Vermont Association of Hospitals and Health Systems

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October 3, 2024

Sent via e-mail

Dear Chair Foster and Members of the Green Mountain Care Board:

On behalf of all Vermont's hospitals, VAHHS requests formal clarification of the standard budget language, as adopted by the Green Mountain Care Board (GMCB) on September 13, 2024, and included in the 2025 budget orders, released October 1, 2024 (see, Order, Paragraph B, in each hospital's FY2025 Budget Decision and Order).

As currently written, setting the "change in charge" and the "commercial negotiated rate increase" to the same percentage does not tie back to the GMCB order with respect to Net Patient Revenue Growth (see Order, Paragraph A, in each hospital's FY2025 Budget Decision and Order). Although the GMCB has approved specific revenue for each organization through the NPR/FRP, those revenue levels will not be reasonably attainable if the change in charge and commercial negotiated rate increase are held to the same percentage. This issue is compounded by the recognition by the GMCB throughout the FY2025 Hospital Budget Orders that governmental payers (Medicare and Medicaid) will either provide insignificant or no increase in reimbursement in 2025, further compounding potential margin erosion. We acknowledge that the New Patient Revenue Growth is a cap per the GMCB, but the wording in Paragraph B makes reaching the Net Patient Revenue Growth benchmark an impossibility and violates the health care reform principle at 18 V.S.A. § 9371 that "the system… must enable health care professionals to provide, on a solvent basis, effective and efficient health services that are in the public interest."

The same wording was used and discussed in the FY 2024 budget process, which resulted in two appeals to the Vermont Supreme Court. Footnote 1 to the Vermont Supreme Court's Entry Order on the appeals states:

> Originally, the conditions provided: "[HOSPITAL]'s overall commercial rate increase is approved at not more than [xx]% over current approved levels, with no commercial rate increase for any payer at more than [xx]% over current approved levels." (Brackets in original.) The changes to those conditions, which the GMCB adopted, were as follows: [HOSPITAL]'s overall <u>change in charge and</u> commercial rate increases are approved at not more than [xx]% over current approved levels, with no commercial rate increase for any payer at more than [xx]% over current approved levels." (Emphasis added) (Brackets in original.) As the GMCB's attorney explained, these changes were intended only to further clarify that the Commercial Rate Cap Conditions would cap rate increases on charges to commercial payers.

The Supreme Court made the determination that concerns about Paragraph B. in the FY24 standard budget conditions had not been preserved for its review. Instead, in response to the

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FY24 budget orders with this language, hospitals and insurers negotiated the ambiguity in good faith to meet net patient revenue.

This situation is leading to extremely challenging circumstances for some hospitals where they are currently not being paid for FY25 claims, pending an agreement to terms for FY25.

This letter is not the first instance of VAHHS raising concerns about the lack of clarity pertaining to this language in Paragraph B. In VAHHS' public comment letter dated 9/12/2024, we expressed our concerns related to the deliberations specific to net patient service revenue:

> As it relates to the budget orders for FY 2025, hospitals need clarity on the total NPR being reduced and what each component is related to. For example, enforcement and the specific motion language # 1 and # 2 being made for each hospital have been comingled, making it very difficult to distinguish the impacts of each item. Historically, working to identify these NPR reductions has been an important part of understanding the dollars behind the percentages. We ask again for clarity—it is critical to understand the magnitude of these changes along with possible implications of these adjustments.

Contained in that same letter was the request to adopt financial terms aligned with industry standards.

> GMCB needs to improve definitions that utilize health care finance terms not ones that are developed to meet the regulatory process. By way of example, hospitals have one chargemaster. Hospitals charge all payers and patients the same for each chargemaster item(s) or service(s) it would be illegal to do otherwise. There is a difference in the amount collected by each payer, but there is no "commercial rate."

In addition to VAHHS' arguments on this point, we also point you to the Addendum to this letter, which provides some examples of when hospitals raised this issue during the FY2025 hearings and deliberations.

To help Vermont's hospitals complete their negotiations with commercial payers in a way where they have an opportunity to reach the approved cap for net patient revenue, VAHHS respectfully requests this issue be addressed as soon as possible through the following amendment to Paragraph B:

> B. [Hospital]'s ~~overall change in charge and~~ commercial negotiated rate increase is approved at not more than [X]% over current approved levels, with no commercial negotiated rate increase for any payer at more than [X]% over current approved levels. The commercial negotiated rate increase overall or with respect to any payer may be less than [X]% as negotiated between the hospital and payer.

