



Office of the Health Care Advocate
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May 24th, 2024

Green Mountain Care Board
144 State Street
Montpelier, VT 05602

Re: Office of the Health Care Advocate Comments Regarding GMCB-004-23con - University of Vermont Medical Center Outpatient Surgical Center

Dear Chair Foster and Members of the Green Mountain Care Board,

The Office of the Health Care Advocate (HCA) considers the Outpatient Surgical Center (OSC) application in the context of the Certificate of Need (CON) approval criteria laid out in 18 V.S.A. § 9437 and Board Rule 4.402. The University of Vermont Medical Center (UVMHC) has presented sufficient evidence that the OSC would help address the significant access challenges that Vermonters continue to experience for surgical care and would serve the public good. However, the HCA has significant concerns related to affordability and elements of UVMHC's approach to the project. The HCA recommends the Board issue the following conditions:

- 1. Exercise provider rate setting authority to set a price cap for all medical services offered at the OSC near UVMHC's commercial breakeven price as a percentage of Medicare and prohibit UVMHC from charging facility fees at the OSC.**

Affordability and access are not mutually exclusive concepts. Quality medical care is only valuable to the degree to which people can afford to receive it. CON statutory criterion 2B requires that the project “not result in an undue increase in the costs of medical care or an undue impact on the affordability of medical care for consumers.”¹ As discussed in the hearing,² the newest price transparency data from RAND and the National Association of State Health Plans shows that UVMHC's total facility price as a percent of Medicare is 331%, well above their commercial breakeven price as a percentage of Medicare, which is 216%.³ UVMHC's commercial breakeven price as a percentage of Medicare is also the highest in the peer group identified in the approved FY25 hospital budget guidance and 69% higher than the peer group median. UVMHC's commercial outpatient facility plus physician price as a percent of Medicare also currently stands at 427% — among the highest in the country.

The HCA's position is that a price at 5 percent above commercial breakeven for Medicare is appropriate with the recognition that the Board could reasonably choose to adopt a slightly different price point. Rate setting at a cap slightly above UVMHC's commercial breakeven strikes an

¹ 18 V.S.A. § 9437(2)(B).

² UVMHC OSC CON Hearing Video Part 3 of 3 at 49:30 - 1:21:20, available at https://www.youtube.com/watch?v=_zPtvA2eEdU

³ RAND Corporation. “Rand 5.0 Price Transparency.” <https://dashboard.sagetransparency.org/>. Accessed May 20th, 2024.

appropriate balance between allowing the hospital to earn a small margin in alignment with both the mission of a non-profit hospital and the need to reduce undue impacts on affordability.

The HCA also submits that charging facility fees for services offered in an outpatient setting imposes unwarranted costs to Vermonters and therefore should be prohibited at the OSC. The HCA can provide additional research and materials to the Board on this issue upon request.

2. Require that all revenue in excess of 2.5% margin from the OSC be earmarked to support future inpatient mental health and substance use disorder related investments.

The need to increase investment in mental health in Vermont is well-documented by stakeholders across the state, including UVMMC — which identified mental health and wellbeing as one of its top 3 priorities as a part of its latest CHNA in 2022.⁴ We recognize the Board could reasonably choose to adopt a slightly different marginal revenue point. Regardless, such a condition is warranted to compel UVMMC to invest in this long under-addressed need for Vermonters.

3. Prohibit UVMMC from conducting a marketing and advertising campaign and require that any budget for such activities be eliminated.

The HCA was troubled by sections of the OSC application (Exhibit 4) that appear to show that at least during one point of the application process there was a plan to steer business from surrounding hospitals to the OSC, including but not limited to deploying a “paid search ‘capture campaign’ relative to competitors.”⁵ The HCA appreciates that UVMMC leadership attempted to distance themselves from this problematic exhibit during the hearing. However, the Board should explicitly prohibit such marketing and advertising efforts to ensure compliance with section 1.3 of the Health Resource Allocation Plan, which requires that the applicant “demonstrate that a collaborative approach to delivering the service has been taken or is not feasible or appropriate.”

4. Require that UVMMC submit to the Board an analytical method to evaluate the causal impact of the OSC on surgical wait times once the center is operational.

Establishing a clear method of evaluation is important to be able to assess whether the project is having the intended impact on wait times, and if not, to establish a reliable methodology that the Board and UVMMC can use to develop potential action steps for improvement. The Board could consider requiring UVMMC to provide quarterly or biannual updates on OSC’s impact on wait times.

⁴ University of Vermont Health Network. “Community Health Needs Assessment: Chittenden County and Grand Isle Counties.” 2022. Page 8.

⁵ Exhibit 4, pages 34-35.



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Conclusion

The HCA thanks the Board for their careful and diligent review of this project. However, with the recognition that a year plus long process makes it difficult for the Board to require substantive modifications or ultimately reject a CON – given the significant time and resources invested from all parties – the HCA recommends that Board consider establishing a six-month time standard for the review and issuance of a decision for future CON applications. The HCA appreciates the importance of the Board’s regulatory role in this area and the resources required to effectively review these applications. Establishing a six-month standard could help streamline the application process without sacrificing the quality of CON review, which is of paramount importance. Creating and adhering to such a standard could help to improve the process.

Thank you for your consideration.

Sincerely,

s\ Sam Peisch
Health Policy Analyst, Office of the Health Care Advocate

s\ Eric Schultheis
Staff Attorney, Office of the Health Care Advocate

s\ Charles Becker
Staff Attorney, Office of the Health Care Advocate

s\ Mike Fisher
Chief Health Care Advocate, Office of the Health Care Advocate