

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

ORDER DENYING BUDGET ADJUSTMENT REQUEST

In re: Porter Hospital)
Fiscal Year 2023)
_____) Docket No. 22-011-H

INTRODUCTION

On October 1, 2022, the Green Mountain Care Board (GMCB or Board) issued a written order establishing a budget for Porter Hospital (Porter) for fiscal year 2023 (FY23). Porter’s FY23 operating results differed substantially from its budget. After being notified that the Board might act to correct this deviation, Porter requested a retroactive adjustment to its FY23 budget. In this order, we deny Porter’s request.

LEGAL FRAMEWORK

Regulation of hospital budgets is one of the Board’s core statutory duties and is a key mechanism by which the Board seeks to control growth in health care spending. *See* 18 V.S.A. §§ 9375(b)(7), 9451-58. The Board establishes hospitals’ budgets by September 15 of each year and the Board’s decisions are reflected in written orders that are issued to hospitals by October 1, the start of the hospitals’ fiscal year. 18 V.S.A. §§ 9454(b), 9456(d)(1).

The budget orders issued by the Board limit growth in hospitals’ net patient revenue and fixed prospective payments (“NPR”) – the revenue the hospitals receive from providing care to patients. The budget orders also limit growth in hospitals’ charges or rates, which, together with the volume of services the hospitals provide, influence their NPR. *See* FY23 Hospital Budget Guidance and Reporting Requirements (eff. Mar 31, 2022).

The Board reviews and considers a variety of information in establishing hospital budgets, including information on hospitals’ utilization and administrative costs. 18 V.S.A. § 9456(b). Budget orders must, among other things, “take into consideration national, regional, or in-state peer group norms,” “promote efficient and economic operation of the hospital,” and “reflect budget performances for prior years.” 18 V.S.A. §§ 9456(c)(2)-(4).

Compliance with a Board-established budget is not optional; each hospital is required by law to “operate within the budget established” for it by the Board. 18 V.S.A. § 9456(d)(1). The Board may, upon application, adjust a hospital’s budget upon a showing of need based on exceptional or unforeseen circumstances. *See* 18 V.S.A. § 9456(f). Hospitals bear the burden of justifying their budgets or any amendments to their budgets. *See* GMCB Rule 3.306(a).

The Board may review a hospital’s performance under its established budget at any time, including in response to an application from a hospital for an adjustment to its budget. GMCB Rule 3.401(a). In reviewing a hospital’s performance under its established budget, the Board

considers the following factors:

- (1) the variability of a hospital's actual revenues, taking into account the resources of payers and the methods of payment used by the payers;
- (2) the hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients;
- (3) the financial position of the hospital in relation to other hospitals and to the health care system as a whole, using the statistics developed from information submitted in compliance with the uniform reporting manual;
- (4) the hospital's performance under budgets identified or established under subchapter 7 of Chapter 221 of Title 18 of Vermont Statutes Annotated for the previous three years and its budget projections for the next three years; and
- (5) any other considerations deemed appropriate by the Board, including but not limited to other instances in which a hospital has less than full control over the expenditures limited by the budget.

GMCB Rule 3.401(a). If the Board determines that a hospital's performance has differed substantially from its budget, the Board may adjust the hospital's budget. *See* GMCB Rule 3.401(c).

PROCEDURAL BACKGROUND

After reviewing hospitals' FY23 operating results, the Board notified Porter¹ on May 30, 2024, that its FY23 NPR exceeded the budgeted amount by 10.5% and that the variance was subject to review and potential enforcement. *See* Letter from Owen Foster re Porter Budget Violation ("Notice"). The Notice cited the relevant legal authorities, asked Porter to provide certain information to assist with the Board's review, invited Porter to submit any additional information it thought was relevant to the review, and advised Porter that it should be prepared to address potential FY23 budget enforcement at a hearing later in the summer with its proposed FY25 budget. *See id.*

Porter responded to the Board's Notice on July 2, 2024. *See* Letter from Rick Vincent to Owen Foster ("Porter Resp."). The response included a request that the Board retroactively adjust Porter's FY23 budget by increasing its approved FY23 NPR to match its actual NPR. *See id.* at 7. Around this time, Porter also submitted its proposed FY25 budget to the Board. On August 30, 2024, the Board held a hearing on Porter's proposed FY25 budget and the potential enforcement of Porter's FY23 budget deviation. *See* Porter Hearing Presentation; Hearing Transcript ("Hrg. Tr."). The hearing was attended by a number of officials from Porter and from the UVM Health Network (UVMHN). *See* Hrg. Tr., 2.

