Rutland Regional Medical Center
160 Allen Street, Rutland, VT 05701 | 802.775.7111 | www.RRMC.org

Legal Department

Mitchell E. Baroody, JD, MHA
VP, Chief Legal Officer
Admitted in VT, NY, TN, & D.C.
mebaroody@rrmc.org
P 802.747.1630 | **C** 802.855.0732

September 13, 2024

Mr. Mark Hengstler, Esq.
Staff Attorney
Green Mountain Care Board
144 State Street
Montpelier, Vermont 05602

Subj: Continued objections to the September 6, 2024 and September 11, 2024 Deliberations

Dear Mark:

Rutland Regional Medical Center ("RRMC") respectfully submits these objections in order to preserve our right to appeal, for the purposes of alerting the GMCB and the public to critical aspects of this process are deficient, lacking supporting evidence, lacking rationale, lacking notice in parts, and are arbitrary and capricious. We implore members of the GMCB to take these objections seriously, to pause and review the substance of these objections, to review the impact summary thoughtfully, and to make a decision that is not political but in the best interest of our patients.

We now restate the previous objections on the record, stated in the September 10th Objections, with modifications, as listed, to these objections:

I. **Lack of Notice, Fairness, and Arbitrary and Capricious nature of the Request: September 6, 2024 Request for Clinical Productivity Data and any decision due to not furnishing this data before the vote on September 13, 2024.**

II. **Insufficient Rationale and Lack of Evidence: *Review of Hospital Budget Requests & Key Metrics (Part 1)*, Slide 87 –- "Suggested Motion Language" and extended to Slide 9- FY25 Hospital Budget Review- Deliberations from September 11, 2024.**

III. **Error: *Review of Hospital Budget Requests & Key Metrics (Part 1)*, Slide 88 – "Enforcement" from September 6, 2024, related deliberations and action**
RRMC requests that the referenced slide presentation be amended and reposted to reflect the correct numerical values and that staff confirm all calculations made, that may be derived from the stated values, are correct. RRMC also clarifies that "Error" is not the assertion of the "Plain Error" standard but providing the board notice that RRMC is asserting an error that is prejudicial.

IV. **Insufficient rationale, insufficient explanation, lack of opportunity to respond to rationale, lack of factual basis on the record: *Review of Hospital Budget Requests & Key Metrics (Part 1) #1*, Slide 90 – Motion Language – "Enforcement", and is extended to the deliberations and proposed but tabled motion to deny RRMC's request for a retroactive budget adjustment and rebase (slide deck not available to cite for modified September 11, 2024 presentation).**

V. Error, Lack of Notice, Insufficient Explanation, and now includes Arbitrary and Capricious: *Review of Hospital Budget Requests & Key Metrics (Part 1)*, Slides 88-90 - "Enforcement", and is now extended to the approved but tabled motions on September 11, 2024 (slide deck not available to cite for modified September 11, 2024 presentation).

We expand this objection to also including the tabled motion for enforcement of RRMC's budget since it does not account for the measurement across the 8.6% aggregate growth cap. RRMC now includes Arbitrary and Capricious specifically because there is a clear record related to the institution of the 8.6% growth measurement over two years, which is favorable to RRMC and could prevent enforcement. However, the GMCB refuses to review RRMC's budget based upon this principle and now proceeds towards enforcement with complete disregard for its previous set standard to RRMC's detriment in a manner that is arbitrary and capricious. RRMC also clarifies that "Error" is not the assertion of the "Plain Error" standard but providing the board notice that RRMC is asserting an error that is prejudicial.

VI. Insufficient Explanation and lack of factual basis: *Review of Hospital Budget Requests & Key Metrics (Part 1)*, Slide 90 – #2, and is extended to the deliberations and September 11, 2024 Slide 25 of *FY25 Hospital Budget Review – Deliberations* as follows:

The GMCB modified the draft Slide 90 language on September 11, 2024 to now be –0.4% instead of –0.8%. We still object to –0.4% since there remains an insufficient explanation and factual basis.

VII. Error, Lack of Rationale, and Arbitrary and Capricious: *Review of Hospital Budget Requests & Key Metrics (Part 1*), Slide 87 and Draft Budget Order Conditions and deliberation on September 6, 2024 and is now extended to the approved motion on September 11, 2024 via Slide 25 of *FY25 Hospital Budget Review – Deliberations*.

