

Hospital Budget Enforcement

Owen Foster, Chair
Green Mountain Care Board
May 01, 2025

Title 18 : Health

Chapter 221 : Health Care Administration

Subchapter 007 : HOSPITAL BUDGET REVIEW

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Chapter 221 : Health Care Administration

Subchapter 007 : HOSPITAL BUDGET REVIEW

(Cite as: 18 V.S.A. § 9456)

§ 9456. Budget review

(a) The Board shall conduct reviews of each hospital's proposed budget based on the information provided pursuant to this subchapter and in accordance with a schedule established by the Board.

(b) In conjunction with budget reviews, the Board shall:

- (1) review utilization information;
- (2) consider the Health Resource Allocation Plan identifying Vermont's critical health needs, goods, services, and resources developed pursuant to section 9405 of this title;
- (3) consider the expenditure analysis for the previous year and the proposed expenditure analysis for the year under review;
- (4) consider any reports from professional review organizations;
- (5) solicit public comment on all aspects of hospital costs and use and on the budgets proposed by individual hospitals;
- (6) meet with hospitals to review and discuss hospital budgets for the forthcoming fiscal year;
- (7) give public notice of comment on the proposed
- (8) consider the extent provided to Medicaid beneficiaries and non-Medicaid payers;
- (9) require each hospital to file an analysis that reflects a reduction in net revenue needs from non-Medicaid payers equal to any anticipated increase in Medicaid, Medicare, or another public health care program reimbursements, and to any reduction in bad debt or charity care due to an increase in the number of insured individuals;

(h)(1) If a hospital violates a provision of this section, the Board may maintain an action in the Superior Court of the county in which the hospital is located to enjoin, restrain, or prevent such violation.

(2)(A) After notice and an opportunity for hearing, the Board may impose on a person who knowingly violates a provision of this subchapter, or a rule adopted pursuant to this subchapter, a civil administrative penalty of no more than \$40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than \$100,000.00 or one-tenth of one percent of the gross annual revenues of the hospital, whichever is greater. This subdivision shall not apply to violations of subsection (d) of this section caused by exceptional or unforeseen circumstances.

(B)(i) The Board may order a hospital to:

(I)(aa) cease material violations of this subchapter or of a regulation or order issued pursuant to this subchapter; or

(bb) cease operating contrary to the budget established for the hospital under this section, provided such a deviation from the budget is material; and

(II) take such corrective measures as are necessary to remediate the violation or deviation and to carry out the purposes of this subchapter.

(ii) Orders issued under this subdivision (2)(B) shall be issued after notice and an opportunity to be heard, except where the Board finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital. Where there is an immediate threat, the Board may issue orders under this subdivision (2)(B) without written or oral notice to the hospital. Where an order is issued without notice, the hospital shall be notified of the right to a hearing at the time the order is issued. The hearing shall be held within 30 days after receipt of the hospital's request for a hearing, and a decision shall be issued within 30 days after conclusion of the hearing. The Board may increase the time to hold the hearing or to render the decision for good cause shown. Hospitals may appeal any decision in this subsection to Superior Court. Appeal shall be on the record as developed by the Board in the administrative proceeding and the standard of review shall be as provided in 8 V.S.A. § 16.

(d)(1) Annually, the Board shall establish a budget for each hospital on or before September 15, followed by a written decision by October 1. Each hospital shall operate within the budget established under this section.

Hospital Budget Rule

GMCB Rule - Enforcement Process

3.400 Enforcement

(e) If a hospital does not apply for a budget adjustment within 30 days of receiving a notice from the Board under Section 3.401(b) above, then the Board may use any enforcement action set forth in 18 V.S.A. § 9456(g)-(h) that is warranted under the circumstances.

