

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 37 entitled “An act relating to access to legally protected health care
4 activity and regulation of health care providers” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 * * * Definitions * * *

8 Sec. 1. 1 V.S.A. § 150 is added to read:

9 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

10 (a) “Gender-affirming health care services” means all supplies, care, and
11 services of a medical, behavioral health, mental health, surgical, psychiatric,
12 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
13 relating to the treatment of gender dysphoria and gender incongruence.

14 “Gender-affirming health care services” does not include conversion therapy as
15 defined by 18 V.S.A. § 8351.

16 (b)(1) “Legally protected health care activity” means:

17 (A) the exercise and enjoyment, or attempted exercise and
18 enjoyment, by any person of rights to reproductive health care services or
19 gender-affirming health care services secured by this State;

20 (B) any act or omission undertaken to aid or encourage, or attempt to
21 aid or encourage, any person in the exercise and enjoyment, or attempted

1 exercise and enjoyment, of rights to reproductive health care services or
2 gender-affirming health care services secured by this State, provided that the
3 provision of such a health care service by a person duly licensed under the
4 laws of this State and physically present in this State shall be legally protected
5 if the service is permitted under the laws of this State, regardless of the
6 patient’s location; or

7 (C) the provision, issuance, or use of, or enrollment in, insurance or
8 other health coverage for reproductive health care services or gender-affirming
9 health care services that are legal in this State, or any act to aid or encourage,
10 or attempt to aid or encourage, any person in the provision, issuance, or use of,
11 or enrollment in, insurance or other health coverage for those services,
12 regardless of the location of the insured or individual seeking insurance or
13 health coverage, if the insurance or health coverage is permitted under the laws
14 of this State.

15 (2) Except as provided in subdivision (3) of this subsection, the
16 protections applicable to “legally protected health care activity” shall not apply
17 to a lawsuit, judgment, or civil, criminal, or administrative action that is based
18 on conduct for which an action would exist under the laws of this State if the
19 course of conduct that forms the basis for liability had occurred entirely in this
20 State.

1 (7) Unfair discrimination; arbitrary underwriting action.

2 (A) Making or permitting any unfair discrimination between insureds
3 of the same class and equal risk in the rates charged for any contract of
4 insurance, or in the dividends or other benefits payable thereon, or in any other
5 of the terms and conditions of such contracts.

6 * * *

7 (F)(i) Discriminating against a health care provider, as defined by
8 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider’s
9 risk classification or premium charges on the basis that:

10 (I) the health care provider provides or assists in the provision
11 of legally protected health care activity that is unlawful in another state;

12 (II) another state’s laws create potential or actual liability for
13 that activity;

14 (III) abusive litigation against a provider concerning legally
15 protected health care activity resulted in a claim, settlement, or judgement
16 against the provider; or

17 (IV) the license of the provider has been disciplined in any way
18 by another state based solely on the provider’s provision of legally protected
19 health care activity.

20 (ii) For purposes of this subdivision (F), it shall not be unfairly
21 discriminatory nor an arbitrary underwriting action against a health care

1 provider if the risk classifications, premium charges, or other underwriting
2 considerations are based on factors other than those listed in subdivision (i) of
3 this subdivision (F).

4 * * *

5 * * * Insurance Coverage * * *

6 Sec. 3. 8 V.S.A. § 4088m is added to read:

7 § 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE

8 SERVICES

9 (a) Definitions. As used in this section:

10 (1) “Gender-affirming health care services” has the same meaning as in
11 1 V.S.A. § 150.

12 (2) “Health insurance plan” means Medicaid and any other public health
13 care assistance program, any individual or group health insurance policy, any
14 hospital or medical service corporation or health maintenance organization
15 subscriber contract, or any other health benefit plan offered, issued, or renewed
16 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.
17 For purposes of this section, health insurance plan includes any health benefit
18 plan offered or administered by the State or any subdivision or instrumentality
19 of the State. The term does not include benefit plans providing coverage for a
20 specific disease or other limited benefit coverage, except that it includes any
21 accident and sickness health plan.