RRMC asserts error, with clarity that the prior objection was not in "Plain Error" but to place the board on notice that it has made an error in setting the rate cap ("not to exceed") at 2.8%, which directly results in a $312,817 loss and contradicts the staff's own projections from September 4, 2024. The GMCB has neither acknowledged nor examined the impact of this error on negotiations, particularly its harmful effects on RRMC. This oversight is prejudicial, not harmless, and without correction, the decision lacks a clear rationale. RRMC has not been given the opportunity to address the rationale behind the rate cap, which disregards aggregate negotiation rates, due, in part, to the GMCB's failure to explain the rationale other than stating that this is what occurred in a previous year. RRMC requests a modification in its rate cap to 3.05%, from 2.8%, to allow for fair negotiations consistent with its budget. Failure to correct this error constitutes an arbitrary and capricious decision. We incorporate the further arguments by reference as stated in New Objections III. (1) as it relates to the standard budget condition (B), as this argument is also applicable to the foregoing specific rate cap mentioned in this objection.

VIII. In-excess of statutory authority under 18 V.S.A § 9371 *Principles for health care reform*, 18 V.S.A. § 9375 Duties: *Review of Hospital Budget Requests & Key Metrics* Slide 87, 89, and 90, related deliberations as well as Slides 11, and 25 of *FY25 Hospital Budget Review – Deliberations* and now extends to related deliberations, motions, and votes on September 11, 2024 related to RRMC's budget and enforcement

IX. Insufficient Rationale: *Impact of FY25 Budget Requests & Summary of Staff Recommendations*, Slide 35 - RRMC Row, Columns – "NPR Rec $, NPR Rec vs. Requested, NPR Rec vs. Guidance, NPR Rec vs. Projected", related deliberations and action

X. Reservation of Rights: RRMC maintains its previous objection and now extends its reservation of rights and general objection to now include the contested case requirements under the Vermont Administrative Procedures Act pursuant to 3 V.S.A. Section 801(2) and accompanying statutory provisions in this chapter.

Since the enforcement action against RRMC is a contested case, the requirements under VAPA must be followed. Had these requirements been followed, many of these objections could have been made in the appropriate proceeding. By not following VAPA, RRMC was deprived of due process.

<u>Now, RRMC presents additional objections from the September 11, 2024 hearing:</u>

I. Arbitrary and Capricious: September 11, 2024 RRMC Deliberation on Enforcement.

We object since the decision to enforce RRMC while choosing not to enforce Porter is arbitrary and capricious. RRMC is not advocating for different action by the GMCB against Porter, to be clear. However, RRMC merely advocates for consistent application of the Chair's rationale related to non-enforcement, namely on the basis of financial position, volume, and pricing and objections due to the Arbitrary and Capricious nature of the application of this rationale.

First, the rationale for leniency towards Porter was not applied consistently to RRMC, on the record, related to pricing.

Vermont Hospital Prices

Hospital	IP Standardized Price	IP Standardized Price Decile	OP Standardized Price	OP Standardized Price Decile
Brattleboro	$19,264	3	$456.48	8
Copley	$16,127	2	$314.51	6
CVMC	$19,902	4	$419.26	7
Gifford	$22,530	5	$544.04	9
Grace Cottage			$547.50	9
Mt. Ascutney	$42,223	10	$543.10	9
North Country	$26,877	8	$605.88	10
Northeastern VT	$25,134	7	$522.44	8
Northwestern	$16,572	2	$307.97	5
Porter	$21,403	4	$423.38	7
Rutland	$24,645	6	$399.37	6
Southwestern VT	$23,165	6	$438.21	8
Springfield	$14,290	1	$374.38	6
UVM	$31,753	9	$556.73	10

- **Outpatient Pricing**: RRMC's outpatient standardized price is $399.37, while Porter's is $423.38. Outpatient services form a sizable portion of healthcare provided by RRMC, and are much of the increased utilization. While the Chair based his recommendation not to enforce Porter's 2023 NPR overrun on the fact that "Porter's prices are quite a bit lower," this same rationale was not afforded to RRMC. RRMC is even lower than Porter. In fact, RRMC is the 4th lowest Outpatient provider in the state pursuant to the above data.

