

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of The University of Vermont)
Medical Center, Inc., MRI and Addition) GMCB-010-21con
Tilley Drive, South Burlington)
_____)

STATEMENT OF DECISION AND ORDER

Introduction

In this Decision and Order we review the application of The University of Vermont Medical Center, Inc. (UVMC or “the Applicant”) for a certificate of need (CON) to purchase a new Magnetic Resonance Imaging (MRI) scanner, a Philips Ingenia Elition 3.0T X MRI System, and to construct an addition to house the scanner at 192 Tilley Drive in South Burlington. The cost of the project is \$4,080,192.

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 May 25, 2021, UVMC filed a CON application and request for expedited review. On June 4, 2021, the Green Mountain Care Board (Board) informed UVMC that expedited review was granted. The Board requested additional information regarding the project on June 10, July 1, August 5, and August 30, 2021, which UVMC provided on June 28, July 12, August 26, and August 30, 2021. The Board closed the application on September 1, 2021.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(8) and 18 V.S.A. § 9434(b)(1), (2).

Findings of Fact

1. UVMC is a tertiary/quarternary hospital serving approximately one million people in Vermont and Northern New York. The use of diagnostic imaging equipment is essential to its delivery of patient care to the region. UVMC currently owns and operates five MRI scanners, including one 3T MRI, and rents time on an additional 3T MRI machine otherwise dedicated to research at University of Vermont (UVM). The UVMC MRIs operate at least 16 hours a day on weekdays and many operate on the weekends, as well. Application (App.), 2-3, 16.

2. UVMC is the only hospital in the Vermont and Northern New York region with a 3T MRI scanner. UVMC’s volume of MRI imaging in general, and 3T MRI imaging in particular,

has grown steadily over the past five to ten years. UVMMC is currently using all its MRI units to their fullest capacity. Approximately 5,700 adjusted scans are conducted per year per MRI machine, which, according to UVMMC's analysis, is 18% over the suggested benchmark for 4 and more scanners. While UVMMC's target wait time for an MRI scan is 14 days or fewer, the average wait time for an MRI scan at UVMMC is currently 4 weeks and wait times for certain types of 3T MRI scans is even longer. The addition of the new 3T MRI will reduce the average wait time for all MRI scans to one week. App., 3-7.

3. MRI is an imaging technique that performs better than CT in certain applications. A 3T MRI is used for scans requiring higher resolution than 1.5T MRIs. It benefits patient safety because it does not expose patients to ionizing radiation. It provides significant diagnostic advantages for certain exams, including prostate MRI, functional MRI to evaluate specific areas of the brain, and rectal cancer staging. 3T MRI is also preferred for pediatric patients, and patients with multiple sclerosis and seizure patients. App., 2, 15.

4. UVMMC has calculated the current demand for a 3T MRI, applied a growth rate to estimate incremental volume for the 3T MRI over FY19. Incremental volume for the 3T MRI over FY 19 is projected to be 1,184 in Year 1 and grows to 1,640 in Year 3. App., 7-8 and Utilization Projections, Table 7.

5. UVMMC plans to purchase a Philips Ingenia Elition 3.0T X MRI System. Equipment will include the magnet assembly, support equipment for MRI procedures, and an uninterrupted power supply system to power the equipment through completion of a scan in the event of a loss of normal power. UVMMC also plans to construct an approximately 825 square-foot addition to its two-story, 53,300 square-foot outpatient Orthopedic Specialty Center located at 192 Tilley Drive in South Burlington to house the new 3T MRI. There is presently a 1.5T MRI located at this site. App., 8.

6. The proposed project will use existing MRI support spaces, including a staff break room, a staff locker room, staff offices, patient holding spaces, and male and female bathrooms and changing spaces. The proposed addition will house the control room for the current MRI and the new MRI, a scanner room for the 3T MRI and an equipment closet. The addition will include shielding required for the MRI. Appropriate mechanical, electrical, power, lighting, and data will be included in the addition. The new addition will displace three existing parking spaces; fourteen new spaces will be added along the northern edge of the existing parking lot for a net increase of eleven spaces. App., 8-9. Response (June 28, 2021) 4.