1 **(b) Coverage.**

2 **(1) A health insurance plan shall provide coverage for gender-affirming**
3 **health care services that:**

4 **(A) are medically necessary and clinically appropriate for the**
5 **individual’s diagnosis or health condition; and**

6 **(B) are included in the State’s essential health benefits benchmark**
7 **plan.**

8 **(2) Coverage provided pursuant to this section by Medicaid or any other**
9 **public health care assistance program shall comply with all federal**
10 **requirements imposed by the Centers for Medicare and Medicaid Services.**

11 **(3) Nothing in this section shall prohibit a health insurance plan from**
12 **providing greater coverage for gender-affirming health care services than is**
13 **required under this section.**

14 **(c) Cost sharing. A health insurance plan shall not impose greater**
15 **coinsurance, co-payment, deductible, or other cost-sharing requirements for**
16 **coverage of gender-affirming health care services than apply to the diagnosis**
17 **and treatment of any other physical or mental condition under the plan.**

18 Sec. 4. 8 V.S.A. § 4099e is added to read:

19 **§ 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED**

20 **SERVICES**

21 **(a) Definitions. As used in this section:**

1 (1) “Abortion” means any medical treatment intended to induce the
2 termination of, or to terminate, a clinically diagnosable pregnancy except for
3 the purpose of producing a live birth.

4 (2) “Health insurance plan” means Medicaid and any other public health
5 care assistance program, any individual or group health insurance policy, any
6 hospital or medical service corporation or health maintenance organization
7 subscriber contract, or any other health benefit plan offered, issued, or renewed
8 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.
9 For purposes of this section, health insurance plan shall include any health
10 benefit plan offered or administered by the State or any subdivision or
11 instrumentality of the State. The term shall not include benefit plans providing
12 coverage for a specific disease or other limited benefit coverage, except that it
13 shall include any accident and sickness health plan.

14 (b) Coverage. A health insurance plan shall provide coverage for abortion
15 and abortion-related care.

16 (c) Cost sharing. The coverage required by this section shall not be subject
17 to any co-payment, deductible, coinsurance, or other cost-sharing requirement
18 or additional charge, except:

19 (1) to the extent such coverage would disqualify a high-deductible
20 health plan from eligibility for a health savings account pursuant to 26 U.S.C.
21 § 223; and

1 services, others provide confusing and misleading information to pregnant
2 individuals contemplating abortion by leading those individuals to believe that
3 their facilities offer abortion services and unbiased counseling. Many limited-
4 services pregnancy centers have promoted patently false or biased medical
5 claims about abortion, pregnancy, contraception, and reproductive health care
6 providers.

7 (3) False and misleading advertising by centers that do not offer or refer
8 clients for abortion is of special concern to the State because of the time-
9 sensitive and constitutionally protected nature of the decision to **continue or**
10 terminate a pregnancy. When a pregnant individual is misled into believing
11 that a center offers services that it does not in fact offer or receives false or
12 misleading information regarding health care options, the individual loses time
13 crucial to the decision whether to terminate a pregnancy and may lose the
14 option to choose a particular method or to terminate a pregnancy at all.

15 (4) Telling the truth is how trained health care providers demonstrate
16 respect for patients, foster trust, promote self-determination, and cultivate an
17 environment where best practices in shared decision-making can flourish.
18 Without veracity in information and communication, it is difficult for
19 individuals to make informed, voluntary choices essential in fulfilling
20 autonomy-based obligations.

1 (5) Advertising strategies and educational information about health care
2 options that lack transparency, use misleading or ambiguous terminology,
3 misrepresent or obfuscate services provided, or provide factually inaccurate
4 information are a form of manipulation that disrespects individuals,
5 undermines trust, broadens health disparity, and can result in patient harm.

6 (b) Intent.

7 (1) It is the intent of the General Assembly to ensure that the public is
8 provided with accurate, factual information about the types of health care
9 services that are available to pregnant individuals in this State. The General
10 Assembly respects the constitutionally protected right of each individual to
11 personal reproductive autonomy, which includes the right to receive clear,
12 honest, and nonmisleading information about the individual’s options and to
13 make informed, voluntary choices after considering all relevant information.

14 (2) The General Assembly respects the right of limited-services
15 pregnancy centers to counsel individuals against abortion, and nothing in this
16 subchapter should be construed to regulate, limit, or curtail such advocacy.

17 § 2492. DEFINITIONS

18 As used in this subchapter:

19 (1) “Abortion” means any medical treatment intended to induce the
20 termination of, or to terminate, a clinically diagnosable pregnancy except for
21 the purpose of producing a live birth.

1 (2) “Client” means an individual who is inquiring about or seeking
2 services at a pregnancy services center.

3 (3) “Emergency contraception” means any drug approved by the U.S.
4 Food and Drug Administration as a contraceptive method for use after sexual
5 intercourse, whether provided over the counter or by prescription.

6 (4) “Health information” means any oral or written information in any
7 form or medium that relates to health insurance or the past, present, or future
8 physical or mental health or condition of a client.

9 (5) “Limited-services pregnancy center” means a pregnancy services
10 center that does not directly provide, or provide referrals to clients, for
11 abortions or emergency contraception.

