STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

ORDER CORRECTING BUDGET DEVIATION AND DENYING BUDGET ADJUSTMENT REQUEST

In re: Rutland Regional Medical Center Fiscal Year 2023	))	Docket No. 22-012-H

INTRODUCTION

On October 1, 2022, the Green Mountain Care Board (GMCB or Board) issued a written order establishing a budget for Rutland Regional Medical Center (RRMC) for fiscal year 2023 (FY23). RRMC's FY23 operating results differed substantially from its budget. In this order, we correct RRMC's deviation from its budget by reducing its overall change in charge and commercial negotiated rate increase. Accordingly, we also deny RRMC's request for a retroactive adjustment to its FY23 budget.

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 by:

(1) changing hospital rates or prices by the amount of net revenues exceeding the budgeted net revenues;
(2) changing the net revenue and/or expenditure levels of future budgets;
(3) allowing hospital rates to be increased for a hospital with a deficit caused by revenues that were less than projected, but whose actual expenditures were within the budget limits;
(4) allowing a hospital to retain surplus funds if the surplus was achieved while the hospital stayed within its established budget;
(5) allowing a hospital to retain a percentage of surplus generated primarily by volume in excess of that projected for a particular year; or
(6) any other circumstance the Board deems appropriate.

See GMCB Rule 3.401(c). Budget adjustment methods based on past performance may be applied by the Board in the course of establishing a new budget and may be imposed over a multiyear period. GMCB Rule 3.401(d).[1]

The Board has a Policy on Hospital Budget Enforcement (Enforcement Policy). The Enforcement Policy was adopted by the Board in response to "no meaningful regulatory action" being taken in situations where hospitals "experienced grater reimbursement than had been

[1] GMCB Rule 3.401 has two subsections labeled (c). The second subsection (c) should be labeled (d) and is referred to as subsection (d) herein.

forecasted." The Enforcement Policy provides "guidance regarding enforcement of hospital budgets" and states:

(1) Net Patient Revenue and Fixed Prospective Payments (NPR/FPP) amounts as ordered may be enforced.
(2) The GMCB may review hospitals whose year-end NPR/FPPs exceed the NPR/FPP requirement by 1.0% above or below their approved NPR/FPP. This review will not necessarily lead to action by the GMCB.
(3) Budget reviews will compare each hospital to results of the total system.
(4) Reporting requirements for the review will be determined by the GMCB.
(5) The GMCB will afford the hospital an opportunity for a hearing and will require a hearing if it deems one necessary.
(6) If the GMCB determines that a hospital's performance has differed substantially from its budget, the GMCB may take actions including, but not limited to:
    (a) Reduce or increase the hospital's rates;
    (b) Reduce or increase net revenue and/or expenditure levels in the hospital's budget;
    (c) Use its finding as a consideration to adjust the hospital's budget in one or more subsequent years;
    (d) Allow a hospital to retain a percentage or all of the surplus funds; and
    (e) Any other actions the GMCB deems appropriate.

The Board carries out its duties consistent with the State's principles of health care reform. *See* 18 V.S.A. § 9375(a). Among these are the principle that "[s]ystemic barriers, such as cost, must not prevent people from accessing necessary health care" and the principle that "[o]verall health care costs must be contained, and growth in health care spending in Vermont must balance the needs of the population with the ability to pay for such care." 18 V.S.A. § 9371(2).

PROCEDURAL BACKGROUND

After reviewing hospitals' FY23 operating results, the Board notified RRMC on June 5, 2024, that its NPR had exceeded the budgeted amount by 3.52% and that the variance was subject to review and potential enforcement. *See* Letter from Owen Foster re RRMC FY23 Budget Violation ("Notice"). The Notice cited the relevant legal authorities, asked RRMC to provide certain information to assist with the Board's review, invited RRMC to submit any additional information it thought was relevant to the review, and advised RRMC 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*.

RRMC responded to the Board's Notice on June 12, 2024. *See* Formal Response to Notice of FY 2023 Budget Violation ("RRMC Resp."). On July 3, 2024, RRMC requested a retroactive adjustment to its FY23 budget. *See* Letter re Application for FY23 Retroactive Budget Adjustment ("Retroactive Adjustment Request"). Around this time, RRMC also submitted its proposed FY25 budget to the Board. On August 7, 2024, the Board held a hearing on RRMC's proposed FY25 budget and the potential enforcement of RRMC's FY23 budget deviation. *See* Hearing Transcript ("Hrg. Tr."). Present at the hearing were RRMC's CEO, CFO, Chief Legal Officer, and Chief Nursing Officer. Hearing Tr., 2.

On August 23, 2024, RRMC responded to a set of post-hearing questions. *See* RRMC 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 hospitals' FY25 budgets and the enforcement of hospitals' FY23 budget deviations. During this period, RRMC submitted written objections relating to these subjects. On September 13, 2024, the Board voted to deny RRMC's application for retroactive budget adjustment and to correct RRMC's material budget deviation by reducing its overall change in charge and commercial negotiated rate increases in FY25 and FY26.

FINDINGS

1. RRMC is a prospective payment system hospital with its primary location in Rutland, Vermont. RRMC is Vermont's second largest hospital as measured by NPR; its actual NPR in FY23 accounted for approximately 10% of the total NPR of all 14 community hospitals in the state. *See* Fiscal Year 2023 Vermont Hospital Reporting: Year-End Actuals, Staff Presentation (Mar. 13, 2024) ("FY23 Actuals Presentation"), 7; Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 22.

