

House Calendar

WEDNESDAY, APRIL 29, 2009

113th DAY OF BIENNIAL SESSION

House Convenes at 9:30 A. M.

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ACTION CALENDAR

**Action Postponed Until Wednesday,
Favorable with Amendment**

H. 75

An act relating to interim budget and appropriation adjustments..

Rep. Larson of Burlington, for the Committee on **Appropriations**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 704 is amended to read:

§ 704. INTERIM BUDGET AND APPROPRIATION ADJUSTMENTS

(a) The general assembly recognizes that acts of appropriations and their sources of funding reflect the priorities for expenditures of public funds enacted by the legislature, and that major reductions or adjustments ~~in such appropriations~~, when required by reduced state revenues or other reasons, ought to be made whenever possible by an act of the legislature reflecting its revisions of those priorities. Nevertheless, if the general assembly is not in session, authorized appropriations and their sources of funding may be ~~reduced adjusted and funds may be transferred~~ pursuant to the provisions of this section.

(b)(1) If the official state revenue estimates of the emergency board for the general fund, the transportation fund, or federal funds, determined under section 305a of this title have been reduced by one percent or more from the estimates determined and assumed for purposes of the general appropriations act or budget adjustment act, and if the general assembly is not in session, in order to ~~reduce adjust~~ adjust appropriations and their sources of funding under this subdivision the secretary shall prepare a plan ~~to reduce appropriations~~ for approval by the joint fiscal committee, and authorized appropriations and their sources of funding may be ~~reduced adjusted and funds transferred~~ pursuant to ~~an expenditure reduction~~ a plan approved under this section.

(2) If the secretary of administration determines that the current fiscal year revenues for the general fund, transportation fund, or federal funds are likely to be reduced from the official revenue estimates by less than one percent, the secretary may prepare and implement an expenditure reduction plan, and implement appropriations reductions in accordance with the plan. The secretary may implement a plan under this subdivision without the

approval of the joint fiscal committee if reductions to any individual appropriation do not exceed five percent of the appropriation's amount for personal services, operating expenses, grants, and other categories, and provided that the plan is designed to minimize any negative effects on the delivery of services to the public, and shall not have any unduly disproportionate effect on any single function, program, service, ~~or benefit, or county~~. Plans not requiring the approval of the joint fiscal committee shall be filed with the joint fiscal office prior to implementation. If the secretary's plan consists of disproportionate reductions greater than five percent in any line item, such plan shall not be implemented without the approval of the joint fiscal committee.

~~(c) An expenditure reduction plan prepared by the secretary shall indicate all proposed reductions in expenditures authorized by a general appropriations or budget adjustment act, and shall indicate the effect of the expenditure reduction on the primary purposes of the program for which the appropriation was made.~~

~~(d) An expenditure reduction~~ A plan prepared for approval by the joint fiscal committee by the secretary shall indicate the amounts to be reduced from adjusted in each appropriation, and from in personal services, operating expenses, grants, and other categories, shall indicate the effect of each adjustment in appropriations and their sources of funding, and each fund transfer, on the primary purposes of the program, and shall indicate how it is designed to minimize any negative effects on the delivery of services to the public, and any unduly disproportionate effect the plan may have on any single function, program, service, ~~or benefit, or county~~.

~~(e)(d)~~ An expenditure reduction plan under subdivision (b)(2) of this section shall not include any reduction in:

(1) appropriations authorized and necessary to fulfill the state's debt obligations;

(2) appropriations authorized for the judicial or legislative branches, except that the plan may recommend reductions for consideration by the judicial or legislative branches; or

(3) appropriations for the salaries of elected officers of the executive department listed in subsection 1003(a) of this title.

~~(f)(e)(1)~~ The joint fiscal committee shall have 21 days from the date of submission of a plan under subdivision (b)(1) of this section to consider the plan, and may approve an expenditure reduction or disapprove the plan submitted under subdivision (b)(1) of this section upon affirmative a vote of a majority of the members of the committee. If the committee vote results in a

tie, the plan shall be deemed disapproved; and if the committee fails for any other reason to take final action on such plan within 21 days of its submission to the committee, it shall be deemed to be approved. For purposes of this section the committee shall be convened at the call of the chair or at the request of at least three members of the committee. During the 21-day period for consideration of the plan, the committee shall conduct a public hearing and provide an opportunity for public comment on the plan.

(2) If the committee disapproves the plan, is disapproved, then in order to communicate the priorities of the general assembly, the committee shall make recommendations to the secretary for amendments to the plan. The Within seven days after the committee notifies the secretary of its disapproval of a plan, the secretary may resubmit submit a final plan to the committee for approval. The committee shall have 14 days from the date of submission of a final plan to consider that plan and to vote by a majority of the members of the committee to approve or disapprove the plan; but if the committee fails to approve or disapprove the plan by a majority vote, the plan shall be deemed disapproved. If the secretary's final plan includes any changes from the original plan other than those recommended by the committee, then during the 14-day period for consideration of the final plan, the committee shall provide an opportunity for public comment on the plan. A disapproved plan shall not be implemented. In the event of an additional reduction in the official state revenue estimate, the secretary of administration may request approval of an amended expenditure reduction plan.

