

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

**ORDER CORRECTING BUDGET DEVIATION AND DENYING BUDGET
ADJUSTMENT REQUEST**

In re: University of Vermont Medical Center) Docket No. 22-004-H
Fiscal Year 2023)
_____)

INTRODUCTION

On October 1, 2022, the Green Mountain Care Board (GMCB or Board) issued a written order establishing a budget for the University of Vermont Medical Center (UVMMC) for fiscal year 2023 (FY23). UVMMC’s FY23 operating results differed substantially from its budget. In this order, we correct UVMMC’s deviation from its budget by reducing its overall change in charge and commercial negotiated rate increase. Accordingly, we also deny UVMMC’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 UVMHC on May 30, 2024, that its NPR had exceeded the budgeted amount by 4.8% and that the variance was subject to review and potential enforcement. *See* Letter from Owen Foster to Dr. Sunil Eappen re UVMHC Budget Violation (“Notice”). The Notice cited the relevant legal authorities, asked UVMHC to provide certain information to assist with the Board’s review, invited UVMHC to provide any additional information it thought was relevant to the review, and advised UVMHC 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.*

UVMHC responded to the Board’s Notice on July 2, 2024. *See* Letter from Rick Vincent to Owen Foster (“UVMHC Resp”). The response included a request that the Board retroactively adjust UVMHC’s FY23 budget by increasing its approved FY23 NPR to match its actual NPR. *See id.* at 7. Around this time, UVMHC also submitted its proposed FY25 budget to the Board. On August 28, 2024, the Board held a hearing on UVMHC’s proposed FY25 budget and the potential enforcement of the FY23 budget deviation. *See* UVMHC Hearing Presentation; Hearing Transcript (“Hrg. Tr.”). The hearing was attended by a number of officials from UVMHC and from the UVM Health Network (UVMHN). *See* Hrg. Tr., 2.

On September 6, 2024, UVMMC responded to a set of post-hearing questions. *See* UVMMC 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 (and extending beyond it), UVMHN submitted written objections related to these subjects. On September 13, 2024, the Board voted to deny UVMMC's request for a retroactive budget adjustment and to correct UVMMC's material budget deviation by reducing its overall change in charge and commercial negotiated rate increases in FY25 and FY26.

FINDINGS

1. UVMMC is a prospective payment system hospital with its primary location in Burlington, Vermont. UVMMC is by far the largest hospital in Vermont as measured by NPR; its actual NPR in FY23 accounted for approximately 52% 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. On March 18, 2022, UVMMC requested an adjustment to its FY22 budget, seeking to increase its commercial rate by 10%. The Board found that UVMMC made a showing of need in the face of unexpected circumstances and approved a budget modification increasing UVMMC's rates by 2.5% above the levels approved in the FY22 budget. *See In re University of Vermont Medical Center Fiscal Year 2022*, Docket No. 21-004-H, Modification of FY22 Hospital Budget Decision and Order (April 15, 2022).
3. UVMMC's FY23 NPR was approved as proposed at \$1,658,725,627, a 10.0% increase over the FY22 budget and a 15.7% increase over UVMMC's FY22 projected performance. *In re University of Vermont Medical Center Fiscal Year 2023*, Docket No. 22-004-H, FY2023 Hospital Budget Decision and Order (Oct. 1, 2022) ("FY23 Budget Order"), 7, 12. UVMMC's FY23 NPR increase included a utilization increase of 7.7% over its FY22 budget. *Id.*, at 7.
4. UVMMC's commercial effective rate increase for FY23 was approved at not more than 14.77% over current approved levels. FY23 Budget Order, 12.
5. UVMMC's actual FY23 NPR was \$1,739,015,783, exceeding the approved amount by \$80,290,156, or approximately 4.8%. *See* Notice; *see also* Hospital Budget Review, Staff Presentation (Sept. 6, 2024), 22. 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.
6. UVMMC's actual FY23 NPR exceeded its FY22 actual NPR by \$161,261,479, or approximately 16%. *See* FY 23 Actuals Presentation, 40.
7. Most of the care UVMMC provides is paid on a "fee-for-service" basis such that UVMMC receives more revenue by delivering more services. *See* FY23 Actuals Presentation, 40.

8. UVMHC employs a “cost shift” approach to budgeting whereby it accounts for government revenue and then seeks to “shift” its outstanding budgeted expenses onto commercial payers. *See* Testimony of Judy Peek-Lee, Hearing Tr. (Aug. 28, 2024), 74:15-75:13 (UVMHC considers Medicare and Medicaid changes in payment, graduate medical education revenue, sole community hospital reimbursements, and “we attempt to factor those in before we calculate the necessary commercial rate.”), 76:9-19 (“any additional funding that we could receive would certainly assist in how much needs to be covered by commercial”).
9. UVMHC attributes its FY23 NPR overage to two primary factors: increased access with correspondingly higher expenses, and additional reimbursement from non-commercial payers, specifically graduate medical education (GME) and Sole Community Hospital (SCH) payments. *See* UVMHC Resp., 7.
10. In July 2024, UVMHC requested a retroactive adjustment to its budget in which it asked the Board to increase its approved FY23 NPR to match its actual NPR. UVMHC Resp., 7.
11. UVMHC provided the following breakdown of its FY23 NPR overage:

NPR	Total	% over/under
FY 2023 Approved Budget	\$ 1,658,725,627	
Utilization	\$ 121,231,384	7.3%
Reimbursement/Payer Mix	\$ (75,216,459)	-4.5%
Bad Debt/Free Care	\$ 33,344,250	2.0%
Changes in DSH	\$ (11,826,485)	-0.7%
GME Reimbursement Change	\$ 30,713,364	1.9%
Administrative Write-Offs	\$ (17,955,898)	-1.1%
FY 2023 Actual Results	\$ 1,739,015,783	4.8%

UVMHC Resp., Exhibit A, 1.

12. UVMHC was approved for SCH status by CMS effective December 2022, resulting in an “add on” payment percentage of 7.1%. This additional Medicare payment translated to approximately \$9.5 million in unbudgeted revenue for UVMHC in FY23. *See* UVMHC Resp. 5. UVMHC also sought and received additional GME payments from CMS that resulted in \$30.7 million in unbudgeted revenue in FY23. *Id.*
13. UVMHC budgeted \$25 million in free care in FY23 but only provided \$18.2 million—a difference of \$6.8 million or 27%. *See* UVMHC FY23 Bridges. UVMHC also budgeted \$44.6 million in bad debt in FY23 but only experienced \$18.1 million—a difference of \$26.4 million or 59%. *Id.*; *see also* UVMHC Post-Hearing Resp., 11. In total, UVMHC’s budgeted FY23 bad debt/free care missed the mark by over \$33 million, or 48%.