2. The Board approved RRMC's proposed FY23 NPR as submitted, at $313,970,338, a 16.1% increase over its FY22 budgeted NPR and a 4.8% increase over it projected FY22 NPR. *See In re Rutland Regional Medical Center Fiscal Year 2023*, Docket No. 22-012-H, FY2023 Hospital Budget Decision and Order (Oct. 1, 2022) ("FY23 Budget Order"), 7, 10. The Board also approved an overall average charge increase for RRMC of not more than 17.4%, a reduction from RRMC's request of 17.8%. *See id*. at 10-11.

3. RRMC's FY23 NPR increase assumed a utilization increase of 8.2%, the highest of any Vermont hospital, and RRMC budgeted approximately $52.5 million in increased revenue in FY23 due to increased volume. FY23 Budget Order, 7.

4. RRMC's actual FY23 NPR was $325,035,199, exceeding the budgeted amount by $11,064,861, or approximately 3.5%. *See* Notice, 1; *see also* RRMC Resp., 9. The review threshold specified in the Board's Enforcement Policy is a 1.0% NPR variance. *See* FY23 Budget Guidance, Part D, Policy on Hospital Budget Enforcement. RRMC's actual FY23 NPR was 6.4% greater than its actual FY22 NPR. RRMC Resp. 2.

5. RRMC attributes its FY23 NPR variance primarily to higher utilization than budgeted and states that reimbursement-related factors, particularly improvements in "denial management" resulting from implementation of a new insurance verification tool, accounted for a relatively minor portion of the overage. RRMC also states that fixed prospective payments were higher than anticipated due to an increase in "attributed lives,"[2] and that RRMC benefited from a favorable calendar year 2022 risk settlement with OneCare Vermont. *See* RRMC Resp., 1, 9.

[2] An accountable care organization (ACO) is an organization of health care providers that agrees to be accountable for the quality, cost, and overall care of the patients assigned to it. 18 V.S.A. § 9373(16). "Attributed lives" are the patients assigned to an ACO and for whom the ACO is accountable. RRMC participates in the ACO OneCare Vermont and receives fixed prospective payments (FPP) to provide care to the patients assigned to the ACO.

6. RRMC provided the following breakdown of its FY23 NPR variance:

NPR/FPP		Total	% over/under
FY 23 Approved Budget	$	313,970,338	
Utilization	$	14,730,097	4.7%
Reimbursement	$	613,759	0.2%
Payer Mix	$	(1,040,712)	-0.3%
Bad Debt/Free Care	$	(5,111,992)	-1.6%
Physician Acq/Trans	$	883,145	0.3%
Changes in Accounting	$	-	0.0%
Changes in DSH	$	(112,833)	0.0%
Level II Custodial Patient	$	(2,950,270)	-0.9%
ACO/FPP	$	3,446,816	1.1%
State Psych Bed - Cost Settlement	$	606,852	0.2%
FY 23 Actual Results	$	325,035,200	3.5%

RRMC Resp., 9.

7. The following table reflects the primary service lines that contributed to the increase in utilization:

Service Line	FY23 Actual Gross Revenue	FY23 Budgeted Gross Revenue	Variance
PHARMACY	143,670,932	127,439,058	16,231,874
CT SCANNNER	54,943,529	46,828,093	8,115,436
ANESTHESIOLOGY	19,435,198	12,474,739	6,960,460
EMERGENCY DEPARTMENT	64,867,754	57,745,155	7,122,599
VERMONT ORTHOPAEDIC CLINIC	35,388,614	30,801,023	4,587,591
OTHER SERVICES COMBINED	86,038,187	77,668,326	8,369,861

See RRMC Resp., 4-5.

8. RRMC states that its higher than budgeted pharmacy volume resulted from the introduction of new monoclonal antibody drugs, primarily for the treatment of cancer, autoimmune, and infectious diseases. *See* RRMC Resp., 4; *see also* RRMC Post-Hearing Resp., 5.

9. RRMC states that its higher than budgeted CT volumes were due to patient demand, both from local patients and patients from outside its service area. *See* RRMC Resp., 4; *see also* RRMC Post-Hearing Resp., 5.

10. Regarding anesthesiology utilization, RRMC notes that it terminated its agreement with a third party and opted to employ its own professional anesthesia services. RRMC states that utilizing the revenue information available at the time, which informed the FY23 budget process, its revenue estimates were moderate. Subsequent external coding reviews revealed that the budget estimates were based on block time rather than per-minute increments. As a result, actual revenue surpassed budget expectations. *See* RRMC Resp., 4; *compare* FY23 Budget Order, 7 (discussing gross revenue expectations for anesthesiology professional services).

11. RRMC attributes its higher than budgeted emergency department utilization to the inability of RRMC's primary care partners to fill provider vacancies, which led them to periodically close urgent care services and stop accepting new patients. *See* RRMC Resp., 4; *see also* RRMC Post-Hearing Resp., 5.

12. RRMC states that the primary factor leading to the increase in orthopedic utilization was an increase in patients from outside its service area ($2.3 million of a $4.6 million variance) and that this was influenced by the retirement of a long-standing orthopedic surgeon in Middlebury. *See* RRMC Resp., 4; *see also* RRMC Post-Hearing Resp., 5.

