

THE  
**University of Vermont**  
MEDICAL CENTER

Via First Class Mail and Electronic Mail

*Office of the General Counsel*

November 21, 2017

Judy Henkin  
General Counsel  
Green Mountain Care Board  
89 Main Street, Third Floor, City Center  
Montpelier, VT 05620

*Re: Electronic Health Record Replacement Project, Certificate of Need Application  
Docket No. GMCB-001-17con*

Dear Judy:

This letter responds to the letter from the Office of the Health Care Advocate (“HCA”) dated November 16, 2017. We welcome the HCA’s participation in the CON process and appreciate the HCA’s role as the state-mandated advocate for health care consumers, but we believe the HCA’s proposed CON conditions are unnecessary, unduly burdensome, and unwarranted by any evidence on the record.<sup>1</sup> Accordingly, we respectfully request that the Green Mountain Care Board (the “Board”) not implement any of the conditions proposed by the HCA. If the Board is inclined to include any of the proposed conditions in a project CON, we would request the opportunity to review a draft CON before it is issued and provide more specific comments.

We respond more specifically to the points raised in the HCA’s letter below.

**1. Data Integrity**

The HCA has recommended a series of auditing and validation conditions regarding data entered into the unified EHR. These include conditions on training and conditions on reporting to the Board on such matters as: (1) the number of identified data entry errors in a given month, reportable for a five-year period following implementation; and (2) the number of billing errors associated with data entry errors

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<sup>1</sup> The HCA did not submit any evidence into the record in this proceeding and only asked a limited number of questions during the hearing. Nor did the experts retained by the Board recommend any of the measures now being proposed by the HCA.

and the associated dollar amounts of each such error, also reportable for a five-year period following implementation.

There is no evidentiary basis for the HCA's recommendations. The evidence demonstrates that data integrity will be *improved* by this project, not reduced, since the four participating UVM Health Network hospitals will install one instance of EHR software that will seamlessly transition relevant clinical and billing information for necessary treatment and payment activities. No longer will clinicians and administrators need to enter duplicate data into multiple inpatient and outpatient clinical and billing systems.

## **2. Data Security**

We share the HCA's concern with respect to data security and have implemented robust procedures to safeguard sensitive medical and financial information. However, the reporting requirements proposed by the HCA would duplicate existing legal requirements and are unnecessary.

Under federal law, we must report any breaches of patient information to affected patients, the U.S. Department of Health and Human Services, and local media if the breach involves more than 500 patients.<sup>2</sup> We must also take specific measures to investigate the breach, mitigate the harm to affected patients, and protect against future breaches. Finally, we must provide patients with guidance on steps they can take to protect themselves from potential harm resulting from the breach.

Under state law, we must report breaches of financial information to affected patients, the Vermont Attorney General's Office, local law enforcement, and the three major credit reporting agencies if the breach involves more than 1,000 patients.<sup>3</sup> We must also take steps to: (1) promptly secure our data following a breach; (2) provide patients with a general description of the steps we will take to protect their information from further unauthorized acquisition; and (3) inform patients on how to monitor their financial accounts for suspicious activity.

Reporting data breaches to the Board could conflict with regulatory oversight by other government agencies. For example, under the Vermont Security Breach Notice Act, a law enforcement agency may request that we delay notification of a data breach if public notification could impede an ongoing law enforcement investigation.<sup>4</sup>

The HCA has also requested that UVM Medical Center "not limit a patient's right to seek civil damages related to a data breach...and not limit the dollar amount a patient may recover, for instance, by requiring patients to enter into an agreement specifying liquidated damages for unauthorized

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<sup>2</sup> See, the HIPAA Breach Notification Rule, 45 CFR §§ 164.400 – 414

<sup>3</sup> See, the Vermont Security Breach Notice Act, 9 VSA §§ 2430 and 2435.

<sup>4</sup> 9 VSA § 2435(b)(4)(A)

disclosures of a patient's health data." There is no evidence to suggest that UVM Medical Center would seek to limit its liability to patients, and we assure the HCA that we will not.

### **3. Consumer Protection Contract Provisions**

The HCA has recommended that our contract with Epic include "specific contract provisions that explicitly commit the parties to privileging patient care and safety when making decisions regarding the Epic implementation." It is not clear what exactly the HCA has in mind, but it is clear that the HCA has not reviewed our Epic contract, which is confidential, and has no basis to conclude that the contract is deficient in any respect.

Our license agreement with Epic was entered into in 2007, when UVM Medical Center initially received CON approval for the installation of Epic in certain clinical areas. The agreement contains heavily-negotiated, industry-standard contract provisions to assure that the software operates as intended. If the project is approved, that agreement would stay in place and new modules will be added to it. We believe the existing contract provisions are reasonable and appropriate, and there will not be an opportunity to renegotiate the contract terms.

### **4. Unanticipated Cost Protections**

The HCA has proposed conditions on financial reporting that would go far beyond what is required in standard CON implementation reports for projects like this and would be unnecessary, given the independent analytical work already done by the Board's HIT consultant. Deloitte concluded, after an extensive review, that the project budget is comprehensive, accurate and complete, with appropriate protections for cost overruns. There is no evidentiary basis for the financial reporting requirements proposed by the HCA. They would result in increased burdens and costs to the applicant without any added public benefit.

### **5. System Benefits**

Finally, the HCA recommends what it calls "lessons learned" reports from each phase of the Epic implementation so that "other actors in the larger Vermont health care system can benefit from it." The reports are to be developed at regular intervals "within twenty-four months of completing the Epic implementation but not before implementation," with additional reports to be filed annually during the project's implementation and then annually for a five-year period following project completion.

While UVM Medical Center personnel routinely compare best practices with their colleagues at other hospitals in the region, the "lessons learned" reporting conditions proposed by the HCA would add internal costs, would take away from the focused effort needed to successfully implement the project, and are unnecessary.

### **Conclusion**

In conclusion, we continue to welcome the opportunity for the HCA's input and would be pleased to meet with HCA officials and explain more about the governance structure that's been put in place to

oversee project implementation, including applicable safeguards. Once the HCA learns more about our project, we would welcome additional suggestions.

However, we do not believe that any of the HCA's recommendations should be implemented by the Board for the reasons indicated above. If any of the HCA's recommendations are being considered by the Board, we would appreciate the opportunity to review draft conditions, before issued, so that we may provide advance comments.

Thank you for your attention to this letter, and we would be pleased to provide any other information required by the Board as it completes its deliberative process for this proceeding.

Very truly yours,

A handwritten signature in blue ink, appearing to read "S. Klein".

Steven J. Klein  
Director of Legal Affairs & Assistant General Counsel

cc: Office of Health Care Advocate (by email only)