

1 H.596

2 Introduced by Representatives Dickinson of St. Albans Town, Botzow of
3 Pownal, Bouchard of Colchester, Carr of Brandon, Christie of
4 Hartford, Cross of Winooski, Kitzmiller of Montpelier,
5 Kupersmith of South Burlington, Marcotte of Coventry, Ralston
6 of Middlebury, Scheuermann of Stowe, and Young of Glover

7 Referred to Committee on

8 Date:

9 Subject: Commerce; hospitals; asset conversion

10 Statement of purpose of bill as introduced: This bill proposes to clarify the
11 process for the conversion of assets of a nonprofit hospital.

12 An act relating to ~~the conversion of assets of a nonprofit hospital~~
13 *miscellaneous amendments to health care laws*

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 18 V.S.A. § 9420 is amended to read:

16 § 9420. CONVERSION OF NONPROFIT HOSPITALS

17 (a) Policy and purpose. The ~~state~~ State has a responsibility to ~~assure~~ ensure
18 that the assets of nonprofit entities, which are impressed with a charitable trust,
19 are managed prudently and are preserved for their proper charitable purposes.

20 (b) Definitions. As used in this section:

1 ~~(1) "Board" means the Green Mountain Care Board.~~

2 (2) "Charitable assets" means the fair market value of a nonprofit
3 hospital. When a conversion affects only some of the assets of a nonprofit
4 hospital, "charitable assets" means those assets of the hospital that will be
5 so affected.

6 ~~(2) "Commissioner" is the commissioner of financial regulation.~~

7 (3) "Conversion" means a transaction or series of transactions described
8 in subdivision (4) of this subsection, except that a conversion does not include
9 a transaction in which the party receiving assets of a nonprofit hospital is a
10 nonprofit corporation.

11 (4) "Convert" means to sell, transfer, lease, exchange, option, commit,
12 convey, or otherwise dispose of assets or operations of a nonprofit hospital.
13 The term does not include transactions ~~occurring in the normal and ordinary~~
14 ~~course of business for the nonprofit hospital,~~ such as management contracts,
15 vendor contracts, physician-hospital contracts, managed care contracts,
16 financing agreements, sales of investment securities, or ventures such as letters
17 of credit, or cooperative or networking agreements with for-profit providers,
18 occurring in the normal and ordinary course of business of the
19 nonprofit hospital.

20 (5) "Fair market value" means the price that the assets being converted
21 would bring in a competitive and open market under a fair sale with the buyer

1 ~~and seller acting prudently, knowledgeably, at arm's length, and in their own~~
2 best interest.

3 (6) "Hospital system" means a network of hospitals affiliated with a
4 nonprofit hospital.

5 (7) "Nonprofit hospital" means a nonprofit entity, where no part of the
6 net earnings may lawfully be applied to the benefit of any private shareholder
7 or individual, and which is a hospital as defined in section 1902 of this title, or
8 a hospital member of a hospital system; provided, that the term "hospital" does
9 not include any hospital conducted, maintained, or operated by the ~~United~~
10 ~~States~~ U.S. government or the ~~state~~ State of Vermont or the duly authorized
11 agency of either.

12 (8) "Parties" means the nonprofit hospital and any other person who is a
13 party to a conversion ~~described in the application filed pursuant to subsection~~
14 ~~(e) of this section, including, without limitation, any person that, pursuant to~~
15 the plan of conversion, is to receive charitable assets or proceeds as a result of
16 the conversion. When, in this section, reference is made to liabilities or
17 obligations of the parties, such liabilities and obligations shall be joint
18 and several.

19 ~~(9) "Qualifying amount" means an amount that is at least \$1 million and~~
20 ~~represents at least 40 percent of the value of the assets of the nonprofit~~
21 ~~hospital, or that vests control of the nonprofit hospital in another person or~~

1 ~~entity. For purposes of determining whether the threshold requirements of this~~
2 ~~subdivision have been or will be met, related conversions shall be aggregated.~~

3 (c) ~~Approval required for conversion of qualifying amount of charitable~~
4 ~~assets. A nonprofit hospital may convert a qualifying amount of charitable~~
5 ~~assets only with the approval of the commissioner, and either the attorney~~
6 ~~general or the superior court, pursuant to the procedures and standards set forth~~
7 ~~in this section~~ Certification. In any case in which a conversion is subject to the
8 certificate of need process under subsection 5, chapter 221 of this title, the
9 nonprofit hospital shall be required to certify that it has satisfied each of the
10 standards described in subdivisions (d)(1)–(7) of this section. If the Board has
11 reason to believe that any such certification is not true and accurate, it shall
12 refer the matter to the Attorney General, who may investigate and take legal
13 action pursuant to subsection (e) of this section. The Board may request
14 additional information from the nonprofit hospital relating to the certification.

