



# Brattleboro Retreat

COMPREHENSIVE MENTAL HEALTH SERVICES SINCE 1834

June 7, 2024

Ms. Donna Jerry  
Senior Health Policy Analyst  
Green Mountain Care Board  
144 State St.  
Montpelier VT 05602

Re: Docket No. GMCB 015-23con Brattleboro Retreat, Re-opening Paused Adolescent Residential Treatment Beds.

Dear Ms. Jerry:

On August 15, 2023, the Retreat submitted a request for jurisdictional determination in the above-captioned matter. On August 25, 2023, the Board determined that the project was not subject to certificate of need (CON) review. The Board did however require that the Retreat contact the Board if, as the Retreat proceeded with the project, there were changes in “type, scope, services, or cost of the project.” (GMCB Ltr. Aug. 25, 2023).

The Brattleboro Retreat hereby provides updated information and respectfully suggests that the project described below still does not require a certificate of need.

Since the Board issued its letter, the Brattleboro Retreat has been notified that it was the presumptively successful bidder to the RFP. However, the granting Departments also notified the Brattleboro Retreat that they would not have funding to pay for children placed in the program until State Fiscal Year 2024-25.

While the funding mechanisms have worked their way through the legislative process, the Retreat has participated in a robust multi-department collaborative process designed to create a program that will best serve the needs of Vermont’s adolescents. In that process the Retreat has clarified the types of services and the costs of the project. This clarification has not changed the types of services or the cost of the project in any material way. Nevertheless, out of an abundance of caution, the Retreat presents this supplemental letter to update the portions of its previous letter that now have more detail.

- 1. The project does not qualify as a new health care project under § 9434(b)(1) because it does not meet the capital or operating expense thresholds.**

Nothing has changed in terms of capital expenses since the previous letter, and therefore, the project does not meet this jurisdictional threshold.

The operating costs for the project also have not increased significantly since the Retreat submitted its August letter; however, there have been some modest increases. Therefore, we provide you with an updated operating cost projection for this project.

As stated in our previous letter, at the time the program closed, the actual annual operating costs for the program were as follows.

| YEAR | Operating Cost | Resident Days | Average Daily Census | FTEs |
|------|----------------|---------------|----------------------|------|
| 2020 | \$2,393,852    | 1548          | 4.2                  | 14.5 |

If this program had been operating at full capacity (which at the time was approximately 4745 resident days), the operating costs for 2020 would have been \$7,335,770.

The Retreat now projects that when the program re-opens, it will be able to serve youth to the full extent of its current capacity (15 youth), and therefore, projected operating costs for the next three full fiscal years are as follows.

| YEAR              | Operating Cost | Resident Days | Average Daily Census | FTEs |
|-------------------|----------------|---------------|----------------------|------|
| 2024 <sup>1</sup> | 3,615,461      | 2730          | 15                   | 52   |
| 2025              | 7,433,897      | 5475          | 15                   | 52   |
| 2026              | 7,805,592      | 5475          | 15                   | 52   |
| 2027              | 8,195,871      | 5475          | 15                   | 52   |

As previously noted, because this is the resumption of an existing health care service, we have measured the operating costs when the service paused against operating costs for the resumed service to determine jurisdiction. Since operating expenses are less than \$1,230,000 per year more in the next two full fiscal years than they were in the last year that the program operated (when the reduced pandemic capacity is accounted for), we do not believe the project meets this threshold.

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<sup>1</sup> The most optimistic projected start date for this project is September 1, 2024, and it is unlikely that the program would open with 15 residents. Therefore, we provide 2024 numbers solely for context. We anticipate that the first full year of operation will be by FY2025, and we include FY 2027 for transparency, although the jurisdictional criteria only require the first two full years of operation.

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**2. The Project does not qualify as a new health care project under § 9434(b)(2) and GMCB Rule 4.201 because the project does not propose to purchase a single piece of diagnostic equipment in excess of \$1,800,000.**

Nothing has changed regarding this criterion.

