

# VERMONT LEGAL AID, INC.

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November 16, 2017

Green Mountain Care Board  
3rd Floor City Center  
89 Main Street  
Montpelier, VT 05620

Re: Comments on CON GMCB-001-17con – University of Vermont Medical Center’s Electronic Health Record Replacement Project

Dear Members of the Green Mountain Care Board,

The Office of the Health Care Advocate has chosen to participate in the above-captioned Certificate of Need (CON) proceedings as an interested party. We ask the Green Mountain Care Board (Board), if the Board approves the University of Vermont Medical Center’s (UVMMC) CON to implement the EPIC unified EHR, that such an approval be subject to certain conditions. These conditions should ensure that UVMMC implements and operates the proposed unified EHR in a manner that (1) ensures data integrity, (2) protects patient data, (3) includes consumer protection provisions in the contract between UVMMC and Epic, (4) protects against unanticipated costs, and (5) benefits the larger Vermont health care system. Further, we ask the Board, if the CON is approved, to reserve the right to reopen the CON and impose sanctions on UVMMC if legitimate evidence indicates a significant increase in project costs or a significant threat to data integrity or patient privacy due to project implementation.

In its application and related materials, UVMMC states that the proposed unified EHR will give patients and doctors better access to information and lead to significant cost savings, significant efficiencies, and ultimately the provision of better care. UVMMC also states that Epic will benefit UVMMC patients and staff and, through sub-licensing, potentially increase the number of patients and doctors that will benefit from the Epic EHR. We appreciate the value of these goals and ask the Board to ensure that they are realized if the CON is approved.

Lastly, we appreciate the applicant’s stated commitment to the overarching objectives of increasing access and efficiency; maintaining or improving quality of care; using HIT to improve patient care, clinical practice and information sharing; and being an active, collaborative member of Vermont’s health care system. To ensure that these laudable goals are met, we ask the Board, if the CON is approved, to apply the conditions we outline below.

### **Data Integrity**

1. UVMMC must demonstrate that auditing and data validation processes are in place to ensure that the data accuracy risks (clinical- and billing- related) attendant to having a unified EHR are sufficiently mitigated.

2. UVMMC must implement processes that ensure that accuracy issues attributable to data entry are immediately addressed either through group or one-on-one training interventions. Further, the implemented processes must enable ongoing evaluation and respond to emerging data integrity issues.
3. UVMMC should provide “super users” with training on how to effectively communicate information about technological systems and how to motivate others to use such systems in the course of the “super user” training that UVMMC proposes. In addition to supporting other staff and championing the Epic system, the “super users” should be empowered to communicate emerging Epic-related data integrity and/or security concerns to an appropriately senior UVMMC employee who has the ability to influence the Epic implementation and management.

### *Reporting*

- UVMMC must annually submit a report to the Board outlining the specific efforts undertaken to ensure clinical data integrity. This report shall include the number of any identified data errors in a given month and any adverse patient events that are, at least in part, reasonably attributable to such errors. UVMMC must provide such an annual report during project implementation and the five years following project completion.
- UVMMC must annually submit a report to the Board outlining the specific efforts undertaken to ensure billing data accuracy. This report shall include the number of identified errors in a given month and the aggregate dollar amount of erroneous claims submitted to a payer that are, at least in part, reasonably attributable to such errors. The report shall also include the aggregate amount of monies returned to consumers due to erroneous claim submissions, the average time between when UVMMC erroneously billed a patient and when monies were returned to the patient for the erroneous billing, and the amount of monies that have not yet but still need to be returned to patients. UVMMC must provide such an annual report during project implementation and the five years following project completion.

### **Data Security**

1. UVMMC must implement additional security systems and audits to protect patient data from the increased risk exposure due to a unified EHR.
2. UVMMC must commit to informing affected patients and the Board within 10 days of any data breach involving patient data. If the breach did not involve patient data, UVMMC shall notify the Board within 30 days of the breach.
3. UVMMC must commit to, in the instance of a data breach affecting patient data, providing affected patients with, at a minimum, one year of identity theft monitoring at no cost.
4. UVMMC shall not limit a patient’s right to seek civil damages related to a data breach. Further, UVMMC shall not limit the dollar amount a patient may recover, for instance, by requiring patients to enter into an agreement specifying liquidated damages for unauthorized disclosures of a patient’s health data. Lastly, UVMMC shall not limit a patient’s right to seek judicial recourse for a disclosure of a patient’s health information due to a breach, for instance, by requiring binding arbitration for patient claims related to a breach.