(3) In determining whether to approve the secretary's a plan submitted by the secretary under this subsection, the committee shall consider whether the plan minimizes any negative effects on the delivery of services to the public, and whether the plan will have any unduly disproportionate effect on any single function, program, service, or benefit or county.

(4) Any plan disapproved under this section shall not be implemented.

(5) For purposes of this section, the committee shall be convened at the call of the chair or at the request of at least three members of the committee.

(g)(f) In the event of a reduction in the official revenue estimate of one percent or more, the secretary may implement an expenditure reduction plan in the manner provided for in subdivision (b)(2) of this section, provided that the reduction in appropriations is not greater than one percent of the prior official revenue estimate.

(g) In this subsection, "downgrade" means the cumulative reductions in the official state revenue estimates of the emergency board for the general fund, the transportation fund, or federal funds, determined under section 305a of this

title, from the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act, minus the total reductions in appropriations already taken under this section in that fund in the fiscal year. No plan may be approved or implemented under this section which (i) would reduce appropriations from any fund by more than the downgrade; or (ii) would result in total reductions under this section in appropriations in the fiscal year from any fund by more than five percent of the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act.

(h) The provisions of this section shall apply to each official state revenue estimate of the emergency board in the fiscal year and when the general assembly is not in session.

(Committee vote: 8-2-1)

Amendment to be offered by Rep. Larson of Burlington to H. 75

Moves to amend the proposal of amendment of the Committee on Appropriations in Sec. 1 by striking subsection (g) in 32 V.S.A. § 704 and inserting in lieu thereof a new subsection (g) to read:

(g) No plan may be approved or implemented under this section which (i) would reduce appropriations from any fund by more than the cumulative reductions in the official state revenue estimates of the emergency board for the general fund, the transportation fund, or federal funds, determined under section 305a of this title, from the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act; minus the total reductions in appropriations already taken under this section in that fund in the fiscal year; or (ii) would result in total reductions under this section in appropriations in the fiscal year from any fund by more than five percent of the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act.

Amendment to be offered by Rep. Poirier of Barre City to H. 75

Moves to amend the proposal of amendment of the Committee on Appropriations as follows:

First: In Sec. 1, 32 V.S.A. § 704(e)(1), by striking “and if the committee fails for any other reason to take final action on such plan within 21 days of its submission to the committee, it shall be deemed to be approved” and inserting in lieu thereof the words “and if the committee fails for any other reason to take final action on such plan within 21 days of its submission to the committee, it shall be deemed to be ~~approved~~ disapproved”

Second: In Sec. 1, by striking 32 V.S.A. § 704(g) and inserting a new subsection (g) to read:

(g) No plan may be approved or implemented under this section which:

(1) would increase an appropriation for any line item or section of the budget;

(2) would reduce appropriations from any fund by more than the smaller of:

(A) the cumulative reductions in the official state revenue estimates of the emergency board for the general fund, the transportation fund, or federal funds, determined under section 305a of this title, from the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act; minus the total reductions in appropriations already taken under this section in that fund in the fiscal year; or

(B) two percent of the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act; or

(3) would result in total reductions under this section in appropriations in the fiscal year from any fund by more than three percent of the estimate originally determined and assumed for purposes of the general appropriations act or budget adjustment act.

Amendment to be offered by Rep. Nuovo of Middlebury to H. 75

Moves to amend the proposal of the Committee on Appropriations, in Sec. 1, in 32 V.S.A. § 704(e)(1) and (2), in both subsections, after the words “shall provide an opportunity for public comment on the plan”, by adding in both subsections “, and shall hold a hearing for legislative members on the plan”

Amendment to be offered by Rep. Manwaring of Wilmington to H. 75

moves to amend the proposal of amendment of the Committee on Appropriations, in Sec. 1, in 32 V.S.A. § 704(g), before the final period, by inserting the words “; or (iii) would affect the education fund”

Third Reading

S. 69

An act relating to digital campaign finance filings.

S. 96

An act relating to unclaimed property.

NOTICE CALENDAR

H. 125

An act relating to farm-fresh milk.

Rep. Lawrence of Lyndon, for the Committee on **Agriculture**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

(a) Vermont farmers who currently sell unpasteurized (raw) milk directly to consumers operate in a largely unregulated environment that fails to address a full range of food safety issues, and in which restricted supply is the primary method of addressing food safety concerns.

(b) There are widely divergent views on unpasteurized milk's benefits and risks.

(c) Vermont's current unpasteurized milk law also limits economic development opportunities. Farmers sell their unpasteurized milk for \$5.00 to \$10.00 per gallon, which represents an economic opportunity.

(d) The purpose of this act is to allow farmers to sell larger quantities of unpasteurized milk while at the same time creating new sanitary production, marketing, and consumer education standards.

Sec. 2. 6 V.S.A. § chapter 152 is added to read:

CHAPTER 152. SALE OF UNPASTEURIZED (RAW) MILK

§ 2775. LIMITED SALE OF UNPASTEURIZED (RAW) MILK

PERMISSIBLE

The production and sale of unpasteurized milk for fluid consumption is permitted within the state of Vermont only when produced, marketed, and sold in conformance with this chapter. Such production and sale is not subject to rules adopted pursuant to section 2701 of this title.

