

Legal Department

September 10, 2024

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

Subj: Objections to the September 6, 2024 Deliberations

Dear Mark:

Rutland Regional Medical Center ("RRMC") respectfully submits the following objections on the record, arising from the September 4 and September 6, 2024 Green Mountain Care Board ("GMCB") deliberative hearing and presentation.

RRMC is attaching a document titled, *Impact Summary due to FY2023 Enforcement and FY25 Rate Reduction*. This document will also be incorporated by reference into several objections and is to be utilized if any question exists by the GMCB regarding the impact of the present FY2025 reductions and FY2023 enforcement. However, while this document should be on the record, it should be kept confidential. A separate confidentiality request will accompany the document.

We present the following objections for inclusion in the public record, aiming for correction and explanation in part, but also for the purpose of providing the GMCB the opportunity to respond while preserving RRMC's right to appeal.

I. Lack of Notice, Fairness, and Arbitrary Request: September 6, 2024 Request for Clinical Productivity Data and any decision made without furnishing this data before the vote on September 11, 2024.

Chair Foster requested clinical productivity data for FY2023, on the record, to assist in making a decision regarding FY2023 enforcement. The GMCB had numerous opportunities to request clinical productivity data from the original enforcement letter issued on June 5, 2024 or even the joint FY2025 budget hearing/FY2023 enforcement hearing on August 7, 2024. Request for this data could have occurred at any time prior to deliberations on September 6, 2024. However, this request was made less than 5 business days before a final enforcement vote by the GMCB.

Due to the timing of this request and the substantial burden it places on RRMC, the request has occurred in a manner without affording RRMC the opportunity to prepare and respond in a non-prejudicial manner prior to the vote on or before September 13, 2024. We object to this request for lack of notice because it was made at the last minute and in an arbitrary manner. RRMC was never informed during the nearly three-month period prior to the request that this information would be used for or against RRMC related to enforcement. Numerous facts and evidence have been provided on the record supporting RRMC's position, yet this arbitrary request has been made despite RRMC having yet to receive rationale related to the GMCB's position on the facts and evidence that was furnished. If more facts and evidence is warranted, this request should have occurred in a manner that was not prejudicial, unfair, and untimely for RRMC to adequately respond. For these reasons, we object to the request.

Furthermore, we also object should the lack of this information be used as evidence to reach a determination, on the grounds of a lack of notice, fairness, and the arbitrary manner this is being used.

II. Insufficient Rationale and Lack of Evidence: *Review of Hospital Budget Requests & Key Metrics*, Slide 87 -- “Suggested Motion Language”, related deliberations and action

RRMC objects to the approval of the motion language on Slide 87, which endorsed staff recommendations calling for a 5% NPR growth over the FY24 budget—a reduction of 1.1% from the requested 6.1%. This decision was made without any sufficient rationale or evidence provided on the record to justify the reduction. Decisions made in an arbitrary manner, without transparency or explanation, undermine the trustworthiness of the deliberative process and do not allow stakeholders to meaningfully respond or understand the basis of the decision.

To uphold principles of transparency and accountability, we respectfully request a clear articulation of the factual basis and rationale, namely, the calculation used to arrive at this recommendation for the reduction. Without it, the decision-making process lacks legitimacy and raises serious concerns about due process.

III. Plain Error: *Review of Hospital Budget Requests & Key Metrics*, Slide 88 – “Enforcement”, related deliberations and action

The GMCB’s deliberations referenced incorrect NPR+NFP figures for FY2023. The accurate figure, as documented in RRMC’s FY2023 budget order and GMCB staff summary, is \$313,970,338. The failure to correct this error could lead to a misinformed decision. We request that this error be rectified, or alternatively, that the Board provide a reasoned explanation if it disputes this figure.

