

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Application of ACTD, LLC )  
For Green Mountain Surgery Center ) Docket No. GMCB-010-15con  
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CERTIFICATE OF NEED

The Green Mountain Care Board issues this certificate of need (CON) pursuant to 18 V.S.A. § 9431 *et seq.* to ACTD, LLC (the applicant) for a multi-specialty ambulatory surgery center (ASC) to be known as the Green Mountain Surgery Center in Colchester, Vermont (the Project). The Board issues this CON based on the Findings of Fact and Conclusions of Law in the Statement of Decision issued today in this docket and incorporated herein, and subject to the conditions set forth below.

**Conditions:**

The applicant shall develop and operate the Project in strict compliance with the Project scope as described in the application, in other materials in the record submitted by the applicant, and in strict conformance with the Statement of Decision issued today by the Board. This certificate of need is limited to the Project and activities described therein.

A. Prior to commencing any construction of the facility, the applicant must appear before the Board and demonstrate that it meets the following conditions:

1. The applicant shall develop a consumer-friendly website which shall provide information about each physician planning to offer procedures/surgeries at the ASC, including, but not limited to, the following:
  - a. The physician's name, professional credentials and area(s) of specialization;
  - b. The types of procedures/surgeries that the physician will perform at the ASC, including an explanation of
    - i. the evidence-basis for recommending the procedure/surgery to a patient, and
    - ii. how the procedure/surgery improves health;
  - c. The name and location of hospital(s) where the provider has admitting privileges;
  - d. The physician's 24/7 contact information in the event of an emergency;
  - e. Disclosure of any ownership interest in the ASC, and
  - f. Information as detailed in Condition 21, below.

2. The applicant shall develop and implement a policy, which it will post to the ASC's consumer website, requiring that each ASC physician use a patient decision aid such as shared decision-making that: a) fully informs the patient of the benefits and risks of all care alternatives; b) incorporates the best available scientific evidence; c) takes into account a patient's values, goals and preferences; and d) advises the patient of the pros and cons, including the comparative costs, of having the procedure performed in an ASC, rather than a hospital. The policy shall include a provision requiring certification by the provider of his or her compliance with such policy.
  3. The applicant shall develop and implement a policy, which it shall post to the ASC's consumer website, requiring that each physician certify that he or she will accept patients without regard to payer type, insurance status, or their ability to pay for services. The physician shall further certify that he or she shall not consider the source of payment or a patient's ability to pay when determining whether to perform a patient's procedure/surgery at the ASC.
  4. The applicant shall enter into a transfer agreement with at least one local hospital, or obtain a binding Memorandum of Agreement from such hospital(s) confirming that it will enter into a transfer agreement with the ASC once it becomes operational.
  5. The applicant shall enter into a transport agreement with an EMS service for emergency patient transportation.
  6. The applicant shall enter into a participation agreement with one or more risk-bearing ACO(s) to receive fixed payment reimbursement in lieu of fee-for-service for patients attributed to the ACO, or obtain a binding Memorandum of Agreement from such ACO(s) confirming that it will enter into such participation agreement once the ASC becomes operational.
  7. The applicant shall obtain approval to enter into agreement with the Centers for Medicare & Medicaid Services (CMS) to operate as a Medicare-certified ambulatory surgery center.
- B. The applicant shall appear before the Board prior to commencing operations to demonstrate its compliance with, or where appropriate its ability to comply with, each of the following conditions:
8. The applicant shall make the ASC's consumer website, *see* Condition A.1, above, available to the public no later than two weeks prior to commencing operations.
  9. The applicant shall establish and post to the ASC's website the commercial/self-pay and Medicare prices for each of the twenty-five (25) most frequently performed procedures/surgeries, or the commercial/self-pay and Medicare prices of each of the procedures/surgeries that comprise at least 75 percent of the ASC's overall volume if it will result in disclosure of a greater number of prices. The applicant shall regularly

update and post this information, no less than quarterly, whether or not prices or procedures have changed.