§ 2776. DEFINITIONS

For the purposes of this chapter, "unpasteurized milk" or "unpasteurized (raw) milk" means unpasteurized milk sold for fluid consumption and does not include unpasteurized milk to be pasteurized or unpasteurized milk produced for use in manufacturing of milk products other than fluid milk.

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW)

MILK

(a) Unpasteurized milk for fluid consumption shall be sold directly from the producer to the end user and shall not be resold.

(b) Unpasteurized milk shall be sold only from the farm on which it was produced except when delivery is arranged in conformance with section 2778 of this chapter. Unpasteurized milk shall not be sold or offered as free samples at any location other than on the farm on which the milk was produced.

(c) Unpasteurized milk operations shall conform to reasonable sanitary standards, including:

(1) Unpasteurized milk should be derived from healthy animals which are subject to appropriate veterinary care, including tuberculosis and brucellosis testing and rabies vaccination, according to accepted testing and vaccinations standards as established by the agency. Test results and verification of vaccinations shall be posted on the farm in a prominent place and be easily visible to customers.

(2) The animal's udders and teats shall be cleaned and sanitized prior to milking.

(3) The animals shall be housed in a clean, dry environment.

(4) Milking equipment shall be of sanitary construction, cleaned after each milking, and sanitized prior to the next milking.

(5) Milking shall be conducted in a clean environment appropriate for maintaining cleanliness.

(6) The farm shall have a potable water supply which is sampled for bacteriological examination according to agency standards every three years and whenever any alteration or repair of the water supply has been made.

(7) If an animal is treated with antibiotics, that animal's milk shall be tested for and found free of antibiotics before its milk is offered for sale.

(d) Unpasteurized milk shall conform to the following production and marketing standards:

(1) Registration. Each producer intending to sell unpasteurized milk pursuant to this chapter shall register with the agency.

(2) Record keeping and reporting.

(A) A producer shall collect one composite sample of unpasteurized milk each day and keep the previous 14 days' samples frozen. The producer shall provide samples to the agency if requested.

(B) A producer shall maintain a current list of all customers, including addresses, telephone numbers, and e-mail addresses when available.

(C) The producer shall maintain a list of transactions for at least one year which shall include customer names, the date of each purchase, and the amount purchased.

(D) On or before March 1 of each year, the producer shall submit to the agency a statement of the total gallons of unpasteurized milk sold in the previous 12 months.

(3) Labeling. Unpasteurized (raw) milk shall be labeled as such, and the label shall contain:

(A) The date the milk was obtained from the animal.

(B) The name, address, zip code, and telephone number of the producer.

(C) The common name of the type of animal producing the milk (e.g. cattle, goat, sheep) or an image of the animal.

(D) The words "Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated." on the container's principal display panel, and these words shall be clearly readable in letters at least one-eighth inch in height and prominently displayed.

(E) The words "This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems." on the container's principal display panel and clearly readable in letters at least one-sixteenth inch in height.

(4) Temperature. Unpasteurized milk shall be cooled to 40 degrees Fahrenheit within two hours of the finish of milking and so maintained until it is obtained by the consumer.

(5) Customer inspection and notification.

(A) Prior to selling milk to a new customer, the producer shall provide the customer with a tour of the farm and any area associated with the milking operation. Customers are encouraged and shall be permitted to return to the farm at a reasonable time and at reasonable intervals to re-inspect any areas associated with the milking operation.

(B) A sign with the words “Unpasteurized (Raw) Milk. Not pasteurized. Keep Refrigerated.” and “This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune systems.” shall be displayed prominently on the farm in a place where it can be easily seen by customers. The lettering shall be at least one inch in height and shall be clearly readable.

(e) Producers selling 12.5 or fewer gallons (50 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section and shall sell unpasteurized milk only from the farm on which it was produced. A producer selling fewer than 12.5 gallons of unpasteurized milk may choose to meet the requirements of subsection (f) of this section, in which case the producer may deliver in accordance with section 2778 of this chapter.

(f) Producers selling 12.6 to 40 gallons (50.4 to 160 quarts) of unpasteurized milk per day shall meet the requirements of subsections (a) through (d) of this section as well as the following standards:

(1) Inspection. The agency shall annually inspect the producer’s facility and determine that the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

(2) Bottling. Unpasteurized milk shall be sold in containers which have been filled by the producer. Containers shall be cleaned by the producer except that the producer may allow customers to clean their own containers only if each customer’s container is labeled with the customer’s name and address and the customers use their own containers. Producers shall ensure that only clean bottles are filled and distributed.

(3) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 15,000 cfu/ml (cattle and goats);

(ii) Total coliform count: 10 cfu/ml (cattle and goats);

(iii) Somatic cell count: 225,000/ml (cattle); 500,000/ml (goats).

(B) If any test results exceed these limits, it is recommended that the laboratory notify the agency of the results, and the producer shall notify the agency within five days of receiving the results.

(C) Test results shall be kept on file for one year and shall be posted on the farm in a prominent place and be easily visible to customers. The producer shall provide test results to the farm's customers or the agency if requested.