13. With respect to other services, RRMC identified notable variances in cardiology and endoscopy services, with the rise in cardiology volumes stemming from increased cardiac and stress testing and the increased endoscopy utilization reflecting a focused effort by RRMC to increase access to the service following COVID-19. *See* RRMC Resp., 4.

14. RRMC's other operating revenue in FY23 was $21,538,135, exceeding the budgeted amount by approximately 4.1%. RRMC attributes this deviation primarily to the receipt of COVID-19 FEMA grant funding that was utilized to offset supplies and staffing expenses. RRMC also notes that 340b revenue surpassed budget expectations by 2.3%. RRMC Resp., 9.

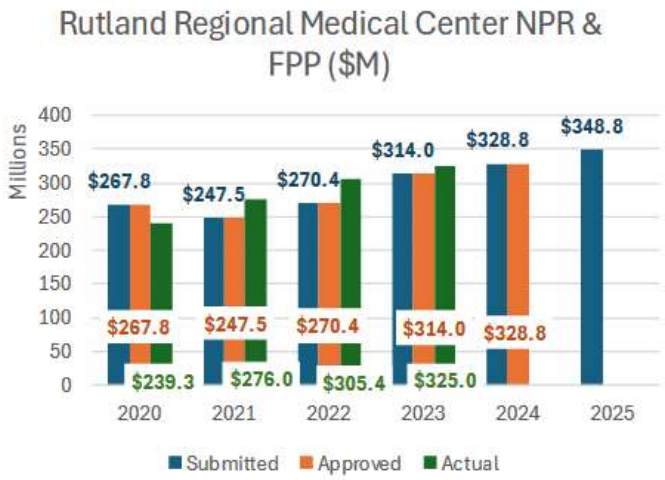
15. RRMC's total operating expense in FY23 was $339,150,667, or approximately 4.0% higher than the budgeted amount. RRMC saw unfavorable variances in physician contracts and salary and contract staffing due to provider vacancies and leaves of absence that necessitated reliance on locum and per diem providers, as well as education, hiring, and performance-based incentives that surpassed expectations. *See* RRMC Resp., 10.

16. RRMC provided the following breakdown of its FY23 operating expense variance:

Expenses	Amount	% over/under
FY 23 Approved Budget	$ 326,062,490	
Salaries	$ (1,015,350)	-0.3%
Fringe Benefits	$ (1,066,310)	-0.3%
Physician Contracts & Salary	$ 4,182,093	1.3%
Contract Staffing	$ 4,137,456	1.3%
Supplies	$ 1,344,541	0.4%
Drugs	$ 3,018,619	0.9%
Facilities	$ 419,444	0.1%
IT Related	$ (1,071,930)	-0.3%
Depreciation	$ 387,632	0.1%
Interest	$ 223,272	0.1%
Health Care Provider Tax	$ (229,425)	-0.1%
Reference Lab and Reagents	$ 1,206,113	0.4%
Insurance	$ (986,987)	-0.3%
Marketing	$ (380,037)	-0.1%
Other	$ 2,919,046	0.9%
FY 23 Actual Results	$ 339,150,667	4.0%

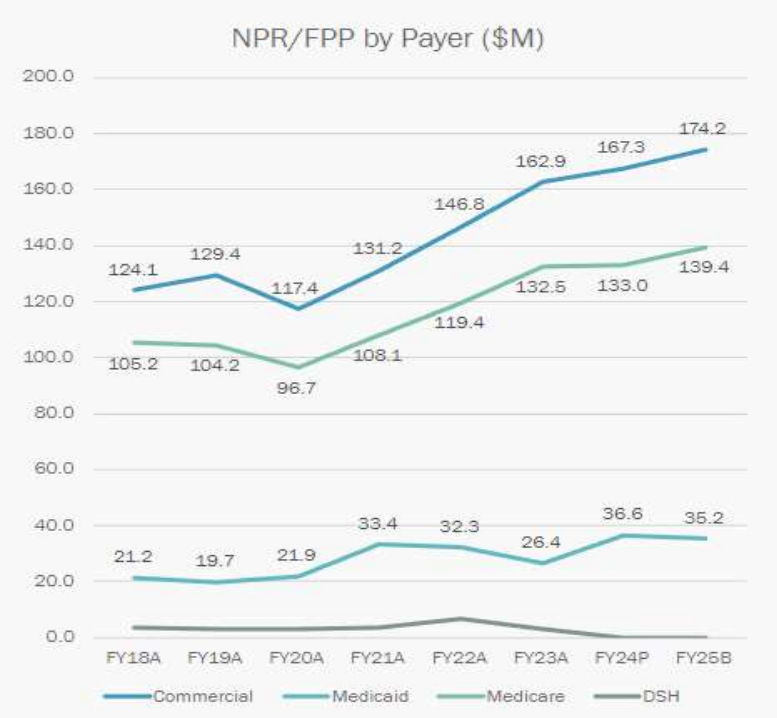
RRMC Resp., 10.