- **Inpatient Pricing**: While RRMC's inpatient standardized price is $24,645 (6th decile), and Porter's is $21,403 (4th decile), it is important to recognize that inpatient pricing is only one part of the picture. When benchmarking hospitals, it is critical to understand the specific services they offer. When reviewing the inpatient pricing for RRMC, there are several unique services that must be considered. RRMC's inpatient pricing includes psychiatric inpatient services, where patients have long length of stays, driving the cost per discharge upward. RRMC's oncology program together with its "Medical Oncology" inpatient unit bear exorbitant costs related to high-cost oncology pharmaceuticals. Finally, 8% of inpatient volume is driven by "custodial" patients who do not meet medical necessity, have long lengths of stay, and result in minimal to no reimbursement for RRMC.

Second, the financial and operational disparities between the hospitals must be considered in the proper context**.**

As for operating margin, Porter's FY2024 projected operating margin is 4%, while RRMC's projected operating margin was only 2.0%. Despite the lower operating margin, RRMC has still been committed to cutting costs and providing critical services for our community. Moreover, RRMC has implemented $3.8 million in cost-saving measures in Budget FY2025 and $10.7 million since FY2022. These budget reductions resulted in a lower cost per discharge by approximately $1,170. Concurrently, Rutland has expanded critical services such as the Infusion Center and Mobile MRI to meet increased patient demand, particularly from outside its service area. These initiatives directly address the increased volume and financial stability challenges that the Board is weighing across all hospitals. RRMC has taken proactive steps toward financial responsibility, stability, and cost control, which should be acknowledged.

Third, patient volume and demand growth justify RRMC's higher NPR growth rate.

RRMC is experiencing increased patient volume and demand from outside its service area, further necessitating a higher NPR growth rate. Enforcing conditions on RRMC while allowing leniency to others, does not align with the strategic goals and statutory requirements of the board of improving healthcare access and affordability. RRMC should receive the leniency extended to others because it has effectively managed the health needs of an increasing volume of individuals, while still being diligent in cutting costs.

Finally, the exercise of discretion in this case is arbitrary and capricious.

While the Chair emphasized the Board's discretion in choosing not to enforce a budget reduction for one hospital, that same discretion must be applied fairly, equitably, and consistently to RRMC given the criteria relied upon by the Chair. RRMC objects and respectfully requests that the Board reconsider its draft motion to enforce RRMC's budget and chooses to not enforce RRMC in the same manner it has applied to others on September 11, 2024. RRMC has shown strong financial stewardship, increasing patient demand, and competitive pricing in outpatient services and has concurrently responded to the needs of our community by opening access to improve patient wait times.

II. Arbitrary and Capricious, Lack of Explanation and Rationale, and a Lack of Opportunity to respond: September 11, 2024 decision to reduce RRMC's commercial growth rate from 6.1% to 5% while capping RRMC commercial negotiated rate at 2.8%, also seen in Slide 9 of the *FY25 Hospital Budget Review – Deliberations- Objection and request for reconsideration*

We object since the GMCB failed in its additional presentation on September 11, 2024 to provide any rationale or relevant evidence to support why they chose to reduce RRMC's budget request from 6.1% to 5.0%, leaving RRMC without an opportunity to respond to a rationale related to this decision.

Furthermore, the decision to reduce RRMC's NPR growth rate from 6.1% to 5%, while capping the commercial negotiated rate at 2.8%, is arbitrary and capricious. The GMCB has offered no evidence or rationale to support this reduction, particularly considering the substantial evidence RRMC presented for the 6.1% growth rate.

RRMC's 6.1% growth rate request is well-founded, backed by a 4.3% increase in net revenue tied to improved access and service expansions, including an enhanced Infusion Center, Mobile MRI, and increased operating room days. These initiatives are vital for meeting patient demand, reducing wait times, and improving overall access to care—particularly in a rural setting where timely care is crucial. RRMC's plans are designed to ensure 50% of imaging visits are scheduled within two weeks and are aligned with broader health equity goals. The GMCB has expressed its interest in wait times, and RRMC is delivering. Yet, this unfounded reduction will jeopardize these efforts.

