

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re. The Collaborative Surgery Center) Docket No. GMCB-008-21CON
Application for Certificate of Need)
For Ambulatory Surgery Center)

**APPLICANT'S REQUEST FOR RELIEF FROM CERTAIN CONDITIONS OF
APPROVAL**

Now Comes Applicant the "Collaborative Surgery Center" (the "CSC") and pursuant to Board Rule 4.500.4, requests relief from the conditions of approval in its March 16, 2022 Certificate of Need ("CON") listed below. For those conditions with a timeline not listed herein, the Applicant requests that such timelines be tolled and stayed until after this Board has adjudicated this request.

The Collaborative Surgery Center is seeking relief from select conditions that threaten the financial viability of its project. In particular, the CSC takes exception to, and asks for relief from, conditions that unfairly restrict pricing, financial feasibility, and/or the CSC's ability to recruit physicians. Additionally, there are several conditions for which relief is sought because they place undue administrative burdens or restrictions on independent physicians. These conditions unfairly place the CSC at a disadvantage relative to physicians employed by a larger health system.

Condition #2. *If the applicant develops a plan to offer specialties other than those approved in the Statement of Decision, it must petition the Board for approval.*

The CSC requests clarification on the process for approving specialties beyond the four core specialties which the Board approved in the CON. CSC has already been approached by multiple surgeons reporting patient demand beyond the four core specialties. The CSC requests details on the specific steps and information required of the petition process, as well as the thresholds and/or criteria for approval or disapproval of new specialties. This information is essential as the CSC recruits physicians to invest in, and use, the CSC.

Condition #3. *Within 30 days of receiving this Certificate of Need, CSC shall submit a finalized and fully executed copy of its lease, which shall include provisions to address the calculation of the rent in the event of either cost overruns or cost savings.*

The CSC requires more time to finalize lease provisions that address the calculation of the rent in the event of cost overruns or cost savings. Conditions in the construction industry and the broader economy have changed dramatically since the CSC submitted its application in July 2021. Historic levels of inflation not seen in 30 years, supply chain problems, and global geo-political instability are driving up steel, oil, and other construction costs. Workforce shortages also influence construction timeline and costs. As a result of these conditions, CSC must request ample additional time to properly assess and coordinate bids to ensure that project costs will not exceed the long-term financial feasibility of the project. This cost management is critical to the lease and cannot be completed within 30 days. CSC

requests that the Condition be amended so as to require that CSC submit a finalized and fully executed copy of its lease with provisions addressing potential cost overruns before construction begins, but not sooner.

Condition #8 d. *The applicant shall develop and implement a policy, which it will post to CSC's consumer website, requiring each physician who performs procedures or surgeries at CSC to use a patient decision aid such as shared decision-making that: d) advises the patient of the pros and cons, including the comparative costs, of having the procedure performed in an ASC, rather than a hospital. The policy shall include a provision requiring certification by the provider of his or her compliance with such policy.*

CSC is committed to providing patients with a convenient and cost-effective option for surgical care and we are confident that the cost of care at the CSC will routinely be less than care obtained at a hospital. This is particularly true if ancillary costs are considered since ASCs do not charge for anything beyond the procedure itself, unlike hospitals who can charge for each additional item or service. The CSC is happy to discuss such differences with patients. The CSC expects that the Board will install this condition in future CONs that it may issue so that it applies to surgeons who solely operate in a hospital system, including academic medical centers. Otherwise, Condition 8(d) is an undue burden levied only on independent physicians and does not ensure patients receiving care at a hospital receive information on all their choices for care.

Condition #10. *The applicant shall post to its website the commercial, self-pay, and Medicare prices for each of the twenty-five (25) most frequently performed procedures and surgeries, or, if it will result in disclosure of a greater number of prices, the commercial, self-pay, and Medicare prices of each of the procedures and surgeries that comprise at least 75 percent of CSC's overall volume. The applicant shall regularly update this information, no less than quarterly, whether or not prices or procedures have changed.*

CSC is prepared to post this information on our website. However, the CSC requests that the Board amend this condition to require only annual reporting. This is in alignment with federal price transparency requirements for hospitals and helps to decrease administrative costs associated with more frequent reporting. Successful ASCs can provide high value care because they are highly efficient operations. Every additional administrative task decreases overall efficiency and drives up cost of healthcare.

Condition #16. *The applicant must successfully negotiate prices with commercial insurers that are lower than any hospital in Vermont. Within 30 days of executing an initial contract and annually thereafter, the applicant must submit letters from Cigna, Blue Cross and Blue Shield of Vermont, and MVP confirming CSC's compliance with this condition. The price of a procedure or surgery that is billed to patients that self-pay may not exceed the lowest price billed to patients covered by commercial insurance.*

This condition imposes an unacceptable, and unreasonable, financial risk to the CSC that renders the project untenable.

This condition requires that the CSC ensure a certain outcome with third-party health insurers who are not a party to the CON and not subject to CON conditions. That is unfair to the CSC and seemingly outside of the Board's jurisdiction in issuing conditions of approval.

This condition subjugates the CSC to the pricing decisions of all hospitals within the State including those located outside of any proposed service area for the CSC whose patient population has no overlap with the CSC, and who operate in vastly different economic conditions.