3.400 Enforcement

3.401 Budget Performance Review and Adjustment

(a) The Board may conduct an independent review of a hospital's performance under the budget established for it by the Board at any time, including in response to an application for an adjustment made by a hospital pursuant to 18 V.S.A. § 9456(f). This review shall take into consideration the following factors:

- (1) the variability of a hospital's actual revenues, taking into account the resources of payers and the methods of payment used by the payers;
- (2) the hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients;
- (3) the financial position of the hospital in relation to other hospitals and to the health care system as a whole, using the statistics developed from information submitted in compliance with the uniform reporting manual;
- (4) the hospital's performance under budgets identified or established under subchapter 7 of Chapter 221 of Title 18 of Vermont Statutes Annotated for the previous three years and its budget projections for the next three years; and
- (5) any other considerations deemed appropriate by the Board, including but not limited to other instances in which a hospital has less than full control over the expenditures limited by the budget.

(b) If, after conducting a review under Section 3.401(a), the Board determines that a hospital's performance has varied substantially from its budget, the Board shall provide written notice to the hospital. The notice shall set forth the results of the Board's review as well as a description of the factors the Board considered.

(c) After making a determination of a hospital's performance under an established budget, and upon application of the hospital, the Board may adjust the hospital's budget, taking into account the factors set forth in subsection 3.401(a). Where a determination is made that a hospital's performance has differed substantially from its budget, the Board may adjust its budget by:

- (1) changing hospital rates or prices by the amount of net revenues exceeding the budgeted net revenues;
- (2) changing the net revenue and/or expenditure levels of future budgets;
- (3) allowing hospital rates to be increased for a hospital with a deficit caused by revenues that were less than projected, but whose actual expenditures were within the budget limits;
- (4) allowing a hospital to retain surplus funds if the surplus was achieved while the hospital stayed within its established budget;
- (5) allowing a hospital to retain a percentage of surplus generated primarily by volume in excess of that projected for a particular year; or
- (6) any other circumstance the Board deems appropriate.

(c) Adjustment methods based on past performance may be applied by the Board in the course of establishing a new budget and may be imposed over a multiyear period. In considering adjustment of a hospital's budget, the Board shall consider the financial condition of the hospital and any other factor it deems appropriate.

(e) If a hospital does not apply for a budget adjustment within 30 days of receiving a notice from the Board under Section 3.401(b) above, then the Board may use any enforcement action set forth in 18 V.S.A. § 9456(g)-(h) that is warranted under the circumstances.

Enforcement Policy



144 State Street
Montpelier, VT 05602
802-828-2177

*Kevin Mullin, Chair
Jessica Holmes, Ph.D.
Robin Lunge, J.D., MHCDS
Tom Pelham
Maureen Usifer
Susan J. Barrett, J.D., Executive Director*

Policy on Hospital Budget Enforcement

Background and Justification

Vermont law requires that the Green Mountain Care Board (GMCB) establish the budgets of Vermont's hospitals and mandates that "[e]ach hospital . . . operate within the budget established." 18 V.S.A. §§ 9375(b)(7); 9456(d). GMCB Rule 3.000 outlines the review process and parameters that the GMCB will use to assess budget performance and adjustments. See GMCB Rule 3.000, § 3.401. In addition, the GMCB's annual Uniform Reporting Manual Supplement outlines a methodology to compare actual budget results for the fiscal year to the budget established by the GMCB.

In adopting performance guidelines in 2013, the GMCB found that Vermont hospitals' aggregate budget-to-actual performance had improved since the early 2000s, but that many hospitals nonetheless continued to exceed net revenue thresholds. Some of these budget-to-actual differences resulted from one-time events such as physician practice acquisitions, or from prior year Medicare settlements. Some hospitals, however, experienced greater reimbursement than had been forecasted. In such instances, prior to the GMCB's adoption of an enforcement policy, no meaningful regulatory action was taken. The GMCB is adopting this Enforcement Policy to provide guidance regarding enforcement of hospital budgets. The policy will govern enforcement of fiscal year budgets ending after the effective date specified below.

Hospital Budget Enforcement

For fiscal year budgets ending after the effective date specified below:

- 1) Net Patient Revenue and Fixed Prospective Payments (NPR/FPP) amounts as ordered may be enforced.
- 2) The GMCB may review hospitals whose year-end NPR/FPPs exceed the NPR/FPP requirement by 1.0% above or below their approved NPR/FPP. This review will not necessarily lead to action by the GMCB.