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Thank you for your attention to this matter. Please feel free to contact me for further discussion.

Sincerely,

Michael Del Trecco
President and CEO
Vermont Association of Hospitals and Health Systems

Cc: Shireen Hart
Mark Hengstler

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ADDENDUM

Mt. Ascutney Hospital and Health Center

Public Comment - MAHHC Hospital Budget Recommendation Objections - 09.08.2024.pdf (vermont.gov)

> In addition to the NPR rate, we noticed an omission in our motion slide. On item #2, the commercial negotiated rate growth capped is listed as 2.2%. That is the correct net rate growth, per our submitted budget. There is no mention of the gross charges rate increase we have requested of 3.5%. I do see that mentioned in the other hospital motions and we would like that memorialized in the motion. It does not change the negotiated rate growth cap or our correct NPR and Operating Margin.
>
> **Therefore, we request that the following changes be made to the language pertaining to our budget submission:**
>
> *** * ***
>
> **2. Update motion item #2 to align with the other hospital recommendations and include the commercial change in charge of 3.5% as requested.**
>
> (Emphasis in original)

Northwestern Medical Center

Public Comment - NMC FY25 Budget Written Objection - 09.11.2024.pdf (vermont.gov)

> **2. Plain Error and Lack of Rationale: Review of Hospital Budget Requests & Key Metrics, Slide 30 and Draft Budget Order Conditions and deliberation on September 9, 2024**
>
> NMC objects, due to plain error, to the motion language on Slide 30 and draft budget order's generalized approval of a 3.4% change in charge and negotiated commercial rate growth cap increase, as it fails to recognize that hospitals cannot possibly predict with certainty the adjudication and ultimate reimbursement of billed claims. This blanket cap overlooks the nuances of specific payer agreements, leading to misalignment between the budget order and NMC's submitted budget.
>
> NMC provided the GMCB with suggested budget order language in a written letter dated August 8, 2024.
>
> Clear and specific language addressing payer variations is essential to allow for effective negotiations and proper financial management. There will be a prejudicial effect of failing to correct this error. Specifically, the imposition of a blanket 3.4% cap in the budget order will lead to a further reduction in NMC's net revenue, beyond the significant reductions already being proposed. Therefore, if the error is not corrected, accordingly, NMC extends this objection to being arbitrary due to the lack of rationale which results in a prejudicial effect.

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Rutland Regional Medical Center

September 10, 2024 Written Public Comment – Proposed Standard Budget Conditions (this document is identified in the list of Public Comments, https://gmcboard.vermont.gov/board/comment/previous, but the link goes to a UVMMC document. Please advise if you would like a copy of the letter for ease of reference).

1. Condition B

RRMC must emphasize the critical importance of precise language in the budget order conditions to avoid misunderstanding and ensure regulatory alignment. As RRMC has highlighted, there is a distinct difference between a change in price or charge versus commercial rate growth. These terms cannot be used interchangeably. It is crucial to define and distinguish between the two as these factors often create disconnects in financial expectations between the parties. Additionally, it is critical to isolate that this budget order condition language is only applicable to the rate and price relationship and does not include other factors that impact the commercial payers overall estimated claim experience.

To mitigate this ongoing confusion, RRMC advocates for the inclusion of specific language in the budget order conditions that specifies the impact of the GMCB approved commercial rate growth and associated NPR due to a price change, which does not include other components of commercial rate growth. Payers often calculate growth rates by factoring in utilization, new services, and shifts in payer mix, while hospitals focus on the commercial rate impact from a change in charge. This discrepancy leads to confusion, with payers interpreting rate changes as including all factors, resulting in higher estimates than those provided by hospitals. Such clarity will prevent misunderstandings between hospitals and payers and ensure that the budget orders accurately reflect each party's financial and operational realities.