17. RRMC's submitted, approved, and actual NPR in recent years are shown in the graph below:



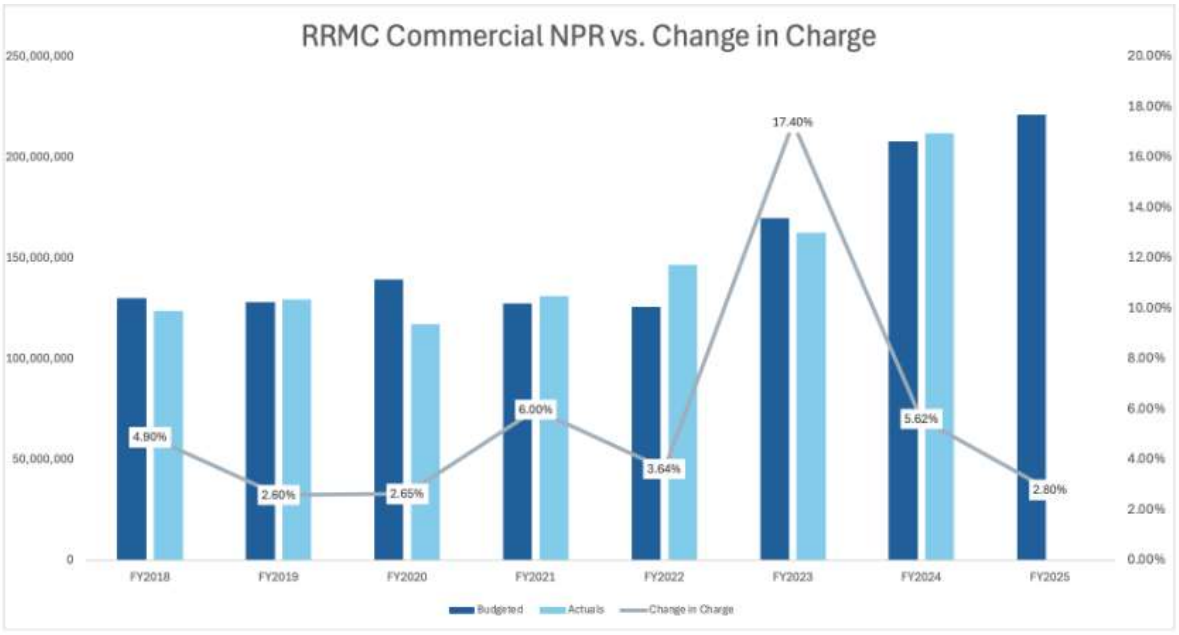
Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 85.

18. Commercial revenue is the largest contributor to RRMC's overall NPR and has increased approximately 48% since FY20. *See* Hospital Revenue Trends by Payer, Staff Analysis, 7.[3]



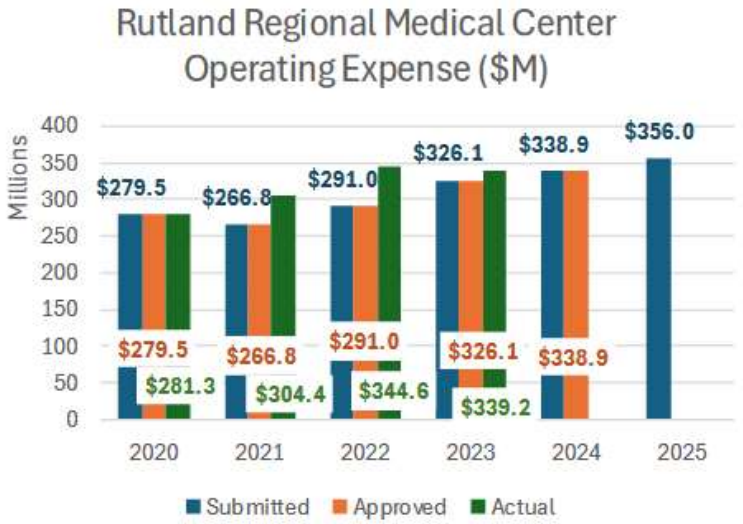
19. The following graph shows RRMC's approved commercial charge increases (grey line) in relation to its budgeted (dark blue bar) and actual (light blue bar) commercial NPR since FY18:

[3] https://gmcboard.vermont.gov/hospital-budget-review/FY25-Professional-Staff-Analyses



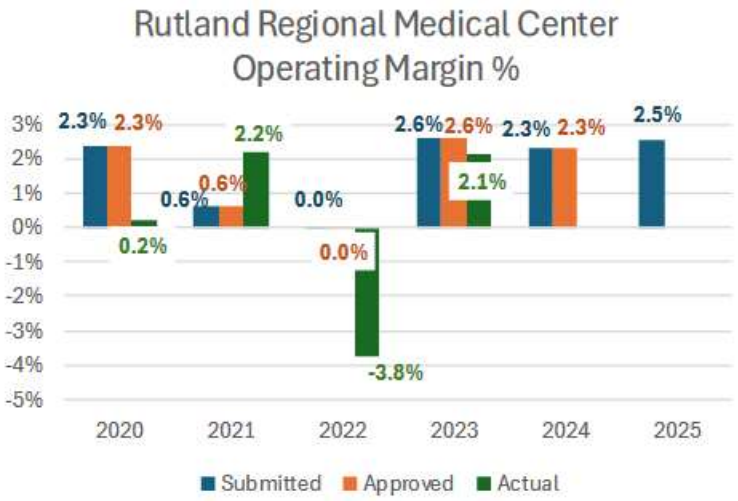
Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 71.