14. In FY22, UVMMC overbudgeted bad debt/free care by \$7.5 million. *See* UVMMC FY22 Actuals Report Package.² In FY21, UVMMC overbudgeted bad debt/free care by \$20.6 million. *See* UVMMC FY21 Actuals Report Package.³
15. UVMMC’s other operating revenue in FY23 was approximately \$329 million, exceeding the budgeted amount by approximately \$26.8 million or 8.9%. FY23 Actuals Presentation, 40. UVMMC attributes this variance primarily to Specialty Pharmacy and Mail Order Pharmacy (generating a \$21.6 million positive variance) and COVID-19 related FEMA funding (\$5.3 million). UVMMC Resp., Exhibit A, 2.
16. UVMMC’s total operating revenue in FY23 was approximately \$2.1 billion, exceeding the budgeted amount by approximately 5.5%. *See* Actuals Presentation, 40.
17. UVMMC’s total FY23 operating expense was approximately \$2 billion, approximately 4.3% over budget. *Id.* UVMMC identified contract staffing, drugs, supplies, and purchased services as the largest individual contributors to this variance. *See* UVMMC Resp., Exhibit A, 3. UVMMC’s total contract labor spend in FY23 was above the 75th percentile of other academic medical centers nationally. *See* UVMMC Post-Hearing Resp. (Sept. 6, 2024), 15.
18. UVMMC provided the following breakdown of its FY23 operating expense overage:

Expenses	Amount	% over/under
FY 2023 Approved Budget	\$ 1,921,613,374	
Salaries	\$ (25,993,750)	-1.4%
Contract Staffing	\$ 43,567,119	2.3%
Fringe Benefits	\$ 867,358	0.0%
Physician	\$ (7,490,568)	-0.4%
Locum tenans (MDs)	\$ 4,533,066	0.2%
Supplies	\$ 10,288,637	0.5%
Drugs	\$ 29,930,740	1.6%
Facilities	\$ 37,620	0.0%
Software Related	\$ 2,351,258	0.1%
Depreciation	\$ 3,210,159	0.2%
Interest	\$ (215,852)	0.0%
Health Care Provider Tax	\$ (8,581,758)	-0.4%
Purchased Services	\$ 13,057,959	0.7%
Other	\$ 16,236,646	0.8%
	\$ -	0.0%
FY 2023 Actual Results	\$ 2,003,412,010	4.3%

UVMMC Resp., Exhibit A, 2.

² [B22A UVMMC 0.pdf \(vermont.gov\)](#).

³ [A21_H21_UVMMC.pdf \(vermont.gov\)](#).

19. UVMMC’s projected FY24 NPR is approximately \$1.9 billion, exceeding the budgeted amount by approximately 2.3%, and exceeding its FY22 actual NPR by approximately 25.2%. See UVMMC FY25 Budget Submission, Income Statement.
20. UVMMC shows a recent pattern of significantly exceeding its budgeted operating revenues and expenses, as reflected in the table below, which shows UVMMC’s operating revenue and expense variances in FY22 – FY24 (projected) in relation to the Vermont averages. Given its size, these averages are strongly affected by UVMMC.

	2022	2023	2024
UVMMC Operating Revenue	\$1,825,629,645	\$2,067,962,231	\$2,267,584,149
UVMMC Operating Expense:	\$1,848,355,820	\$2,003,412,010	\$2,199,398,007
UVMMC Margin:	-\$22,726,174	\$64,550,221	\$68,186,142
UVMMC Operating Revenue:			
(Actual - Budget)	\$103,540,109	\$107,047,250	\$88,747,089
UVMMC Operating Revenue:			
% Difference in Actual vs. Budget	6.0%	5.5%	4.1%
UVMMC Operating Expense:			
(Actual - Budget)	\$185,604,141	\$81,798,636	\$85,103,164
UVMMC Operating Expense: %			
Difference in Actual vs. Budget	11.2%	4.3%	4.0%
VT Operating Revenue:			
% Difference in			
Actual vs. Budget	5.7%	3.1%	3.0%
VT Operating Expenses:			
% Difference in			
Actual vs. Budget	10.4%	4.3%	3.3%

Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 109.

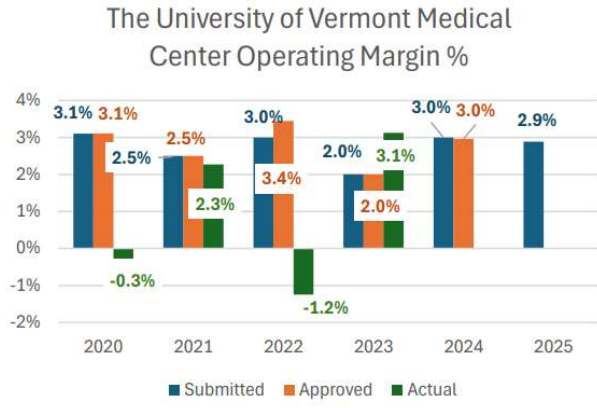
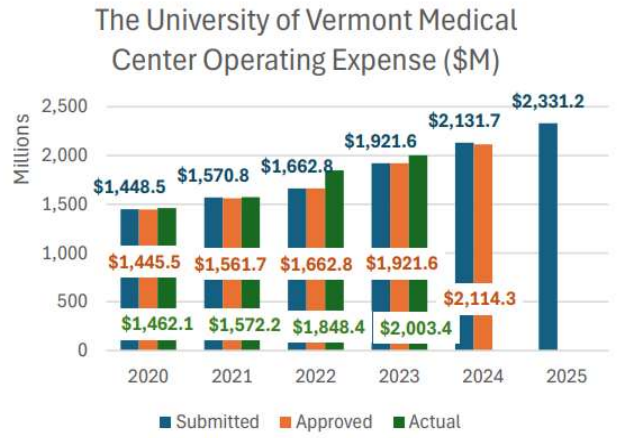
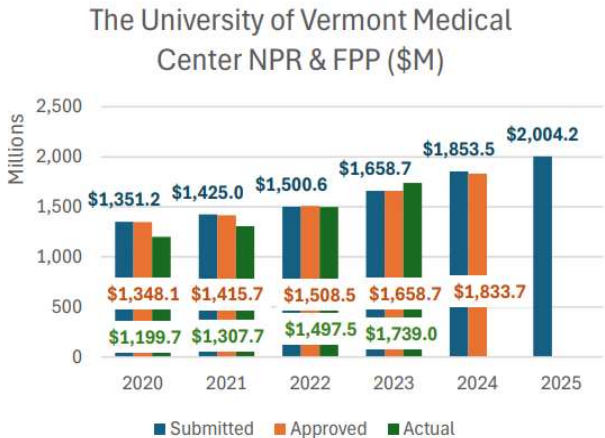
21. UVMMC has a recent history of its revenue from public payers varying significantly from its budget assumptions, as reflected in the following table, which shows the difference between UVMMC’s budgeted and actual NPR by payer.