10. The applicant shall not offer services, procedures or surgeries without first demonstrating to the Board that such services, procedures or surgeries are evidence-based and fall within the scope of those approved in this certificate of need.
11. The applicant shall require that each physician that performs procedures/surgeries at the ASC have admitting privileges at one or more local hospitals.
12. The applicant must successfully negotiate with Blue Cross and Blue Shield of Vermont to accept reimbursement that is below the community fee schedule rate. For insurer(s) that do not use a community hospital schedule, the applicant shall negotiate reimbursements that it can demonstrate are below reimbursements for the same procedures/surgeries when performed in a hospital setting.
13. The price of a procedure/surgery that is billed to patients that self-pay may not exceed the lowest price billed to patients covered by commercial insurance.
14. The applicant shall dedicate a staff member to provide potential patients with written price estimates for their surgeries on request. In advance of surgery, the applicant will provide all patients with written disclosures that outline the total price of their procedure/surgery and the portion of the price for which the patient will be responsible.
15. The applicant shall establish and implement a policy to provide charity care on par with the policies at University of Vermont Medical Center and Northwestern Medical Center, which shall be posted on the ASC's consumer website.
16. The applicant shall require that all physicians maintain after hours on-call policies and 24-hour call coverage to answer patient inquiries. The applicant shall provide all patients with written instructions for after hour care, including instructions that if their condition warrants, to call 911 and go to the nearest emergency room. The applicant shall provide the same emergency information, recorded on its phone line, for after hour callers.
17. The applicant shall immediately begin the process for accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and must earn such accreditation no later than 18 months after it commences operations.
18. The applicant shall require that all physicians sign a Collaborative Care Agreement that includes the following principles: (i) timely access to care, (ii) communication, (iii) adherence to widely accepted evidence-based principles of care, and (iv) support of the primary care practice (PCP) as the Medical Home for most patients.
19. The applicant shall participate in the CMS Ambulatory Surgical Center Quality Reporting Program and shall periodically, but no less often than annually, post its performance on each quality measure on the ASC's website.

20. The applicant shall quarterly compile for inclusion in its next-due implementation report, and post to its website within forty-five (45) days of the close of each quarter, the ASC's payer mix by number of procedures/surgeries and by revenues.
21. In addition to information specified under Section A.1, above, the applicant shall quarterly update, compile for inclusion in its next-due implementation report, and post to its website within forty-five (45) days of the close of each quarter, the following information for each provider:
  - a. A breakdown of the types of procedures/surgeries he or she performed at the ASC;
  - b. A breakdown of the procedures/surgeries he or she performed at the ASC, by payer mix.
  - c. A breakdown of the procedures/surgeries he or she performed at local hospitals (specify the hospital) by payer mix.
  - d. The number of patients he or she determined were inappropriate for care at the ASC, and the reason for each determination.
22. The applicant shall file implementation reports with the Board at quarterly intervals for seventeen (17) consecutive quarters beginning three (3) months following the date of this Certificate of Need. In addition to information specified in Sections B.20 and B.21, above, the implementation reports shall include the following information and analysis:
  - a. Overview of the Project, including information and analysis demonstrating that the Project is in conformance with the scope of the Project as described in the application;
  - b. Verification under oath that the Project complies with all conditions imposed in this certificate of need;
  - c. Notice of any material or nonmaterial change, or verification that no material or nonmaterial changes are contemplated or have occurred.

C. The applicant shall additionally comply with the following conditions:

23. The Project as described in the application shall be fully implemented within four (4) years of the date of this certificate of need, or the certificate of need shall become invalid and deemed revoked.
24. Noncompliance with any provision of this certificate of need or with applicable ordinances, rules, laws and regulations constitutes a violation of this certificate of need and may be cause for enforcement action pursuant to 18 V.S.A. §§ 9445, 9374(i) and any other applicable law.
25. This certificate of need is not transferable or assignable and is issued only for the premises and entity named in the application.

26. If the applicant contemplates or becomes aware of a potential or actual nonmaterial change, as defined in 18 V.S.A. § 9432(12), or a material change as defined in 18 V.S.A. § 9432(11), to the scope or cost of the Project described in its application and as designated in this certificate of need, the applicant shall file a notice of such change immediately with the Board. The Board shall review the proposed change and advise the applicant whether the proposed change is subject to review.
27. The Board may, after notice and an opportunity to be heard, make such further orders as are necessary or desirable to accomplish the purposes of this certificate of need, and to ensure compliance with the terms and conditions of this certificate of need.
28. All reports, notices, forms, information or submissions of any kind required to be submitted to the Board as a condition of this certificate of need shall be signed by the applicant's chief executive officer and verified by the chief executive officer, or by his or her designated representative.
29. The conditions contained in this certificate of need shall remain in effect for the duration of the reporting period defined in paragraph 22, above.

**SO ORDERED.**

Dated: July 10, 2017 at Montpelier, Vermont

s/ Jessica Holmes )  
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 s/ Robin Lunge )  
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 s/ Kevin Mullin )  
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 s/ Maureen Usifer )

GREEN MOUNTAIN  
 CARE BOARD  
 OF VERMONT

Board member Cornelius Hogan dissented from the Board's decision.

Filed: July 10, 2017