20. RRMC's operating expenses grew at a slower rate than the Vermont average in FY22 and FY23 and its operating expense growth for FY24 is projected to be below the state average as well. *See* Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 72. RRMC's operating expense exceeded budget in FY20 – FY23, as reflected in the following graph depicting RRMC's submitted, approved, and actual operating expense in recent years:



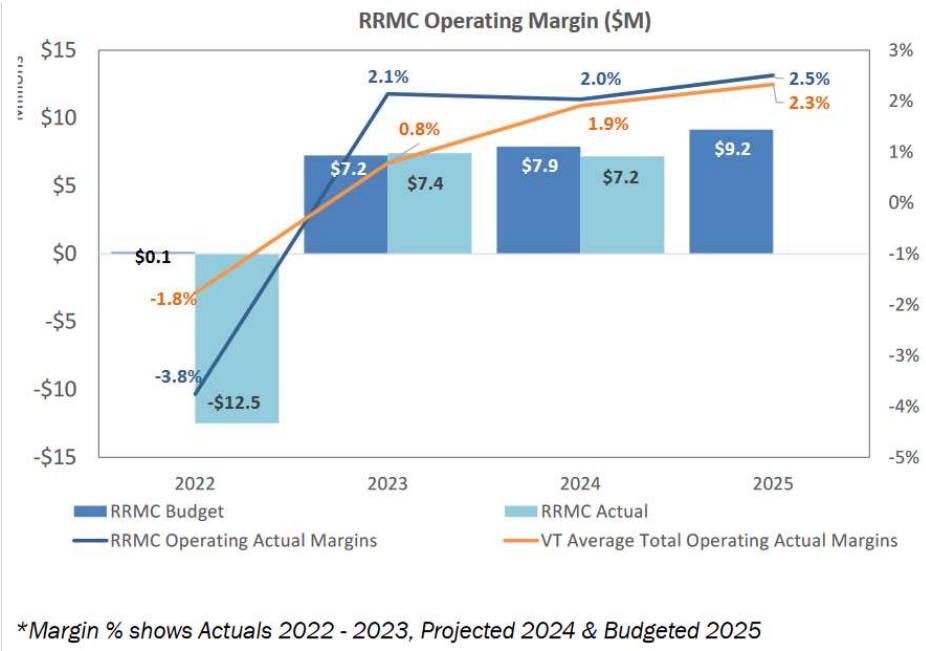
Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 85.

21. RRMC's submitted, approved, and actual operating margins in recent years are shown in the graph below:



Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 85.

22. The graph below compares RRMC's budgeted operating income to its actual (or projected, in the case of 2024) operating income, as well as RRMC's actual operating margin to the average operating margin of all Vermont hospitals:



**Margin % shows Actuals 2022 - 2023, Projected 2024 & Budgeted 2025*

Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 74.

23. Days cash on hand (DCOH) is a measure of a hospital's financial health. RRMC's DCOH rose from around 182 in FY22 to around 189 in FY23 and is projected to be around 203 for FY24. These numbers compare favorably to those of other Vermont hospitals; RRMC's projected FY24 DCOH is the third highest amongst Vermont hospitals. *See* Impact of FY25 Budget Requests, Staff Presentation (Sept. 4, 2024), 20.

24. RAND standardized pricing provides a national comparison of hospital commercial prices. To determine standardized price, RAND first calculates a relative price by comparing a hospital's commercial prices to the Medicare payment system as a benchmark. RAND then calculates the standardized price by adjusting the benchmark using Medicare's case mix grouping and relative weights. For standardized price, a higher decile indicates that commercial prices appear to be higher than the national median, while a lower decile indicates that commercial prices appear to be lower than the national median. The most current RAND report uses prices from 2020 - 2022. *See* RAND Hospital Price Transparency Project, GMCB Presentation (Aug. 6, 2024), 7-9. RRMC's commercial standardized prices are close to the median for hospitals nationally, with outpatient facility prices lower than the median at the 3rd decile. *See* Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 81. However, this price data does not reflect the 17.4% charge increase RRMC received in FY23, or the 5.6% increase it received in FY24.

25. The Medicare payment to cost ratio is an indicator of a hospital's relative cost efficiency. This ratio measures a hospital's revenues obtained from Medicare and Medicare's estimate of the cost to the hospital for providing that care. Medicare payments are adjusted to reflect individual hospital characteristics, so this measure shows how well a hospital manages its expenses. A lower ratio indicates inefficient expense management, while a higher ratio indicates greater efficiency. *See* Financial Analysis for Vermont Hospitals, Bartholomew & Nash, GMCB Presentation (Aug. 6, 2024). RRMC's 2022 Medicare payment to cost ratio was 73%, which was less than its peer median of 93%. *Id.* at 16.

26. Days in patient accounts receivable, which reflects the average time it takes for a hospital to collect revenues for patient services rendered, is an important input to analyze a hospital's financial health. Using the industry standard, RRMC's days in patient accounts receivable shows average to high performance. *See* Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 76.

27. A hospital's ratio of current assets to current liabilities is another method of evaluating its financial health. RRMC's current ratio of assets to liabilities, including funded depreciation, is above breakeven and is above the US median. Its current ratio of assets to liabilities (without funded depreciation) is above the breakeven and below the US median. Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 77.

28. Average age of plant, a ratio that measures the age of a hospital's fixed assets, is another assessment of a hospital's financial health. It indicates how much capital spending may be required in the near term. As such, an older average age of plant indicates a greater immediate need for capital resources. RRMC's average age of plant is above the 75th percentile. Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 78.

29. RRMC's projected FY24 NPR is $336,891,917, which is just over $8 million or approximately 2.5% over the FY24 budgeted amount of $328,821,700 and over 10% greater than RRMC's FY22 actual NPR. *See* RRMC FY25 Budget Submission, Income Statement, 2.

