCA) has chosen to participate in the above-captioned Certificate of Need (CON) proceedings as an interested party because of the project's potential impact on Vermonters. We ask the Green Mountain Care Board (the Board) to approve ACTD LLC's CON for establishment of the Green Mountain Surgery Center (GMSC) and to impose a set of conditions to ensure that the GMSC is accountable to patients and to Vermont's health care system. We believe that this facility, with the conditions we suggest, will be beneficial to consumers and therefore to the health care system as a whole.

In its application and related materials, ACTD has stated that the GMSC will give patients and doctors an affordable, efficient, high quality option for a limited set of medical procedures. ACTD has stated that Vermonters will have access to the facility regardless of their insurance status and that the GMSC will implement a financial assistance policy that adheres to federal requirements for nonprofit hospitals. We appreciate these assurances from ACTD and ask the Board to ensure that they are realized.

The other intervening parties in this matter, the Vermont Association of Hospitals and Health Systems and Northwestern Medical Center, expressed concerns about the potential effects of the GMSC on hospitals' revenue. We do not believe that the possible negative impact on hospitals' revenue in this case negates the need for improvement and innovation in other parts of our health care system. We are confident that the hospitals have the ability and financial flexibility to adapt to changes in the system including this relatively small project. We believe that the other concerns raised by the two parties were not supported by evidence, were addressed sufficiently by the applicant, and/or are addressed by the conditions we suggest.

We appreciate the applicant's stated commitment to increasing access, affordability, efficiency, and price transparency; maintaining or improving quality of care; providing appropriate,

evidence-based services; and being an active, collaborative member of Vermont's health care system. We further recognize the value in supporting a provider-friendly work environment to the extent that it will improve provider recruitment and retention in Vermont. To ensure that these goals are met we ask the Board to approve the GMSC CON and to apply the conditions outlined below.

### **1. Payer Mix and Utilization**

- a. The GMSC must serve all Vermonters without regard to any individual's payer type, insurance status, or ability to pay for necessary services. The GMSC must serve Medicaid and Medicare beneficiaries, and un- and under-insured Vermonters, without applying a quota to the number of patients in any category.
- b. The GMSC must demonstrate that it serves, at a minimum, a reasonably proportionate number of Medicaid patients to the number of Medicaid patients served by the local hospitals, except to the extent that the Medicaid patients choose to receive care at local hospitals over the surgery center or it is necessary based on acuity.
- c. The GMSC must provide appropriate services and must ensure that its rates of utilization are in line with patient needs.

#### *Reporting*

- ACTD must submit, quarterly in the first year and annually thereafter (or more often at the Board's request), a report to the Board outlining the GMSC's payer mix by provider and procedure, comparative information for local hospitals, and to the extent it is available, comparative information for the region and state. If the proportion of Medicaid patients served by GMSC differs significantly from the proportion at local hospitals, ACTD must provide a written explanation of the reasons behind the difference.
- ACTD must submit annually a report to the Board outlining the number and types of procedures performed at the GMSC, and to the extent it is available, comparative information for the region and state.
- ACTD must submit annually a financial report to the Board that includes the GMSC's net patient revenue, operating expenses, and profits.

### **2. Price Transparency**

- a. ACTD must ensure that the GMSC's prices are available to the public on its website, and to patients who may receive care at the GMSC in advance of any procedure. The provider must give each patient a written disclosure that outlines the total price of the planned procedure, as well as the portion of such cost that would be the patient's responsibility, prior to scheduling the procedure at the GMSC.

### *Reporting*

- ACTD must document the price disclosure in the patient's chart and provide the Board with its price transparency policy and/or materials at the Board's request.

### **3. Patient Financial Assistance**

- a. ACTD must adopt and maintain a patient financial assistance policy (FAP) in line with the requirements of IRS regulation 26 CFR 1.501(r)-4 for all services provided at the GMSC.

### *Reporting*

- ACTD must submit its FAP, application for financial assistance, and plain language version of the FAP to the Board and attest that the GMSC is following the FAP requirements of IRS regulation 26 CFR 1.501(r)-4. ACTD must submit its FAP to the Board whenever there is a change made to the FAP or surrounding policies.

### **4. Shared Decision Making**

- a. To promote appropriate levels of utilization and patient-centered care, providers who practice at the GMSC must conduct shared decision making with each patient who may choose to have a procedure at the GMSC.
- b. Shared decision making must include working with patients to ensure that they are informed about and understand their choices and the clinical evidence behind those choices, that risks and expected outcomes are considered, and that patient preferences and values are appreciated.

### *Reporting*

- Providers who practice at the GMSC must document the shared decision making process in the patient's chart and provide the Board with information about their shared decision making practices at the Board's request.

### **5. Informed Consent**

- a. Prior to performing a procedure at the GMSC, the provider must inform the patient about the choices the patient has (e.g., having the procedure at the GMSC or at one or more hospitals; options the patient may have other than the procedure) so that the patient understands his or her options and the risks and benefits of those options.
- b. Patients must be informed about the GMSC's pricing for the procedure and its FAP. Additionally, patients must be informed if the provider has a financial stake (owner/investor) in the GMSC.
- c. Prior to performing a procedure at the GMSC the provider must obtain signed consent from the patient stating that the patient is informed about his or her

options and has been given pricing information, the plain language version of the FAP, and information about the provider's stake in the GMSC if applicable. The consent form must be in plain language and must be given to the patient in a manner that is understandable by the patient, including providing translators as necessary. The HCA must have the opportunity to review any consent forms and provide feedback.

*Reporting*

- ACTD must make its informed consent policies, procedures, materials, and forms available to the Board upon request.

**6. Health Care Reform and System Participation**

- a. ACTD and the GMSC must participate in good faith in health care reform and health care system improvement efforts, including providing input for hospitals' Community Health Needs Assessments, if asked, and continually working to provide high quality and high value care.

*Reporting*

- On an annual basis, ACTD must report to the Board on its health care reform and health care system improvement efforts. If ACTD encounters barriers to participation in these efforts, these must be reported to the Board in a timely manner.

**Enforcement**

- If any condition or component of a condition is not met, ACTD must submit a written explanation to the Board and suggest a corrective action plan.
- The Board may accept or amend the proposed corrective action plan, and may impose additional limitations on the surgery center or revoke the CON if the corrective action plan is not satisfactorily implemented.
- We recognize that in accordance with GMCB Certificate of Need rule 4.500(4), the applicant may seek relief from a condition in the future by filing a written request to the Board.

Thank you for considering our comments.

Sincerely,

s\ Julia Shaw

Health Care Policy Analyst, Office of the Health Care Advocate

s\ Kaili Kuiper

Staff Attorney, Office of the Health Care Advocate