

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

IN RE SOTERIA VERMONT)
CERTIFICATE OF NEED) Docket No. GMCB-005-13con
APPLICATION)
)

REQUEST FOR INTERESTED PARTY STATUS

NOW COMES HowardCenter, Inc., (hereafter "HowardCenter") and hereby requests designation as an interested party in the above-captioned certificate of need (hereafter "CON") proceeding. This Request is submitted in accordance with 18 V.S.A. § 9440(c)(7) and Green Mountain Care Board (hereafter "GMCB") Rule 4.406.¹

I. Statement of Requestor's Interest

HowardCenter is a non-profit corporation with a principal place of business in Burlington, Vermont. It has distinct legal and programmatic interests in the present matter which will be substantially and directly impacted by the project under review, as described in detail below.

A. Legal Interest

Under Vermont statutes, specified State officials are charged with ensuring "that community services to mentally ill and developmentally disabled persons throughout the state are provided

¹ It is the understanding of the undersigned counsel that the CON application in question was filed after January 1, 2013. Hence the GMCB Rule cited above applies to this application, not Vermont Department of Financial Regulation Certificate of Need Program Procedures, Rule H-2010-01 at Section Six, (f) at 34. If this conclusion is erroneous, HowardCenter requests the opportunity to amend this Request for Interested Party Status accordingly.

through designated community mental health agencies.” 18 V.S.A. §8907(a). In the case of the HowardCenter, those officials have denoted it as the Designated Agency to provide mental health and developmental services to residents of Chittenden County. That designation carries with it specific statutory obligations including the responsibility “to provide or arrange for the provision of these services.” *Id.*

The overarching mandate established by State law for an agency like the HowardCenter is to “plan, develop, and provide or otherwise arrange for those community mental health . . . services that are not assigned by law to the exclusive jurisdiction of another agency and which are needed by and not otherwise available to persons with mental illness . . . who reside within the geographic area served by the agency.” 18 V.S.A. § 8907(b). This responsibility encompasses the determination of “the need for community mental health . . . services within the area served” by the HowardCenter. 18 V.S.A. § 8908.

To this end, State law charges each Designated Agency with undertaking certain planning activities. For Chittenden County, HowardCenter is obligated to “prepare a local community services plan which describes the methods by which the agency will provide those services.” *Id.* A related provision, 18 V.S.A. § 8909(b), reaffirms this obligation and requires the designated agency to consult with a variety of governmental, advocacy, and client groups in determining the service needs of the community and service priorities. The local services plan ultimately must “encourage utilization of existing agencies, professional personnel and public funds at both state and local levels in order to improve the effectiveness of mental health . . . services and to prevent unnecessary duplication of expenditures.” *Id.* Failure to do so or to implement such a plan of services can result in a range of sanctions, including loss of designated agency status. 18 V.S.A. § 8911.

Of particular relevance to the current CON application is the specific obligation HowardCenter bears with respect to any new mental health services. The local community services plan drafted by the agency must “include a schedule for the anticipated provision of new or additional services and shall specify the resources which are needed by and available to the agency to implement the plan.” 18 V.S.A. § 8908.² In short, Vermont law directs that the HowardCenter, as the Designated Agency for Chittenden County, be involved in the planning and implementation of all mental health services within that geographic area, thus vesting it with a valid legal interest in the present proceeding.

B. Programmatic Interest

HowardCenter directly provides a wide-array of human services to adults and children in Chittenden, Franklin, Grand Isle, and Rutland Counties and also provides additional substance abuse and mental health services in partnership with other agencies in Washington County. Within Chittenden County, HowardCenter is the preeminent provider of mental health services. It offers crisis services for adults, children and adolescents, and families who experience mental health and behavioral emergencies. HowardCenter screeners make the initial determination as to whether individuals in such crises warrant care in in-patient or out-patient settings. Its Community Support Program serves adults diagnosed with a major mental illness with a range of out-patient programs. In terms of the number of clients served, the scope of services offered, the number of clinicians employed, and the total amount of funds spent on such treatment, HowardCenter is the largest

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To insure the responsiveness of such Designated Agencies, the Vermont Legislature requires such non-profit organizations to ensure that a majority of their boards of directors consists of current or former clients with disabilities or their family members. 18 V.S.A. § 8909(a).

community mental health agency in the State of Vermont.

