

**Certificate of Need Application of Vermont Open MRI, LLC**  
**Replacement of Existing MRI Scanner and Relocation of Facility**

**Docket No. GMCB-014-19con**

**Revised Application Narrative**

**Introduction**

With this Certificate of Need Application Vermont Open MRI, LLC, a Vermont Limited Liability Company (“Vermont Open MRI”), seeks permission to replace its existing Phillips Panorama 0.6T Open MRI scanner with a new Hitachi Oasis 1.2T Open MRI scanner and move its facility from its existing location at 620 Hinesburg Road in South Burlington to a new location at 3000 Williston Road in South Burlington. Vermont Open MRI’s corporate parent, Minglewood Imaging Management Company, a Vermont corporation, will purchase the building at the new location and lease a portion of it to Vermont Open MRI.

**Regulatory Background**

In June 2011 Vermont Open MRI purchased a Philips Panorama 0.6T Open MRI scanner from Vermont Radiologists, LLP. Prior to doing so Todd Kummer of Vermont Open MRI advised the Green Mountain Care Board’s predecessor regulatory agency, the Department of Banking, Insurance, Securities and Health Care Administration (“BISHCA”), that he intended to purchase Vermont Radiologists’ MRI scanner. Because Vermont Open MRI’s initial projected annual operating expenses exceeded 18 V.S.A. § 9434(a)(5)’s jurisdictional threshold of \$500,000 BISHCA asserted Certificate of Need (“CON”) jurisdiction in a letter dated June 3, 2011. By letter dated July 19, 2011 BISHCA rescinded its assertion of jurisdiction due to Mr. Kummer’s submission of revised documentation showing that annual operating expenses fell below the jurisdictional threshold. However, in doing so BISHCA required that Vermont Open MRI submit profit and loss statements annually for a three-year period.

Based on Vermont Open MRI’s filing for the twelve-month period ending June 30, 2013 the Green Mountain Care Board (“the Board”), BISHCA’s successor as the state’s CON regulator, advised Mr. Kummer in a letter dated February 7, 2014 that Vermont Open MRI must apply for a CON. Vermont Open MRI did so on May 14, 2014. Vermont Open MRI not only applied for CON approval for the continued operation of Philips Panorama 0.6T Open MRI scanner acquired from Vermont Radiologists, but also for the future purchase and installation of a Hitachi Oasis 1.2T MRI machine.

In a *Statement of Decision and Order* and a separate *Certificate of Need* both dated July 27, 2015 the Board granted CON approval for the continued operation of the 0.6T MRI scanner. However, the Board deferred making a decision concerning the acquisition and operation of the proposed replacement 1.2T MRI scanner. The Board required Vermont Open MRI to annually submit, for three years, information concerning the volume of MRI scans and the percentage of scans performed with and without contrast. In filings made on or about August 29, 2016, August 1, 2017 and July 31, 2018 Vermont Open MRI submitted the required information to the Board.

### **Project Overview**

- **Description of who you are, types of facilities you own and/or operate nationwide and in Vermont.**
  - Minglewood Medical Imaging Management Company (“Minglewood”) is a medical imaging company, founded in 2007, specializing in out-patient Open MRI imaging. Minglewood owns two separate facilities, Vermont Open MRI, operating in South Burlington, Vermont, since 2011, and New Hampshire Open MRI, located in West Lebanon, New Hampshire since 2007.
  
- **Copy of organizational chart for national and Vermont facility(s).**
  - Todd Kummer, a resident of South Burlington, is the sole shareholder and President of Minglewood Company and the Managing Member of Vermont Open MRI.
  