**3. The Project does not qualify as a new health care project under § 9434(b)(3) and GMCB Rule 4.202 because it is not a new health care service or technology.**

The project does not propose to offer a new health care service or technology. The Brattleboro Retreat has delivered adolescent residential services continuously from at least the 1970s until 2021 when it suspended adolescent residential operations. The Retreat has maintained its adolescent inpatient and adolescent outpatient programs throughout the pandemic, demonstrating its ongoing commitment to the care of this population. In fact, the Retreat's strategic plan is aimed at strengthening the continuum of mental health services for children and adolescents. Resuming adolescent residential services is key to this vision.

Although the residential program closed temporarily from 2021 to 2024, the Retreat has maintained its license for children's residential services. Throughout the pandemic Retreat leadership stayed in close contact with leaders at the Department of Mental Health and the Department for Children and Families to discuss when it might be appropriate to re-open the paused adolescent residential program. Therefore, this adolescent program should not be considered a new program.

It is important to note that the Brattleboro Retreat does not intend to rigidly replicate the treatment that it provided in 2020, but rather has designed a treatment program that will better meet the needs of today's adolescents. We do not see the updated treatment program as a new healthcare service, but rather as another natural iteration of the service that the Retreat has provided in innovative ways for more than 50 years.

In that spirit, the Brattleboro Retreat will reopen its residential program as a psychiatric residential treatment facility ("PRTF"). The PRTF designation does not materially change the programming or the care that will be offered within the residential program (see Tables A and B below for comparison).

For purposes of determining whether this project is a "new healthcare project," it is necessary to describe with precision the Retreat's adolescent residential program in its final iteration before the 2020 pause so that the Board may compare it with the program as it is currently expected to operate.

**Table A: 2020 Adolescent Residential Program**

This 15-bed program was licensed as an adolescent residential treatment program through the Vermont Department for Children and Families, accredited by the Joint Commission, and certified as a Private Non-Medical Institution by the Centers for Medicare and Medicaid Services. The following table explains the care that was provided at the time the program closed.

| Services                 | Provider type                               | FTE for 4.2 residents <sup>2</sup>                  | Location of services             | frequency   | duration  |
|--------------------------|---|---|----------------------------------|---|---|
| Admin/Office Support     | Director/<br>program coordinator and admin. | 2.42  | Osgood 3 (former inpatient unit) | Daily   | M-F 8 hrs/day and on-site RN Supervisor all other times |
| Residential care         | Behavioral health tech (unlicensed)         | 11.32   | Osgood 3 (former inpatient unit) | daily   | 24 hours  |
| Nursing                  | RN  | 0.44  | Osgood 3 (former inpatient unit) | daily and as needed                                       | M-F 8 hrs/day and on-site RN Supervisor all other times |
| Physician care           | Psychiatrist MD/DO                          | 0.4   | Osgood 3 (former inpatient unit) | Weekly with each resident and rounds. Also as needed 24/7 | Weekly and as needed/ DOC afterhours and weekends       |
| Medical Consult Services | MD/APRN                                     | n/a because service is available to entire hospital | Osgood 3 (former inpatient unit) | As needed   | As needed   |

<sup>2</sup> As noted in the financial tables, the pandemic dramatically impacted census in the adolescent residential program. We provide you with the total FTEs to operate the program in its final year. The FTEs for BHTs and RNs were reduced as census dropped, but we maintained the same physician and therapist coverage throughout the final year.

|   |  |   |  |  |                                      |
|---|--|---|--|--|--------------------------------------|
| Individual Therapy<br>Family Therapy<br>Team Meetings | Social Work:<br>LICSW<br>LCMHC<br>LMFT | 1.46  | Osgood 3<br>(former inpatient unit)        | 2-4 times a week   | As scheduled                         |
| Psychological Testing                                 | Psychologist                           | n/a   | Osgood 3                                   | As ordered   | As scheduled                         |
| Occupational Therapy Assessments                      | Occupational Therapists                | n/a because service is available to entire hospital | Osgood 3                                   | As ordered   | As scheduled                         |
| Nutritional Assessments                               | Nutritionist                           | n/a because service is available to entire hospital | Osgood 3                                   | As admission and as ordered                                      | As scheduled                         |
| Treatment planning                                    | Inter-disciplinary team                | See above   | Osgood 3<br>(former inpatient unit)        | Weekly and monthly   | As scheduled                         |
| Milieu therapy  | BHTs, RN, and Social Work              | See above   | Osgood 3<br>(former inpatient unit)        | daily  | daily                                |
| Group therapy   | Social Work                            | See above   | Osgood 3<br>(former inpatient unit)        | daily  | 2-4 hours a day                      |
| Education   | Teachers                               | FTEs shared with the then-active independent school | The Meadows School (on the Retreat campus) | 5 days/week during the school year and during the summer session | 4.25 hours a day                     |
| Recreational activities—on site                       | BHTs                                   | See above   | Various locations on Retreat campus        | Daily  | Varied based on schedule and weather |
| Recreational activities—off site                      | BHTs                                   | See above   | Various locations around the region        | 1-7 times a week depending on schedule                           | Varied based on schedule and weather |