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- 3) Budget reviews will compare each hospital to results of the total system.
- 4) Reporting requirements for the review will be determined by the GMCB.
- 5) The GMCB will afford the hospital an opportunity for a hearing and will require a hearing if it deems one necessary.
- 6) If the GMCB determines that a hospital's performance has differed substantially from its budget, the GMCB may take actions including, but not limited to:
 - a) Reduce or increase the hospital's rates;
 - b) Reduce or increase net revenue and/or expenditure levels in the hospital's budget;
 - c) Use its finding as a consideration to adjust the hospital's budget in one or more subsequent years;
 - d) Allow a hospital to retain a percentage or all of the surplus funds; and
 - e) Any other actions the GMCB deems appropriate.

Notice of UVMMC & Porter FY23 Budget Order Violations



144 State Street
Montpelier, VT 05633-3601
802-828-2177

Susan

DELIVERED ELECTRONICALLY

May 30, 2024

The University of Vermont Health Network
C/O: Sunil Eappen, Chief Executive Officer
462 Shelburne Road
Burlington, VT 05401

RE: UVMMC AND PORTER FY23 BUDGET VIOLATIONS

Dear Dr. Eappen:

As you are likely aware, the University of Vermont Medical Center's Hospital's (Porter) FY23 year-end actual operating results were out of compliance substantially from their FY23 budgets. The FY23 year-end results for UVMHC's NPR/FPP was \$1,739,015,783, which exceeds its GRCB-approved budget by 4.8%. Porter's NPR/FPP was \$115,464,374, which exceeds its GRCB-approved budget by 10.5%. Vermont law requires that "[e]ach hospital . . . comply with the budget established" by the Board. 18 V.S.A. § 9456(d)(1); see also GRCB Policy on Budget Enforcement.¹ Accordingly, this letter is to advise you that these hospital's approved budgets are subject to review and potential enforcement action. (h); GRCB Rule 3.000, § 3.401.

In connection with GRCB's review, please provide any information that will assist the Board's review of compliance with the subject budget orders. Please provide the following information:

1. All internal communications and presentations (internal and/or to hospital boards of directors) discussing UVMMC's and Porter's performance vis-à-vis their FY23 budgets, including with respect to NPR/FPP, utilization, and operating expenses;
2. Contemporaneous documents and a description of the drivers of the NPR/FPP variance;

Please provide the requested materials by June 12, 2024, and be prepared to address potential enforcement actions at your FY25 hospital budget hearings. The Board shall defer any potential enforcement action until these hearings are held. Should either hospital desire that the Board consider retroactive adjustment to its FY23 budget, it may apply for a budget adjustment in writing within 30 days of receipt of this notice, pursuant to 18 V.S.A. § 9456(f) and GRCB Rule 3.000, § 3.401(c).

We appreciate your cooperation in this process.

Sincerely,

/s/ Owen Foster
Owen Foster, Chair
Green Mountain Care Board

cc: Michael Barber, GRCB
Alena Berube, GRCB
Mark Hengstler, GRCB
Matthew Sutter, GRCB
Health Care Advocate Policy Team
Green Mountain Care Board Members

UVMHC & Porter - Response to Notice of Budget Violation



July 2, 2024

Green Mountain Care Board
c/o The Honorable Owen Foster, Chair
144 State Street
Montpelier, VT 05602

Re: May 30 GMCB Letter on UVM Medical Center and Porter Hospital FY23 NPR Variance

Dear Chair Foster:

In this response to the Green Mountain Care Board's (the "Board") June 4, 2024 letter regarding the year-end actual Net Patient Revenues (NPRs) for UVM Medical Center and Porter Hospital, please accept the below description of the drivers of increased NPR, internal communications to leaders and our Trustees describing the variance, and our proposed path forward.