12 (6) “Pregnancy services center” means a facility, including a mobile
13 facility, where the primary purpose is to provide services to individuals who
14 are or may be pregnant and that either offers obstetric ultrasounds, obstetric
15 sonograms, or prenatal care to pregnant individuals or has the appearance of a
16 medical facility. A pregnancy services center has the appearance of a medical
17 facility if two or more of the following factors are present:

18 (A) The center offers pregnancy testing or pregnancy diagnosis, or
19 both.

20 (B) The center has staff or volunteers who wear medical attire or
21 uniforms.

1 (C) The center contains one or more examination tables.

2 (D) The center contains a private or semiprivate room or area
3 containing medical supplies or medical instruments.

4 (E) The center has staff or volunteers who collect health information
5 from clients.

6 (F) The center is located on the same premises as a State-licensed
7 medical facility or provider or shares facility space with a State-licensed
8 medical provider.

9 (7) “Premises” means land and improvements or appurtenances or any
10 part thereof.

11 § 2493. UNFAIR AND DECEPTIVE ACT

12 (a) It is an unfair and deceptive act and practice in commerce and a
13 violation of section 2453 of this title for any limited-services pregnancy center
14 to disseminate or cause to be disseminated to the public any advertising about
15 the services or proposed services performed at that center that is untrue or
16 clearly designed to mislead the public about the nature of services provided.
17 Advertising includes representations made directly to consumers; marketing
18 practices; communication in any print medium, such as newspapers,
19 magazines, mailers, or handouts; and any broadcast medium, such as television
20 or radio, telephone marketing, or advertising over the Internet such as through
21 websites and web ads. For purposes of this chapter, advertising or the

1 provision of services by a limited-services pregnancy center is an act in
2 commerce.

3 (b) The medical director of a pregnancy services center, or the individual
4 charged with supervising health care services provided by center staff or
5 volunteers at a pregnancy services center, shall be responsible, legally and
6 professionally, for the activities of staff and volunteers performing duties for
7 and on behalf of the pregnancy services center. The medical director or
8 individual shall ensure that the staff of the pregnancy services center, including
9 the medical director or individual, and any volunteers providing health care
10 services maintain a level of supervision, training, and practice consistent with
11 legal requirements established under Vermont law, including those set forth in
12 Title 26, and professional standards of practice. Failure to conduct or to ensure
13 that health care services are conducted in accordance with State law and
14 professional standards of practice may constitute unprofessional conduct under
15 3 V.S.A. § 129a and 26 V.S.A. § 1354.

16 (c) The Attorney General has the same authority to make rules, conduct
17 civil investigations, and bring civil actions with respect to violations of
18 subsection (a) of this section as provided under subchapter 1 of this chapter.

1 26 V.S.A. chapter 28, subchapter 5 and the Interstate Medical Licensure
2 Compact pursuant to 26 V.S.A. chapter 23, subchapter 3A.

3 Sec. 10a. 26 V.S.A. chapter 56 is amended to read:

4 CHAPTER 56. OUT-OF-STATE TELEHEALTH LICENSURE &
5 REGISTRATION AND INTERSTATE COMPACTS

6 Subchapter 1. Out-of-State Telehealth Licensure And Registration

7 * * *

8 Subchapter 2. Interstate Compacts; Health Care Provider Compacts

9 § 3071. HEALTH CARE PROVIDER COMPACTS; DIRECTION TO

10 VERMONT REPRESENTATIVES

11 (a) The General Assembly finds that a state’s prohibition of or limitation on
12 the provision of gender-affirming health care services or reproductive health
13 care services, or both, as defined by 1 V.S.A. § 150, prohibits health care
14 providers from following health care best practices and is a failure on the part
15 of the state to provide health care services that are medically necessary and
16 clinically appropriate for its residents. Therefore, it is the General Assembly’s
17 intent to protect the ability of professionals licensed, certified, or registered in
18 Vermont, and applicants from other member states seeking to practice a
19 profession in Vermont pursuant to an interstate compact or agreement, to have
20 the benefit of compacts and agreements while at the same time engaging in,

1 providing, or otherwise facilitating, personally or professionally, gender-
2 affirming health care and reproductive health care services.

3 (b) Vermont’s representative or delegate for an interstate compact or
4 agreement related to health care shall seek an amendment or exception to the
5 compact or agreement language, rules, or bylaws, as necessary, so that if a
6 licensee is disciplined by another state solely for providing or assisting in the
7 provision of gender-affirming health care services or reproductive health care
8 services that would be legal and meet professional standards of care if
9 provided in Vermont, the compact or agreement does not require that Vermont
10 take professional disciplinary action against the licensee.