**Table B: 2024 Adolescent Residential Program (PRTF)**

This 15-bed program will be licensed by the Vermont Department of Health as a psychiatric residential treatment facility,<sup>3</sup> accredited by the Joint Commission, and certified as a Psychiatric Residential Treatment Facility by CMS.

The following table explains the care that will be provided in the program.

| Services                | Provider type                               | FTE for 15 residents program                        | Location of services                   | frequency  | duration  |
|-------------------------|---|---|--|--|---|
| Admin/Office Support    | Director/<br>program coordinator and admin. | 1.23  | Linden Lodge 1 (former inpatient unit) | Daily  | M-F 8 hrs/day and on-site RN Supervisor all other times |
| Residential care        | Behavioral health tech (unlicensed)         | 28.2  | Linden Lodge 1 (former inpatient unit) | Daily  | 24/7  |
| Nursing                 | RN  | 1   | Linden Lodge 1 (former inpatient unit) | daily and as needed  | M-F 8 hrs/day and on-site RN Supervisor all other times |
| Physician care          | MD  | 0.5   | Linden Lodge 1 (former inpatient unit) | Weekly with each resident and rounds. Also as needed 24/7. | 20 hrs a week and DOC 24/7                              |
| Medical Consult Service | MD/APRN                                     | n/a because service is available to entire hospital | Linden Lodge 1 (former inpatient unit) | At admission and as needed                                 | Available 24/7  |

<sup>3</sup> We address the issue of licensure more fully below in section 4.

|   |  |  |  |   |                     |
|---|--|--|--|---|---------------------|
| Individual Therapy<br>Family Therapy<br>Team Meetings | Social Work:<br>LICSW<br>LCMHC<br>LMFT         | 3  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | 2-4 times a<br>week                                     | As<br>scheduled     |
| Psychological<br>Testing                              | Psychologist                                   | 0.1  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | As ordered  | 4 hours a<br>week   |
| Occupational<br>Therapy<br>Assessments                | Occupational<br>Therapist                      | 0.1  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | As ordered  | 4 hours a<br>week   |
| Nutritional<br>Assessments and<br>follow up           | Nutritionist                                   | n/a<br>because<br>service is<br>available<br>to entire<br>hospital |  | At admission<br>and as<br>ordered                       | As ordered          |
| Treatment planning                                    | Inter-<br>disciplinary<br>team                 | See above  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | weekly and<br>monthly<br>review                         | As<br>scheduled     |
| Milieu therapy  | BHTs   | See above  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | daily   | daily               |
| Group therapy   | Social Work<br>Nursing                         | See above  | Linden<br>Lodge 1<br>(former<br>inpatient<br>unit) | Daily   | 1-3 hours a<br>day  |
| Education   | Contracted<br>through<br>independent<br>school |  | Linden<br>Lodge 2<br>Classroom<br>s                | 5 days/ week<br>during the<br>school year<br>and during | 4.25 hours a<br>day |

|                                  |                                |           |                                     |  |                                      |
|----------------------------------|--------------------------------|-----------|-------------------------------------|--|--------------------------------------|
|                                  |                                |           |                                     | the summer session                     |                                      |
| Recreational activities—on site  | BHTs<br>Nursing<br>Social Work | See above | Various locations on Retreat campus | Daily                                  | Varied based on schedule and weather |
| Recreational activities—off site | BHTs<br>Nursing<br>Social Work | See above | Various locations around the region | 1-7 times a week depending on schedule | Varied based on schedule and weather |

As should be evident by comparing these two tables, the material differences between the 2020 program and the 2024 program have more to do with the average daily census than with the programming that will be offered.