(4) Prearranged delivery of unpasteurized milk is permitted and shall be in compliance with section 2778 of this chapter.

(g) The sale of more than 40 gallons (160 quarts) of unpasteurized milk in any one day is prohibited.

§ 2778. DELIVERY OF UNPASTEURIZED (RAW) MILK

(a) Delivery of unpasteurized milk is permitted only within the state of Vermont and only by those producers meeting the requirements of subsection 2777(f) of this chapter.

(b) Delivery shall conform to the following requirements:

(1) Delivery shall be to customers who have purchased milk in advance either by a one-time payment or through a subscription;

(2) Delivery shall be directly to the customer at the customer's home or to a customer's home if that home is outfitted with refrigerated storage capable of maintaining the milk at 40 degrees Fahrenheit until obtained by the customer.

(3) During delivery, milk shall be protected from exposure to direct sunlight.

(4) During delivery, milk shall be kept at 40 degrees Fahrenheit or lower at all times.

(c) A producer may contract with another individual to deliver milk in accordance with this section.

Sec. 3. 6 V.S.A. § 2723 is amended to read:

§ 2723. -EXEMPTIONS

Handlers' licenses shall not be required from the following persons:

(1) Producers, except producers who sell fluid dairy products at retail in Vermont.

(2) A hotel, restaurant, or other public eating place that sells fluid dairy

products for consumption on the premises, or a store which sells packaged dairy products, provided the entire supply of fluid dairy products is purchased from licensed milk handlers.

~~(3) A person who produces and sells or offers for sale less than 50 quarts of milk in any one day, but in such case an inspection may be made and reasonable sanitary requirements shall be complied with~~ A person producing unpasteurized milk under section 2777 of this title.

and that the title of the bill be amended to read:

“An act relating to the sale of unpasteurized (raw) milk”

(Committee vote: 8-3-0)

S. 42

An act relating to the department of banking, insurance, securities and health care administration.

Rep. Wilson of Manchester, for the Committee on **Commerce and Economic Development**, recommends that the House propose to the Senate that the bill be amended as follows:

First: By inserting a new Sec. 30a to read as follows:

Sec. 30a. 8 V.S.A. § 6006(i)(5) is amended to read:

(5) the commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the sole purpose of merging with or assuming existing insurance or reinsurance business from an existing ~~Vermont~~ licensed captive insurance company. The commissioner may, upon request of such newly formed captive insurance company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and (2) of this title.

Second: After Sec. 33, by inserting three new sections to be numbered 33a-33b and 33c, to read as follows:

Sec. 33a. 8 V.S.A. § 15(c) and (d) are added to read:

(c) The commissioner may waive the requirements of 15 V.S.A. § 795(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18. The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of

Title 18.

(d) Upon written request by the office of child support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, chapter 150 of Title 9, and chapter 221 of Title 18 if the commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the office of child support to the commissioner shall constitute prima facie evidence. The office of child support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the department receives a certificate issued by the office of child support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order.

Sec. 33b. 21 V.S.A. § 1378(c) is amended to read:

(c) Every agency shall, ~~at least annually~~ upon request, furnish to the commissioner a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such certificates. The lists should include the name, address, Social Security or federal identification number of such licensee or provider, and such other information as the commissioner may require.

Sec. 33c. REPEAL

21 V.S.A. § 1378(b) (verification of good standing with respect to unemployment contributions) is repealed.

(Committee vote: 11-0-0)

Rep. Masland of Thetford, for the Committee on **Ways and Means**, recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Commerce and Economic Development** and when further amended as follows:

First: In Sec. 20, 8 V.S.A. § 6014(h), by striking the number “12” before the word “percent” and inserting in lieu thereof the number “11”

Second: In Sec. 21, 8 V.S.A. § 6014(k), by striking the date “January 1, 2009” and inserting in lieu thereof “the effective date of this subsection”

Third: In Sec. 22, 8 V.S.A. § 6017(a)(1), by striking the number “12” before the word “percent” and inserting in lieu thereof the number “11”

Fourth: By striking Sec. 34 in its entirety and inserting in lieu thereof a new Sec. 34 to read:

Sec. 34. EFFECTIVE DATES

This act shall take effect July 1, 2009, except that this section, Secs. 15 and 16 (guaranty funds), Secs. 17 through 19 (captive insurance), Sec. 21 (tax credit), and Secs. 23 through 30 (captive insurance) shall take effect upon passage.

(Committee vote: 9-0-2)

S. 70

An act relating to clarifying procedures for the reinstatement of driver’s license based on total abstinence from alcohol and drugs.

Rep. Brennan of Rutland, for the Committee on **Transportation**, recommends that the House propose to the Senate that the bill be amended as follows:

First: In Sec. 1, subsection (b), subdivision (1) by striking the figure “\$1,000.00” and inserting in lieu thereof the figure “\$500.00” and

Second: In Sec. 1, subsection (b), subdivision (1), after the final period, by inserting the following: “The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant.”