11 * * * Emergency Contraception * * *

12 Sec. 11. 26 V.S.A. chapter 36, subchapter 1 is amended to read:

13 Subchapter 1. General Provisions

14 * * *

15 § 2022. DEFINITIONS

16 As used in this chapter:

17 * * *

18 (22) “Emergency contraception” means any drug approved by the U.S.
19 Food and Drug Administration as a contraceptive method for use after sexual
20 intercourse, whether provided over the counter or by prescription.

21 § 2023. CLINICAL PHARMACY; PRESCRIBING

1 * * *

2 (b) A pharmacist may prescribe in the following contexts:

3 * * *

4 (2) State protocol.

5 (A) A pharmacist may prescribe, order, or administer in a manner
6 consistent with valid State protocols that are approved by the Commissioner of
7 Health after consultation with the Director of Professional Regulation and the
8 Board and the ability for public comment:

9 * * *

10 (ix) emergency prescribing of albuterol or glucagon while
11 contemporaneously contacting emergency services; ~~and~~

12 (x) tests for SARS-CoV for asymptomatic individuals or related
13 serology for individuals by entities holding a Certificate of Waiver pursuant to
14 the Clinical Laboratory Amendments of 1988 (42 U.S.C. § 263a); and

15 (xi) emergency contraception.

16 * * *

17 Sec. 11a. 26 V.S.A. § 2077 is added to read:

18 § 2077. EMERGENCY CONTRACEPTION; VENDING MACHINES

19 (a) A retail or institutional drug outlet licensed under this chapter or a
20 postsecondary school, as defined in and subject to 16 V.S.A. § 176, may make
21 over-the-counter emergency contraception and other nonprescription drugs or

1 articles for the prevention of pregnancy or conception available through a
2 vending machine or similar device.

3 (b) The Board may adopt rules in accordance with 3 V.S.A. chapter 25 to
4 regulate the location, operation, utilization, and oversight of the vending
5 machines and similar devices described in subsection (a) of this section in a
6 manner that balances consumer access with appropriate safeguards for theft
7 prevention and safety.

8 * * * Higher Education; Health Care Services * * *

9 Sec. 12. 16 V.S.A. chapter 78 is added to read:

10 CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-
11 AFFIRMING HEALTH CARE SERVICES

12 § 2501. DEFINITIONS

13 As used in this chapter:

14 (1) “Gender-affirming health care readiness” means each institution’s
15 preparedness to provide gender-affirming health care services to students or
16 assist students in obtaining gender-affirming health care services, including
17 having in place equipment, protocols, patient educational materials,
18 informational websites, and training for staff; provided, however, that gender-
19 affirming health care readiness may include the provision of gender-affirming
20 health care services.

1 (2) “Gender-affirming health care services” has the same meaning as in
2 1 V.S.A. § 150.

3 (3) “Institution” means the University of Vermont or a college in the
4 Vermont State College system.

5 (4) “Medication abortion” means an abortion provided by medication
6 techniques.

7 (5) “Reproductive health care services” has the same meaning as in 1
8 V.S.A. § 150 and includes medication abortion.

9 (6) “Reproductive health care readiness” means each institution’s
10 preparedness to provide reproductive health care services to students or assist
11 students in obtaining reproductive health care services, including having in
12 place equipment, protocols, patient educational materials, informational
13 websites, and training for staff; provided, however, that reproductive health
14 care readiness may include the provision of reproductive health care services.

15 (7) “Telehealth” has the same meaning as in 26 V.S.A. § 3052.
16 § 2502. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE

17 HEALTH CARE READINESS; REPORTS

18 (a) Each institution shall report to the Agency of Human Services annually,
19 on or before November 1, on the current status of its gender-affirming health
20 care and reproductive health care readiness, including:

21 (1) whether the institution has an operational health center on campus;

1 (2) whether the institution employs health care providers on campus;

2 (3) the types of gender-affirming health care services and reproductive
3 health care services that the institution offers to its students on campus and the
4 supports that the institution provides to students who receive those services;

5 (4) the institution’s efforts to assist students with obtaining gender-
6 affirming health care services and reproductive health care services from
7 licensed health care professionals through telehealth;

8 (5) the institution’s proximity to a hospital, clinic, or other facility that
9 provides gender-affirming health care services or reproductive health care
10 services, or both, that are not available to students on campus;

11 (6) the referral information that the institution provides regarding
12 facilities that offer gender-affirming health care services and reproductive
13 health care services that are not available to students on campus, including
14 information regarding the scope of the services that are available at each such
15 facility; and

16 (7) the availability, convenience, and cost of public transportation
17 between the institution and the closest facility that provides gender-affirming
18 health care services or reproductive health care services, or both, and whether
19 the institution provides transportation.