Financially, RRMC is also absorbing a $2 million shortfall due to inflation while maintaining affordability and resilience through $3.8 million in cost-saving measures, including optimized staffing and integrated nursing units. The Board mentioned how impressed it was with other hospitals on September 11, 2024 related to cost savings measures, but failed to acknowledge that RRMC is a leader in these initiatives. Furthermore, RRMC attracts patients from outside its service area, with non-Rutland gross charges expected to increase from $126.6 million in FY2024 to $150.5 million in FY2025. This clearly demonstrates that RRMC is providing high-quality care that extends beyond its immediate geographic boundaries and warrants the NPR we requested.

RRMC's commercial rate growth is already below the GMCB's 3.4% benchmark, at 2.8%. Despite this, the GMCB's decision to reduce the requested NPR growth to 5% and cap the commercial rate at 2.8% without an opportunity to review the evidence, rationale, and justification for this decision, unjustly penalizes RRMC for its efforts to improve access, maintain quality care, and manage financial pressures. This is ultimately what the effect of the decision is to the very patients who are choosing to come to RRMC. We implore you to further review the impact summary furnished on September 10, 2024, under confidentiality, where the evidence is clear as to how this will create a negative impact for our community. The evidence supports RRMC's request for a 6.1% increase in NPR. By disregarding and failing to acknowledge this evidence, the GMCB undermines both its statutory obligations and the hospital's ability to serve its community effectively. Approving the 6.1% NPR growth ensures RRMC can continue providing high-quality, accessible care, while remaining financially sustainable, reducing wait times, and providing services that meet the needs of our patients. Therefore we object and request reconsideration of this decision.

III. Error, lacks sufficient explanation, and is Arbitrary and Capricious: Standard Budget Conditions

We object since these proposed conditions are clearly erroneous, lack sufficient explanation and rationale, and are arbitrary and capricious, resulting in a prejudicial effect upon RRMC.

1. Condition B – Commercial Charge Cap & Negotiated Rate Increases

RRMC objects to Condition B because it lacks any meaningful explanation for capping the change in charge and negotiated commercial rate and is clearly an error due to the prejudicial effect this condition causes on RRMC and other hospitals. To continue without correction is arbitrary and capricious.

The imposition of a uniform cap disregards individual payer negotiations, resulting in an arbitrary limitation that conflicts with the statutory requirement to ensure financial sustainability for hospitals. We 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.

Lastly, a generalized approval, such as a 2.8% approved change in charge and negotiated commercial rate increase for any payer, would overlook variations among individual payers. The budget order should incorporate a "not to exceed" commercial rate growth, with a maximum of 3.05% in RRMC's case, as that is the highest rate impact due to a change in charge for one specific payer *(See table below)*. The budget order as written, capped at 2.8% is not in alignment with RRMC's submitted budget. GMCB's approved NPR condition would prevent the hospital from implementing a blanket 3.05% commercial rate with all payers, as the hospital is held to the approved aggregate NPR.

	Rate	Mix	Utilization	Total
Payer 1	2.01%	0.05%	11.45%	13.52%
Payer 2	3.01%	0.03%	12.63%	15.67%
Payer 3	3.05%	0.42%	5.31%	8.77%
Payer 4	2.25%	-0.35%	-25.75%	-23.84%

2. Condition G – Payer-Specific Data Collection

Condition G imposes an undue burden on RRMC and is arbitrary in its timing and scope, rendering it impractical for immediate implementation. The requirement to implement payer-specific data collection by the start of FY 2025, with definitions provided only by October 1, 2024, fails to account for the operational realities and external dependencies involved in executing this condition. The lack of sufficient time and guidance constitutes an arbitrary imposition of regulatory requirements that do not align with hospital capabilities, particularly given the complexity of coordinating changes in workflow, staff training, and IT build.

Additionally, GMCB's failure to provide clear guidelines for the classification of Vermont-specific versus non-Vermont commercial plans introduces the risk of compliance errors, further exacerbating the arbitrary nature of this condition. RRMC requests that the GMCB provide adequate implementation time and specific, detailed guidance, or otherwise reconsider the condition as presently drafted since the current process as outlined by the GMCB is arbitrary and capricious.