Of particular importance in regard to the current application by Pathways Vermont is the number and scope of residential programs operated by HowardCenter. In Chittenden County, the agency oversees ten residential programs serving those with a mental health diagnosis. It also provides clinical support services to the residents of three other congregate care facilities within the region. A listing of the programs providing such residential care is attached as Exhibit 1.³ It affords the Green Mountain Care Board with a sense of the extent of the residential programs offered by this non-profit organization. In addition, HowardCenter works with numerous private landlords and non-profit housing organizations to support individuals with a mental health diagnosis to live independently.

As is well-documented, persons experiencing mental health and behavioral difficulties oftentimes have engaged in some form of substance abuse. In this respect, HowardCenter affords a variety of services for those individuals with co-occurring disorders. The agency is the paramount provider of substance abuse services in northwestern Vermont. It is designated as a “preferred provider” of substance abuse services by the Vermont Department of Health’s Office of Alcohol and Drug Abuse Programs.

II. Relevance of Certificate of Need Criteria

According to the October 16, 2013, CON Application, Pathways Vermont proposes to create

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The three programs listed last under the heading of the Community Supported Program are operated by entities other than HowardCenter, but the individuals residing there receive services and support from agency personnel. This list does not include residential programs primarily for substance abuse treatment even though they may also serve persons with a mental health diagnosis.

“a five-bed residence for individuals experiencing an initial episode of psychosis.” CON Application at 1. The program is to be located in Burlington, Vermont, hence within the region served by HowardCenter. The relevant criteria governing the present CON Application are delineated at 18 V.S.A. § 9437, and the interests of the organization with respect to these criteria are set forth below.

The CON Application depicts the proposed program, Soteria Vermont, as an alternative, non-traditional program “staffed by a team of non-clinical staff . . .” CON Application at 3. One primary characteristic of this project is an aversion to the use of anti-psychotic medications. CON Application at 6-7. In addition, Soteria Vermont is proposing to not provide any clinical services to individuals residing there. As the CON Application states, “[t]he proposed project differs from traditional mental health care residence in that mental health programming (ex. group therapy, individual therapy) is not provided at the residence.” CON Application at 17.⁴

It appears from the program description that HowardCenter may well have primary responsibility for the provision for certain clinical services if needed by Soteria Vermont residents. For example, agency crisis screeners customarily would be a primary source of client referrals. The CON Application acknowledges this fact: “[i]t is anticipated for some if not most referrals to come from Emergency Services at Designated Agencies.” CON Application at 17.⁵ Inherent in this

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The only clinical services provided to residents of Soteria Vermont are consultations with a psychiatrist and a naturopath with whom Pathways Vermont has contracted for eight hours a week of services. CON Application at 18. Given the lack of provision of clinical services and the lack of staffing by licensed professionals, it is not surprising that the costs of the Soteria Vermont program are substantially below those of more traditional clinically-oriented programs. CON Application at 14.

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How such screeners, in the midst of an emergency, will be able to determine that the individual in crisis is experiencing a “distressing episode of psychosis” for the first time is a subject that the Application does not address in depth. CON Application at 17.

statement is the likelihood that clients from outside Chittenden County will be admitted to this program. This conclusion is supported by the relatively small potential client population targeted by Soteria Vermont – those individuals experiencing psychosis for the first time. CON Application at 17.

Upon entry into the program, those persons in need of clinical services such as mental health counseling or substance abuse treatment would be linked to providers in the community. As the Application states, “[w]hile staying at Soteria Vermont, residents are supported in exploring other forms of assistance in the community.” CON Application at 18. In other words, ultimate responsibility for clinical services for Soteria Vermont residents may well lie with community providers such as HowardCenter, not Pathways Vermont. This approach translates into making available the full panoply of clinical services, ranging from crisis to out-patient counseling, for up to 20 additional individuals per year. CON Application at 18-19. Given that the clients in question are experiencing psychosis while residing a community setting, HowardCenter services and programs in all likelihood will be impacted by this new residential program.