Introduction

Over the past two years, the UVM Health Network's hospitals – including UVM Medical Center and Porter Hospital – have intently focused their efforts on improving access to high quality care for their patients. That increased patient access, which the Board has repeatedly encouraged as being necessary to care for the population we serve, resulted in \$121 million of unbudgeted utilization-driven revenue at the UVM Medical Center in FY23, and nearly \$10 million at Porter Hospital. Of course, caring for additional patients also brings increased care-related expenses and accompanying investments in our clinical workforce. As a result, neither hospital ended FY23 with more cash on hand than it had at the beginning of the year.

At the same time the hospitals were working to increase access to patient care, they sought and received additional increased reimbursements from non-commercial payers (Graduate Medical Education and Sole Community Hospital payments for UVM Medical Center and increased cost-based Medicare reimbursements for Porter Hospital). While that additional reimbursement increased the hospitals' NPR, it will allow them to continue to provide access to the care their patients need, with the least impact on commercial rates.

For these reasons and others, all of which are discussed in more detail below and in the accompanying

We look forward to discussing these issues with you at our FY25 budget hearings on August 28, or at a separate and earlier date if the Board would prefer. Please do not hesitate to contact me if you have any questions in the meantime.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Vincent".

Rick Vincent

Executive Vice President and Chief Financial Officer

Contested Case?



Sent Via Email

Mark Hengstler
Staff Attorney
Green Mountain Care Board
144 State Street
Montpelier, VT 05602
mark.hengstler@vermont.gov

September 10, 2024

September 10, 2024

Re: UVMHN FY2025 Budget Review – Written Objections to September 9, 2024
Deliberations

Dear Mark:

Pursuant to the Green Mountain Care Board's (GMCB) agreement with the Vermont Association of Hospital and Health Systems (VAHHS),¹ I write to memorialize objections to the GMCB's budget deliberations on September 9, 2024, on behalf of the University of Vermont Health Network's (UVMHN) Vermont hospitals: the University of Vermont Medical Center (UVMHC), Central Vermont Hospital (CVHC) and Porter Hospital.

Although UVMHN is unable to identify all potential objections that may ultimately arise through the continuation of the GMCB's deliberations and issuance of a final written budget order, this letter reflects its current and anticipated objections to the proceedings to date. UVMHN reserves its right to raise additional objections or clarify the nature of its objections in response to further proceedings and written orders.

Budget Adjustment and Budget Enforcement Are Distinct

As a threshold issue, the September 9 deliberations, including the staff recommendations, make clear that the GMCB has impermissibly conflated its statutory powers to adjust hospital budgets with its enforcement powers in a manner that eliminates critical due process protections. By statute, the GMCB has authority to, "upon application, adjust a budget . . . upon a showing of

¹ This agreement is memorialized in Shireen Hart's August 6, 2024, letter to you on behalf of VAHHS, providing in relevant part that "[h]ospitals have two full business days to submit post-hearing written objections."

Budget Enforcement Proceedings Are Subject To Contested Case Requirements

The FY23 budget enforcement actions against UVMHC and Porter Hospital are also contested cases under the Vermont Administrative Procedures Act (VAPA), and therefore subject to numerous procedural requirements that were not satisfied.

A VAPA "contested case" is "a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." 3 V.S.A. § 801(2). The GMCB is required by statute to provide a hospital notice and opportunity for a hearing before it takes budget enforcement action:

(B)(i) *The Board may order a hospital to:*

* * *

(II) *take such corrective measures as are necessary to remediate the violation or deviation [from the hospital's approved budget] and to carry out the purposes of this subchapter.*

(ii) Orders issued under this subdivision (2)(B) shall be issued *after notice and an opportunity to be heard*, except where the Board finds that a hospital's financial or other emergency circumstances pose an immediate threat of harm to the public or to the financial condition of the hospital.