7. The capital expense for the project is \$4,080,192. The equipment itself will cost approximately \$1,936,635, with that figure subject to final negotiation. Facility costs totaling \$2,143,557 are comprised of \$1,395,165 in new construction, \$146,900 for site work, \$308,410 for contingency, and \$293,082 in related project costs. The facility portion of the capital expense will be depreciated over 20 years; the equipment cost will be depreciated over 7 years. App., 10.

8. UVMMC states that its Radiology Department collects, analyzes, and reports data to investigate and analyze risks and potential risks to patient safety and develop action plans to reduce identified risks; a Radiology Quality Committee meets bi-monthly and identifies and improves systems and processes that promote quality outcomes and patient safety. The Committee confirms that radiology services rendered were professionally indicated and performed with applicable standards of care. The Committee reviews and recommends actions based on quality metric reports. The applicant asserts that it makes decisions regarding the appropriate and effective use of imaging with reference to the American College of Radiology's ACR appropriateness Criteria. Its data suggests that MRI utilization is appropriate, with 21.4% of outpatients having an MRI for low-back pain before trying recommended treatments, compared to a 39% average for all U.S. hospitals. App., 12-13.

9. UVMMC states that it complies with the Joint Commission requirements on Infection Prevention and Surveillance. Its Infection Prevention Team is led by the Hospital Epidemiologist and includes members certified in infection prevention. App., 13.

10. The project is not entirely new construction but is an addition to its current MRI facility. App., 14. The applicant has not identified any less expensive options than to purchase the new machine and co-locate it with an existing 1.5T MRI unit at its Orthopedic Specialty Center, which has sufficient existing MRI support spaces for the project. App., 21.

11. The project meets the applicable guidelines set forth in the Guidelines for Design and Construction of Health Care Facilities as issued by the Facility Guidelines Institute (FGI), 2018 edition. App., 15 and Exhibit 1.

12. The applicant asserts there are no known or perceived conflicts of interest regarding the purchase of this equipment between or among UVMMC, the vendor, and the physicians. App., 17.

13. The main population health benefits of the project are the potential cost savings and improved mortality rates with earlier detection for oncology and neurology patients; more precise capture of information for certain types of imaging to lead to improved diagnoses and resulting treatments; and avoiding overtreatment and the risks of radiation exposure after therapy, especially for oncology patients undergoing radiation. App., 18.

14. The applicant states it is working with Efficiency Vermont to ensure that energy efficient design, systems, and products are selected for the project, including LED lighting. App., 14.

15. UVMMC has included planned investments in MRI equipment in its hospital budget submissions this year and for the past several years, save for the FY21 budget due to uncertainties related to the COVID-19 pandemic. UVMMC asserts that the project's impact on its operating margin will be minimal and that the project will not create an unsustainable financial burden or adversely impact UVMMC's financial health. The applicant states that the project will not have an adverse impact on any UVMMC service and that the project will not result in an undue increase

in the costs of medical care either systemically or for individual patients. UVMMC further asserts that it will not raise its charges for any service as a result of the project. App., 15, 18-19; Response (June 28, 2021). UVMMC is financing the project with a \$4,080,192 equity contribution. App., Table 2.

16. The new 3T MRI will be open Monday through Friday from 7 am to 5 pm in Year 1 and will be open 7 am to 11 pm in Year 2 and beyond. App., 9-10. To staff the additional MRI, a 1.0 FTE Technologist will be required in Year 1 and an additional 1.0 FTE in Year 2. UVMMC has already hired one Technologist who will be ready to staff the new 3T MRI by March of 2022 after completing in-house training and the additional 1.0 FTE Technologist will be hired for Year 2. If necessary, UVMMC will retain a Technologist through a travel agency, as there is a nationwide shortage of trained technologists. UVMMC is currently working with Vermont Technical College (VTC) to improve this shortage situation over the longer term by establishing a new advanced imaging training program at VTC. In Year 1, a 1.0 FTE Medical Assistant will also be required and an additional 1 FTE in year 2. UVMMC plans to hire Medical Assistants to fill both positions and does not anticipate difficulty in hiring 2 Medical Assistant FTEs. In year 1 the project will require 0.3 FTE Radiologist and an additional 0.3 FTE in year 2. UVMMC's Radiology Department plans to hire an additional 1.0 FTE radiologist, in part to cover the proposed new 3T MRI. Email from Karen Tyler to Donna Jerry, September 12, 2021.