(Committee vote: 10-0-1)

S. 129

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Rep. O'Brien of Richmond, for the Committee on **Health Care**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Variation in Health Care Utilization * * *

Sec. 1. STUDY OF HEALTH CARE UTILIZATION

(a)(1) The commissioner of banking, insurance, securities, and health care administration shall analyze variations in the use of health care provided both by hospitals and by physicians treating Vermont residents as measured across the appropriate geographic unit or units. The commissioner shall contract with the Vermont program for quality in health care (VPQHC) pursuant to 18 V.S.A. § 9416 and may contract or consult with other qualified professionals or entities as needed to assist in the analysis and recommendations. To the extent possible, the analysis shall include information already available in medical literature and the Vermont quality report.

(2) The purpose of the analysis is to identify treatments or procedures for which the utilization rate varies significantly among geographic regions within Vermont, where the utilization rates are changing faster in one geographic region than another, to determine the reasons for the variations and changes in utilization, and to recommend solutions to contain health care costs by appropriately reducing variation, including by promoting the use of equally or more effective, lower-cost treatments and therapies provided by all health care professionals licensed in the state. The commissioner may examine the utilization rates of comparable, out-of-state hospitals or entities and regions if necessary to complete this analysis.

(3) The secretary of human services shall collaborate with the commissioner of banking, insurance, securities, and health care administration in the analysis required by this section. To the extent that the agency has data to contribute to the analysis that may not be shared directly, the agency shall provide the analysis to the commissioner of banking, insurance, securities, and health care administration.

(4) The commissioner and the secretary may begin the analysis with the following services:

(A) whose utilization is governed largely by patient preference, including:

- (i) cataract surgery;
- (ii) joint replacement;
- (iii) back surgery; and

(iv) elective cardiac and vascular procedures.

(B) whose utilization appears to be governed largely by the available supply of the service, including:

(i) total physician visits, including to specialists and primary care physicians;

(ii) medical admissions to hospitals, including number of inpatient days and outpatient visits, including emergency room visits;

(iii) ambulatory-sensitive conditions;

(iv) advanced imaging;

(v) diagnostic tests; and

(vi) minor procedures.

(b)(1) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration shall collect the same amount under subsection 9416(c) of Title 18 as was collected in state fiscal year 2009 for the expenses incurred under that section.

(2) In fiscal year 2010, the commissioner of banking, insurance, securities, and health care administration may redistribute up to \$150,000.00 of the amount collected under subsection 9416(c) of Title 18 in order to ensure that the analyses and report required by this section are completed.

(c) No later than January 15, 2010, the secretary of human services and the commissioner of banking, insurance, securities, and health care administration shall provide a report to the house committee on health care and the senate committee on health and welfare containing a summary of their analysis of health care utilization, including explanations for variations or increases in spending and recommendations for containing health care costs by reducing variation, including promoting the use of equally or more effective lower cost treatment alternatives, prevention, or other methods of appropriately changing utilization.

Sec. 2. UTILIZATION REVIEW AND REMEDIATION PLAN

No later than January 15, 2010, using the analysis required in Sec. 1 of this act as the primary source of analysis, the commissioner of banking, insurance, securities, and health care administration shall consult with the Vermont Association of Hospitals and Health Systems, Inc., the Vermont Medical Society, insurers, and others to recommend:

(1) A process to ensure appropriate utilization in treatments or procedures across Vermont, including:

(A) identifying inappropriately low or high utilization in a geographic region for which there is a method of changing utilization;

(B) prioritizing variation identified in a geographic region by considering the impact a change in inappropriately low or high variations could have on cost or quality and the potential to develop strategies to rectify inappropriate variations;

(C) determining the causes of inappropriately low or high utilization identified pursuant to the process developed under this subdivision in a particular geographic region;

(D) providing the information gathered pursuant to the process developed under this subdivision to the health care professionals and facilities in the geographic region and in a publicly available format; and

(E) monitoring the health care professionals and facilities in the geographic region's progress.

(2) Modifications, if any, to existing regulatory processes, including the certificate of need process or the annual hospital budget process.

(3) Solutions to reduce inappropriate low or high utilization, including initiatives to improve public health and change reimbursement methodologies.

(4) Incentives for hospitals and health care professionals to change inappropriately low or high utilization.

* * * Administrative Cost* * *

Sec. 3. HEALTH PLAN ADMINISTRATIVE COST REPORT

(a) No later than December 15, 2009, the commissioner of banking, insurance, securities, and health care administration, in collaboration with the secretary of human services and the commissioner of human resources, shall provide a health plan administrative cost report to the health care reform commission, the house committee on health care, and the senate committee on health and welfare.

(b) The report shall:

(1) identify a common methodology based on the current rules for insurer reports to the department of banking, insurance, securities, and health care administration for calculating costs of administering a health plan in order to provide useful comparisons between the administrative costs of:

(A) private insurers;

(B) entities administering self-insured health plans, including the state employees' and retirees' health benefit plans; and

- (C) offices or departments in the agency of human services; and
- (2) compare administrative costs across the entities in Vermont providing health benefit plans.