Please also see the following Hearing Transcripts:
September 7, 2024, pages 234-36
September 11, 2024, pages 24-25

Springfield Hospital

Public Comment - Springfield Hospital - 09.09.2024.pdf (vermont.gov)

Regarding today's presentation and comments, we have a few questions that need clarification: 1) Slide 80: Please review the 3.5% increase shown as we do not understand what this represents. From FY18-FY24, the graph appears to

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show the change in charge (charge increase) approved. For FY25, it appears to show a different metric - commercial rate growth of 3.5%. Our "change in charge" built into our budget is 5.5% which yields 2.2% commercial rate growth. It is unclear how these two metrics align with the 3.5% stated in this graph. Please clarify. 2) Please refer to slide page 3, item 3b, FY25 Standard Budget Conditions, and note that commercial change in charge (5.5%) and negotiated rate increase (2.2%) should be differentiated in this defined condition for suggested budget language as they are not the same number and are two completely different calculations

Meeting on August 21, 2024 with GMCB's Director of Health Systems Finances and subsequent emails (September 24th – 27th between Springfield's CFO and GMCB's Director of Health Systems Finances.

University of Vermont Medical Center

UVMNH Letter to GMCB: Written Objections to September 9, 2024 Deliberations

Amendments to the GMCB's Standard Budget Conditions Raise Serious Concerns of Unintended Consequences

UVMHN objects to the following standard budget conditions and new definitions presented by the GMCB staff.

Condition 2/B

[Hospital]'s total commercial change in charge and negotiated rate increases are approved at not more than [x]% over current approved levels, with no commercial change in charge or negotiated rate increase for any payer at more than [x]% over current approved levels. ***Actual FY25 commercial growth may be less than [x]% but under no circumstance may it exceed [x]%.***

("Condition 2/B") (emphasis added). This condition was listed as condition 2 during the September 6, 2024 GMCB meeting,8 but it was listed as condition B during the September 9, 2024 GMCB meeting.9 During its meeting on September 9, the GMCB discussed amending this condition to remove a reference to "commercial change in charge" (because a hospital has only one charge master rather than separate charge lists for each line of business) and refer instead to "total commercial charge and commercial negotiated rate increases."

Condition 3

The following condition ("Condition 3") was not introduced during the September 6, 2024 GMCB meeting, but it was included as condition 3 in the slides for the September 9, 2024 GMCB meeting.10

The commercial rate increase cap in Paragraph B is a maximum and is subject to negotiation between [Hospital] and commercial insurers. [Hospital] shall not represent the maximum commercial rate increase approved by the GMCB in Paragraph B or the expected commercial NPR based on that rate increase as the

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amounts set or guaranteed by the GMCB in the hospital's negotiations with insurers."

The rationale for including it in this year's standard conditions was that it had been included in prior years' budget orders, including FY24.

The GMCB presented a slide at the September 9 meeting to show how the standard conditions proposed for FY25 differed from those included in the FY24 budget orders.11
However, that slide did not highlight the last sentence of Condition 2/B (bolded above), which raises matters of concern and, as explained below, makes the proposed condition materially different from that adopted in FY24. First, this sentence refers to "actual commercial growth" without defining that term. Second, in FY24, this sentence read: "[t]he commercial rate increase overall or with respect to any payer may be less than [x]% as negotiated between the hospital and payer." Third, this sentence (taken together with new definitions that GMCB staff presented during the September 6 meeting, which appear in both Conditions 2/B and C), blurs the line between regulated rate and regulated revenue, as those terms pertain to commercial payers. This blurring creates ambiguity such that FY25 negotiations with Vermont commercial payers would be impossible.

New Definitions
The new definitions the GMCB staff presented at the September 6 meeting in slide 19 include the following:

• **Commercial Effective Rate:** Growth in commercial net patient revenue, inclusive of price and volume.
• **Commercial Negotiated Rate:** Growth in the commercial net patient revenue, due to price only (See Rate Decomposition Workbook).12

UVMHN objects to these definitions because they improperly blur the distinction between rate and revenue. "Commercial effective rate" represents the aggregate of the service/item prices we must negotiate with payers to achieve the budgeted, aggregate NPR target. The effective rate does not translate to a specific amount of revenue growth for each payer, as patient volumes during the fiscal year might vary from previous years, especially if UVMHN works to increase access. Similarly, "negotiated rates" are the service/item prices UVMHN sets with the payer. None of UVMHN's contracts with commercial payers include a specific net revenue cap.

If the GMCB's standard Condition 2/B utilizes the above definitions (which are taken from a source with which UVMHN is not familiar and has not had the opportunity to evaluate), it is not clear what the GMCB intends to accomplish.

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We are concerned that, without clarity, neither payers nor hospitals will understand how to implement this requirement, leading to confusion and unintended consequences.