- **Description of existing facility and equipment you intend to replace, age of existing facility/equipment.**
  - Vermont Open MRI, LLC is currently located at 620 Hinesburg Road in South Burlington. The facility was started as Vermont Radiologists in 1989 and originally only performed x-rays. The facility slowly expanded between 1989 and 2000 to include the provision of CAT scan, mammography, plain x-ray, fluoroscopy, and DEXA services and, ultimately Open MRI scanning services was added in 2000. The original Open MRI scanner was replaced in 2005 with a Phillips Panorama 0.6T scanner. In 2011 Vermont Radiology closed its practice and liquidated all its imaging equipment. In 2011 Minglewood purchased the Phillips Panorama 0.6T Open MRI scanner and started Vermont Open MRI in a leased portion of the space previously occupied by Vermont Radiologists. In 2012 the building was sold to the current owners and Vermont Open MRI maintained its lease, which expired in July of 2019. Since then Vermont Open MRI has leased its current space on a month to month basis. Vermont Open MRI’s landlord wants the month to month arrangement to end

no later than July 2020.

- **Description of proposed project including purchase or lease of a new facility and any renovations/construction components, replacement of shielding, equipment, furniture etc.**
  - The current replacement plan calls for the purchase of an 8,400 square foot existing building, located at 3000 Williston Road in South Burlington by Minglewood. Vermont Open MRI will lease an approximately 4,400 square feet portion of the building and renovate that space to accommodate its offices, patient care areas, and shielded space and equipment rooms necessary for the replacement Open MRI scanner. Vermont Open MRI's existing computers, software RIS and PACS systems will be migrated from the existing facility. New furnishings will be purchased.
  
- **Explanation of need for the proposed new equipment and facility and related renovations/construction.**
  - Vermont Open MRI's current MRI scanner and its proposed replacement scanner are "open" machines which are preferable for bariatric and claustrophobic patients. Currently Vermont Open MRI's facility is the only one in Vermont that utilizes an open scanner.
  - The current Phillips Panorama 0.6T Open MRI scanner is nearing 15 years of age and has been termed "end of life" by its manufacturer. While currently under service contract, the scarcity of replacements parts has begun to lengthen down-time. Between January 1, 2019 and July 31, 2019, the scanner was inoperable for 8.5 days. Down time is expected to increase as time passes and components continue to fail.
  - There have been many improvements to Open MRI technology since the current unit was installed. Replacement of the current unit with a Hitachi Oasis 1.2T Open MRI will ensure quality imaging in keeping with current medical imaging standards.
  - A new facility is needed because the landlord of the space Vermont Open MRI currently leases is not willing to commit to a lease term long enough to cover the useful life of the proposed new scanner. Because the space Vermont Open MRI will lease in the new space is not currently being used for performing MRI scans it will need to be renovated in order to support that use.

- **If moving to a new location, explain whether the existing facility is owned or leased and explain what you will do with the existing facility.**

- The existing facility is currently leased. Once the new facility is operational, the current space will be returned to the landlord who plans on expanding the existing offices in the building.

- **Description of services to be provided and levels of providers, etc.**

- The planned services will not deviate from those currently performed, namely, Open MRI scanning.

The Vermont Open MRI is and will continue to be staffed by 1.5 technologists, one contract radiologist and 2 per diem physicians to supervise IV contrast administration.

- **Describe any HIT/EMR components.**

- All current RIS and PACS components are web-based and will easily transfer to the new location. No additional medical record components will be required.

- **Total project cost including debt financing expenses and detailed description of how you are financing the project.**

- New scanner space fit-up: \$317,305
- Site Work: \$19,855
- New Open MRI scanner: \$1,145,000.00
- Furniture: \$12,840
- Debt Financing: \$358,185<sup>1</sup>
- Total: \$1,853,185

The majority of the foregoing costs will be financed via an 84-month Finance Lease with Highland Capital Corporation (“Highland”). Highland will finance the \$1,145,000 cost of the scanner and \$343,500 of the \$350,000 combined cost of fitting up the new space, site work associated with the new space and new furniture. Vermont Open MRI, LLC will fund the remaining \$6,500 of initial costs with its own money and will bear the interest expense (debt

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<sup>1</sup> The interest expense (debt financing) is based on the following: The lease calls for 84 monthly payments of \$21,984.35, which over the term of the lease totals \$1,846,685.40. Of that amount \$1,488,500 is attributable to the cost of the new MRI scanner and the \$343,500 portion of the renovation costs Highland is financing. The difference between \$1,846,685.40 and \$1,488,500 is \$358,185.40. That figure represents the interest expense Vermont Open MRI, LLC will be incurring under the lease with Highland.

financing) of \$358,185 with its own funds over the life of the lease.

