



September 23, 2020

*via e-mail*

Green Mountain Care Board  
144 State Street  
Montpelier, VT 05602

Dear Green Mountain Care Board Members:

I write to express my concern that the Green Mountain Care Board's (GMCB's) budget review process has become untethered from the equitable, legal, and financial principles that should guide it, resulting in a series of budget decisions that will harm Vermont's patients and hospitals at a time when they are already vulnerable due to the COVID-19 pandemic. As established by statute, the GMCB is charged with overseeing the annual hospital budget review process in order to promote the health of the population and patient experience, reduce costs, and "achiev[e] administrative simplification in health care financing and delivery." (18 V.S.A. § 9372). Through its FY 2021 hospital budget process and decisions, the GMCB has done the very opposite, jeopardizing patient care and adding to the uncertainty and burdens facing hospitals. Additionally, through these decisions, the Board has undermined one of the fundamental tenets of the All-Payer Model (APM), which is our State's established health care reform plan and our mechanism for achieving a health care system Vermonters can afford.

While I have expressed these same concerns in the past—even as recently as last week—I now formally request that you take account of them by reconsidering your budget decisions prior to issuing written orders on the UVM Health Network's Vermont affiliates' FY 2021 budgets. Specifically, I ask that you:

1. Reconsider the imposition of a split in the commercial rates for these hospitals between standard and special, "time-limited" rates due to COVID-19, as these time-limited rates are not defined in any reasonable way by the Board, introducing an inappropriate level of uncertainty and burden when we specifically did not seek it and,
2. Specifically as it relates to Porter Hospital, reconsider the cut you imposed on its rate and net patient revenue (NPR) driven, the Board's deliberations reveal, largely by a desire to limit the support for Helen Porter Nursing and Rehabilitation, even though Porter Hospital submitted a budget in complete alignment with established guidelines and benchmarks.

I also ask that you approve these budgets using the proper legal framework, thereby ensuring access to necessary health care services for our patients and communities, while adding stability to Vermont’s already critically-stressed health care delivery system.

### **Vermont Has a Regulatory Framework for Reviewing Hospital Budgets**

The GMCB’s hospital budget review process is intended to provide a predictable regulatory framework, promoting the health of the population and patient experience, reducing costs, and promoting administrative simplification. The basic premise of the regulatory structure is straightforward:

- On an annual basis, “the Board . . . establish[es] benchmarks for *any indicators* for use in developing and preparing the upcoming fiscal year’s hospital budgets.” (GMCB Rule 3.202 (emphasis added).)
- Hospitals then build their budgets and manage their operations with those guidelines and benchmarks in mind.
- Once those budgets are built and approved by their boards, hospitals submit their budgets to the GMCB, along with all of the other information they feel is necessary to explain why the budgets either meet the published guidelines and benchmarks or depart from them in a way that does not require a budget adjustment. (GMCB Rule 3.203 and 3.302.)
- The Board is then required to approve or adjust the hospitals’ budgets by reference to the guidelines and benchmarks it established in advance. (GMCB Rule 3.303 [“The benchmarks established under section 3.202 shall guide the Board’s decisions whether or not to adjust a hospital’s proposed budget.”])

This familiar scheme complies with the basics of due process—providing hospitals with advance notice and an opportunity to be heard—and allows the hospitals and the Board to engage in a meaningful exchange of information and ideas on issues that have been identified well in advance of the budget hearings. It also ensures that the Board has all of the evidence it needs to make fact-based decisions.

### **The GMCB Has Imposed Uncertainty and Burden with its Ill-Conceived Time-limited Rates Due to COVID-19**

This year’s budget process did not comply with the GMCB’s own rules or with notions of fundamental fairness. In approving the UVM Health Network’s hospitals’ FY 2021 budgets, the Board did not adjust them by reference to guidelines and benchmarks it had articulated in advance. Instead, it adjusted our budgets based on guidelines and benchmarks that it never articulated prior to its deliberations, violating the Board’s own rules and adding tremendous unpredictability to both the regulatory process and the operation of our hospitals.