The proposed addition of another residential program for individuals with a psychiatric diagnosis thus would substantially and directly impact HowardCenter and is related to multiple criteria identified in 18 V.S.A. § 9437. Soteria Vermont also would affect the organization with regard to a number of CON Standards, particularly those relating to the following programmatic issues:

1. CON Standard 1.3 requires a demonstration of a collaborative approach to service delivery. “Collaboration with community service providers is paramount . . . the project can collaborate with community providers in coordinating services for residents during their stay . . .” CON Application

at 8. HowardCenter is concerned that Pathways Vermont has not demonstrated the extent of inter-agency cooperation necessary to ensure the success of Soteria Vermont. When one examines the operational details set out in the CON Application, inconsistencies emerge that are not indicative of an expansive collaborative undertaking. For example, with respect to supported employment, the CON application states that Soteria Vermont would assist “residents utilize providers” such as a “Designated Agency CRT [Community Rehabilitation and Treatment] program.” CON Application at 12. Yet given the description of the population served by Soteria Vermont – persons experiencing a first episode of psychosis – such individuals are not likely to meet the eligibility requirements of HowardCenter’s CRT program. That project targets individuals with serious and persistent mental illness. A sufficiently robust collaboration effort by Pathways Vermont with HowardCenter would have illuminated this problem early on.

A similar difficulty arises from Soteria Vermont’s proposed use of NAMI-VT for family psychoeducational resources. CON Application at 12. The National Alliance on Mental Illness historically has not embraced the general aversion to the use of psychotropic medication adopted by Soteria Vermont. Indeed, it would be hard to image that NAMI-VT would be supportive of the type of program described in the CON Application. Again, these types of problematic representations are not reflective of a CON Application based on in-depth collaboration with other entities.

2. CON Standard 1.9, in part, obligates an applicant to demonstrate that the project is cost-effective. In the same vein, Criterion (2) of CON Standard 4.6 directs that the cost of the project be reasonable. Pathways Vermont asserts that the CON Application meets this standard because it will divert “unnecessary admissions” to in-patient facilities. CON Application at 18. It contends that “[w]hen compared to inpatient hospitalization, the proposed project is remarkably cost effective.”

CON Application at 19.

These broad statements are problematic for several reasons. First, Pathways Vermont has not provided concrete information as to the nature of the problem it intends to address, the extent of the “unnecessary admissions” in Vermont; nor has it presented quantitative support for the proposition that the individuals who would reside at Soteria Vermont would be at risk of hospitalization. While this program does represent a cost-effective alternative to hospitalization, it is not clear that all or even most of the individuals it would serve would otherwise have been hospitalized. Since Pathways Vermont is targeting nonviolent persons who are opposed to the use of anti-psychotic medications, these are individuals who, in the current system of care, would most likely be referred for out-patient treatment or existing hospital diversion programs.

Second, HowardCenter respectfully suggests that Pathways Vermont’s assertion as to the proposed project’s cost-effectiveness is based on a questionable comparison. Hospitalization can involve both voluntarily and involuntarily admitted patients; designated hospitals in Vermont must have the capacity to serve both kinds of individuals.⁶ Under Vermont law, involuntary hospitalization can be ordered only if a patient is deemed to be mentally ill and a danger to self or others. 18 V.S.A. §§ 7101(16)-(17) and 7617. There is no suggestion in the CON Application that Soteria Vermont would accept any patients other than voluntary, non-dangerous individuals. Hence, Pathways Vermont’s invocation of favorable cost comparisons to programs serving a significantly different patient population does not represent an appropriate method of demonstrating compliance with these

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The term “designated hospital” for mental health purposes is defined at 18 V.S.A. § 7101(4).

two CON Standards.⁷

3. CON Standard 4.5 requires the integration of mental health, substance abuse, and other health care. The CON Application states that “Project staff will . . . provide information and referral to resources within the larger community.” CON Application at 17. Specifically, Soteria Vermont proposes to use referrals to out-patient programs, such as those operated by HowardCenter, to address substance abuse issues. CON Application at 12. Yet such an approach does not demonstrate a deep understanding of the importance of fully integrating mental health and substance abuse treatment services. A mere referral by Soteria Vermont to an outside provider does not constitute an integrated program to address co-occurring disorders.

4. CON Standard 4.6 similarly obligates an applicant to demonstrate the integration of mental health, substance abuse and primary care. “Program staff,” according to the CON Application, “will be knowledgeable about local resources for mental health, substance abuse, health and other issues and will be available to support residents who wish to access these resources.” CON Application at 18. However, as noted above, Pathways Vermont has not indicated that it intends to provide residents with “integrated dual disorders treatment” as suggested in its submission. CON Application at 12. The lack of an such a comprehensive in-house program is a concern for the HowardCenter.