Accuracy in factual determinations is critical for ensuring fairness in the Board's decision-making process. The failure to correct this plain error would undermine the credibility of subsequent actions based on incorrect data and could be 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*, Slide 90 – Motion Language – “Enforcement”, related deliberations and action

RRMC objects to the GMCB’s decision to deny its application for a retroactive budget adjustment, as deliberated on Slide 90. The decision lacked sufficient rationale, factual basis, or transparency, leaving RRMC unable to respond to the reasoning behind the denial. This raises serious concerns about the fairness of the process.

In June 2024, the Board informed RRMC of its intent to enforce the FY2023 budget. RRMC, acting in compliance with 18 V.S.A. § 9456(f), submitted a request for a retroactive adjustment. Although the Board has discretion, that discretion must be justified. The denial was issued without explanation, leaving RRMC without an opportunity to address the decision. RRMC’s July rebase application proposed a fair approach, urging the Board to assess FY2023 results based on projected figures rather than the original budget, aligning with realistic financial expectations. Notably, the actual FY2023 NPR exceeded projections by only 0.2%, which was provided in the record during the FY2024 Budget approval. Moreover, when combined with FY2024 NPR, RRMC remained within the 8.6% NPR growth cap set by the GMCB’s Budget Decision and Order.

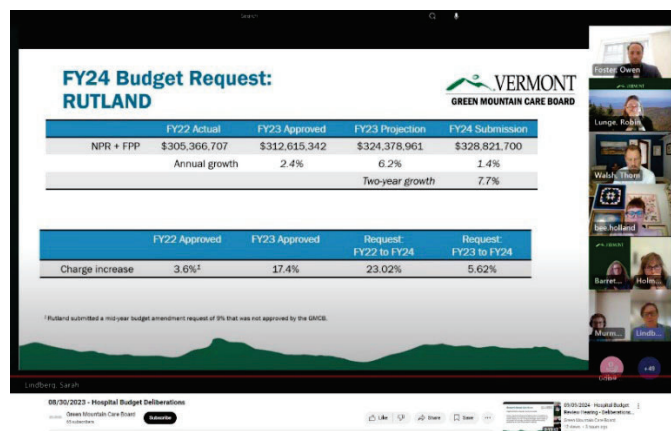
Given RRMC’s compliance and the minimal deviation from projections, enforcement action and denial of its application for retroactive adjustment is disproportionate. The Board’s decision lacks both a substantive explanation and a factual record, making it arbitrary. RRMC requests a reasoned explanation

grounded in evidence, as failure to provide such would constitute a denial of due process and leads to the conclusion that the decision and resulting consequences are based upon arbitrary rationale. RPMC urges the Board to reconsider and ensure that any actions taken are transparent, reasonable, and supported by the record.

V. Plain Error, Lack of Notice, Insufficient Explanation, and Lack of Evidence: Review of Hospital Budget Requests & Key Metrics, Slide 88-90- “Enforcement”, related deliberations and action

RPMC objects to the significant discrepancy in the interpretation of the NPR/FPP growth rates approved for FY2023 and FY24. The FY2023 Budget Decision and Order explicitly set forth that the NPR/FPP growth would be measured in the aggregate, with a growth cap of 8.6% over two years. This understanding was clearly communicated and relied upon by RPMC to build the FY2023 and FY2024 budgets.

Furthermore, during the August 30, 2023 deliberations (See screenshot below) on the FY24 Budget Request, GRCB staff introduced a two-year NPR/FPP growth calculated at 7.7%, which is below the 8.6% cap. While this lower amount still falls within acceptable limits, the Board’s acknowledgment of the “two-year growth” reinforces that the growth was intended to be measured on an aggregate basis. This intent aligns with RPMC’s interpretation and should be clarified on the record.



RPMC, in its June 12, 2024 Formal Response to the Notice of FY2023 Budget Violation, provided detailed figures that confirm the hospital’s compliance with the aggregate growth guidance. Specifically, RPMC’s FY2023 NPR growth rate was 6.44%, well below the 8.6% threshold. When combined with the FY2024 Budget, the aggregate growth from Actual FY2022 to Budget FY2024 remains below the 8.6% cap, further supporting RPMC’s compliance with the Board’s original directive and supporting a position against enforcement.