15 (d) ~~Exception for conversions in which assets will be owned and controlled~~
16 ~~by a nonprofit corporation:~~

17 ~~(1) Other than subsection (g) of this section and subdivision (2) of this~~
18 ~~subsection, this section shall not apply to conversions in which the party~~
19 ~~receiving assets of a nonprofit hospital is a nonprofit corporation.~~

20 ~~(2) In any conversion that would have required an application under~~
21 ~~subsection (e) of this section but for the exception set forth in subdivision (1)~~

1 ~~of this subsection, notice to or written waiver by the attorney general shall be~~
2 ~~given or obtained as if required under 11B V.S.A. § 12.02(g). Standards of~~
3 ~~review. When converting an asset, the nonprofit hospital shall be subject to the~~
4 ~~following standards:~~

5 ~~(1) The governing body of the nonprofit hospital exercised due diligence~~
6 ~~in deciding to engage in the conversion, selecting the acquiring party, and~~
7 ~~ensuring that the terms and conditions of the conversion are fair and reasonable~~
8 ~~to the nonprofit hospital.~~

9 ~~(2) The nonprofit hospital will receive fair market value for its~~
10 ~~charitable assets, and the market value of those assets has not been~~
11 ~~manipulated by the actions of the parties in a manner that causes the value of~~
12 ~~the assets to decrease.~~

13 ~~(3) The conversion will not result in a breach of fiduciary duty,~~
14 ~~including any undisclosed or material conflicts of interest related to payments~~
15 ~~or benefits to officers, directors, board members, executives, or experts~~
16 ~~employed or retained by the parties.~~

17 ~~(4) The conversion will not result in private inurement to any person.~~

18 ~~(5) The proceeds of the conversion will be used in a manner and place~~
19 ~~consistent with the public benefit purposes of the nonprofit hospital.~~

20 ~~(6) Any foundation established to hold the proceeds of the conversion~~
21 ~~will be representative of and broadly based in the community served by the~~

1 ~~nonprofit hospital and will be subject to appropriate public~~
2 ~~accountability standards.~~

3 ~~(7) The conversion plan has made reasonable provisions for reports,~~
4 ~~upon request, to the Attorney General on the conduct and affairs of any person~~
5 ~~that, as a result of the conversion, is to receive charitable assets or proceeds~~
6 ~~from the conversion to carry on any part of the public purposes of the nonprofit~~
7 ~~hospital.~~

8 ~~(e) Application. Prior to consummating any conversion of a qualifying~~
9 ~~amount of charitable assets, the parties shall submit an application to the~~
10 ~~attorney general and the commissioner, together with any attachments~~
11 ~~complying with subsection (f) of this section. If any material change occurs in~~
12 ~~the proposal set forth in the filed application, an amendment setting forth such~~
13 ~~change, together with copies of all documents and other material relevant to~~
14 ~~such change, shall be filed with the attorney general and the commissioner~~
15 ~~within two business days, or as soon thereafter as practicable, after any party to~~
16 ~~the conversion learns of such change. If the conversion involves a hospital~~
17 ~~system, and one or more of the hospitals in the system desire to convert~~
18 ~~charitable assets, the attorney general, in consultation with the commissioner,~~
19 ~~shall determine whether an application shall be required from the hospital~~
20 ~~system. Action by the Attorney General.~~

1 ~~(1)(A) If the Board or the Attorney General has reason to believe that a~~
2 ~~nonprofit hospital has converted or is about to convert charitable assets in such~~
3 ~~a manner that would violate one or more of the standards set out in subsection~~
4 ~~(d) of this section, the Attorney General may investigate the matter pursuant to~~
5 ~~procedures set forth generally in 9 V.S.A. § 2460 and may bring an action in~~
6 ~~Washington Superior Court or in the Superior Court of any county where one~~
7 ~~of the parties has a principal place of business. In any action brought by the~~
8 ~~Attorney General under this subsection, the Attorney General shall have the~~
9 ~~burden to establish that the conversion:~~