	FY18 Δ		FY19 Δ		FY20 Δ		FY21 Δ		FY22 Δ		FY23 Δ	
Commercial	(7.63)	-1.1%	7.75	1.0%	(107.11)	-13.3%	(100.18)	-11.6%	(51.06)	-5.7%	(18.36)	-1.8%
Medicaid	8.17	6.3%	(8.79)	-6.4%	2.41	1.8%	17.05	13.1%	20.38	12.5%	34.08	20.0%
Medicare	44.55	13.1%	12.41	3.3%	(43.61)	-11.0%	(24.83)	-6.0%	10.61	2.4%	76.40	17.1%
DSH	(0.71)	-5.2%	0.39	3.7%	(0.09)	-0.8%	0.02	0.2%	9.03	80.5%	(11.83)	-51.4%
	44.38	3.67%	11.77	0.92%	(148.40)	-11.01%	(107.94)	-7.62%	(11.04)	-0.73%	80.29	4.84%

Note: Negative values reflect over-budgeted revenues (actuals less than budget), positive values, under-budgeted.

Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 105.

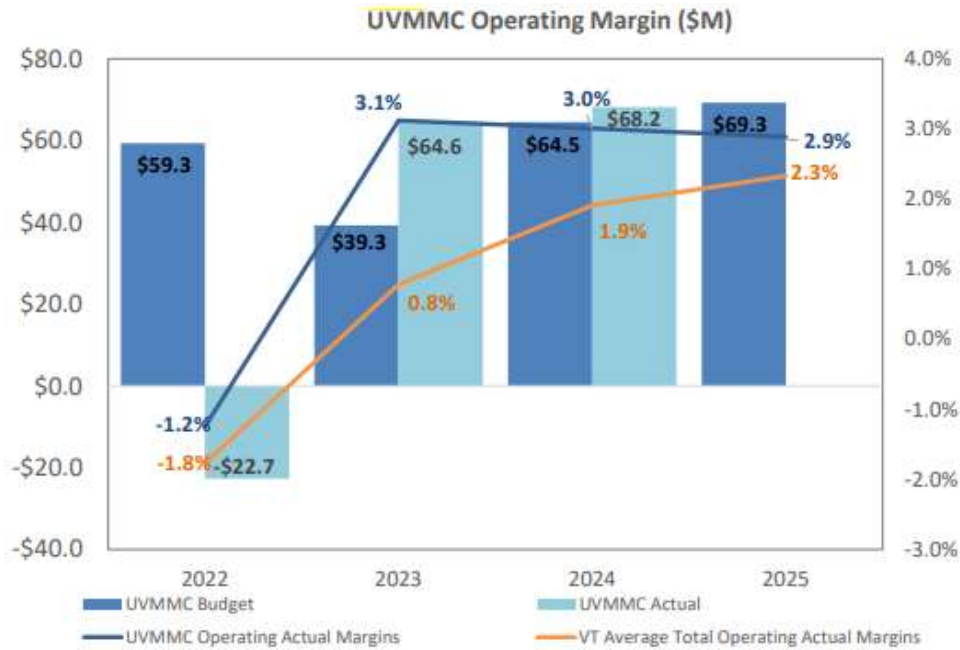
22. The following graphs show UVMMC’s submitted, approved, and actual NPR, operating expense, and operating margin for FY20 through FY25:



Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 121.

23. As shown above, UVMHC’s FY23 operating margin (3.1%) was greater than budgeted (2.0%). This variance amounted to approximately \$25.2 million. UVMHC Resp., 4. In FY24, UVMHC is projecting an operating margin in line with its budget due to roughly equivalent operating revenue and expense overages. *See Findings of Fact (Findings), ¶ 20, supra.*
24. UVMHC’s total margin in FY23 (5.6%) was also greater than budgeted (2.8%). Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 110. This variance amounted to approximately \$63.7 million. UVMHC Resp., 4. UVMHC attributes this variance to strong market performance within its investments that flow through non-operating revenue, along with its greater than budgeted operating margin. *Id.* UVMHC’s total margin is projected to exceed its budget in FY24 by 1.5%. Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 110.
25. The graph below compares UVMHC’s budgeted operating income to its actual (or projected, in the case of 2024) operating income, as well as UVMHC’s operating margin to the average operating margin of all Vermont hospitals. UVMHC’s operating income exceeded budget in

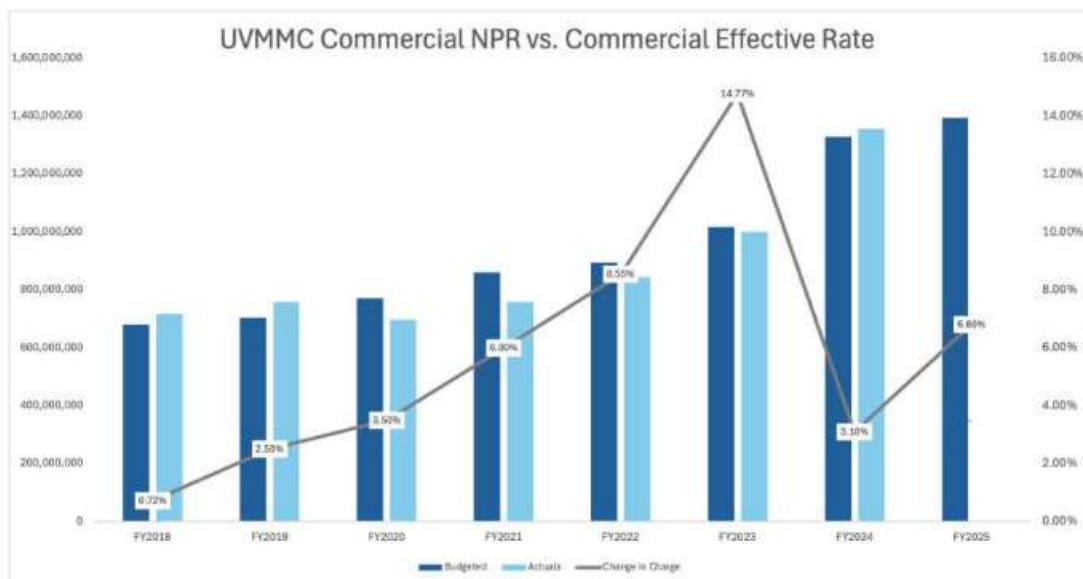
2023 and projected 2024. Operating margins for UVMHC have been higher than the state average since 2022.



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

Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 109.

26. The following graph shows UVMHC’s approved rate increases (grey line) in relation to its budgeted (dark blue bar) and actual (light blue bar) commercial NPR since FY18. These increases, including the 8.55% increase in FY22 and the 14.77% increase in FY23, contributed to the commercial NPR increases as shown.