Rutland Regional Medical Center		
FY 2023 Actual NPSR/FPP	325,035,200	
FY 2022 Actual NPSR/FPP	305,366,707	
FY 2023 Increase Over FY 2022	19,668,493	6.44%
FY 2024 Budget NPSR/FPP	328,821,700	
FY 2023 Actual NPSR/FPP	325,035,200	
FY 2024 Budgeted Increase Over FY 2023	3,786,500	
Total Increase Over FY 2022	23,454,993	7.68%
FY 2023 Physician Transfer NPSR - Anesthesia	883,145	

Given these facts, the discrepancy that arose during the deliberations appears to stem from either an error or a shift in the interpretation of the growth guidelines. If this deviation from the original standard was made unintentionally, RPMC respectfully requests that the error be acknowledged and corrected. If the deviation was

intentional, it represents a significant change in the regulatory framework—one that prejudices RRMC and is both arbitrary and unsupported by the facts, any evidence, without notice, or on the record. Such a shift, particularly without notice, rationale, or an opportunity for RRMC to respond, undermines the principles of fairness and due process. RRMC relied on the Board's prior guidance when making its FY2023 and FY2024 budget submissions. The FY2023 and FY2024 guidance supersedes any other interpretation or arbitrary rule. To now enforce a different interpretation without sufficient explanation/rationale would prejudice RRMC but also diminish confidence in the consistency and transparency of the process. We therefore request that the Board clarify whether the NPR/FPP growth for FY2023 and FY2024 is indeed measured in the aggregate, as originally understood and communicated, and rectify any discrepancies accordingly. If the Board intends to enforce a different standard, RRMC should have been given proper notice and an opportunity to respond to such a shift in regulatory interpretation and thus, should not be enforced for the alleged overages in the FY2023 Budget.

VI. Insufficient Explanation and lack of factual basis: *Review of Hospital Budget Requests & Key Metrics, Slide 90 – #2, related deliberations and action*

RRMC objects to slide 90, #2 because the calculation for the reduction to -0.8% under the commercial rate cap has not been provided. Without a clear understanding of the methodology, it is impossible to assess the fairness and accuracy of the recommended language and eventual decision if based upon the recommended language. Due to the numerous calculation errors in the previous staff presentation, RRMC must ensure that plain error does not exist here either. Absent understanding the calculation, it is unknown whether there is error. Therefore, any decision made on these calculations may be based on erroneous or arbitrary calculations that create a prejudicial effect on RRMC.

VII. Plain Error and Lack of Rationale: *Review of Hospital Budget Requests & Key Metrics, Slide 87 and Draft Budget Order Conditions and deliberation on September 6, 2024*

RRMC objects, due to plain error, to the motion language on Slide 87 and draft budget order's generalized approval of a 2.8% change in charge and negotiated commercial rate cap increase, as it fails to account for variations among individual payers. This blanket cap overlooks the nuances of specific payer agreements, leading to misalignment between the budget order and RRMC's submitted budget. RRMC recommends the budget order incorporate a "not to exceed" commercial rate growth with a maximum of 3.05%, as this reflects the highest rate impact due to a change in charge for one specific payer. The current 2.8% cap impedes RRMC's ability to negotiate accurately with payers and does not reflect the reality of our financial landscape.

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 2.8% cap in the budget order will lead to a further reduction in RRMC's net revenue, beyond the significant reductions already being proposed, diverging from the projections outlined in the staff recommendations and conditions. Therefore, if the error is not corrected, accordingly, RRMC extends this objection to being arbitrary due to the lack of rationale which results in a prejudicial effect.