* * * Shared Decision-making * * *

Sec. 4. SHARED DECISION-MAKING DEMONSTRATION PROJECT

(a) No later than January 15, 2010, the secretary of administration or designee shall present a plan to the house committee on health care and the senate committee on health and welfare for a shared decision-making demonstration project to be integrated with the Blueprint for Health. The purpose of shared decision-making shall be to improve communication between patients and health care professionals about equally or more effective treatment options where the determining factor in choosing a treatment is the patient's preference. The secretary shall consider existing resources and systems in Vermont as well as other shared decision-making models. The plan shall analyze potential barriers to health care professionals participating in shared decision-making, including existing law on informed consent, and recommend solutions or incentives to encourage participation by health care professionals in the demonstration project.

(b) "Shared decision-making" means a process in which the health care professional and patient or patient's representative discuss the patient's health condition or disease, the treatment options available for that condition or disease, the benefits and harms of each treatment option, information on the limits of scientific knowledge on patient outcomes from the treatment options, and the patient's values and preferences for treatment with the use of a patient decision aid.

* * *Health Care Quality* * *

Sec. 5. BISHCA; REVIEW OF HEALTH QUALITY INITIATIVES

(a) The commissioner of banking, insurance, securities, and health care administration, in collaboration with the Vermont program for quality in health care, shall conduct a review of health care quality organizations in other states and countries to identify and evaluate quality improvement strategies, initiatives, and best practices. The review shall determine how other jurisdictions conduct health care quality reviews, including what types of organizations are providing health care quality analysis, the content of the analysis, the methods used by the organization to do the analysis, and other relevant information.

(b) No later than January 15, 2010, the commissioner shall provide a report to the house committee on health care and the senate committee on health and

welfare including its findings, a comparison of Vermont's program with other jurisdictions, and any recommendations for modifying the program.

* * * Accountable Care Organization Pilot Project * * *

Sec. 6. ACCOUNTABLE CARE ORGANIZATION WORK GROUP

(a) It is the intent of the general assembly that all Vermonters receive affordable and appropriate health care at the appropriate time, and that health care costs be contained over time. In order to achieve this goal and to ensure the success of health care reform, it is essential to pursue innovative approaches to a system of health care delivery that integrates health care at a community level and contains costs through community-based payment reform, such as developing an accountable care organization. It is also the intent of the general assembly to ensure sufficient state involvement and action in designing and implementing an accountable care organization in order to comply with federal anti-trust provisions by replacing competition between payers and others with state regulation and supervision.

(b)(1)(A) The commission on health care reform shall convene a work group to support the development of an application by at least one Vermont network of community health care providers for participation in a national accountable care organization (ACO) state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution with the intent that at least one ACO pilot project be implemented in Vermont no later than July 1, 2010. The network of community health care providers shall include primary care professionals, specialists, hospitals, and other health care providers and entities.

(B) An accountable care organization is an entity that enables networks of community health care providers to become accountable for the overall costs and quality of care for the population they jointly serve and to share in the savings created by improving quality and slowing spending growth as described in *Fostering Accountable Health Care: Moving Forward in Medicare* by Fisher et al, Health Affairs w219, 2009.

(2) The commission shall research other opportunities to create proposals to establish an ACO pilot project or another similar payment reform pilot project, which may become available through participation in a demonstration waiver in Medicare, payment reform in Medicare, national health care reform, or other federal changes that support the development of accountable care organizations.

(c)(1) The commission shall solicit participation in the work group from a broad group of interested stakeholders, including the secretary of administration or designee, the commission of banking, insurance, securities,

and health care administration or designee, the director of the office of Vermont health access or designee, representatives of private insurers, employers, consumers, and representatives of health care professionals and facilities interested in participating in the ACO pilot project.

(2) To the extent required to avoid federal anti-trust violations, the commissioner of banking, insurance, securities, and health care administration shall facilitate and supervise the participation of health care professionals, health care facilities, and insurers in the planning and implementation of an accountable care organization. The department shall ensure that the application includes sufficient state supervision over these entities to comply with federal anti-trust provisions. The department shall propose to the commission any legislation necessary for implementation of the ACO pilot project.

(3) The director of the office of Vermont health access shall propose to the commission a plan for including Medicaid, VHAP, and Dr. Dynasaur in the accountable care organization, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities. Notwithstanding section 1901 of Title 33, the commission may approve the director of Vermont health access' plan for including Medicaid, VHAP, and Dr. Dynasaur in the ACO pilot project if it is necessary for the director to apply for the waiver amendment outside of the legislative session to ensure implementation of the ACO pilot project no later than July 1, 2010.

(d) The work group shall:

(1) identify local community health care professional and facility networks interested in participating in the ACO pilot project and assist them in qualifying as a site;

(2) develop a financial model for the community provider network involved in the accountable care organization to estimate the fiscal impact of the ACO pilot project on payers, the local community health care professional and facility network, and the state, including a model for recapturing a portion of anticipated savings from participation in an ACO which would be reinvested with health care professionals and facilities; and

(3) ensure that the ACO pilot project proposal is coordinated with the Blueprint for Health, existing medical home projects, and shared decision-making pilot projects.

(e) No later than January 15, 2010, the commission on health care reform shall report to the house committee on health care and the senate committee on health and welfare on the ACO state learning collaborative application, the

status of the development of an application by a Vermont network of health care providers, and any proposed legislation necessary for the implementation of the ACO pilot project.