- **Provide a project timeline.**

The building a 3000 Williston Road will be purchased shortly after the CON is issued in this matter. If a CON is issued in January 2019 the timeline for completing the project will be as follows:

- Begin new site fit-up in February 2020.
- Scanner installation in April 2020.
- Applications training complete in June 2020.
- Existing location closed in June 2020.
- New facility fully operational in July, 2020.

### **Applicable<sup>2</sup> Statutory Criteria and HRAP CON Standards**

**1. The proposed project aligns with statewide health care reform goals and principles because the project:**

- A. takes into consideration health care payment and delivery system reform initiatives;**
- B. addresses current and future community needs in a manner that balances statewide needs (if applicable); and**
- C. is consistent with appropriate allocation of health care resources, including appropriate utilization of services, as identified in the HRAP pursuant to section 9405 of this title.**

**CON STANDARD 1.4: If an application proposes services for which a higher volume of such service is positively correlated to better quality, the applicant shall show that it will be able to maintain appropriate volume for the service and that the addition of the service at the facility will not erode volume at any other Vermont facility in such a way that quality at that facility could be compromised.**

Vermont Open MRI has been offering MRI services since 2011 and has seen volume growth averaging 6.5% per year. This increase tracks closely to the utilization increases reported throughout the state. Vermont Open MRI anticipates this trend continuing and the replacement scanner will reduce scan times enough to accommodate anticipated increases in procedural volume into future years.

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<sup>2</sup> The HRAP CON standards addressed in this application are based on those identified to the applicant by Donna Jerry, Senior Health Policy Analyst, as being the relevant standards.

**CON STANDARD 1.6: Applicants seeking to develop a new health care project shall explain how the applicant will collect and monitor data relating to health care quality and outcomes related to the proposed new health care project. To the extent practicable, such data collection and monitoring shall be aligned with related data collection and monitoring efforts, whether within the applicant’s organization, other organizations or the government.**

As a referral destination, Vermont Open MRI does not monitor patient outcomes resulting from our services. However, the facility does maintain accreditation by the American College of Radiology to ensure imaging quality meets industry standards. Additionally, Vermont Open MRI adheres to meaningful use standards set by the Centers of Medicare Studies.

**CON STANDARD 1.7: Applicants seeking to develop a new health care project shall explain how such project is consistent with evidence-based practice. Such explanation may include a description of how practitioners will be made aware of evidence-based practice guidelines and how such guidelines will be incorporated into ongoing decision making. (2005 State Health Plan, page 48.)**

Vermont Open MRI only performs MRI scans that have been ordered by a fully licensed health care provider. All requests are additionally reviewed by our staff under the guidelines set by our Medical Director to ensure the testing will provide relevant answers to the intended rule-out or anticipated diagnosis.

**CON STANDARD 1.8: Applicants seeking to develop a new health care project shall demonstrate, as appropriate, that the applicant has a comprehensive evidence-based system for controlling infectious disease.**

Currently, Vermont Open MRI follows clinical protocols as prescribed by the American College of Radiology and Centers for Medicare Studies.

**CON STANDARD 1.9: Applicants proposing construction projects shall show that costs and methods of the proposed construction are necessary and reasonable. Applicants shall show that the project is cost-effective and that reasonable energy conservation measures have been taken.**

The building in which Vermont Open MRI’s proposed new facility will be located is not currently configured to accommodate an MRI facility, and thus will need to be renovated accordingly. The renovation work will be performed by All Access Building, LLC, of Canton, Connecticut. All Access Building has extensive experience in constructing and renovating space for use by health care providers, and has performed 23 renovation/fit up projects for MRI scanners identical to the one that is proposed in this application. Reference is also made to the attached floor plan.