30. Vermont has some of the highest per capita health care spending of any state in the nation. *See* Impact of FY25 Budget Requests, Staff Presentation (Sept. 4, 2024), 14.

31. Vermont marketplace plans are among the most expensive in the country. Qualified Health Plan (QHP) premiums have grown more than in any other state. *See* GMCB Staff Presentation, Overview of FY25 Budget Requests (Aug. 6, 2024), 6. Since 2018, average premium increases for plans sold to individuals and small businesses in Vermont have ranged from 46% to 80%. These premiums will rise steeply in 2025; the average premium increases for individual plans were approved at 19.8% and 14.2%, while the average premium increases for small group plans were approved at 22.8% and 11.1%. Impact of FY25 Budget Requests, Staff Presentation (Sept. 4, 2024), 13.

32. Employer-based insurance premiums in Vermont are also growing faster than the national average. *See* GMCB Staff Presentation, Overview of FY25 Budget Requests (Aug. 6, 2024), 9.

33. Effective July 1, 2024, the Department of Financial Regulation approved premium increases of 15.7% to 16.7% for the Vermont Education Health Initiative (VEHI).[4] VEHI rate increases will impact homeowners in the form of property tax increases across the state.[5]

34. According to the 2021 Vermont Household Health Insurance Survey, the cost of health insurance is the most common reason for a gap in coverage.[6] Forty-four percent of privately insured Vermonters under the age of 65 are underinsured, meaning they have insufficient incomes to cover deductibles and out-of-pocket expenses.[7]

35. While hospitals make up one-third of total health care spend nationally, Vermont hospitals account for almost half of the state's total health care expenditures. *See* Overview of FY25 Budget Requests, Staff Presentation (Aug. 6, 2024), 11-12.

36. Blue Cross and Blue Shield of Vermont, the largest commercial payer in the state, is experiencing serious solvency issues and its financial performance recently triggered a company action level event under 8 V.S.A. § 8303. *See* GMCB 2022 Vermont Annual Statement Supplement Report Commercial Health Insurer Market Share Reports, Data by Company;[8] *In re Blue Cross and Blue Shield of Vermont 2025 Small Group and Individual Market Rate Filings*, GMCB-003-24rr and GMCB-004-24rr, Decision and Order (Aug. 12, 2024), Findings of Fact, ¶ 59.

37. This year Vermonters submitted public comments to the Board identifying the harmful impacts of these costs on their businesses, their budgets, and their ability to pay for care. *See* Impact of FY25 Budget Requests, Staff Presentation, (Sept. 4, 2024), 3-10.

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[4] Vermont Education Health Initiative (VEHI), VEHI FY 25 Health Rates Approved for Website.pdf.
[5] *See* 16 V.S.A. §§ 4025(a)(1), 4025(b).
[6] *See* Vermont Department of Health, 2021 Vermont Household Health Insurance Survey (March 2022), 44-45, 118, available at: https://www.healthvermont.gov/sites/default/files/documents/pdf/HSVR-VHHIS-2021-Report.pdf.
[7] *Id*.
[8] *Available at* https://gmcboard.vermont.gov/node/11071

38. In July of 2024, RRMC requested a retroactive adjustment to its budget. RRMC asks the Board to "rebase" its FY23 budget "using the [FY23] projected amounts [presented in connection with the FY24 budget]," and to evaluate its budget performance "using FY23 projections as the baseline." Retroactive Adjustment Request, 1. RRMC asserts that its actual FY23 NPR was only 0.2% above the projection. *See id.* at 2-3. In support of its request, RRMC states that the Board approved the FY24 budget, which was based on the FY23 projections. *Id.* at 2. RRMC also asserts that enforcement is not warranted because its actual FY23 NPR, together with its FY24 budgeted NPR, met the Board's guidance for two-year NPR growth not exceeding 8.6% from actual FY22 to budget FY24. *Id.* at 3.

CONCLUSIONS OF LAW

First, we deny RRMC's request to retroactively adjust its FY23 budget. RRMC's request asks the Board to treat the FY23 projection that RRMC provided during the FY24 budget process as the hospital's FY23 budget. *See* Findings, ¶ 38. RRMC has not demonstrated that such a retroactive adjustment is necessary based upon exceptional or unforeseen circumstances. The "need" RRMC speaks to most clearly in its request is a need to avoid enforcement of the NPR overage. As described below, however, we believe enforcement is appropriate.

We are also not persuaded by the arguments RRMC presented in support of its request. In establishing RRMC's FY24 budget, the Board did not enforce RRMC's projected FY23 NPR variance, and it is not irrational or inequitable to address that variance now. Furthermore, while RRMC cites the Board's two-year NPR growth benchmark of 8.6%, that benchmark is not what the Board is enforcing; the Board is enforcing the FY23 budget order, which clearly limited the amount of NPR that RRMC could bring in. *See* Findings, ¶ 2.

Second, we find that RRMC's performance differed substantially from its FY23 budget, and, having considered the factors set forth in GMCB Rule 3.401(a), we decide to correct the deviation by reducing RRMC's overall change in charge and commercial negotiated rate increase by the rate-equivalent of half the FY23 NPR variance (i.e., $5,532,430) over the course of two budget cycles, FY25 and FY26. *See* Findings, ¶ 4. We emphasize that this is not intended to be a punitive action, but rather a correction for prices that were higher than they needed to be.