**4. The Project does not qualify as a new health care project under § 9434(b)(4) because there is no change from one licensing period to the next in the number of licensed beds of a healthcare facility through addition, conversion, or through relocation from one physical facility or site to another.**

In the interest of complete transparency, the phrasing of this criterion does not neatly align with the circumstances presented by the current proposal. To assist the Board in determining how best to handle this issue, the Retreat provides a brief description of the laws that currently address PRTF licensure.

The Federal PRTF regulations allow PRTF services to be provided by a hospital or another treatment facility accredited by the Joint Commission. 42 C.F.R. § 441.151(a)(2). Thus, these regulations do not determine how the facility providing PRTF services is licensed, and they allow a PRTF to be licensed as a hospital but do not require it to be so. A hospital that chooses to provide PRTF Services to CMS under a provider agreement must comply with PRTF-specific conditions of participation that are similar but not identical to those already required of CMS-certified hospitals. A non-hospital entity that provides PRTF services to CMS under a provider agreement must meet those same conditions of participation and must be licensed by the state in which the entity is located.

On May 30, 2024, Governor Scott signed S.192, addressing many issues related to PRTF services in the State of Vermont. That law states in relevant part: “A person or governmental entity shall not establish, maintain, or operate a psychiatric residential treatment facility for youth without first obtaining a license from the Department of Health in accordance with this section.” (S. 192, Section 8 (a)). The section then goes on to describe qualifications that an entity applying for a license to operate PRTF must have. The Brattleboro Retreat meets these qualifications.



The Brattleboro Retreat currently holds a license from the Vermont Department of Health for 149 inpatient hospital beds. The Retreat currently staffs and operates 101 of those beds. With the proposed PRTF, it would operate 116 beds.

Because CMS treats PRTFs as an “inpatient residential” level of care, 42 C.F.R. § 441.151(a) the Retreat does not believe that a new license is necessary. The Brattleboro Retreat contends that it holds sufficient licensed beds at the appropriate level of care. Licensing its adolescent residential program as a PRTF will not, therefore, constitute a “change in the number of licensed beds from one licensing period to the next.” 18 V.S.A. § 9434(b)(4). For these reasons, the Retreat does not believe that the project triggers this jurisdictional criterion.<sup>4</sup>

**5. The Project does not qualify as a new health care project under § 9434(b)(5) because it does not offer any home health service.**

Again, at the risk of stating the obvious, the residential program does not contain any home health service components. Therefore, it does not trigger this jurisdictional criterion.

**Conclusions**

There is an ongoing need for capacity in the adolescent mental health system. Currently the Brattleboro Retreat operates 24 adolescent inpatient beds, and there are often young people waiting in emergency departments for those beds. Expanded capacity at the inpatient level has not and is unlikely to completely resolve the demand for inpatient beds. This is because adolescents who have completed their inpatient treatment but who need a safe, step-down program do not have adequate placement options. Expanded capacity at the inpatient level, without expanding step-down options will likely increase the number of patients boarding in acute settings or being discharged to out-of-state programs.

Re-opening the Retreat’s residential program will allow the Retreat to more effectively stabilize acutely ill adolescent patients and discharge them to appropriate settings, thereby relieving bottlenecks in the system. The PRTF program will also enable placing agencies to access residential care for adolescents before they need inpatient treatment—thus, providing an earlier intervention that will hopefully reduce the need for adolescent hospitalizations.

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<sup>4</sup> Early consultations with the Vermont Department of Health regarding the process for licensure indicate that the Department believes that S. 192 requires rulemaking related to PRTFs. Thus, it remains unclear as to whether the Department will determine that a separate licensure category is necessary. If that is found to be the case, the Retreat will continue to provide updated information to this Board. However, even if a different *category* is required, it still will not change the *number of licensed beds* between one licensing period and the next, and that numerical change is the statutory trigger for CON jurisdiction.

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Because this program has only been temporarily closed, the Retreat hopes that the Board will find that this project does not trigger CON jurisdiction.

Thank you in advance for your time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Wohl", with a long horizontal flourish extending to the right.

Elizabeth R. Wohl  
General Counsel