10 ~~(i) violates one or more of the standards listed in~~
11 ~~subdivision (d)(1), (3), (4), (6), or (7) of this section;~~

12 ~~(ii) substantially violates one or more of the standards set forth in~~
13 ~~subdivisions (d)(2) and (5) of this section.~~

14 ~~(B) The Court may order appropriate relief in such circumstances,~~
15 ~~including avoidance of the conversion or transfer of the converted assets or~~
16 ~~proceeds or the amount of any private inurement to a person or party for use~~
17 ~~consistent with the purposes for which the assets were held prior to the~~
18 ~~conversion, a penalty of up to \$250,000.00, and the award of costs of~~
19 ~~investigation and prosecution under this subsection (e), including the~~
20 ~~reasonable value of legal services.~~

1 ~~(2) In determining whether to grant relief under this subsection, and the~~
2 ~~nature of such relief, the Court shall consider whether:~~
3 ~~(A) the violation was willful;~~
4 ~~(B) any person has derived, or may derive, an economic benefit from~~
5 ~~the conversion;~~
6 ~~(C) the purposes for which the assets had been held by the nonprofit~~
7 ~~hospital have been frustrated by the violation; and~~
8 ~~(D) the interests of the public or the community served by the~~
9 ~~nonprofit hospital would be jeopardized by voiding the conversion.~~

(B) The Court may order appropriate relief in such circumstances, including avoidance of the conversion or transfer of the converted assets or proceeds or the amount of any private inurement to a person or party for use consistent with the purposes for which the assets were held prior to the conversion, a penalty of up to \$1 million, and the award of costs of investigation and prosecution under this subsection (e), including the reasonable value of legal services.

(2) In determining whether to grant relief under this subsection, and the nature of such relief, the Court shall consider:

(A) whether the violation was willful;

(B) whether any person has derived, or may derive, an economic benefit from the conversion;

~~(C) whether the purposes for which the assets had been held by the nonprofit hospital have been frustrated by the violation;~~

~~(D) whether the interests of the public or the community served by the nonprofit hospital would be jeopardized by voiding the conversion; and~~

~~(E) how any monetary penalty imposed would affect the community served by the nonprofit hospital.~~

1 (f) ~~Completion and contents of application.~~

2 (1) ~~Within 30 days of receipt of the application, or within 10 days of~~
3 ~~receipt of any amendment thereto, whichever is longer, the attorney general,~~
4 ~~with the commissioner's agreement, shall determine whether the application is~~
5 ~~complete. The attorney general shall promptly notify the parties of the date the~~
6 ~~application is deemed complete, or of the reasons for a determination that the~~
7 ~~application is incomplete. A complete application shall include the following:~~

8 (A) ~~a detailed summary of the purposes and material terms of the~~
9 ~~proposed conversion;~~

10 (B) ~~the names and addresses of the parties that have been or will be~~
11 ~~created as part of the conversion, including a list of all individuals who are or~~
12 ~~have been chosen as their directors, officers, or board members;~~

13 (C) ~~copies of all organizational documents relating to the parties;~~

14 (D) ~~copies of all contracts and other agreements related to the~~
15 ~~conversion;~~

1 ~~(E) copies of the most recent audited financial reports of the entities~~

2 involved;

3 ~~(F) a detailed description of all assets of the nonprofit hospital,~~
4 ~~including the value of the assets and the basis for that valuation. For assets~~
5 ~~included in or otherwise affected by the conversion, the following information~~
6 ~~is also to be included:~~

7 ~~(i) the nature of any restrictions on such assets owned or held by~~
8 ~~the nonprofit hospital and the purpose or purposes for which such assets were~~
9 ~~received;~~

10 ~~(ii) a statement as to whether the assets will be converted to cash in~~
11 ~~connection with or as a result of the conversion; and~~