18 V.S.A. § 9456(h)(2) (emphasis added). A budget enforcement action is therefore a VAPA "contested case."

A hospital subject to potential enforcement action has important procedural rights in the contested case proceeding, including but not limited to the following:

- the opportunity to respond and present evidence and argument on all issues involved;
- the right to a decision based on the contested case record, including findings of fact based on the record evidence and matters officially noticed;
- the right to make objections to evidentiary offers; and
- the right to conduct cross-examinations required for a full and true disclosure of the facts.

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

**ORDER CORRECTING BUDGET DEVIATION AND DENYING BUDGET
ADJUSTMENT REQUEST**

In re: University of Vermont Medical Center)
Fiscal Year 2023)
_____) Docket No. 22-004-H

INTRODUCTION

On October 1, 2022, the Green Mountain Care Board (GMCB or Board) issued a written order establishing a budget for the University of Vermont Medical Center (UVMMC) for fiscal year 2023 (FY23). UVMMC’s FY23 operating results differed substantially from its budget. In this order, we correct UVMMC’s deviation from its budget by reducing its overall change in charge and commercial negotiated rate increase. Accordingly, we also deny UVMMC’s request for a retroactive adjustment to its FY23 budget.

LEGAL FRAMEWORK

Regulation of hospital budgets is one of the Board’s core statutory duties and is a key mechanism by which the Board seeks to control growth in health care spending. *See* 18 V.S.A. §§ 9375(b)(7), 9451-58. The Board establishes hospitals’ budgets by September 15 of each year and the Board’s decisions are reflected in written orders that are issued to hospitals by October 1, the start of the hospitals’ fiscal year. 18 V.S.A. §§ 9454(b), 9456(d)(1).

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



(1) the variability of a hospital's actual revenues, taking into account the resources of payers and the methods of payment used by the payers;

I. UVMMC'S ACTUAL REVENUES DIFFERED SUBSTANTIALLY FROM ITS BUDGET

UVMMC's FY23 NPR budget cap was \$1,658,725,627. Findings, ¶ 3. UVMMC's actual FY23 NPR was \$1,739,015,783, a variance or overage of \$80,290,156, or approximately 4.8%. Findings, ¶ 5. This overage significantly exceeds the 1.0% review threshold specified in the Board's enforcement policy. *Id.*

II. CONSIDERATION OF PAYERS' RESOURCES STRONGLY FAVORS ENFORCEMENT OF UVMMC'S BUDGET

Vermont's health care affordability challenges strongly favor enforcement of UVMMC's FY23 budget cap. UVMMC's additional \$80 million in health care spending is an immense and unnecessary financial burden for Vermonters to bear at a time when health care costs negatively impact patient access and Vermont's largest insurer faces the threat of insolvency. *See Findings, ¶¶ 5, 41-48.* UVMMC did not show—and given the evidence before us we cannot conclude—that Vermonters have the resources to cover this \$80 million overage. This is especially true given that UVMMC's margin would have been far greater had it managed its expense growth and had it not spent millions of dollars supporting other hospitals in Vermont and New York. *See Findings, ¶¶ 18, 20, 28-29, 39.*

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



(2) the hospital's ability to limit services to meet its budget, consistent with its obligations to provide appropriate care for all patients;

III. UVMMC HAS SIGNIFICANT ABILITY TO CONTROL REVENUE, INCLUDING BY MOVING CARE TO MORE APPROPRIATE SETTINGS AND IMPROVING POPULATION HEALTH, CONSISTENT WITH ITS OBLIGATIONS TO PROVIDE APPROPRIATE CARE

UVMMC failed to show that it was unable to limit services to comply with its FY23 order. UVMMC's average length of stay in FY23 significantly exceeded budget. UVMMC Resp., Ex. B, at 5. UVMMC owns and operates numerous, large primary care practices throughout Chittenden and Washington counties. According to UVMMC's data, those practices have low clinical efficiency and productivity as compared to the national benchmarks utilized by UVMMC. *See* UVMMC FY25 Workbook Submission, Clinical Productivity. In FY24 UVMMC implemented basic improvements to increase primary care access, including utilizing a risk adjusted panel size and implementing Fast Pass to allow patients to be seen sooner if an appointment is made available. UVMMC Follow-Up Responses (Aug. 16, 2024), 3. These strategies significantly increased access to primary care (*id.*) and UVMMC did not implement them to assist in complying with its FY23 budget.