This condition places hospitals in an advantageous position against a competitor (the CSC) to the detriment of the CSC. This is particularly true of the large local health network which could decrease the prices of any procedures at one of its network hospitals to a level that would be financially unsustainable for the CSC and then recover the difference through unreasonably high ancillary charges and/or increase the cost of the procedure at the other network hospitals. The CSC has no protection from this potential scenario.

Furthermore, the CSC is in no position to confidently determine what the actual "price charged" at any hospital is. Real price transparency in hospital-provided care is lacking. The CSC cannot verify what prices are charged, or how those costs are allocated for any procedure (i.e., procedure costs v. hospital costs and fees) so as to comply with this condition.

Finally, this condition creates massive annual uncertainty regarding facility payment levels for independent providers who wish to invest in and operate at the CSC. This will negatively impact the CSC's ability to recruit independent physicians to the state, especially given that no such limitations are placed on physicians working at ASCs in other states. ASCs are proven to be high value facilities with lower prices than hospitals on average.

The CSC simply cannot move forward with this project if Condition #16 is imposed as written.

Condition #18. *The applicant shall quarterly compile for inclusion in its next-due implementation report, and post to its website within forty-five (45) days of the close of each quarter, CSC's payer mix by revenue. In the event that the applicant's payer mix is not in line with its projections in the application, CSC shall include in its implementation report a justification for the deviations and proposed remedies to ensure inclusion of all Vermonters, regardless of payer type.*

The payer mix outlined in CSC's application are merely projections. The payer mix is highly dependent on the physicians who will eventually be recruited as well as the types of surgeries performed. The payer mix will certainly fluctuate accordingly. The CSC fully intends to report on the payer mix but the CSC requests that the reporting be done annually, not

quarterly. This will reduce the administrative burden on what amounts to a metric that is largely dependent on factors outside of CSC's control.

Condition #21. *The applicant shall quarterly update and compile for inclusion in its next-due implementation report, the following information:*

- (a) The types of procedures and surgeries performed at CSC and the number of times each procedure and surgery was performed.*
- (b) A breakdown, by payer mix, of the types of procedures and surgeries each physician performed at CSC and at local hospitals (specify the hospital).*
- (c) The number of patients each physician determined were inappropriate for care at CSC and the reason for each determination.*

The information in (b) and (c) of this condition is to be submitted confidentially. Within 45 days of the close of each quarter, CSC shall post the information specified in (a)-(c) of this condition on its website. The information on providers may be reported by specialty on the website. In the event there is only one provider for any given specialty, the report posted on the website may note "small numbers prevent us from providing this information," or words to that effect.

CSC requests reporting on item "a" on an annual basis rather than quarterly. This will reduce associated administrative costs while still providing data on procedure types and volume.

The CSC also request relief from reporting for items "b" and "c". Physicians find this type of reporting intrusive and administratively cumbersome. To our knowledge, physicians performing procedures at ASCs in other states are not subjected to such reporting, putting CSC at a disadvantage when recruiting physicians from other states. Further, this type of reporting puts an undue burden on independent physicians only. Physicians who operate as employees of hospitals in the state are not subject to this transparency regarding their cases. This effectively places an additional administrative burden on individual providers who wish to operate at the lower cost site of care.

Condition #22 e. *Before CSC opens, the applicant must demonstrate that conditions 3-9, 11-12, and 15-17, of this certificate of need have been satisfied. The applicant shall file implementation reports with the Board at six-month intervals beginning six (6) months following the date of this certificate of need and continuing for four (4) years following the opening of CSC. In addition to information specified in conditions 10, 13-14, 18, and 20-21 above, the implementation reports shall include the following information and analysis:*

- (e) annually, CSC's profit and loss statement and balance sheet.*

CSC seeks relief from requirement "e" that requires the release of profit and loss statements and balance sheets. By statute, this Board has oversight over "Hospital" budgets. 18 V.S.A. §9451. Providing profit and loss statements from an Ambulatory Surgery Center is

inconsistent with that authority. This level of reporting is also detrimental to physician recruitment and is intrusive and administratively burdensome. CSC is a private company who will be paying property taxes, income taxes, and other taxes and will not benefit from tax-exempt status like other entities subject to such detailed public reporting. To be successful, CSC needs the ability to be able to use its resources flexibly and nimbly to achieve the goal of providing increased access to high value surgical care.

Condition #23. *The project as described in the application shall be fully implemented within two (2) years of the date of this certificate of need, or the certificate of need shall become invalid and deemed revoked.*

CSC seeks relief from the two-year timeline and requests a minimum of four years. Since we first submitted our application, there has been a panoply of world and local events that influence our ability to complete our project in a timely, cost-effective manner. These have affected the CSC's ability to complete the build-out in two years and the CSC needs ample time to gather bids, secure contractors, account for supply chain disruptions, inflation, and contractor schedules. We believe this is a reasonable request given the current landscape and size of the project. At this point, expediting this project to adhere to the Board's Condition #23 would increase the overall cost of the project due to the need to expedite various items thus quickly running above and beyond the proposed project budget. The CSC cannot reasonably move forward if it *must* complete the build-out and staffing within two years or risk termination of the CON.

Dated this the 13th day of April, 2022 at Burlington, Vermont

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