

Green Mountain Care Board
144 State Street
Montpelier, VT 05602

802-828-2177
www.gmcboard.vermont.gov

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DELIVERED ELECTRONICALLY

April 16, 2018

Ms. Elina Moss Koumjian
52 Bear Hill
Brattleboro, VT 05301

RE: Docket No. GMCB-009-18con, Development of an Independent Birth Center in Southern Vermont

Dear Ms. Koumjian:

As Ms. Jerry informed you on the phone, the Green Mountain Care Board's legal counsel has revisited your request for a jurisdictional determination regarding your proposal to establish a birth center in southern Vermont. The prior determination advised you that the project was not subject to certificate of need (CON) review under 18 V.S.A. § 9435(a) which excludes "the offices of physicians, dentists, or other practitioners of the healing arts . . . in which such providers perform a range of diagnostic and treatment services usually performed by such providers on an outpatient basis"). This letter rescinds the prior determination, provides a more complete analysis of the Board's CON jurisdiction, and requests that you provide additional information before a determination can be made.

In Vermont, a health care facility may not develop a new health care project without first obtaining a CON from the Board. The jurisdictional parameters for facilities other than hospitals, such as the proposed birth center, include thresholds for capital costs, annual operating costs, and costs of equipment. 18 V.S.A. 9434(a). In addition, the law provides express exclusions from CON jurisdiction for certain projects and activities under 18 V.S.A. § 9435. As referenced above, subsection 9435(a) excludes from CON jurisdiction the offices and workspaces regularly occupied by health care providers in which they perform a range of services "usually performed by such providers on an outpatient basis." *Id.* Thus, the key inquiry is whether the range of services that will be performed at the center by its providers—certified nurse midwives—are usually performed by certified nurse midwives on an outpatient basis.

In the most general terms, midwives provide "care, support, and education to healthy women during the childbearing cycle, including normal pregnancy, labor, childbirth, and the postpartum period." 26 V.S.A. § 4181(3) (defining "midwifery"). With the exception of services associated with labor and childbirth, the range of diagnostic and treatment services performed by midwives are almost always provided on an outpatient basis, regardless of the provider type. Services associated with labor and childbirth, however, may be provided "by such providers" both on an inpatient basis (hospital or clinic) or outpatient basis (typically in the patient's home).



Based on the information provided in your letter of intent, the birth center is not excluded from CON review under subsection 9435(a). Although midwives are advocates for homebirths¹ and are specially trained to provide birthing services to healthy women in the home setting, midwives credentialed as “certified nurse midwives” (CNMs)—such as the midwives that will provide services at the proposed birth center—are advanced practice registered nurses, are regulated under Vermont’s nursing regulations, and attend to birthing mothers mainly in hospitals and hospital birthing clinics on an inpatient basis. In contrast, “licensed midwives,” are regulated under Vermont’s midwife regulations, must meet extensive credentialing requirements prescribed by the North American Registry of Midwives to become certified professional midwives (CPMs), and perform birthing services most often in the patient’s home on an outpatient basis.² See 26 V.S.A. § 1571 *et. seq.* (professional nursing statutes); 26 V.S.A. § 4181 *et. seq.* (professional midwifery statutes); see generally Department of Health, Agency of Human Services, *2016 Vermont Vital Statistics Annual Report* (March 2018) (licensed midwives performed 119 of 120 births in 2016 in home location, compared with one of 1,445 for CNMs), <http://www.healthvermont.gov/health-statistics-vital-records/vital-records-population-data/vital-statistics-reports-and-maps>.

Because the exclusion does not apply, the Board will need additional information to determine whether the proposed project is subject to CON review. Please contact Donna Jerry at (802) 828-2918 for more specific information regarding the submission of additional materials.

Sincerely,

/s/ Kevin Mullin

Kevin Mullin

Chair, Green Mountain Care Board

cc: Judy Henkin, General Counsel
Donna Jerry, Senior Health Policy Advisor
Members, Green Mountain Care Board

¹ Examples of advocacy statements in favor of homebirths can be viewed on the websites of The Midwives Alliance of North America and The Vermont Midwives Association. See, e.g., *Homebirth Position Paper*, The Midwives Alliance of North America, <https://mana.org/healthcare-policy/homebirth-position-paper>; Vermont Midwives Association, <http://www.vermontmidwivesassociation.org/>.

² The process to become a CPM lasts approximately three to five years and includes successful completion of core educational components, skills training, and experiential training to include homebirths. Additionally, a CPM candidate must sit for a national certifying exam and complete a portfolio evaluation process. *Certification*, North American Registry of Midwives, <http://narm.org/certification/>; see also *Thinking of Becoming a Midwife?*, Vermont Midwives Association, <http://www.vermontmidwivesassociation.org/prospective-midwives>.