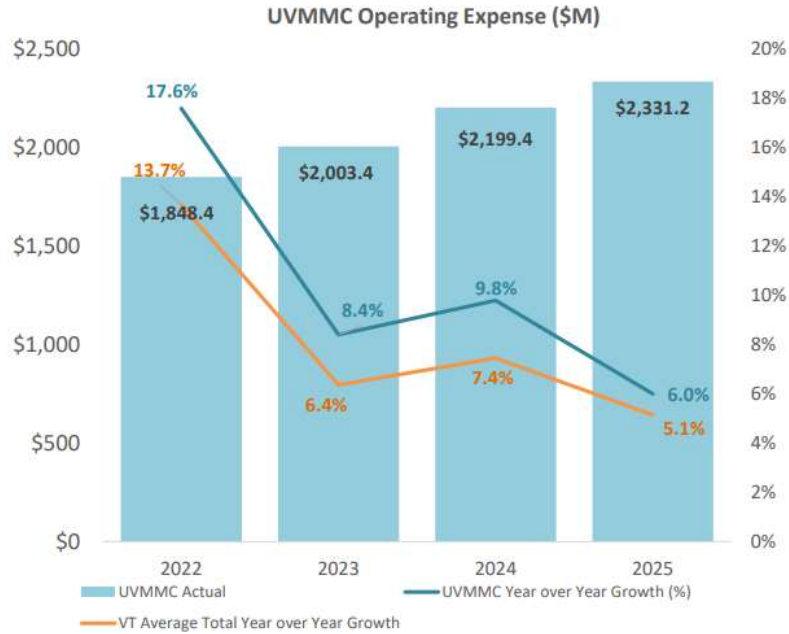


Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 106.

27. 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 Medicare payments. RAND calculates the standardized price by adjusting for case mix and other relative weights. For standardized price, higher deciles indicate commercial prices above national median, while lower deciles indicate commercial prices lower than 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. UVMHC's commercial standardized prices are very high compared to national medians, as shown below. *See* Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 116. UVMHC's outpatient service prices are in the highest decile nationally (10th decile), its inpatient service and facility prices are in the 9th decile, and its outpatient facility prices are in the 8th decile. *Id.* UVMHC's relative prices are also high, with outpatient in the 10th decile, inpatient the 6th decile, inpatient and outpatient in the 9th, and professional, inpatient facility, and outpatient facility each in the 10th deciles. *Id.*

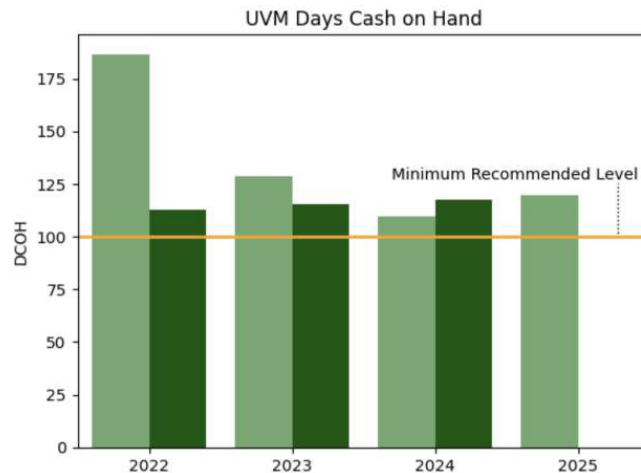
Core Service Line	Relative Price	Relative Price Decile	Standardized Price	Standardized Price Decile
Outpatient	427%	10	\$556.73	10
Inpatient	243%	6	\$31,753	9
Inpatient & Outpatient	317%	9		
Professional (Inpatient & Outpatient)	257%	10		
Inpatient Facility	246%	10	\$28,811	9
Outpatient Facility	508%	10	\$434.89	8

28. The trajectory of a hospital's operating expense growth is one method of examining operating efficiency. UVMHC's operating expenses have consistently grown at a faster rate than the Vermont average, as reflected in the following graph:



Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 107.

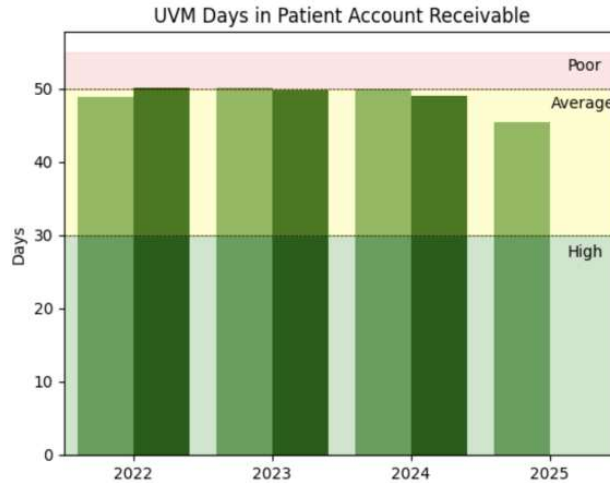
29. UVMMMC’s cumulative expense growth from FY20 to FY25 budget was the highest in the state at nearly 60%. Vermont’s second largest hospital, Rutland Regional Medical Center, had approximately half of UVMMMC’s cumulative expense growth over this period (less than 30%). *See Overview of FY25 Budget Requests, Staff Presentation (Aug. 6, 2024), 59.*
30. Days cash on hand (DCOH) is a measure of a hospital’s financial health. UVMMMC’s DCOH for FY24 is projected to be 117.7, the 5th highest among Vermont hospitals. *See Impact of FY25 Budget Requests, Staff Presentation (Sept. 4, 2024), 20.*



Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 111.

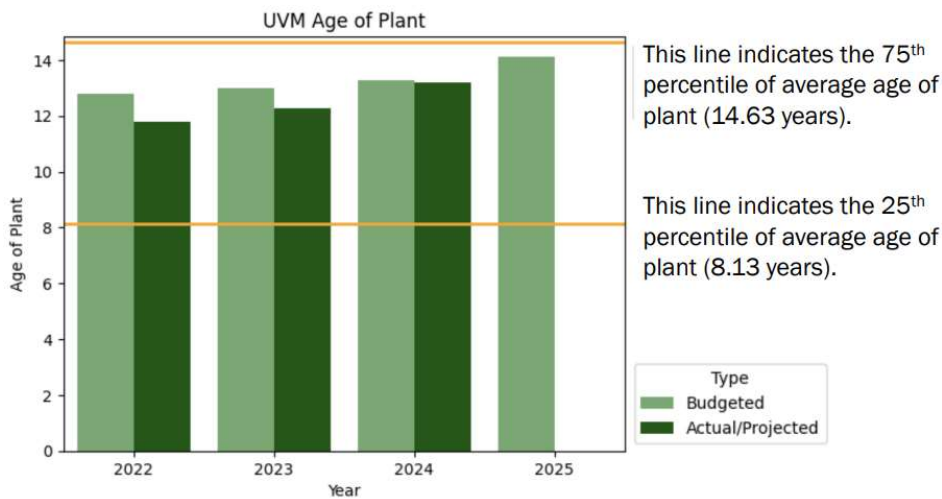
31. Days in patient accounts receivable, which reflects the average time it takes a hospital to collect revenues for patient services rendered, is relevant to analyzing a hospital’s financial health. UVMMMC’s days in patient accounts receivable has been hovering around 50 days. An

improvement in this metric is typically accompanied by an improvement in DCOH. This figure is budgeted to improve slightly in FY25.



Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 111.

32. A hospital’s ratio of current assets to current liabilities is another method of evaluating its financial health. UVMHC’s current ratio of assets to liabilities, including funded depreciation, is well above breakeven and is above the US median. Its current ratio of assets to liabilities without funded depreciation is also above breakeven and US median. Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 112.
33. Average age of plant, a ratio that measures the age of a hospital’s fixed assets, is another assessment 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. UVMHC’s average age of plant is below the 75th percentile, as shown below.



Hospital Budget Review, Staff Presentation (Sept. 9, 2024), 113.

34. Medicare Star ratings are based on safety of care delivered, the quality of care, and patient satisfaction surveys. Testimony of Stephen Leffler, Hearing Tr. (Aug. 28, 2024), 186:16-188:16. UVMMC previously received 5-star ratings, however its rating dropped in July 2024 to 4 stars. *Id.* UVMMC believes its rating could stay at 4 stars for some time. *Id.*
35. UVMMC was penalized by Medicare due to quality and safety issues, specifically the level of hospital acquired conditions (HAC) experienced by UVMMC patients around 2021-2022. *See* Testimony of Stephen Leffler, Hearing Tr. (Aug. 28, 2024), 175:22-177:15. UVMMC described its current performance as variable and mixed. *Id.* at 179:1-25.
36. Under Medicare’s Hospital Acquired Condition Reduction Program, payments are reduced for “hospitals with a Total HAC score greater than the 75th percentile of all Total HAC scores (that is, the worst-performing quartile) by 1 percent.” *See* UVMMC Post-Hearing Response: CMS Program Performance (Sept. 6, 2024). UVMMC’s HAC performance for January 1, 2021, through December 31, 2023, was in the worst quartile nationally, which exceeded penalty thresholds by a large margin and thus made UVMMC subject to payment reduction. *Id.* For the performance period of January 1, 2021, through December 31, 2022, the threshold for a HAC penalty (the bottom quartile nationally) was .3751. UVMMC had a total HAC score of .7253. *Id.* For the performance period of July 1, 2021, through December 31, 2023, the threshold for a HAC penalty (the bottom quartile nationally) was .3661. UVMMC had a total HAC score of .9255. *Id.* UVMMC’s quality and safety performance will result in CMS downwardly adjusting payments to UVMMC in FY25. *Id.*
37. UVMMC was additionally penalized under CMS’s Hospital Value-Based Purchasing (VBP) Program, pursuant to which hospitals may be rewarded or penalized based on quality of care provided. *Id.* For FY24, UVMMC had a *negative* adjustment to its Medicare DRG payments because of its prior performance under this quality program. *Id.* UVMMC had a score of 19.417, the state had a score of 25.75, and the national score was 22.597. *Id.*
38. The Leapfrog Group is a paid quality and safety survey that UVMMC does not participate in. UVMMC received a “B” grade from Leapfrog in 2023 but was downgraded to a “C” in spring 2024. *See* Testimony of Stephen Leffler, Hearing Tr. (Aug 28, 2024), 189:1-12.⁴
39. In FY22 UVMMC was owed approximately \$48 million from related hospitals, and as of September 30, 2023, UVMMC was owed \$87 million from other network hospitals—including large sums from New York hospitals owned by the UVMHN. *See* Testimony of Rick Vincent, Hearing Tr. (Aug. 28, 2024), 156:19-157:6. Champlain Valley Physicians Hospital, based in Plattsburgh, NY, owed UVMMC approximately \$29 million as of September 2022, which swelled to \$60 million as of September 2023. *Id.* at 157:17-19. UVMMC’s provision of financial support to New York hospitals is significant and as to CVPH includes approximately \$10 million for shared services, \$30 million in pharmacy expenses, and \$20 million for physician salaries and fringe benefits. *See* UVMMC Post-Hearing Resp. (Sept. 6, 2024), 12.
40. In FY22, UVMMC’s “commitment payment” to the University of Vermont Medical School was \$59.6 million, which increased to \$77.5 million in FY23. *See* Testimony of Rick Vincent,

⁴ *See also* [The University of Vermont Medical Center - VT - Hospital Safety Grade](#).

Hearing Tr. (Aug. 28, 2024), 152:1-153:25. In FY23 UVMHC's total support for the University of Vermont Medical School exceeded \$90 million when including the commitment payment, an academic support payment, a dean's tax, and an additional dean's tax. *See* UVMHC FY23 Audited Financials, 56-57.⁵

41. 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.
42. 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.
43. 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.
44. 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).⁶ VEHI rate increases will impact homeowners in the form of property tax increases across the state.⁷
45. According to the 2021 Vermont Household Health Insurance Survey, the cost of health insurance is the most common reason for a gap in coverage.⁸ 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.⁹
46. 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.
47. 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;¹⁰ *In re Blue Cross and Blue Shield of Vermont 2025 Small Group and Individual*

⁵ Available at <https://gmcboard.vermont.gov/node/11013>.

⁶ Vermont Education Health Initiative (VEHI), [VEHI FY 25 Health Rates Approved for Website.pdf](#).

⁷ *See* 16 V.S.A. §§ 4025(a)(1), 4025(b).

⁸ *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>.

⁹ *Id.*

¹⁰ Available at <https://gmcboard.vermont.gov/node/11071>

Market Rate Filings, GMCB-003-24rr and GMCB-004-24rr, Decision and Order (Aug. 12, 2024), Findings of Fact, ¶ 59.

48. 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 Overview of FY25 Budget Requests*, Staff Presentation (Aug. 6, 2024), 6. Employer-based insurance premiums are also growing faster than the national average. *See id.* at 9.
49. 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 Request*, Staff Presentation (Aug. 6, 2024), 11-12.
50. 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.

CONCLUSIONS OF LAW

First, we reject UVMMC’s request for a retroactive adjustment to its FY23 budget. In support of its request, UVMMC 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.” UVMMC Resp., 7-8.

We are unpersuaded by UVMMC’s 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” UVMMC has identified relates to the establishment of future budgets and the Board’s measurement of permissible NPR growth. However, UVMMC’s FY24 NPR was established in relation to its FY22 actuals and its FY25 NPR was established in relation to its approved FY24 NPR. *See Findings*, ¶ 3. UVMMC has not met its burden of demonstrating that a retroactive adjustment to its FY23 budget is necessary or appropriate. *See GMCB Rule 3.306(a)*.