(f) The work group shall cease to exist on January 1, 2011.

Sec. 7. ACCOUNTABLE CARE ORGANIZATION PILOT; MEDICAID WAIVER

If the plan provided for under Sec. 6(c)(3) of this act is approved by the commission on health care reform, the director of Vermont health access shall apply to the Centers on Medicare and Medicaid Services (CMS) for an amendment to the Global Commitment for Health Medicaid Section 1115 waiver to allow for participation in a national accountable care organization state learning collaborative sponsored by the Dartmouth Institute for Health Policy and Clinical Practice and the Brookings Institution.

* * * Health Care Administration * * *

Sec. 8. 18 V.S.A. § 9401 is amended to read:

§ 9401. POLICY

(a) It is the policy of the state of Vermont to ~~insure~~ ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy it is necessary that the state ensure the quality of health care services provided in Vermont and, until health care systems are successful in controlling their costs and resources, to oversee cost containment.

(b) It is further the policy of the state of Vermont that the health care system should:

(1) Maintain and improve the quality of health care services offered to Vermonters.

(2) Promote ~~market or other~~ planning mechanisms that contain or reduce increases in the cost of delivering services so that health care costs do not consume a disproportionate share of Vermonters' incomes or the moneys available for other services required to insure the health, safety, and welfare of Vermonters.

(3) Encourage regional and local participation in decisions about health care delivery, financing, and provider supply.

(4) Promote ~~market or other~~ planning mechanisms that will achieve rational allocation of health care resources in the state.

(5) Facilitate universal access to preventive and medically necessary health care.

(6) Support efforts to integrate mental health and substance abuse services with overall medical care.

Sec. 9. 18 V.S.A. § 9402 is amended to read:

§ 9402. DEFINITIONS

* * *

(6) “Health care facility” means all institutions, whether public or private, proprietary or nonprofit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any facility operated by religious groups relying solely on spiritual means through prayer or healing, but includes all institutions included in subdivision ~~9432(7)~~ 9432(10) of this title, except health maintenance organizations.

* * *

(10) “Health resource allocation plan” means the plan ~~developed~~ adopted by the commissioner ~~and adopted by the governor of banking, insurance, securities, and health care administration~~ under section 9405 of this title.

(11) “Home health agency” means a for-profit or ~~not-for-profit~~ nonprofit health care facility providing part-time or intermittent skilled nursing services and at least one of the following other therapeutic services made available on a visiting basis, in a place of residence used as a patient’s home: physical, speech, or occupational therapy; medical social services; home health aide services; or other non-nursing therapeutic services, including the services of nutritionists, dietitians, psychologists, and licensed mental health counselors.

* * *

(13) “Hospital” means an acute care hospital licensed under chapter 43 of this title ~~and falling within one of the following four distinct categories, as defined by the commissioner by rule:~~

- ~~(A) Category A1: tertiary teaching hospitals.~~
- ~~(B) Category A2: regional medical centers.~~
- ~~(C) Category A3: community hospital systems.~~
- ~~(D) Category A4: critical access hospitals.~~

* * *

* * * Certificate of Need * * *

Sec. 10. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop, or have developed on its behalf a new health care project without issuance of a certificate of need by the commissioner. For purposes of this subsection, a “new health care project” includes the following:

* * *

(5) The offering of a health care service or technology having an annual operating expense which exceeds \$500,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the health care facility within the previous three fiscal years.

(6) The construction, development, purchase, lease, or other establishment of an ambulatory surgical center.

* * *

Sec. 11. 18 V.S.A. § 9440(c)(2) is amended to read:

(c) The application process shall be as follows:

* * *

(2)(A) Prior to filing an application for a certificate of need, an applicant shall file an adequate letter of intent with the commissioner no less than 30 days or, in the case of review cycle applications under section 9439 of this title, no less than 45 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this subchapter to the proposed expenditure or action. A letter of intent shall become invalid if an application is not filed within six months of the date that the letter of intent is received or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule. Except for requests for expedited review under subdivision (5) of this subsection, public notice of such letters of intent shall be provided in newspapers having general circulation in the region of the state affected by the letter of intent. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application or petition to intervene must be filed. In addition, a copy of the public notice shall be sent to the clerk of the municipality in which the health care facility is located. Upon receipt, the clerk shall post the notice in or near the clerk's office and in at least two other public places in the municipality.

(B) Applicants who agree that their proposals are subject to jurisdiction pursuant to section 9434 of this title shall not be required to file a

letter of intent pursuant to subdivision (2)(A) of this subsection and may file an application without further process.

Sec. 12. 18 V.S.A. § 9443 is amended to read:

§ 9443. EXPIRATION OF CERTIFICATES OF NEED

~~The commissioner shall adopt rules providing for the expiration of certificates of need.~~

(a) Unless otherwise specified in the certificate of need, a project shall be implemented within five years or the certificate shall be invalid.

(b) No later than 180 days before the expiration date of a certificate of need, an applicant that has not yet implemented the project approved in the certificate of need may petition the commissioner for an extension of the implementation period. The commissioner may grant an extension in his or her discretion.