I. The variability of a hospital's actual revenues, taking into account the resources of payers and the methods of payment used by the payers.

This factor weighs strongly in favor of enforcing RRMC's FY23 NPR overage. RRMC's total NPR has risen steadily over the past several years and grew approximately 6.4% from FY22 to FY23. *See* Findings, ¶¶ 4, 17. Commercial NPR is the largest contributor to RRMC's overall NPR and RRMC's commercial NPR has increased approximately 48% since FY20. *See* Findings, ¶ 18. The unusually large 17.4% increase in charges approved for RRMC in FY23 has contributed to this growth in commercial NPR. *See* Findings, ¶ 19.

Vermont is experiencing rapidly increasing health insurance premiums and costs that are making it difficult for Vermonters to afford care. *See* Findings, ¶¶ 30-33. In short, the resources of

payers are seriously constrained. Indeed, Vermont's largest commercial payer is facing significant solvency concerns. *See* Findings, ¶ 36. RRMC's additional, unbudgeted and unplanned $11 million in revenue can and should be used to provide some rate relief to nearly insolvent insurers and the businesses, municipalities, and individuals struggling with crushing health care costs.

II. The hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients.

RRMC's FY23 budget anticipated a large increase in utilization and associated revenue. *See* Findings, ¶ 3. Most of RRMC's NPR overage was due to utilization that exceeded the expectations in the budget, although other factors contributed. *See* Findings, ¶¶ 5-6. Much of the unbudgeted utilization was the result of efforts that RRMC made to meet patient demand and increase access to its services, although the variance in anesthesiology appears to be the result of inaccurate budget estimates. *See* Findings, ¶¶ 7-14.

While we acknowledge that utilization was the primary driver of RRMC's NPR overage, we also note that this does not mean that RRMC had no ability to limit services to meet its budget. RRMC's FY23 budget included over $903,000 in marketing and advertising expenses. *See* RRMC Post-Hearing Resp., 4.[9] If RRMC had chosen to constrain its marketing and advertising actions, it could have limited expenses while curbing services to meet its budget. Additionally, RRMC could have complied with its FY23 budget order without limiting care by reducing its prices. Although such action could have reduced its operating margin, we note that the hospital's Medicare payment to cost ratio demonstrates room for improvement in expense management. *See* Findings, ¶ 25.

III. 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.

This factor also weighs in favor of enforcing RRMC's FY23 NPR overage. RRMC's DCOH compares favorably to other hospitals in Vermont; indeed, RRMC's projected FY24 DCOH is the third highest amongst Vermont hospitals. Findings, ¶ 23. RRMC's operating margins are improving and are not of concern. Findings, ¶ 22. RRMC's days in patient account receivable and current ratio are good and RRMC appears to have a good amount of unrestricted funded depreciation. *See* Findings, ¶¶ 26-27. While RRMC's average age of plant is high (Findings, ¶ 28), its overall financial position is stable.

IV. 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

This factor weighs in favor of enforcement as well. RRMC's NPR was under budget in FY20 but over budget in FY21, FY22, and FY23. Findings, ¶ 17. RRMC exceeded its budgeted NPR in FY23 by $11,064,861, or approximately 3.5%. Findings, ¶ 4. RRMC's NPR is projected to be over budget again in FY24, this time by just over $8 million or approximately 2.5%. Findings,

[9] *Available at* https://gmcboard.vermont.gov/document/rutland-responses-post-hearing-questions.

¶ 29. Regarding expenses, while RRMC's operating expense grew more slowly in FY22 and FY23 than the statewide average, its total operating expense was over budget in FY20, FY21, FY22, and FY23. *See* Findings, ¶ 20.

It is relevant that RRMC did not fully achieve its budgeted operating margin in FY23. *See* Findings, ¶¶ 21-22. However, hospital budget regulation seeks to control the revenue and expense growth that contributes to the affordability challenges the State is experiencing. *See* Findings, ¶¶ 30-37. These revenues and expenses, as stated above, have been over budget in recent years. Had RRMC more effectively managed its expenses, it could have provided the additional utilization at lower prices and still achieved its budgeted operating margin.

V. 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.

In a fee-for-service payment system, a hospital's NPR is determined by the volume of services it provides and the price of those services. The very high 17.4% charge increase that the Board approved for RRMC for FY23 contributed to RRMC's NPR variance that year and is also contributing to significant growth in RRMC's NPR from commercial payers. *See* Findings, ¶¶ 2, 18-19. Given this fact, and given the affordability challenges that the State is facing, particularly commercial payers, we conclude that it is appropriate to correct the FY23 NPR variance through a reduction in RRMC's charges or rates.

VI. Evaluation of RRMC's procedural arguments.

RRMC makes a number of procedural arguments related to FY23 enforcement, including that it was deprived of due process by the contemporaneous review of its FY25 budget submission and FY23 budget deviation, and that our review of its FY23 budget deviation constitutes a contested case under the Vermont Administrative Procedure Act (VAPA), requiring additional procedural safeguards such as the opportunity to cross-examine "adverse witnesses." *See* RRMC Final Objections (Sept. 20, 2024). Upon review of the law and the record, we conclude that RRMC's assertions are without merit.