UVMMC also did not establish that the FY23 NPR overage was the result of exceptional or unforeseen circumstances. As described *infra*, much of the overage was the entirely foreseeable result of additional revenue increases due to sole community hospital status and GME payments. Moreover, UVMMC has a recent history of inaccurately budgeting government payer revenue, which suggests that it was not unforeseeable that it would again in FY23. *See Findings*, ¶ 21. UVMMC frequently overbudgets its bad debt/free care, which also foreseeably contributed to the FY23 performance. *See Findings*, ¶ 14. UVMMC also provided tens of millions of dollars to other UVMHN hospitals. *See Findings*, ¶ 39. Had it not done so, UVMMC would have had significantly higher margins than budgeted. Lastly, UVMMC affirmatively sought to increase utilization, which made it foreseeable that it may exceed its budget cap. *See UVMMC Resp.*, Exhibit E, at 2, 6-7. UVMMC’s increased utilization efforts began early in FY23 (*id.*), and unsurprisingly led to revenue significantly over budget. UVMMC had the largest or second largest volume of cases in

nine out of 12 months in FY23 (*id.* at 6); consequently, UVMMC was aware throughout FY23 that it was likely to exceed its budget. 18 V.S.A. § 9456(f) allows a hospital to address such overages, when circumstances are exceptional or unforeseen, by applying for budget adjustment. The statute does not prohibit retroactive applications, but hospitals have historically made these requests mid-year. UVMMC did not make a mid-year request. We find it reasonable to conclude that it did not do so because, at the time, it understood that it did not meet statutory criteria for budget adjustment. Such an application, if denied, may have led to mid-year enforcement action, including in the form of a mid-year reduction to UVMMC’s commercial rate.

Second, as permitted by GMCB Rule 3.401(c), we correct UVMMC’s FY23 budget deviation by reducing its rates by an amount equivalent to the full NPR variance. As described below, the factors set forth in GMCB Rule 3.401(a), as well as Vermont’s principles of healthcare reform, weigh in favor of this action.

In establishing UVMMC’s FY23 budget, the Board approved an extremely large 14.77% rate increase. Findings, ¶¶ 4, 26. Even before the increase, UVMMC’s prices were high compared to other hospitals nationally. *See* Findings, ¶ 27. While UVMMC decried the Board’s decision as “deep, arbitrary cuts” that “are a severe blow to our ability to serve our patients, improve access, and increase health equity,”¹¹ UVMMC’s performance vis-à-vis its FY23 budget demonstrates that the approved 14.77% increase was unnecessary as the hospital exceeded its budget cap by over \$80 million. *See* Findings, ¶ 5. This large commercial rate increase in FY23 has contributed to a steep rise in the patient revenue that UVMMC receives from commercial payers and has placed an unnecessarily large burden on a commercially insured population in Vermont that is struggling to afford extreme and rapidly increasing costs. *See* Findings, ¶¶ 26, 41-48.

Although correcting UVMMC’s budget deviation through an equivalent reduction in rate is appropriate, we exercise our discretion to enforce half of the overage (\$40,145,078) in FY25, which equates to a 4.4% reduction in commercial rates this year, and to enforce the second half (\$40,145,078) via a commercial rate reduction in connection with UVMMC’s FY26 budget, as permitted by GMCB Rule 3.401(d).

I. UVMMC’S ACTUAL REVENUES DIFFERED SUBSTANTIALLY FROM ITS BUDGET

UVMMC’s FY23 NPR budget cap was \$1,658,725,627. Findings, ¶ 3. UVMMC’s actual FY23 NPR was \$1,739,015,783, a variance or overage of \$80,290,156, or approximately 4.8%. Findings, ¶ 5. This overage significantly exceeds the 1.0% review threshold specified in the Board’s enforcement policy. *Id.*

UVMMC attributes much of the NPR overage to increased patient volumes and utilization. *See* Findings, ¶¶ 9, 11. However, UVMMC realized significant unbudgeted sums that were not connected to increased patient care. Specifically, UVMMC received approximately \$30.7 million more in GME revenue than it budgeted. *See* Findings, ¶¶ 11-12. UVMMC also received approximately \$9.5 million in unbudgeted Medicare reimbursements due to its receipt of SCH

¹¹ [UVM Health Network Slams Regulators Over Budget Decision | Seven Days Vermont \(sevendaysvt.com\)](https://www.sevendaysvt.com/uvmm-health-network-slams-regulators-over-budget-decision/)

status. Findings, ¶ 12. UVMMC’s other operating revenue also varied substantially from budget in connection with COVID-19 related FEMA funding of \$5.3 million. Findings, ¶ 15. None of the above-described additional revenue was demonstrated by UVMMC to relate to unplanned and/or unavoidable care.

UVMMC did not disclose these additional government funds during its FY23 budget process or during FY23.¹² This is important because UVMMC employs a “cost shift” approach to budgeting whereby it accounts for government revenue and then seeks to “shift” its outstanding budgeted expenses onto commercial payers. Findings, ¶ 8. As UVMMC concedes, had it included these additional funds in its budgeting process it would have impacted the amount it “needs to be covered by commercial.” *Id.* Similarly, had UVMMC disclosed this additional revenue, either during its hearing or through the budget amendment process, the hospital’s commercial rate request could have been denied or adjusted to alleviate unnecessary financial burden on Vermont’s commercially insured population. Indeed, UVMMC’s FY23 budget submission did not account for \$11.9 million in unbudgeted GME revenue and GMCB reduced UVMMC’s FY23 commercial rate request specifically because of this additional GME revenue. *See* UVMMC FY23 Hospital Budget Order, 9, 11.

UVMMC could have come to the Board pursuant to 18 V.S.A. § 9456(f) and requested a mid-year budget adjustment to alleviate the severe financial burden the FY23 rate increase placed on the community and to ensure compliance with its FY23 budget order. UVMMC did not avail itself of this process at that time. UVMMC’s failure to account for these additional FY23 revenue sources—either in its initial budget or through a mid-year budget adjustment request—resulted in Vermont’s commercially insured patients shouldering unwarranted and excessive costs.

II. CONSIDERATION OF PAYERS’ RESOURCES STRONGLY FAVORS ENFORCEMENT OF UVMMC’S BUDGET

Vermont’s health care affordability challenges strongly favor enforcement of UVMMC’s FY23 budget cap. UVMMC’s additional \$80 million in health care spending is an immense and unnecessary financial burden for Vermonters to bear at a time when health care costs negatively impact patient access and Vermont’s largest insurer faces the threat of insolvency. *See* Findings, ¶¶ 5, 41-48. UVMMC did not show—and given the evidence before us we cannot conclude—that Vermonters have the resources to cover this \$80 million overage. This is especially true given that UVMMC’s margin would have been far greater had it managed its expense growth and had it not spent millions of dollars supporting other hospitals in Vermont and New York. *See* Findings, ¶¶ 18, 20, 28-29, 39.

Vermonters pay some of the highest health care costs in the country, and those costs are rising faster than nearly anywhere in the country. *See* Findings, ¶¶ 41-44. UVMMC’s \$80 million surplus revenue should be used to provide rate relief to the businesses, municipalities, and individuals struggling with health care costs.

¹² UVMMC knew well before it submitted its FY23 budget that it would qualify as a SCH. *See* Post-Hearing Submission of UVM Medical Center, 1-2 (Aug. 30, 2024) (describing UVMMC’s review of Northwestern Medical Center’s cost report five months after the end of the fiscal year).

III. UVMHC HAS SIGNIFICANT ABILITY TO CONTROL REVENUE, INCLUDING BY MOVING CARE TO MORE APPROPRIATE SETTINGS AND IMPROVING POPULATION HEALTH, CONSISTENT WITH ITS OBLIGATIONS TO PROVIDE APPROPRIATE CARE

UVMHC failed to show that it was unable to limit services to comply with its FY23 order. UVMHC's average length of stay in FY23 significantly exceeded budget. UVMHC Resp., Ex. B, at 5. UVMHC owns and operates numerous, large primary care practices throughout Chittenden and Washington counties. According to UVMHC's data, those practices have low clinical efficiency and productivity as compared to the national benchmarks utilized by UVMHC. *See* UVMHC FY25 Workbook Submission, Clinical Productivity. In FY24 UVMHC implemented basic improvements to increase primary care access, including utilizing a risk adjusted panel size and implementing Fast Pass to allow patients to be seen sooner if an appointment is made available. UVMHC Follow-Up Responses (Aug. 16, 2024), 3. These strategies significantly increased access to primary care (*id.*) and UVMHC did not implement them to assist in complying with its FY23 budget.

We requested that UVMHC identify when it "applied for or learned of the potential variance/change" for each revenue and expense variance it identified. UVMHC did not provide this information. UVMHC Post-Hearing Resp. (Sept. 6, 2024), 5. Thus, UVMHC did not demonstrate that the care was necessary and unavoidable. Nonetheless, UVMHC could have complied with its budget order without limiting any care whatsoever if it had lowered prices and controlled its expenses consistent with its budget. UVMHC's commercial prices are excessively high, and the hospital has demonstrated poor cost management. *See* Findings, ¶¶ 18, 20, 22, 27-29. Indeed, UVMHC's FY23 operating expense was 4.3% over budget. *See* Findings, ¶¶ 17-18. With effective expense management, UVMHC could have reduced its high commercial prices—alleviating burden on Vermonters struggling with incredible health care cost growth—and provided the additional unbudgeted care.

Lastly, UVMHC pays the University of Vermont Medical School tens of millions of dollars annually, including in the form of a commitment payment, academic support payment, dean's tax, and an additional dean's tax. *See* Findings, ¶ 40. In FY22, UVMHC's "commitment payment" was \$59.6 million, which increased to \$77.5 million in FY23. *Id.* In FY23 UVMHC's total support for the University of Vermont Medical School exceeded \$90 million. *Id.* These increasing expenditures are relevant to assessing UVMHC's financial health and ability to control revenue and expenses to comply with its budget order. Additionally, UVMHC did not address any efforts to curb its marketing and advertising spend in FY23 for the purpose of limiting services to maintain compliance with its budget order, which, collaterally, would yield lower expenses.

IV. UVMHC'S FINANCIAL POSITION RELATIVE TO OTHER HOSPITALS AND TO THE HEALTHCARE SYSTEM AS A WHOLE STRONGLY FAVORS ENFORCEMENT

UVMHC's financial position is strong compared to other hospitals and the health care system. UVMHC's days cash on hand is projected to be 117.7 in FY24, the 5th highest among Vermont hospitals. *See* Findings, ¶ 30. Days in accounts receivable is improving and UVMHC has further room to enhance its collections. *See* Findings, ¶ 31. UVMHC's operating margins have

been higher than the state average since FY22. *See Findings, ¶ 25.* Its current assets to current liabilities, including funded depreciation, is well above breakeven and exceeds the US median. *See Findings, ¶ 32.* Its average age of plant is below the 75th percentile. *See Findings, ¶ 33.*

Moreover, UVMMC is owed large sums from other network hospitals. In FY22 UVMMC was owed approximately \$48 million from related hospitals, and as of September 2023 UVMMC was owed \$87 million from other network hospitals—including large sums from New York hospitals owned by the UVMHN. *See Findings, ¶ 39.* This amount exceeds the \$81.8 million FY23 operating expense overage that UVMMC points to in asserting that its budget order should not be enforced. Champlain Valley Physicians Hospital (CVPH) in Plattsburgh, NY, owed UVMMC approximately \$29 million as of September 2022, which swelled to \$60 million as of September 2023. *Id.* If UVMMC had not provided this additional \$31 million to CVPH, its lower expenses would have allowed it to lower its commercial prices without impacting its margin and while still providing the same care.

V. UVMMC’S PERFORMANCE UNDER PRIOR BUDGETS STRONGLY FAVORS ENFORCEMENT

UVMMC’s performance under prior budgets favors enforcement. The hospital has recently underbudgeted revenue by significant amounts. Findings, ¶¶ 5, 11-12, 15-16, 19-22. UVMMC underestimated operating revenue in FY22 and in FY23 and is currently projected to have underbudgeted operating revenue again in FY24 by 4.1% (and NPR by 2.3%). Findings, ¶¶ 19-20. UVMMC has also recently inaccurately underbudgeted its utilization and Medicare and Medicaid revenue. Findings, ¶¶ 3, 11-12, 21.

UVMMC has also had difficulty estimating or managing its expenses. UVMMC’s expense growth has significantly exceeded that of other Vermont hospitals. Findings, ¶¶ 28-29. UVMMC’s actual operating expenses have also exceeded the hospital’s approved budget every year since FY20, with a large variance in FY22 (11.2%) and sizable variances in FY23 (4.3%, equivalent to \$81.8 million) and projected for FY24 (4.0%). Findings, ¶¶ 17-18, 20, 22. UVMMC’s daily adjusted operating expenses were \$4,877 in FY22, but in August and September 2023 the hospital’s daily adjusted operating expenses were over \$5,250. UVMMC Resp., Ex. B, at 4. UVMMC’s inability to control its expense growth is long-standing and generalized, and not shown by UVMMC to tie specifically to increased utilization.