(c) Certificates of need shall expire on the date the commissioner accepts the final implementation report filed in connection with the project implemented pursuant to the certificate.

(d) An action or expenditure that is related to a service or expenditure that was the subject of a certificate of need shall not be considered a material or non-material change to that project if the original certificate of need expired, as provided in this section, at least two years before the action is proposed. The proposed action shall require a certificate of need only if the change itself would be considered a new health care project under section 9434 of this title.

Sec. 13. 18 V.S.A. § 9432 is amended to read:

§ 9432. DEFINITIONS

As used in this subchapter:

* * *

(2) “Annual operating expense” means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.

~~(2)~~(3) “Applicant” means a person who has submitted an application or proposal requesting issuance of a certificate of need.

~~(3)~~(4) “Bed capacity” means the number of licensed beds operated by the facility under its most current license under chapter 43 of this title and of facilities under chapter 71 of Title 33.

~~(4)~~(5) “Capital expenditure” means an expenditure for the plant or equipment which is not properly chargeable as an expense of operation and maintenance and includes acquisition by purchase, donation, leasehold expenditure, or lease which is treated as capital expense in accordance to the accounting standards established for lease expenditures by the Financial Accounting Standards Board, calculated over the length of the lease for plant or equipment, and includes assets having an expected life of at least three years. A capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment.

~~(5)~~(6) “Construction” means actual commencement of any construction or fabrication of any new building, or addition to any existing facility, or any expenditure relating to the alteration, remodeling, renovation, modernization, improvement, relocation, repair, or replacement of a health care facility, including expenditures necessary for compliance with life and health safety codes.

~~(6)~~(7) “To develop,” when used in connection with health services, means to undertake activities which on their completion will result in the offer of a new health care project, or the incurring of a financial obligation in relation to the offering of a service.

~~(7)~~(8) “Health care facility” means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include but is not limited to:

* * *

~~(8)~~(9) “Health care provider” means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual’s medical care, treatment, or confinement.

~~(9)~~(10) “Health services” mean activities and functions of a health care facility that are directly related to care, treatment, or diagnosis of patients.

(11) “Material change” means a change to a health care project for which a certificate of need has been issued which:

(A) constitutes a new health care project as defined in section 9434 of this title; or

(B) increases the total costs of the project by more than 10 percent of the approved amount.

(12) “Nonmaterial change” means a modification that does not meet the cost threshold of a material change as defined in subdivision (11) of this section, but otherwise modifies the kind, scope, or capacity of a project for which a certificate of need has been granted under this subchapter.

~~(10)~~(13) “Obligation” means an obligation for a capital expenditure which is deemed to have been incurred by or on behalf of a health care facility or health maintenance organization.

~~(11)~~(14) “To offer,” when used in connection with health services, means that a health care provider holds itself out as capable of providing, or as having the means for the provision of, specified health services.

~~(12) “Annual operating expense” means that expense which, by generally accepted accounting principles, is incurred by a new health care service during the first fiscal year in which the service is in full operation after completion of the project.~~

Sec. 14. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

(a) The commissioner may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the commissioner.

~~(b)(1) In the event that after a project has been approved, its proponent wishes to materially change the scope or cost of the approved project, all such changes are subject to review under this subchapter. If a change itself would be considered a new health care project as defined in section 9434 of this title, it shall be considered as material. If the change itself would not be considered a new health care project as defined in section 9434 of this title, the commissioner may decide not to review the change and shall notify the applicant and all parties of such decision. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.~~

(2) Applicants shall notify the commissioner of a nonmaterial change to the approved project. If the commissioner decides to review a nonmaterial change, he or she may provide for any necessary process, including a public

hearing, before approval. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.

* * *CONSUMER INFORMATION* * *

Sec. 15. 18 V.S.A. § 9410(a)(2)(A) is amended to read:

(2)(A) The program authorized by this section shall include a consumer health care price and quality information system designed to make available to consumers transparent health care price information, quality information, and such other information as the commissioner determines is necessary to empower individuals, including uninsured individuals, to make economically sound and medically appropriate decisions. On the front page of Vermont's state government website, the secretary of administration or designee shall prominently post a link, worded in a clear and understandable manner, to the price and quality information for consumers. The price and quality information shall be available in an easy-to-use format that is understandable to the average consumer.

Sec. 16. IMPLEMENTATION

Sec. 12 of this act, amending section 9443 of Title 18, shall apply to certificates of need issued on or after July 1, 2009.

and that, upon passage, the title of the bill shall read "An act relating to containing health care costs"

(Committee vote: 10-0-1)

Rep. Keenan of St. Albans City, for the Committee on **Appropriations**, recommends the bill ought to pass in concurrence when amended as recommended by the Committee on **Health Care**.

(Committee vote: 11-0-0)

INFORMATION NOTICE

The following item was recently received by the Joint Fiscal Committee:

JFO #2379 — \$15,449.00 grant from the National Association of State Foresters to Forests, Parks and Recreation. These grant funds will assist in the development of State Assessment and Resource Strategies for the Vermont Forest Resource Plan, including the provision of Geographic Information Systems (GIS) services and public involvement meetings.

[JFO received 4/27/09]