As in past years, the Board established only one specific financial benchmark against which hospital budgets would be judged: “a maximum NPR/FPP growth limit of 3.5% for FY21 (over each hospital’s FY20 budget).” Although the Board articulated many other “factors” it might consider when reviewing hospital budgets—including a catch-all “other relevant factors proposed during the budget review process”—it did not indicate how it might take account of

any of those factors, much less anything resembling a standard governing their use by hospitals or the GMCB.

In light of the effect the COVID-19 pandemic had on hospital utilization and revenues, the Board invited hospitals to seek an “additional, temporary NPR/FPP adjustment,” which it defined as a “time-limited charge request to offset FY 2020 commercial revenue losses due to COVID-19.” The Board published no additional rules regarding (a) just how “temporary” the COVID adjustment would be, suggesting instead that it could last from several months to several years; (b) the process by which the Board might seek to rescind the time-limited adjustment; or (c) what benchmarks would be used to adjudicate that rescission. Perhaps most importantly, the Board never indicated it would unilaterally impose these time-limited rates on any hospital that did not ask for them.

Our hospitals did not premise any portion of their budgeted commercial rate requests “to offset FY 2020 commercial revenue losses due to COVID-19.” To the contrary, the UVM Health Networks’ Vermont hospital budgets did not seek any additional revenue from commercial payers to offset either past or future COVID-19-related losses. While our Vermont affiliates anticipate a combined negative margin due to COVID-19 in FY 2020, and each of them failed to achieve its budget by a wide margin as a result, some of those COVID losses were offset by Federal and State stimulus funds and painful expense reduction measures. The rest of those losses fell to our FY 2020 bottom line, where they will remain. As our budget submissions and presentations made clear, our FY 2021 hospital budgets reflect solely the revenue we need to take care of our patients, employees, and communities in FY 2021 regardless of the COVID-19-related financial burdens in FY 2020.

At the conclusion of its deliberations, the Board nonetheless imposed a special, time-limited COVID-19 rate on each of the hospitals. In doing so, it articulated none of the benchmarks governing that decision. Our leaders are now left with the impossible task of running their hospitals without knowing the answers to questions that are fundamental to making thousands of medium- and long-term spending and investment decisions, including decisions around employee wages. They also have no idea how, or even whether, these so-called time-limited rates have been explained to the commercial carriers, or how those payers will interpret them. They therefore have no idea how, or for how long, to incorporate these rates into the hospitals’ binding commercial contracts, which commence on January 1, 2021. They similarly have no idea how to explain these time-limited rates, or the process that has produced them, to our bond ratings agencies, which have already downgraded us based in part on the Board’s previous actions to reduce our rates.

In short, the Board’s decision to make certain rates time-limited when our hospitals did not seek them, and without previously asking the hospitals to explain the effects of that decision on their operations, has introduced an unprecedented level of uncertainty and chaos into Vermont’s health care system. It is precisely this result that a well-ordered regulatory process—where everyone knows the rules in advance and has an opportunity to engage in an honest exchange of information and ideas around those rules—is supposed to avoid.

In light of all of this, we ask that the Board treat the commercial rates it approved for each of our hospitals as one single rate, as we requested in our budget submission. A failure to make this

change would result in significant burden on our hospitals, jeopardizing our financial viability and our ability to serve the health care needs of Vermonters.

### **The Board Should Not Reduce Porter Hospital's Budget Due to its Support of Helen Porter Nursing and Rehabilitation**

The Board also adjusted Porter Hospital's budget and commercial rate downward even though it submitted a budget in complete alignment with the only benchmark established by the Board in advance: the 3.5% NPR/FPP growth cap. Based on the Board's deliberations, we understand this decision was based in large part on the fact that Porter Hospital provides support to its sister corporation, Helen Porter Nursing and Rehabilitation, just as it has for every year in recent (or even distant) history. The Board has never before relied upon this support to reduce Porter Hospital's operating budget. Nor, prior to deliberations, did it suggest that it would do so this year.