In summary, HowardCenter’s financial and business interests in intervention as an interested party directly relate to the following criteria: 18 V.S.A. § 9437(2)(B) as to no undue increase in the costs of medical care and 18 V.S.A. § 9437(2)(C) regarding the absence of less expensive

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The lack of clinical services provided by Soteria Vermont personnel represents another reason for the relatively low cost of the proposed project. See footnote 4, above.

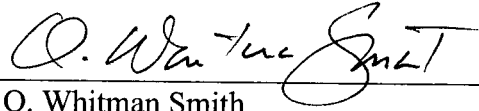
alternatives. Pathways Vermont's CON application also implicates those criteria associated with the general cost of care, 18 V.S.A. § 9437(2)(B); the need for the proposed project, 18 V.S.A. § 9437(3); and the improved quality of health care and increased access, 18 V.S.A. § 9437(4). For these reasons, HowardCenter has a "direct financial or other business interest in the proposed project." GMCB Rule 4.406 3; *see also* 18 V.S.A. § 9440(c)(7).

III. Demonstration of Substantial and Direct Effect of the Proposed Project

In view of the obligations imposed on it by State statutes and the interwoven nature of the interests of HowardCenter and the requisite CON criteria, the standard for intervention as an interested party is amply satisfied in the present case. HowardCenter's mental health treatment programs "will be substantially and directly affected by the new health care project under review." 18 V.S.A. § 9440(c)(7). The limited Vermont case law on this subject confirms this conclusion and fully supports HowardCenter's request. *See In re Professional Nurses Service Application for a Certificate of Need*, 2006 VT 112, ¶ 2, 180 Vt. 479, 481, 913 A.2d 381, 384 (In a CON application involving home health care services, the Commissioner of Banking, Insurance, Securities and Health Care Administration granted interested party status to twelve regional home health care agencies and their umbrella organization).

For all the reasons listed above, HowardCenter, Inc., respectfully requests that it be designated as an interested party in the above-captioned matter pursuant to 18 V.S.A. § 9440(c)(7) and GMCB Rule 4.406. These provisions indicate that the perspective of the primary provider of mental health services, including residential programs in Chittenden County, warrants consideration by the Board in the current proceeding.

Dated at Burlington, Vermont this 25TH day of November, 2013.

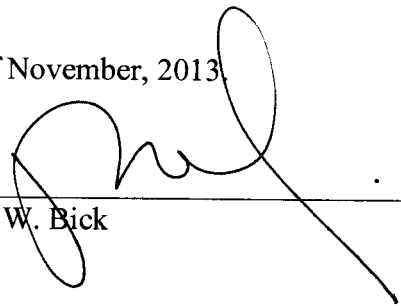


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INC.**

AFFIRMATION

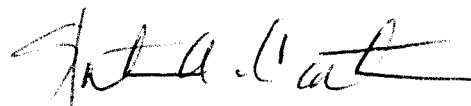
So sworn to at Burlington, Vermont, this 25th day of November, 2013.



Robert W. Bick

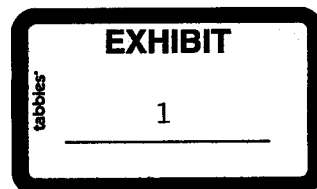
STATE OF VERMONT
CHITTENDEN COUNTY, SS.

So appeared before me at Burlington, Vermont, this 25th day of November, 2013, Robert W. Bick, Director of Mental Health and Substance Abuse Services for HowardCenter, Inc., and made oath as to the truth of the factual statements contained in the foregoing Request for Interested Party Status.



Notary Public

My Commission Expires: 2/10/2015



HOWARDCENTER RESIDENTIAL PROGRAMS

Program

Address

Community Support Program

Total Beds

72 North Spruce	72 North Winooski Avenue, Burlington VT	8
MyPad	41 Spruce Street, Burlington, VT	8
Lakeview	30 Pearl Street, Essex Junction, VT	7
Next Door	332 St. Paul Street, Burlington, VT	16
Shelter Plus	847 Pine Street, Burlington, VT	8
Branches	20 South Willard Street, Burlington, VT	6
Safe Haven	222 North Street, Burlington, VT	6
Saint Paul	133 King Street, Burlington, VT	7
Allen House	336 St. Paul Street, Burlington, VT	-
Monroe Place	57 West Allen Street, Winooski, VT	-
	29 North Champlain Street, Burlington, VT	-

CRIMINAL JUSTICE

Northern Lights	72 Cherry Street, Burlington, VT	11
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CRISIS

ASSIST	851 Pine Street, Burlington, VT	6
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