On September 6, 2024, Porter responded to follow-up questions from the Board. Porter Post-Hearing Resp. At a series of public meetings on September 4, 6, 9, 11, and 13, 2024, Board staff presented analyses and recommendations regarding the establishment of Vermont hospitals' FY25 budgets and the enforcement of hospitals' FY23 budget deviations. During this period (and

¹ Several of the communications described in this section were between the GMCB and Porter's parent organization, the UVM Health Network.

extending beyond it), UVMHN submitted written objections relating to these subjects. On September 13, 2024, the Board voted to deny Porter’s request for a retroactive adjustment to its FY23 budget and to take no action on Porter’s potential enforcement for its overage in FY23.

FINDINGS

1. Porter is a critical access hospital with its primary location in Middlebury, Vermont.
2. On October 1, 2022, the Board approved Porter’s proposed FY23 NPR as submitted at \$104,464,068, a 10.9% increase over its FY22 budgeted NPR and a 4.4% increase over its projected FY22 NPR. *In re Porter Hospital Fiscal Year 2023*, Docket No. 22-011-H, FY2023 Hospital Budget Decision and Order (Oct. 1, 2022) (“FY23 Budget Order”), 6-7, 9. The Board also approved an overall average charge increase of not more than 3.5% and a commercial effective rate increase of not more than 11.5% for Porter for FY23. *See id.* at 9.
3. Porter’s FY23 NPR increase over its FY22 budget included a utilization increase of 6.8%, higher than the Vermont median of 2.1%. *See* FY23 Budget Order, 7.
4. Porter’s actual FY23 NPR was \$115,464,374, exceeding the budgeted amount by \$11,000,307, or approximately 10.5%. *See* Notice, 1; *see also* Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 22.
5. Porter attributes its FY23 NPR variance primarily to higher than budgeted utilization, particularly above budget volumes in ED visits, lab tests, and radiology procedures, which were offset by below budget OR surgical cases and contract 340B pharmacy revenue. Porter notes that bad debt and charity care were below budget by approximately \$2.6 million, or 2.5%. Porter also explains that its administrative write-offs in FY23 were unfavorable to its budget by approximately \$1.4 million or 1.4%, which Porter attributes to its final transition off the Meditech (legacy) system and to the Epic system. *See* Porter Resp., Exhibits, 8. Porter provided the following breakdown of the FY23 NPR variance:

| NPR | Total | % over/under |
|----------------------------------|-----------------------|---------------------|
| FY 2023 Approved Budget | \$ 104,464,068 | |
| Utilization | \$ 9,724,820 | 9.3% |
| Reimbursement/Payer Mix | \$ 51,539 | 0.0% |
| Bad Debt/Free Care | \$ 2,639,133 | 2.5% |
| Changes in DSH | \$ (3,712) | 0.0% |
| Administrative Write-Offs | \$ (1,411,473) | -1.4% |
| | \$ - | 0.0% |
| FY 2023 Actual Results | \$ 115,464,374 | 10.5% |

Id.

6. Porter also provided the following table that breaks down the contribution of different departments to the portion of the NPR variance attributed to utilization:

| PORTER HOSPITAL | | |
|----------------------|-----------|------------------|
| Clinical Services | \$ | 1,892,252 |
| Pharmacy | \$ | 1,819,168 |
| Hospital Operations | \$ | (2,068,325) |
| Medical Group Part A | \$ | 78,185 |
| Nursing Services | \$ | 1,065,757 |
| Other Clinical | \$ | 995,876 |
| Hospital Services | \$ | 4,097,261 |
| Facility Providers | \$ | (1,697,369) |
| Practices | \$ | 2,351,976 |
| Professional Revenue | \$ | 1,043,371 |
| Other | \$ | 146,667 |
| Total | \$ | 9,724,820 |

Porter Resp., 4.