First, 18 V.S.A. § 9456(h)(2)(B) provides that the Board may take corrective measures as are necessary to remediate a budget deviation after providing the hospital notice and an opportunity to be heard. RRMC was provided notice. *See* Letter from Owen Foster re RRMC FY23 Budget Violation (June 5, 2024). RRMC had ample, and somewhat duplicative, opportunities to be heard, including in written responses to the Board's notice,[10] via public comment throughout the Board's deliberations, in multiple written objection letters,[11] and in its own presentation on August 7, 2024, when it provided argument in support of both its FY25 budget submission and against enforcement

[10] *See* RRMC Resp. (June 12, 2024); *see also* RRMC Retroactive Adjustment Request (July 3, 2024)

[11] *See*, e.g., RRMC Objections to Sept. 4 GMCB Hearing (Sept. 5, 2024); RRMC Impact Summary due to FY23 Enforcement and FY25 Rate Reduction (Sept. 10, 2024); RRMC Objections to Sept. 6 Deliberations (Sept. 10, 2024); RRMC Objections to Sept. 6 and Sept. 11 Deliberations (Sept. 13, 2024); Letter from Judi Fox, RRMC CEO (Sept. 13, 2024); RRMC Final Objections (Sept. 20, 2024).

of its FY23 budget deviation.[12] Furthermore, GMCB Rule 3.000, § 3.401 clearly contemplates that the Board may review potential enforcement of a hospital's prior-year deviation when evaluating its current-year budget submission, providing: "Adjustment methods based on past performance may be applied by the Board in the course of establishing a new budget and may be imposed over a multiyear period." *Id.* at § 3.401(d). Reviewing potential prior-year enforcement during review of current-year budget submissions makes sense. Relevant to our analysis, as discussed *infra*, is the hospital's current financial position in relation to other hospitals and the health care system as a whole. GMCB Rule 3.000 § 3.401(a)(3). We know the most about the financial position of other hospitals and the health care system during annual budget review.

Second, we cannot conclude that the Board's review of a hospital's budget order deviation is a contested case. Under VAPA, a contested case is a proceeding "including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." 3. V.S.A. § 801(a)(2). This Board issued RRMC's FY23 budget order after hospital hearings and deliberations that were not contested cases under VAPA. RRMC deviated from its order and thus did not operate within its established budget pursuant to 18 V.S.A. § 9456(d)(1). In response, this Board took up review of potential enforcement to determine whether it is appropriate, given factors discussed *infra*, to order RRMC to correct the deviation. This review concerns no new identifiable legal right, and RRMC provides no explanation of any right or privilege that it believes is required by law to be determined by this Board. *See* RRMC Final Objections (Sept. 20, 2024), 3. RRMC certainly does not have the legal right to deviate from our budget orders. For these reasons, we are not persuaded by RRMC's arguments that its due process rights have been violated or that it is entitled to the protections of a contested case under VAPA.

ORDER

RRMC's FY25 overall change in charge and commercial negotiated rate increase are reduced from 2.8% over current approved levels to 1.2% over current approved levels, with no commercial rate increase for any payer exceeding that amount, and with a $2,766,215 reduction to RRMC's FY26 commercial NPR, to be applied to its approved FY26 commercial rate in this Board's FY26 Budget Order.

Dated: October 10, 2024
Montpelier, Vermont

s/ Owen Foster, Chair)
)
s/ Thom Walsh)
)
s/ David Murman)

GREEN MOUNTAIN CARE BOARD OF VERMONT

[12] *See* RRMC Budget Presentation, GMCB Hearing (Aug. 7, 2024).

Board Members Holmes and Lunge, dissenting.

We dissent from the majority's decision to deny RRMC's request for a retroactive budget adjustment and reduce RRMC's overall change in charge and commercial negotiated rate increase as a result of the FY23 budget deviation. The majority's decision does not, in our opinion, sufficiently recognize the factors contributing to the NPR overage.

RRMC provided more free care, served more Medicare patients, and had more Medicaid patients in the ACO program than budgeted. Likely due to the payer mix associated with much of the unexpected utilization, the revenue overage did not generate a higher operating margin than expected. The higher than budgeted ED utilization resulted from lack of primary care and urgent care in the community, services which are not provided by the hospital, but by RRMC's community partners. It is important to note that under federal law, RRMC is prohibited from turning away patients who come to the emergency room. In addition, Porter Hospital's orthopedist retired, resulting in patients seeking care in Rutland, at least in part due to the long wait times at UVMMC, the other logical geographic option. In our view, RRMC was not attempting to attract additional utilization to increase its margin; instead, it was serving patients who had few other alternatives and in so doing, generated a lower margin than budgeted.

RRMC also requested a 2.8% increase in commercial price for FY25, below the Board's 3.4% hospital budget guidance and well below the median hospital request for FY25. We view the relatively low commercial rate request as an attempt to self-correct for the uptick in utilization, a practice the Board should encourage of its regulated entities. In the future, we would like to see RRMC return to its historical practice of alerting the Board mid-year of projected revenue overages with a request for either an NPR adjustment or ideally, a reduction in commercial rate to offset unexpected utilization.

Filed: October 10, 2024

Attest: s/ Jean Stetter
Green Mountain Care Board
Administrative Services Director

NOTICE TO READERS: This document is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made.

Appeal of this decision to the Superior Court under 18 V.S.A. § 9456(h)(2)(B)(ii) must be filed with the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Superior Court. Motions for reconsideration or stay, if any, must be filed within ten days of the date of this decision and order.