17. The applicant reports that the Special Services Transportation Agency (SSTA) provides free shuttle service to the site by reservation from University Mall in South Burlington. The University Mall is accessible by Green Mountain Transit. App., 20.

18. The project does not involve the purchase or lease of new Health Care Information Technology. App., 20.

19. The project has no relationship to mental health care access. App., 20.

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, an 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 expands services to meet demand and will improve the quality of MRI imaging services offered to patients. Findings of Fact (Findings) ¶¶ 2-4.

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); 3.20 (address appropriateness of such distribution as compared to population, availability of appropriately trained personnel, urgent versus non-urgent use, and appropriate protocol to reduce the risk of repetitive testing); and 3.23 (equipment reduces costs and/or increases quality). *See* Findings, ¶¶ 2-4, 8-9, 11, 13-14.

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

II.

Under the second statutory CON 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; and if applicable, that the project has incorporated appropriate energy efficiency measures. 18 V.S.A. § 9437(2).

We conclude that the project's total cost of \$4,080,192, is reasonable for the purchase of a new 3T MRI and the addition to house it. The project will take advantage of existing MRI facilities to keep the scope of the addition as small as possible. The project will not create an unreasonable financial burden to the applicant, which will finance the project with a \$4,080,192 equity contribution. Findings, ¶¶ 7, 15.

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

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.

project to the public. Findings, ¶¶ 3, 15. There will not be an increase in charges or rates for services linked to the project. Findings, ¶ 15. The new 3T MRI will increase the availability of MRI scans and reduce wait times. The benefits of the project to the public are tangible and meaningful. Findings, ¶ 2.

We further find that the Applicant has incorporated appropriate energy efficiency measures where feasible and we impose conditions in the CON to ensure that this happens. Findings, ¶ 14.

Finally, the applicant has demonstrated that less expensive alternatives do not exist. Findings, ¶ 2, 10.

We conclude that the applicant has satisfied the second criterion.

III.

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).

The current MRI machines are working over capacity and there are lengthy wait times for MRI screenings. The new 3T MRI will reduce wait times and provide additional capacity to meet demand for the higher-resolution imaging the 3T MRI provides. Findings, ¶¶ 2-4.

For the reasons stated above, we conclude that applicant has satisfied the third criterion.

IV.

The fourth criterion requires that an 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).

The project improves the quality of health care and maintains and supports access to a critical service. Data suggests that UVMMC uses MRI appropriately as a screening tool and reducing wait times for MRIs will facilitate quicker diagnosis of certain illnesses, including certain types of cancer, allowing earlier treatment and better outcomes. Findings, ¶¶ 8, 13.

We find that the applicant has met this criterion.

V.

The fifth criterion requires that an applicant demonstrate that the project will not have an undue adverse impact on any other services it offers. 18 V.S.A. § 9437(5).

The project will not have an adverse impact on any other services that UVMMC offers and will alleviate over-capacity use of the applicant’s existing MRI machines. Findings, ¶¶ 2, 15.

We find that this criterion has been satisfied.

VI.

The sixth criterion was repealed, effective July 1, 2018. *See* 18 V.S.A. § 9437(6) (repealed).

VII.

The seventh statutory criterion requires that an applicant adequately consider the availability of affordable, accessible transportation services to the facility, if applicable. 18 V.S.A. § 9437(7).

The project is accessible by a free-of-charge shuttle service to and from University Mall, which is itself accessible by Green Mountain Transit. Findings, ¶ 17.

VIII.

The eighth statutory criterion states 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. 18 V.S.A. § 9437(8).

As the project does not involve the lease or purchase of a new Health Care Information Technology, this criterion is not applicable.

IX.

Finally, an applicant must show that the proposed project will support equal access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate. 18 V.S.A. § 9437(9). As the project neither involves mental health care services nor poses any barriers to mental health treatment, the criterion is not applicable.

We find that the Applicant has satisfied this criterion.

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: September 15, 2021 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: September 15, 2021

Attest: Jean Stetter, Administrative Services Director