

In re: Request of Birchwood Operations,)
 LLC d/b/a Birchwood Terrace Rehab)
 & Healthcare for a COVID Waiver) GMCB-011-24con
 To Add 16 Licensed Skilled Nursing Beds)
)
 _____)

Certificate of Need, Docket No. GMCB-011-24con, Page 1 of 4

Birchwood's increased capacity would have a direct impact on its ability to meet patient needs by ensuring that individuals receive the care they need, in the right place, at the right time.

UVMHN/UVMMC expresses the challenges involved with deciding how to use the available post-acute care "slots" for a growing number of patients whose needs are not matched to their current setting. In February 2024, UVMMC requested placement for 225 patients to a post-acute setting with only 135 of those resulting in a confirmed acceptance while the remaining 90 patients continued waiting or were declined. The need for additional SNF beds is only expected to increase.

UVMHN/UVMMC states that the impact of COVID-19 persists, and in the case of the post-acute care system, continues to drive a near-crisis level of challenges, including an impact on staffing. UVMHN, itself a post-acute care provider, faces capacity limitations primarily because of staffing shortages.

The Department of Disabilities, Aging and Independent Living (DAIL), the agency responsible for licensing SNF beds, also provided a letter of support. DAIL notes that the project will bring back the 16 beds that the previous owner took offline and asserts that the additional beds will assist Vermont's critical need for post-acute patient care. DAIL observes that the pause of preventative care by many Vermonters during the COVID-19 pandemic and the aging of Vermont's population have resulted in a higher volume of people entering hospitals for care and subsequently needing post-acute care in a Skilled Nursing Facility.

Birchwood is seeking to flexibly use up to 16 of its private rooms as semi-private rooms accommodating two individuals per room. There would be times when these rooms would be used as single occupancy rooms to the maximum extent feasible. Birchwood asserts that its current staffing ratio is healthy and does not anticipate having difficulty hiring any additional staff needed for the additional 16 beds.

Birchwood represents that in addition to staffing costs the only other costs will be \$20,000 for furnishings and \$10,000 for electrical work. There will be no capital costs associated with this project.

Analysis

Based on the representations contained in the documents submitted, the project may be considered to qualify for CON review because of the change in the number of licensed beds.¹ *See* 18 V.S.A. § 9434(a)(2).

Act 4 (2023) extends GMCB's COVID-related regulatory flexibility through March 31, 2024. Relevant to this application, it allows the Board to waive or permit variances from State laws, guidance, and standards for certificates of need, as necessary to prioritize and maximize

¹ Birchwood expresses the position that no CON is required because it is returning to the same number of beds for which it was once licensed. However, DAIL has communicated via email that it would require a license re-application for "increased license capacity." Because of the availability of the COVID Waiver, we do not need to reach the question of whether the return to 160 licensed SNF beds would trigger CON review.

direct patient care, safeguard the stability of health care providers, and allow for orderly regulatory processes that are responsive to evolving needs related to the pandemic.

Based on materials submitted in support of this request, Birchwood's proposed plan to add 16 SNF beds achieves each of these goals. The addition of these beds expands the existing capacity of SNF beds for residents requiring long-term care and for hospitals unable to discharge patients in a timely manner because licensed SNF beds are not available. In this instance, the project would qualify for CON review solely because of the change in licensed beds and the licensing authority, DAIL, supports the increase in beds and application of the waiver. Therefore, we believe this is an appropriate situation in which to use the waiver authority.

Therefore, the Board grants a COVID Waiver to this proposed project and approves it without requiring CON review under 18 V.S.A. § 9435(a).

As Birchwood proceeds with developing and implementing this project, if there are any changes in type, scope or cost of the project (including, but not limited to, increases in capital expenses or the number of licensed beds), Birchwood is directed to contact the Board immediately so that we may determine whether any further process is necessary. Failure to do so as required by Green Mountain Care Board Rule 4.301(4) may result in sanctions, as specified in 18 V.S.A. § 9445.

Dated: March 18, 2024, at Montpelier, Vermont.

)
<u>s/ Jessica Holmes</u>)
)
<u>s/ Robin Lunge</u>)
)
<u>s/ David Murman</u>)

**Chair Foster and Board Member Walsh did not participate in this decision*

Filed: March 18, 2024

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address: tara.bredice@vermont.gov).