20 (b) On or before January 31 of each year, the Agency of Human Services
21 shall compile the materials submitted pursuant to subsection (a) of this section

1 and report to the House Committees on Education, on Health Care, and on
2 Human Services and the Senate Committees on Education and on Health and
3 Welfare on the status of gender-affirming health care and reproductive health
4 care readiness at Vermont’s institutions.

5 Sec. 13. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE
6 HEALTH CARE READINESS; IMPLEMENTATION

7 Each institution shall submit its first report on the status of its gender-
8 affirming health care and reproductive health care readiness as required under
9 16 V.S.A. § 2502(a) to the Agency of Human Services on or before November
10 1, 2023, and the Agency shall provide its first legislative report on or before
11 January 31, 2024.

12 * * * Prohibition on Disclosure of Protected Health Information * * *

13 Sec. 14. 18 V.S.A. § 1881 is amended to read:

14 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION
15 PROHIBITED

16 (a) As used in this section:

17 (1) “Business associate” has the same meaning as in 45 C.F.R.
18 § 160.103.

19 (2) “Covered entity” shall have has the same meaning as in 45 C.F.R.
20 § 160.103.

1 (3) “Legally protected health care activity” has the same meaning as in
2 1 V.S.A. § 150.

3 ~~(2)~~(4) “Protected health information” shall have has the same meaning
4 as in 45 C.F.R. § 160.103.

5 (b) A covered entity or business associate shall not disclose protected
6 health information unless the disclosure is permitted under the Health
7 Insurance Portability and Accountability Act of 1996 (HIPAA).

8 (c) In order to protect patients and providers who engage in legally
9 protected health care activity, a covered entity or business associate shall not
10 disclose protected health information related to a legally protected health care
11 activity for use in a civil or criminal action; a proceeding preliminary to a civil
12 or criminal action; or a probate, legislative, or administrative proceeding unless
13 the disclosure meets one or more of the following conditions:

14 (1) The disclosure is authorized by the patient or the patient’s
15 conservator, guardian, or other authorized legal representative.

16 (2) The disclosure is specifically required by federal law, Vermont law,
17 or rules adopted by the Vermont Supreme Court.

18 (3) The disclosure is ordered by a court of competent jurisdiction
19 pursuant to federal law, Vermont law, or rules adopted by the Vermont
20 Supreme Court. An order compelling disclosure under this subdivision shall

1 include the court’s determination that good cause exists to require disclosure of
2 the information related to legally protected health care activity.

3 (4) The disclosure is to be made to a person designated by the covered
4 entity or business associate and will be used solely in the defense of the
5 covered entity or business associate against a claim that has been made, or
6 there is a reasonable belief will be made, against the covered entity or business
7 associate in a civil or criminal action, a proceeding preliminary to a civil or
8 criminal action, or a probate, legislative, or administrative proceeding.

9 (5) The disclosure is to Vermont’s Board of Medical Practice or Office
10 of Professional Regulation, as applicable, in connection with a bona fide
11 investigation in Vermont of a licensed, certified, or registered health care
12 provider.

13 * * * Effective Dates * * *

14 Sec. 15. EFFECTIVE DATES

15 (a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6
16 and 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Secs. 9
17 and 10 (reports), Sec. 11a (emergency contraception; vending machines), Secs.
18 12 and 13 (gender-affirming health care and reproductive health care
19 readiness; reports), and Sec. 14 (prohibition on disclosure of protected health
20 information) shall take effect on passage.

1 (b) Secs. 3 and 4 (insurance coverage) shall take effect on January 1, 2024
2 and shall apply to all health insurance plans issued on and after January 1,
3 2024 on such date as a health insurer offers, issues, or renews the health
4 insurance plan, but in no event later than January 1, 2025.

5 (c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024,
6 except that the Agency of Human Services shall submit its request for approval
7 of Medicaid coverage of the services prescribed in Sec. 4 of this act, if needed,
8 to the Centers for Medicare and Medicaid Services on or before July 1, 2023,
9 and the Medicaid coverage shall begin on the later of the date of approval or
10 January 1, 2024.

11 (d) Sec. 10a (interstate compacts; state representatives) shall take effect on
12 July 1, 2023.

13 (e) Sec. 11 (emergency contraception) shall take effect on or before
14 September 1, 2023, on such date as the Commissioner of Health approves the
15 State protocol.

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20 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE