

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

**AMENDMENT #2 TO FY24 ACCOUNTABLE CARE ORGANIZATION
BUDGET ORDER**

In re: OneCare Vermont Accountable Care Organization, LLC Fiscal Year 2024)))))	Docket No. 23-001-A
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INTRODUCTION

In December 2023 the Green Mountain Care Board (GMCB or Board) voted to establish the fiscal year 2024 (FY24) budget for OneCare Vermont Accountable Care Organization, LLC (OneCare). This decision was reflected in the OneCare FY24 Vermont ACO Budget Order (Budget Order) entered on February 29, 2024.¹ Condition 17 of the Budget Order required that OneCare provide the GMCB verification that all population health payments budgeted to support primary care were reaching primary care providers. On February 13, 2024, OneCare wrote to the GMCB explaining that it would not provide the verification. In May 2024 the GMCB held a series of meetings to discuss possible enforcement of Condition 17 and other options to achieve the stated goals and purpose of this Budget Order Condition. For the reasons set forth below, the Board voted to amend the FY24 Budget Order, further ordering that OneCare contractually require its hospital providers to demonstrate how they plan to use population health payments received from OneCare to enhance primary care initiatives.

LEGAL FRAMEWORK

The GMCB is tasked with the authority of reviewing, modifying, and approving the budgets of ACOs. 18 V.S.A. § 9382(b). In its review of an ACO’s budget the Board must consider, among other factors, “the character, competence, fiscal responsibility, and soundness of the ACO and its principals” (18 V.S.A. § 9382(b)(1)(D)) and “the extent to which the ACO provides incentives for systemic health care investments to strengthen primary care, including . . . providing resources to expand capacity in existing primary care practices” (18 V.S.A. § 9382(b)(1)(G); *see also* GMCB Rule 5.000, § 5.403(a)(17)). The Board has historically promoted ACO compliance with these statutory factors through budget modification and/or express conditions of approval for a proposed budget.

Separate from its annual budget review and order, the Board may conduct an independent review of ACO performance under its budget at any time and may take any and all actions within its power to compel compliance with an established budget. GMCB Rule 5.000, § 5.407(a). Such review need not be limited to the ACO’s financial performance and may cover any requirement imposed under the ACO’s established budget. *Id.*

¹ <https://gmcboard.vermont.gov/document/fy24-onecare-vermont-budget-order>

In furtherance of its power and obligation to enforce compliance with its orders, the Board consistently conditions approval of a fiscal year budget on the requirement that the ACO abide by further orders deemed necessary to support the underlying intent of the budget order and statute. Condition 19 of the FY24 Budget Order, being consistent with this practice, provides that “[a]fter notice and an opportunity to be heard, the GMCB may make such further orders as are necessary to carry out the purposes of this Order and 18 V.S.A. § 9382.” Budget Order *at* 42.

FINDINGS

1. On December 20, 2023, the GMCB voted to approve OneCare’s proposed FY24 budget with modifications and conditions presented by GMCB staff. One such condition was that OneCare verify that payments it made for primary care were being used by hospitals to support primary care enhancement consistent with 18 V.S.A. § 9382(b)(1)(G). *See* GMCB Board Meeting Minutes (approved) (December 20, 2023); *see also* FY24 OneCare Vermont Budget Modification and Approval Staff Presentation, PowerPoint Slide 23 (December 20, 2023).²
2. This condition was codified as Condition 17 of the FY24 Budget Order, requiring OneCare to provide “verification, using a template developed by GMCB staff, with authority delegated to GMCB’s Deputy Director of Health Systems Policy, that all OneCare population health payments presented by OneCare in its FY24 budget as incentives that support primary care are reaching primary care providers.” Budget Order *at* 42.
3. This condition was premised on two conclusions. First, that \$12.8 million OneCare budgeted for investment in primary care was vital to the goal of strengthening primary care and capacity in Vermont consistent with 18 V.S.A. §9382(b)(1)(G). *See* Budget Order *at* 34, and Findings, ¶ 58. Second, that OneCare had no apparent method of ensuring that the funds paid to hospitals to enhance hospital-owned primary care practices—budgeted at approximately \$5 million, or 39% of total primary care enhancement funds—were being used by hospitals for the intended purpose of enhancing primary care. Budget Order *at* 34.
4. This condition was issued in conjunction with a separate order, codified as Condition 12, which required OneCare to reduce its budgeted operating expenses by \$957,245 and reallocate these funds to expand its population health and primary care investments, thereby bolstering this important work. Budget Order *at* 41.
5. This condition was also historically supported by the Board’s prior August 2023 findings that while primary care enhancement payments were commonly earned for performance measured at the practice level, and while hospitals commonly owned primary care practices that earned these payments, OneCare was issuing these funds to hospitals at the TIN level with no oversight to ensure the appropriate use of funds. *See* Amendment #1 to OneCare FY23 ACO Budget Order, Findings, ¶ 14.³

² <https://gmcboard.vermont.gov/document/fy24-ocv-budget-modification-and-approval-staff-presentation>

³ <https://gmcboard.vermont.gov/document/fy23-ocv-amended-budget-order>

6. In February 2024, prior to issuance of the FY24 Budget Order, GMCB staff shared a draft verification to consider feedback from OneCare. The draft verification required OneCare’s CEO or CFO to affirm to the best of their knowledge that all payments intended to support primary care were being used to support primary care and primary care transformation efforts. The draft verification required OneCare to explain its method of marking these payments on distribution and verifying consistent hospital use of these funds. *See* ACO PCP Funds Verification on Oath or Affirmation.⁴
7. OneCare responded that it would be premature to provide feedback because it had appealed a prior GMCB order requiring it to gather similar attestations from hospitals. OneCare further wrote that “since directing participating providers to expend funds in the manner contemplated by the Oath is not something the OneCare Board of Managers has felt is necessary or advisable and is not a current contractual obligation, and since OneCare is unable to attest to the use of funds by third parties over which it does not exercise such control, OneCare does not believe editing the Oath would produce the results that the GMCB would hope to see.” Memo from OneCare to GMCB (February 13, 2024).⁵
8. On February 26, 2024, GMCB staff issued the FY24 OneCare Vermont Reporting Manual (Reporting Manual), which included the Verification on Oath or Affirmation as presented to OneCare. Reporting Manual *at* 21.⁶ The Reporting Manual established a deadline of April 1, 2024, such that OneCare would include the completed and signed verification with submission of its revised budget. *Id.*
9. On February 29, 2024, the GMCB issued the OneCare FY24 Vermont ACO Budget Order. Condition 2 of this Order required OneCare to submit reports and documents in accordance with the Reporting Manual and delegated the GMCB’s Deputy Director of Health Systems Policy the authority to develop, maintain, and revise the manual within the scope of GMCB Rules 5.501 and 5.503. Budget Order *at* 38.
10. On April 2, 2024, OneCare submitted its revised budget, which did not include the Verification on Oath or Affirmation. *See* FY24 OneCare Vermont Revised Budget Submissions.⁷
11. At the Board’s meeting on April 17, 2024, OneCare presented its revised budget to the Board without reference to the Verification on Oath or Affirmation. *See* OneCare Vermont Revised FY24 Budget Presentation.⁸
12. At the Board’s meeting on May 8, 2024, GMCB staff presented concerns regarding OneCare’s revised budget and noncompliance with Condition 17 of the Budget Order. *See* OneCare Vermont Revised Budget GMCB Staff Presentation.⁹ At this meeting the Board accepted comment from OneCare, which expressed its position that it could not direct

⁴ <https://gmcboard.vermont.gov/document/fy24-onecare-vermont-attestation-pcp-funds>

⁵ <https://gmcboard.vermont.gov/document/memo-gmcb-revised-budget-and-attestation-feedback>

⁶ <https://gmcboard.vermont.gov/document/fy24-onecare-vermont-reporting-manual>

⁷ <https://gmcboard.vermont.gov/aco-oversight/FY24OneCareVermont>

⁸ <https://gmcboard.vermont.gov/document/fy24-onecare-vermont-revised-budget-presentation>

⁹ <https://gmcboard.vermont.gov/document/fy24-onecare-vermont-revised-budget-gmcb-staff-presentation-0>

hospital providers to distribute or expend these funds in a particular manner. Testimony of Aaron Perry, Chief Legal Counsel, 41:37-41:56 (May 8, 2024).

13. At this meeting the Board conferred and then voted to consider amendment to the FY24 Budget Order such that OneCare would be required to prospectively include in its contracts with hospital providers a method for tracking population health payments. A potential vote to amend OneCare’s FY24 Budget Order was noticed for May 22, 2024, and again for May 29, 2024.
14. At its meeting on May 22, 2024, the Board reviewed sample motion language from GMCB staff regarding a potential amendment requiring OneCare’s hospital contracts to track these payments and accepted comment from OneCare, which expressed its receptiveness to this concept and explained its belief that hospitals were in the best position to identify the exact use of these funds. *See* Testimony of Thomas Borys, CFO, 24:37-24:57 (“Regarding the idea of putting into contracts some sort of a tracking methodology prospectively, I understand that. I understand where it’s coming from. I just want to kind of echo the concept of asking for this information in the hospital process. I think that makes a lot of sense to me.); *see also* Testimony of Abe Berman, CEO, 26:08-26:15 (“I think doing this on a prospective basis in our contracts makes sense.”). The Board deferred action to provide OneCare the opportunity to submit an additional written response.
15. On May 24, 2024, OneCare provided a written response to the GMCB, expressing its support of the proposal that the Board require it to “prospectively add contract language in its hospital participant contracts indicating how the hospital shall use such funds and that the GMCB will subsequently monitor such usage through the hospital budget process.” *See* Letter to GMCB Re: FY24 Budget Order Modifications and FY25 Budget Guidance.¹⁰
16. At its meeting on May 29, 2024, the Board prior to its vote accepted further comment from OneCare, which expressed support of an order requiring contract language with hospitals regarding these payments. *See* Testimony of Thomas Borys, CFO, 1:31:18-1:31:26 (“We can put something in our contract that makes it clear that the hospitals are expected to be able to demonstrate this. I think that’s reasonable.”). This decision follows.

CONCLUSIONS

Condition 19 of the FY24 Budget Order provides that “[a]fter notice and an opportunity to be heard, the GMCB may make such further orders as are necessary to carry out the purposes of this Order and 18 V.S.A. § 9382.” Budget Order *at* 42. The Board has provided ample notice and opportunity for OneCare to provide comment on this matter. *See* Findings, ¶¶ 11-14.

The purpose of the verification at Condition 17 was to allow OneCare to better demonstrate the current methods it employs to verify that primary care enhancement funds paid to hospitals are used for their intended purpose. Findings, ¶¶ 3-5. As has been widely recognized, access to primary care is a critical component of a strong healthcare system and an area where Vermont continues to

¹⁰ <https://gmcboard.vermont.gov/document/letter-gmcb-re-fy24-budget-order-modifications-and-fy25-budget-guidance>

face challenges. *See generally* 2022 and 2023 GMCB Annual Reports;¹¹ GMCB Roundtable: Sustainability of Primary Care in Vermont (April 19, 2023). This Board’s prior findings confirmed that OneCare has not known the extent to which its payments to hospitals have been used to expand primary care capacity. *See* Findings, ¶ 5. The intent of the verification was to allow this Board to evaluate the need for issuing further orders to ensure that one of the ACO’s core functions—to provide incentives for systemic health care investments to strengthen and expand primary care—had its full power and intended effect. *See* 18 V.S.A. § 9382(b)(1)(G). This seemed particularly prudent given the initial \$12.8 million devoted this fiscal year to this meaningful work and given our order to reduce FY24 operating expenses by almost \$1 million to increase these payments to primary care providers. Findings, ¶ 4.

The fact that OneCare’s Board of Managers did not find it necessary or advisable to direct participating hospitals to use these payments as intended is concerning. Findings, ¶ 7. This Board is tasked with evaluating “the character, competence, fiscal responsibility, and soundness of the ACO and its principals.” 18 V.S.A. § 9382(b)(1)(D). While we make no finding that these funds have been inappropriately used by hospitals, we find it a measure of OneCare’s soundness and fiscal responsibility to ensure that payments made to third parties for a specific purpose are so used. With that consideration in mind, OneCare’s observation that there is not a current contractual obligation that hospitals demonstrate use of these funds made clear that the verification is no longer the appropriate mechanism to address this issue. Findings, ¶ 7.

We therefore conclude that this matter can best be resolved by ordering OneCare to include in its contracts with hospitals, prospectively, a requirement that hospitals demonstrate the intended use of these funds. This order is necessary to carry out the purpose of Condition 17 and to carry out this Board’s obligation to consider in its budget determination the ACO’s fiscal responsibility and the extent to which it provides incentives for systemic health care investments to strengthen primary care. 18 V.S.A. § 9382(b)(1)(D); 18 V.S.A. § 9382(b)(1)(G).

We note that while more exacting regulatory actions were available, which may have been more burdensome for OneCare to administer, OneCare’s open consideration and discussion of this amendment, and its eventual support of these new contractual requirements, provide us assurance that this amendment as ordered will be implemented in good faith and in accordance with the stated goal of increasing transparency in hospitals’ uses of these funds. *See* Findings, ¶ 14-16. While a regulated entity’s support of a proposed order is not a criterion we directly consider, engagement with the regulatory process and a willingness to consider changes to established practices can be evidence that a more restrained order will have its intended effect. We therefore find this order to be sufficient in carrying out the underlying goals of the FY24 Budget Order.

ORDER

Based on our Findings and Conclusions above, and pursuant to 18 V.S.A. § 9382 and Condition 19 of OneCare’s FY24 Budget Order, we amend the Budget Order to include a condition (Condition 20) further ordering OneCare as follows:

¹¹ <https://gmcboard.vermont.gov/publications/annual-reports>

20. In any FY25 contract with a hospital network participant receiving primary care investment funds from OneCare on behalf of a hospital-owned primary care practice, OneCare shall require that the hospital demonstrate in writing how it plans to use said funds to enhance primary care initiatives that would otherwise not be funded to the same extent. OneCare shall make any such writings from hospital network participants available to the GMCB upon request.

So ordered.

Dated: June 12, 2024 in Montpelier, Vermont.

<u>s/ Owen Foster, Chair</u>)	
)	GREEN MOUNTAIN
<u>s/ Jessica Holmes</u>)	CARE BOARD
)	OF VERMONT
<u>s/ Robin Lunge</u>)	
)	
<u>s/ David Murman</u>)	
)	
<u>s/ Thom Walsh</u>)	

Filed: June 12, 2024

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

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