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



(3) the financial position of the hospital in relation to other hospitals and to the health care system as a whole, using the statistics developed from information submitted in compliance with the uniform reporting manual;

IV. UVMMC'S FINANCIAL POSITION RELATIVE TO OTHER HOSPITALS AND TO THE HEALTHCARE SYSTEM AS A WHOLE STRONGLY FAVORS ENFORCEMENT

UVMMC's financial position is strong compared to other hospitals and the health care system. UVMMC's days cash on hand is projected to be 117.7 in FY24, the 5th highest among Vermont hospitals. *See Findings, ¶ 30.* Days in accounts receivable is improving and UVMMC has further room to enhance its collections. *See Findings, ¶ 31.* UVMMC's operating margins have been higher than the state average since FY22. *See Findings, ¶ 25.* Its current assets to current liabilities, including funded depreciation, is well above breakeven and exceeds the US median. *See Findings, ¶ 32.* Its average age of plant is below the 75th percentile. *See Findings, ¶ 33.*

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



(4) the hospital's performance under budgets identified or established under subchapter 7 of Chapter 221 of Title 18 of Vermont Statutes Annotated for the previous three years and its budget projections for the next three years

V. UVMMC'S PERFORMANCE UNDER PRIOR BUDGETS STRONGLY FAVORS ENFORCEMENT

UVMMC's performance under prior budgets favors enforcement. The hospital has recently underbudgeted revenue by significant amounts. Findings, ¶¶ 5, 11-12, 15-16, 19-22. UVMMC underestimated operating revenue in FY22 and in FY23 and is currently projected to have underbudgeted operating revenue again in FY24 by 4.1% (and NPR by 2.3%). Findings, ¶¶ 19-20. UVMMC has also recently inaccurately underbudgeted its utilization and Medicare and Medicaid revenue. Findings, ¶¶ 3, 11-12, 21.

FY23 - UVMMC - Order Correcting Budget Deviation and Denying Budget Adjustment Request



(5) any other considerations deemed appropriate by the Board, including but not limited to other instances in which a hospital has less than full control over the expenditures limited by the budget

VI. UVMMC HAD SIGNIFICANT OPPORTUNITY TO CONTROL EXPENSES TO LOWER FINANCIAL BURDEN ON RATE PAYERS AND TO COMPLY WITH ITS BUDGET CAP

While UVMMC claims that it needed to increase expenses to provide additional care, our review of the record does not support this assertion. UVMMC could have controlled expenses in accordance with its budget. The majority of UVMMC's FY23 expense variance was due to higher than budgeted contract labor and locum tenens expenses, totaling \$48.1 million. Findings, ¶ 18. UVMMC did not demonstrate that such expenses were necessary, unavoidable, or directly tied to the increased utilization. *See* Findings, ¶ 18; Post-Hearing Resp., (Sept. 6, 2024), 7. Notably, UVMMC's contract labor spending in FY23 was above the 75th percentile of other academic medical centers nationally. *See* Findings, ¶ 17. UVMMC also has particularly low provider productivity and clinical efficiency, which indicates that the hospital has significant opportunities to manage higher volumes with existing resources, thus avoiding unnecessary additional expenses. *See* FY25 Budget Order, Findings, ¶ 17.

VII. EVALUATION OF UVMMC'S PROCEDURAL ARGUMENTS

UVMMC makes a number of procedural arguments, including that it was deprived of due process by our contemporaneous review of potential FY23 budget enforcement and its application for FY23 budget adjustment, and that our review of its budget deviation constitutes a contested case under the Vermont Administrative Procedure Act (VAPA), requiring additional procedural safeguards such as the opportunity to conduct cross-examination. *See* UVMHN Objections to Sept. 9 Deliberations (Sept. 10, 2024). Upon review of the law and the record, we conclude that UVMMC's assertions are without merit.