UVMMC has significantly overbudgeted bad debt/free care expenses. Findings, ¶¶ 13-14. UVMMC has likewise been unable to perform consistent with its budget for staffing and traveler costs. In FY23, UVMMC went \$43.5 million over its budget for contract staffing, and \$4.5 million over its budget on locum tenens. Findings, ¶ 18. In FY23, UVMMC’s total contract labor spend was above the 75th percentile of other academic medical centers nationally. Findings, ¶ 17. Had UVMMC better managed its workforce and traveler costs, its expenses would have performed far more consistent with its FY23 budget.

UVMMC’s operating margin exceeded budget expectations in FY23 by approximately \$25.2 million and its total margin exceeded budget expectations by approximately \$63.7 million. Findings, ¶¶ 23-24. While UVMMC’s FY24 operating margin is projected to be about the same as

budgeted due to roughly equivalent operating revenue and expense overages, its total margin is projected to exceed budget by 1.5%. *See Findings, ¶ 20.*

VI. UVMHC HAD SIGNIFICANT OPPORTUNITY TO CONTROL EXPENSES TO LOWER FINANCIAL BURDEN ON RATE PAYERS AND TO COMPLY WITH ITS BUDGET CAP

While UVMHC claims that it needed to increase expenses to provide additional care, our review of the record does not support this assertion. UVMHC could have controlled expenses in accordance with its budget. The majority of UVMHC's FY23 expense variance was due to higher than budgeted contract labor and locum tenens expenses, totaling \$48.1 million. Findings, ¶ 18. UVMHC did not demonstrate that such expenses were necessary, unavoidable, or directly tied to the increased utilization. *See Findings, ¶ 18; Post-Hearing Resp., (Sept. 6, 2024), 7.* Notably, UVMHC's contract labor spending in FY23 was above the 75th percentile of other academic medical centers nationally. *See Findings, ¶ 17.* UVMHC also has particularly low provider productivity and clinical efficiency, which indicates that the hospital has significant opportunities to manage higher volumes with existing resources, thus avoiding unnecessary additional expenses. *See FY25 Budget Order, Findings, ¶ 17.*

Moreover, UVMHC went approximately \$13.1 million over budget on purchased services (Findings, ¶ 18), used over \$30 million in support of non-Vermont hospitals (*id.*, ¶ 39), and expended considerable sums on executive compensation, including large bonuses, in FY23. UVMHC's CEO received a \$481,648 "VPP Payment" and has a current base salary plus VPP payment of \$1,836,360. UVMHC-Salary Information; UVMHC-Salary Information. At a time when UVMHC was over budget on both revenue and expenses, UVMHC and UVMHC awarded executives significant "VPP payments" in December 2023. *Id.* UVMHC could have considered its executive variable compensation as a step to improve its expense performance and compliance with GACB's FY23 budget order, again for the purpose of reducing its prices to comply with its established NPR.

VII. EVALUATION OF UVMHC'S PROCEDURAL ARGUMENTS

UVMHC makes a number of procedural arguments, including that it was deprived of due process by our contemporaneous review of potential FY23 budget enforcement and its application for FY23 budget adjustment, and that our review of its budget deviation constitutes a contested case under the Vermont Administrative Procedure Act (VAPA), requiring additional procedural safeguards such as the opportunity to conduct cross-examination. *See UVMHC Objections to Sept. 9 Deliberations (Sept. 10, 2024).* Upon review of the law and the record, we conclude that UVMHC'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. UVMHC was provided notice. *See Letter from Owen Foster to Dr. Sunil Eappen re UVMHC Budget Violation (May 30, 2024).* UVMHC had ample, and somewhat duplicative, opportunities to be heard, including in written responses to the Board's notice,¹³ via public

¹³ *See UVMHC Resp. (July 2, 2024); see also UVMHC Exhibits (July 2, 2024).*

comment throughout the Board’s deliberations, in multiple written objection letters,¹⁴ and in its own presentation on August 28, 2024, when it provided information in support of its request that its FY23 budget be adjusted upward to correspond to its deviation, in lieu of enforcement action.¹⁵ By comparison, a hospital is not entitled to an opportunity to be heard in response to its application for adjustment of its budget. 18 V.S.A. § 9456(f). When a hospital applies for budget adjustment, it is entitled to written notice from the Board detailing its findings and its determination. GMCB Rule 3.000, § 3.401. We struggle to understand what rights UVMHC believes itself to have lost having had opportunity to be heard on both its application for adjustment and the Board’s review of enforcement at its hearing, in the Board’s deliberative sessions, and in the extensive written objections and comments to which UVMHC availed itself. This is particularly confusing given UVMHC’s acknowledgement that its application for a retroactive budget adjustment might appear to be an academic exercise. *See* UVMHC Resp. (July 2, 2024). This application, materially, appears to be little more than a request that this Board not enforce its FY23 deviation.

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 UVMHC’s FY23 budget order after hospital hearings and deliberations that were not contested cases under VAPA. UVMHC 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 UVMHC to correct the deviation. This review concerns no new identifiable legal right, and UVMHC provides no explanation of any right or privilege that it believes is required by law to be determined by this Board. *See* UVMHC Objections to Sept. 9 Deliberations (Sept. 10, 2024), 3-5. UVMHC certainly does not have the legal right to deviate from our budget orders. For these reasons, we are not persuaded by UVMHC’s arguments that its due process rights have been violated or that it is entitled to the protections of a contested case under VAPA.

Based on the conclusions above, we reject UVMHC’s request for a retroactive adjustment to its FY23 budget and correct UVMHC’s FY23 NPR overage through an equivalent reduction in rate, as permitted by GMCB Rule 3.401(c). However, we choose to only enforce half, or \$40,145,078, of this total in connection with UVMHC’s FY25 budget, with the other half (\$40,145,078) to be enforced in connection with UVMHC’s FY26 budget, as permitted by GMCB Rule 3.401(d).

ORDER

UVMHC’s FY25 overall change in charge and commercial negotiated rate increase are reduced from 3.4% over current approved levels to 1.0% under (-1.0%) current approved levels, with no commercial rate increase for any payer exceeding that amount, and with a \$40,145,078

¹⁴ *See*, e.g., UVMHC Objections to Sept. 9 Deliberations (Sept. 10, 2024); Letter from Steve Leffler, President and COO, UVMHC, and Judy Peek Lee, CFO, UVMHC (Sept. 11, 2024); UVMHC Response to FY23 Enforcement (Sept. 11, 2024); UVMHC Objections to Sept. 11 Deliberations (Sept. 11, 2024); Letter from Judy Peek Lee, CFO, UVMHC (Sept. 12, 2024); UVMHC Objections to Sept. 13 Enforcement Vote (Sept. 20, 2024).

¹⁵ *See* UVMHC Budget Presentation, GMCB Hearing (Aug. 28, 2024); *see also* UVMHC Resp. (July 2, 2024), 7-8.

reduction to UVMMC’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/ Jessica Holmes)
)
s/ David Murman)

GREEN MOUNTAIN
CARE BOARD OF
VERMONT

Board Members Lunge and Walsh, dissenting.

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.