VIII. In-excess of statutory authority under 18 V.S.A § 9371 *Principles for health care reform*, and 18 V.S.A. § 9375 *Duties: Review of Hospital Budget Requests & Key Metrics Slide 87, 89, and 90, related deliberations and actions on September 6, 2024:*

RRMC objects to the GMCB's current motion language, and any subsequent vote to approve the current motion language that reduces RRMC's requested growth rate from 6.1% to 5% (Slide 87), that uses the GMCB's enforcement methodology that fails to account for the impact and effects of enforcement (Slide 89), and the motion language for FY2023 enforcement, including any vote to approve in its current form, which exceeds statutory authority due to the impact and effect. The proposed motions and methodology, as outlined in the slides

and discussed during RRMC's GMCB deliberation hearing, are fundamentally in conflict with the principles of health care reform enshrined in 18 V.S.A. § 9371(1) and (5), and with the duties of the GMCB under 18 V.S.A. § 9375(b)(A)(i).

The reduction of RRMC's growth rate will significantly limit access to medically necessary, high-quality care, particularly for vulnerable and rural populations in Rutland County. Furthermore, this ruling undermines the essential relationship between patients and their health care providers, a relationship which is recognized as primary in the principles of health care reform. The proposed cuts would force RRMC to significantly reduce certain services, directly impacting Vermonters' ability to select their health care provider of choice (18 V.S.A. § 9371(5)) and to receive care in a timely and appropriate setting (18 V.S.A. § 9371(1)).

Moreover, the impact and effect of the GMCB's proposed motion language conflict with its statutory duties. The Board is obligated to preserve access to high-quality care (18 V.S.A. § 9375(b)(A)(i)), yet the proposed actions would do the opposite—decreasing access, choice, and the quality of health care services for Rutland County and its extended service area. These decisions not only jeopardize RRMC's ability to meet its community's health care needs but also set a precedent that diminishes the quality and sustainability of care for all Vermonters. While the board certainly has the authority to adjust budgets and set growth, when the evidence and facts show that RRMC is meeting the needs of its community, preserving and increasing access, while providing high quality care, the effect should not be a significant budget cut that limits health care access and choice.

To further substantiate this objection, RRMC is submitting an *Impact Summary* detailing the consequences of the FY2023 Enforcement and FY25 Rate Reduction. This unredacted submission, containing trade secrets, will be provided under confidentiality and incorporated by reference into the record. RRMC urges the Board to reconsider its approach, as the current motions and methodology, if approved, would exceed statutory authority, be incongruent with the fundamental principles of health care reform, and result in substantial harm to RRMC and interference to patient access and choice for Vermonters especially those in Rutland County.

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

RRMC continues its September 5, 2024 objection due to insufficient rationale provided for the calculations presented on Slide 35. The Board's reliance on these figures, without clarifying the underlying data or assumptions, creates an opaque decision-making process. We request a full explanation to ensure that the calculations reflect accurate and relevant information. Transparency in these matters is essential for all affected parties to properly evaluate the impact of Board decisions.

X. Reservation of Rights

Rutland Regional Medical Center (RRMC) formally objects on the grounds that it has not been provided sufficient facts and rationale regarding the methodology and enforcement recommendations under consideration. Enforcement without an appropriate factual basis and reasoning appears arbitrary, particularly in light of the facts RRMC has submitted showing the impact of enforcement on the hospital and the needs of our patients. Given the significant consequences these decisions have for both the hospital and the broader Rutland County community, they must be supported by a clear, well-reasoned, and fact-based rationale. This ensures that affected parties, including RRMC, are afforded adequate notice, a rational basis, and a legitimate opportunity for a meaningful response that is thoroughly deliberated. Accordingly, RRMC submits this general reservation of rights and general objection to any further motions or orders arising from the FY2023 Budget Enforcement Motions and the FY2025 Budget Reduction Recommendations that are consistent with the current language or should any other issues arise from this language that have yet to be identified. Fairness and due process are paramount to

preserving the integrity of this regulatory process. Should the existing motions and draft budget order be approved without addressing these objections, RRMC and Rutland County will face substantial prejudicial effects. We respectfully urge the Green Mountain Care Board (GMCB) to reconsider and rectify these deficiencies.

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

Respectfully,

A handwritten signature in blue ink, appearing to read 'MEB' followed by a stylized surname, with a long horizontal flourish extending to the right.

Mitchell E. Baroody

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