### *Reporting*

- UVMMC must annually submit a report to the Board outlining the specific efforts undertaken to ensure data security. This report shall include the number of data breaches in a given year. If any reported

breaches involved patient data, UVMMC shall detail how patients affected by the breach were notified and when such notification occurred. Lastly, UVMMC must detail how security protocols and/or practices were altered in light of each breach reported. UVMMC must provide such an annual report during project implementation and the five years following project completion.

### **Consumer Protection Contract Provisions**

1. UVMMC's contract with Epic must include explicit language ensuring that patient care and safety control how contract obligations are interpreted and fulfilled. We appreciate that Epic has legitimate corporate interests. However, such interests may not align with UVMMC's interests in patient care and safety. It is critical that the parties formally and explicitly commit to privileging patient care and safety when making decisions regarding the Epic implementation.

#### *Reporting*

- UVMMC shall provide the Board with the language of the specific contract provisions that explicitly commit the parties to privileging patient care and safety when making decisions regarding the Epic implementation.

### **Unanticipated Cost Protections**

1. UVMMC, Cumberland Consulting, and Epic shall commit to using their best efforts to avoid unanticipated implementation costs and expenditure of the contingency monies.
2. UVMMC shall identify future upgrade/new module costs that Epic can reasonably anticipate between project start and the proceeding three years after project completion. For instance, analytic tools for the mining of unstructured data are becoming increasingly common. This development is particularly promising for EHR systems as a large amount of clinically-relevant information is captured in narrative form. If Epic can reasonably anticipate that, for instance, a natural language analytics module will become available between project implementation and three years after project completion, then Epic must inform UVMMC of this fact and provide UVMMC with an estimate of the cost or potential cost range of such a module.
3. UVMMC shall commit to the Board that consumers will not need to bear any additional direct or indirect costs that are reasonably attributable to the project. This commitment includes not offsetting any cost overruns with increased procedure or consultation costs.

#### *Reporting*

- UVMMC shall provide the Board, in writing, confirmation that the proposed budget for the Epic implementation includes the items listed below. These items are expenses and/or additional needed services that are often overlooked by parties implementing a new unified EHR. If items listed below are not included in the proposed Epic implementation budget, UVMMC shall provide the Board, in writing, with a brief narrative explanation of why the item is not relevant to the proposed Epic implementation. The items that the budget should account for are:
  - server updates,
  - patient eligibility check services,

- e-prescribing functionality,
  - population health management quality reporting capabilities,
  - patient portals,
  - telehealth functionality,
  - clinical decision support tools,
  - integration engines to connect the EHR to labs and registries,
  - software updates and upgrades,
  - updates for Logical Observation Identifier Names and Codes and Systematized Nomenclature of Medicine,
  - IT staff overtime to maintain servers,
  - productivity losses as providers and staff learn the new EHR,
  - costs borne by patients to access their medical record.
- UVMMC shall monthly submit a report to the Board detailing any use of the project contingency fund and detail the dollar amount of each use. UVMMC must provide such reports until the project is fully implemented.

### **System Benefits**

1. UVMMC shall implement policies and processes to extract “lessons learned” from each phase of the Epic implementation and inform subsequent Epic implementation phases with such “lessons learned.”
2. UVMMC shall develop a set of “lessons learned” and/or best practices over the course of the Epic implementation. The purpose of this exercise is to generate information about the implementation of a unified EHR that other actors in the larger Vermont health care system can benefit from.
3. UVMMC shall evaluate any improvements to patient care and/or cost savings that are reasonably attributable to the unified EHR.

### *Reporting*

- UVMMC shall document emerging issues with the Epic implementation and such documents shall be used by project managers to inform subsequent phases of the Epic implementation.
- UVMMC shall, within twenty four months of completing the Epic implementation but not before complete project implementation, provide the Board with a summary of lessons learned from the Epic implementation. This document shall be made publicly available either by the Board or UVMMC.
- UVMMC shall annually submit a report to the Board documenting cost savings and patient care quality increases that are reasonably attributable to the unified EHR. UVMMC must provide such an annual report during project implementation and the five years following project completion.

Thank you for considering our comments.

Sincerely,

s\ Mike Fisher

Chief Health Care Advocate, Office of the Health Care Advocate