**CON STANDARD 1.10: Applicants proposing new health care projects requiring construction shall show such projects are energy efficient. As appropriate, applicants shall show that Efficiency Vermont, or an organization with similar expertise, has been consulted on the proposal.**

Vermont Open MRI has contacted Efficiency Vermont and they will be providing recommendations once a complete set of drawings is available.

**CON STANDARD 1.11: Applicants proposing new health care projects requiring new construction shall demonstrate that new construction is the more appropriate alternative when compared to renovation.**

Unfortunately, the landlord of Vermont Open MRI's existing space at 620 Hinesburg Road in South Burlington is unwilling to renew a lease that would be of a duration sufficient to allow full depreciation of the new, proposed scanner.

**CON STANDARD 1.12: New construction health care projects shall comply with the Guidelines for Design and Construction of Health Care Facilities as issued by the Facility Guidelines Institute (FGI), 2014 edition.**

As noted above the renovation work will be performed by All Access Building, LLC, based in Canton, Connecticut. All Access Building is aware of and will comply with all FGI guidelines.

**CON STANDARD 3.5: Magnetic resonance imaging (MRI) capacity shall not be increased until current capacity is in excess of valid state, regional and/or national benchmarks for medically necessary exams per year and sufficient additional need is demonstrated based on such benchmarks. An applicant proposing a project involving MRI shall provide information on current use, document the effectiveness of the internal program utilized by the applicant to prevent overuse, and verify that the applicant does not have financial incentives in place to encourage MRI utilization.**

Having begun operation in 2011 Vermont Open MRI is an existing provider of MRI imaging services, and essentially is a successor to Vermont Radiologists, which began providing MRI imaging services in 2000.

Vermont Open MRI conducted 1543 examinations in 2016, 1910 examinations in 2017, 2017 examinations in 2018 and is currently trending toward 2200 examinations for 2019. It should also be noted that the increase in examinations from 2016 to 2017 corresponds to the decommissioning of the only other Open MRI unit that had been operational in Vermont.

Vermont Open MRI is a referral only facility. We only provide MRI scans for patients with a valid request from a licensed health care professional. Each exam we conduct has been deemed appropriate by the patient's ordering provider. Additionally, most insurances, including Vermont

Medicaid, require the completion of a prior authorization process to ensure the appropriateness of each examination.

Reviews of each patient's medical history are conducted before any exams are scheduled, ensuring the appropriateness of the ordered exam as well as reviewing previously conducted studies, both internal and external, to reduce duplicate or unnecessary testing.

Vermont Open MRI is independently owned by a non-physician. Any effort to financially incentivize referrals to encourage utilization would violate Stark and Anti-kick back Laws and is thus prohibited.

**CON STANDARD 3.7: Applicants proposing to replace diagnostic or therapeutic equipment shall demonstrate that existing equipment is fully depreciated, or the cost of the early replacement, including the cost of the remaining depreciation on existing equipment, is less costly than keeping the existing equipment.**

The current scanner was fully depreciated in 2016.

**CON STANDARD 3.20: Applications to purchase diagnostic or therapeutic equipment, or to expand facilities to accommodate major medical equipment purchases, shall address the appropriateness of such distribution as compared to population, the availability of appropriately trained personnel, an evaluation of patient need versus convenience, urgent versus non-urgent use, and appropriate protocol to reduce the risk of repetitive testing (both within the facility purchasing the equipment and within the health care system).**

Vermont Open MRI is not seeking to expand services. Vermont Open MRI is replacing an existing Open MRI scanner that has been termed "end-of-life" by the manufacturer with the most current iteration of an Open MRI scanner. The current facility provides MRI services for the larger or claustrophobic population that cannot be served by other existing MRI providers.

Additionally, Vermont Open MRI provides MRI examinations at a fraction of the cost of similar examinations conducted at alternate facilities and improved equipment shall eliminate potential need for repeat imaging.

All studies are shared electronically with the facility from which the referral originated, enabling seamless follow-on care by associated providers.