3. Condition K – Six-Month Reporting

Condition K is arbitrary and redundant, as it overlaps with the reporting requirements already established under Condition H. RRMC is already mandated to submit comprehensive monthly reports, which include year-to-date operating results. The additional six-month report requirement imposes an unnecessary administrative burden without any clearly articulated benefit, making it both arbitrary and excessive. Furthermore, the GMCB's failure to explain why this additional report is required or how it adds value beyond the existing reports constitutes insufficient rationale, in violation of procedural fairness and reasoned decision-making standards.

Additionally, the condition erroneously refers to FY 2024 instead of FY 2025, further demonstrating the lack of attention to detail and care in drafting, which amplifies the arbitrary and capricious nature of the requirement.

4. Condition R – Methodology Adjustments

Condition R, as drafted, is overly broad, ambiguous in its scope and excessive in its requirement to report "any" change in methodology, regardless of materiality. Such a broad requirement imposes an undue administrative burden on RRMC, without any clear rationale for why all changes, including immaterial ones, must be reported. This condition lacks a reasoned explanation as to why materiality was not considered. Furthermore, the failure to distinguish between significant and insignificant changes constitutes an error in drafting, leading to unnecessary compliance obligations that serves no regulatory purpose, especially a purpose known on the official record. RRMC respectfully requests that the GMCB revise this condition to focus on "material changes" only, providing clear definitions to ensure compliance is manageable and aligned with the regulatory intent of monitoring significant shifts in methodology. To do otherwise is arbitrary and capricious.

We respectfully request that the GMCB revise the conditions to provide clear definitions, reasonable timelines, and flexibility in negotiations in a manner that is not overly broad, ambiguous, without explanation or rationale, not arbitrary and capricious, and does not result in a prejudicial effect on RRMC.

IV: Lack of Rationale, Insufficient Explanation, Arbitrary and Capricious: Draft motion for enforcement against RRMC presented on September 11, 2024

While RRMC objects to being enforced for its FY2023 performance and continues to object for the numerous reasons outlined throughout our objections, if the GMCB is to enforce RRMC through the proposed September 11, 2024 enforcement motions, we further object to the motions as they are written. We object due to the GMCB's failure to apply the 2-yr lookback standard, which is in error, a decision lacking clear rationale, absent a sufficient explanation, and is arbitrary and capricious. RRMC objects to the GMCB's methodology and insufficient rationale for its deviation from the 2-year lookback standard that has clearly been cited in its orders, guidance, and previous hearings. If the GMCB applied the 2-year lookback, that has been outlined and relied upon, then a 50% reduction and 2-year enforcement would align with the expected enforcement that would need to take place for FY2023.

Pursuant to the chart below and based upon RRMC's projected FY2024 performance (understanding that we have 11 months of actual FY2024 performance data) this enforcement would be approximately $1.1 million for Year 1 versus $2.7 million that has been presently proposed by the GMCB. We ask that the GMCB use two years of actual performance to consider the NPR overage and the amount that should be considered as enforcement, to do otherwise results in a prejudicial effect to RRMC through a greater payback. Please refer to the table of numerical values displayed below to determine the enforcement action using a full two-year look back and spreading the overrun over two years.

Rutland Regional Medical Center			
FY 2022 Actual NPSR/FPP	305,366,707		
FY 2024 Projection NPSR/FPP	336,891,917		
FY 2024 Projected Increase Over FY 2023	**31,525,210**		
Total Increase Over FY 2022	**31,525,210**		**10.32%**
FY 2023 Physician Transfer NPSR - Anesthesia	(883,145)		
Total Increase Net of Physician Transfer	**30,642,065**		**10.03%**
2 Year Lookback (FY 2024B to FY 2022A)			8.60%
2 Year Lookback Allowed $		26,254,993	
2 Year Lookback Overage (%)			1.43%
2 Year Lookback Overage ($)		4,387,072	
Applying the 50% GMCB Staff Methodology		2,193,536	
FY 2023 Year 1 Enforcement ($)		1,096,768	
FY 2023 Year 2 Enforcement ($)		1,096,768	
		2,193,536	

We greatly appreciate you addressing these objections and correcting the record.

Respectfully,

Mitchell E. Baroody

cc: Mr. Owen Foster, J.D., Chair