The ownership of Helen Porter Nursing and Rehabilitation is structured as it is in order to minimize the subsidy it requires. Support for Helen Porter Rehabilitation and Nursing facilitates needed post-acute rehabilitation patient support as well as a safe home-like environment for long-term care residents. The hospital's affiliation with, and support of, the nursing home allows the hospital to *decrease* the total cost of inpatient hospital care by better ensuring discharge to a lower acuity setting. As a result of the Board's proposed hospital budget cut, Addison County is now at risk of losing this treasured resource. The result of this cut will do the opposite of "promot[ing] the health of the population and patient experience, reduce costs, and achiev[e] administrative simplification in health care financing and delivery." (18 V.S.A. § 9372)

In short, Porter Hospital submitted a budget that followed all the rules laid down in advance, but was judged by reference to benchmarks that were never previously articulated or followed by the Board.

### **The GMCB's Hospital Budget Process is Also at Odds With the APM and Act 91**

The Board's decisions have not only deviated from the equitable, legal, and financial principles governing the review of the FY 2021 hospital budgets of the UVM Health Network's Vermont affiliates. Those same decisions have also undermined the APM and Act 91.

We view the APM as a key guiding force in our strategy, and in all of the Board's regulatory processes, especially the hospital budget review process. Specifically, the APM establishes a single growth rate target for all of our payers, representing a combination of all the rates reimbursed by participating payers, and has, for better or for worse, enshrined the cost shift. Under the APM, the commercial rates must "solve for" the lack of increases in our reimbursements from public payers, while not exceeding the established, combined growth rate. By setting our commercial rates at an artificial level, rather than allowing us to solve for that rate within our overall reimbursement rates, the Board has created misalignment with the APM. This target was developed over years of discussion among CMMI, GMCB leadership and provider stakeholders, but it is now being rendered irrelevant by these budget decisions.

The Board's decisions and decision-making process similarly run counter to recent legislation designed to serve patients and hospitals during the COVID-19 pandemic. Through swift action by the Vermont Legislature, and the strong support and approval by Governor Scott, Act 91 of this year granted the Board the authority "necessary to prioritize and maximize 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 COVID-19 pandemic" (Act 91, Section 5). The Legislature's clear intent was to grant the GMCB the authority to streamline its process and limit the burden on its regulated entities while we experience this public health emergency. As described above, the Board's budget decisions destabilize health care providers and jeopardize patient care through a regulatory process that was far from orderly.


Whether you look to the GMCB's enabling statute, its rules, Act 91, or the APM, the Board's processes are intended to be grounded in an equitable, legal, and financial framework affording regulated entities predictability and limiting burden. Given the already unpredictable times in which we find ourselves, with a pandemic upturning every bit of what we do, these departures from the established regulatory framework have the potential to inflict damage on providers and patients alike.

**The Board Should Reconsider Its Budget Orders to Preserve Essential Services for Vermonters**

For all of these reasons, I ask that you reconsider your September 16, 2020 decisions and approve our budgets with a single commercial rate, recognizing minor adjustments to reflect updated provider tax calculations. If the Board declines the opportunity to reconsider its decisions, the UVM Health Network will remain true to the promise it made during the budget hearings. Because of the cumulative effect of the GMCB's budget decisions over the past four years, further exacerbated by this year's cut, we will have no choice but to reassess whether we can continue to provide the full array of specialized services that Vermonters have reasonably come to expect to receive at Vermont's only academic medical center, but which we deliver at a financial loss of millions of dollars each year. As a result of those terribly difficult and avoidable decisions, Vermonters will need to travel many hours for care they currently receive close to home, and Vermont's health care dollars will flow to out-of-state hospitals that provide more expensive care. The consequence of your decisions will undoubtedly impede access and make care less affordable in this state.

In spite of all of these concerns, we remain committed to working with you to re-ground the GMCB's process in sound equitable, legal, and financial principles. I hope you will reconsider your decisions to cut the UVM Health Network's Vermont hospitals' budgets as an important step toward that goal.

Sincerely,



John R. Brumsted, MD  
President and Chief Executive Officer  
University of Vermont Health Network