Vermont Open MRI only provides MRI's to patients with a valid request from a fully licensed health care provider. All requests are reviewed by our staff under the protocol set by our medical director for appropriateness and each patient's medical imaging history is reviewed to obtain information about relevant prior imaging for the patient to assist in current diagnosis and eliminate duplication or repetitive testing.



Lastly, prior authorization procedures determined by most insurance carriers must be followed to ensure payment and/or patient liability.

**CON STANDARD 3.23: In addition to proving need, applicants seeking to add or expand diagnostic or therapeutic equipment shall show that the equipment reduces costs and/or improves quality.**

The Hitachi Oasis 1.2T Open MRI will have twice the field strength of the current scanner, which will decrease scan times and improve image resolution. Shorter scan times will increase efficiencies and improved image resolution will increase quality.

**Triple Aims: Institute of Healthcare Improvement (IHI), Triple Aims: Explain how your project is:**

**(a) improving the individual experience of care;**

Vermont Open MRI will remain the only true Open MRI scanner in the state of Vermont. Many patients prefer an Open MRI to a traditional MRI, even the “open-bore” MRI offered at other sites of service. Additionally, the structure of the Open MRI scanner reduces the need for sedated MRI scans.

**(b) improving health of populations;**

Vermont Open MRI will continue to offer MRI scans to patients with a valid request from a fully licensed health care provider.

**(c) reducing the per capita costs of care for populations.**

As an independent diagnostic testing facility, Vermont Open MRI may only be reimbursed by Medicare on the OPPS fee schedule, which is less than the fee schedule for hospital reimbursements. Additionally, according to the charge masters posted on the website for surrounding providers, Vermont Open MRI charges between 58 and 72% LESS than alternative sites of service and does not have any leverage to negotiate higher allowed amounts with the commercial payers.

**2. The cost of project is reasonable because each of the following conditions is met:**

**A. The applicant’s financial condition will sustain any financial burden likely to result from completion of the project;**

The projected revenue from anticipated scan volumes will cover the projected costs.

**B. 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. In making a**

**finding, the Board shall consider and weigh relevant factors, including:**

- (i) The financial implications of the project on hospitals and other clinical settings, including the impact on their services, expenditures and charges; and**

Vermont Open MRI is an existing provider and is not expanding services. Accordingly, it will not have a negative impact on hospitals and other clinical settings, including their services, expenditures and charges.

- (ii) Whether the impact on services, expenditures, and charges is outweighed by the benefit of the project to the public;**

As noted above, there is no negative impact on hospitals and other clinical settings. Instead, Vermont Open MRI is the lowest cost provider by a magnitude of 2 to 5 times, and thus saves payors and Vermonters thousands of dollars on each MRI examination performed.

- C. Less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate.**

The inability to use the existing facility for the duration of the replacement scanner's useful life leaves the current relocation plan as the only option.

- D. If applicable, the applicant has incorporated appropriate energy efficiency measures.**

The renovation work will include appropriate energy efficiency measures and, as indicated earlier, input from Efficiency Vermont will be sought when the final design plans are prepared.

- 3. There is an identifiable, existing, or reasonably anticipated need for the proposed project that is appropriate for the applicant to provide.**

Vermont Open MRI is an existing provider and will not be offering new services. The replacement scanner is required to continue offering the only Open MRI scans in the state of Vermont.

- 4. The project will improve the quality of health care in the State or provide greater access to health care for Vermont's residents, or both.**

The replacement unit will offer improved image quality with reduced scan times and continue to be the only true Open MRI scanner in Vermont.

- 5. The project will not have an undue adverse impact on any other existing services provided by the applicant.**

Replacing the existing scanner and not providing new services will not have an adverse impact on Vermont Open MRI's current operations.

- 6. *REPEALED***

- 7. The applicant has adequately considered the availability of affordable, accessible transportation services to the facility, if applicable**

The new facility is on a bus route and there is a nearby bus stop 718 feet from the front door.

- 8.**

- 9. If the application is for the purchase or lease of new Health Care Information Technology, it conforms with the Health Information Technology Plan established under section 9351 of this title.**

The proposed project does not involve the purchase or lease of new Health Care Information Technology.