7. Porter’s other operating revenue was under budget in FY23 by approximately \$133,000, or 3.0%. Porter Resp., Exhibits, 8.
8. Porter’s operating expense in FY23 was \$110,724,362, approximately 7.8% higher than the budgeted figure of \$102,735,157, and approximately 8.5% higher than FY22 actual operating expense. Fiscal Year 2023 Vermont Hospital Reporting: Year-End Actuals, Staff Presentation (Mar. 13, 2024) (“FY23 Actuals Presentation”), 8; Porter Resp., 9. Porter attributes most of this variance to higher than budgeted contract staffing costs, which it states resulted from a spike in the rate and number of contracted “travelers.” See Porter Resp., 9-10. Porter provided the following breakdown of its operating expense variance:

| Expenses | Amount | % over/under |
|-------------------------------|-----------------------|--------------|
| FY 2023 Approved Budget | \$ 102,735,157 | |
| Salaries | \$ (1,312,875) | -1.3% |
| Contract Staffing | \$ 8,368,385 | 8.1% |
| Fringe Benefits | \$ (1,905,548) | -1.9% |
| Physician | \$ 168,473 | 0.2% |
| Locum tenans (MDs) | \$ 218,386 | 0.2% |
| Supplies | \$ 31,839 | 0.0% |
| Drugs | \$ 791,384 | 0.8% |
| Facilities | \$ 112,477 | 0.1% |
| Software Related | \$ (1,509,465) | -1.5% |
| Depreciation | \$ 59,900 | 0.1% |
| Interest | \$ (7,308) | 0.0% |
| Health Care Provider Tax | \$ 21,450 | 0.0% |
| Purchased Services | \$ 913,305 | 0.9% |
| Other | \$ 2,038,803 | 2.0% |
| | \$ - | 0.0% |
| FY 2023 Actual Results | \$ 110,724,362 | 7.8% |

Id. at 9.

9. Porter’s FY24 NPR was approved at a growth rate of not more than 28.4% over its FY22 actual NPR. *In re Porter Hospital Fiscal Year 2024*, Docket No. 23-011-H, FY2024 Hospital Budget Decision and Order (Oct. 1, 2023) , 22. Porter’s FY25 NPR was approved at a growth rate of not more than 4.2% over its FY24 approved budget. *In re Porter Hospital Fiscal Year 2025*, Docket No. 24-011-H, FY2025 Hospital Budget Decision and Order (Oct. 1, 2024), 12. Porter’s FY23 approved NPR of \$104,464,068 was therefore not the base for determining its FY24 or FY25 NPR.

CONCLUSIONS OF LAW

Porter asks the GMCB to adjust its “FY23 budget[] upward to take full account of the increased revenue [it] received” *See* Porter Resp., 7. Porter states that, “[a]lthough such a retroactive adjustment might appear to be an academic exercise, it could benefit the Board’s regulation . . . on a going-forward basis” because “[w]hen a hospital significantly exceeds its budgeted NPR in order to provide increased access to needed care, the following year’s NPR budget-to-budget guidance is difficult to meaningfully apply without risking harm to the access gains the Board encouraged and the hospital achieved.” *Id.* at 7-8.

We are unpersuaded by this argument. To be eligible for budget adjustment, a hospital must show need based upon exceptional or unforeseen circumstances. 18 V.S.A. § 9456(f). The “need” Porter has identified to adjust its FY23 budget relates to the establishment of future budgets and the GMCB’s measurement of permissible NPR growth. However, Porter’s FY24 NPR was established in relation to its FY22 actuals and its FY25 NPR was established in relation to approved FY24 NPR. *See* Findings, ¶ 9. Porter has not met its burden of demonstrating that a retroactive adjustment to its FY23 budget is necessary. *See* GMCB Rule 3.306(a). Having failed to show the necessity of this adjustment, we need not reach any conclusion as to whether this FY23 NPR overage was an exceptional or unforeseen circumstance.

ORDER

Porter’s request for a retroactive adjustment to its FY23 budget is denied.²

Dated: October 10, 2024
Montpelier, Vermont

s/ Owen Foster, Chair)
) GREEN MOUNTAIN
s/ Jessica Holmes) CARE BOARD
) OF VERMONT
s/ Robin Lunge)

Filed: October 10, 2024

Attest: /s/ Jean Stetter

² In its motion of Sept. 13, 2024, the Board voted to take no action to enforce Porter’s FY23 budget deviation.

Green Mountain Care Board
Administrative Services Director

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