12 ~~(iii) a detailed description of all proposed changes in control or~~
13 ~~ownership of the assets and an explanation regarding whether and if so, how~~
14 ~~the charitable assets of the nonprofit hospital will continue to be used in a~~
15 ~~manner consistent with their intended charitable purpose;~~

16 ~~(G) a description of the process by which the decision to undertake~~
17 ~~the conversion and to select the acquiring party and the type and amount of~~
18 ~~consideration to be given or received in the conversion, if applicable, was~~
19 ~~reached by the nonprofit hospital, and all documents relating to that process~~
20 ~~and decision, including, but not limited to, minutes, committee or special study~~

1 ~~reports, correspondence, presentations, audits, and other internal or outside~~

2 ~~reviews or analyses;~~

3 ~~(H) the amount, source, and nature of any consideration to be paid to~~
4 ~~the nonprofit hospital, its directors, officers, board members, executives, or~~
5 ~~experts retained by the nonprofit hospital, including prospective employment~~
6 ~~or consultation;~~

7 ~~(I) a detailed description of the structure and functions of any~~
8 ~~charitable foundation that will receive proceeds of the conversion, including a~~
9 ~~description of its assets, its mission, the purposes of the foundation, the~~
10 ~~expected charitable uses of the assets, how it will be broadly based in, and~~
11 ~~represent, the community affected by the conversion, and how proceeds from~~
12 ~~the conversion will be controlled;~~

13 ~~(J) a certified board resolution or other appropriate document~~
14 ~~evidencing approval of the conversion by each party involved;~~

15 ~~(K) a certification signed by those members, identified by name and~~
16 ~~title, of the governing body or other person approving the conversion on behalf~~
17 ~~of the nonprofit hospital that the standards set forth in subsection (j) of this~~
18 ~~section have been considered in good faith and are met, together with such~~
19 ~~explanations and other documentation as may be necessary to demonstrate~~
20 ~~such compliance;~~

1 ~~(L) a separate certification from each member of the governing board,~~
2 ~~the chief executive officer, and other officers designated in the governing~~
3 ~~documents of the nonprofit hospital, executed under oath, stating whether that~~
4 ~~director or officer is then, or may become within three years of completion of~~
5 ~~the conversion, a member or shareholder in, or officer, employee, agent, or~~
6 ~~consultant of, or may otherwise derive any compensation or benefits, directly~~
7 ~~or indirectly, from any party.~~

8 ~~(M) a statement from any party specifying the manner in which it~~
9 ~~proposes to continue to fulfill the charitable obligations of the nonprofit~~
10 ~~hospital, if applicable; and~~

11 ~~(N) any additional information the attorney general or commissioner~~
12 ~~finds necessary or appropriate for the full consideration of the application.~~

13 ~~(2) The parties shall make the contents of the application reasonably~~
14 ~~available to the public prior to any hearing for public comment described in~~
15 ~~subsection (g) of this section to the extent that they are not otherwise exempt~~
16 ~~from disclosure under 1 V.S.A. § 317(b). Other preexisting authority. Nothing~~
17 ~~in this section shall be construed to limit the authority under existing law of the~~
18 ~~Board, the Attorney General, the Department of Health, or a court of~~
19 ~~competent jurisdiction.~~

20 ~~(g) Notice and hearing for public comment on application.~~

1 ~~(1) The attorney general and commissioner shall hold one or more public~~
2 ~~hearings on the transaction or transactions described in the application. A~~
3 ~~record shall be made of any hearing. The hearing shall commence within 30~~
4 ~~days of the determination by the attorney general that the application is~~
5 ~~complete. If a hearing is continued or multiple hearings are held, any hearing~~
6 ~~shall be completed within 60 days of the attorney general's determination that~~
7 ~~an application is complete. In determining the number, location, and time of~~
8 ~~hearings, the attorney general, in consultation with the commissioner, shall~~
9 ~~consider the geographic areas and populations served by the nonprofit hospital~~
10 ~~and most affected by the conversion and the interest of the public in~~
11 ~~commenting on the application.~~

12 ~~(2) The attorney general shall provide reasonable notice of any hearing~~
13 ~~to the parties, the commissioner, and the public, and may order that the parties~~
14 ~~bear the cost of notice to the public. Notice to the public shall be provided in~~
15 ~~newspapers having general circulation in the region affected and shall identify~~
16 ~~the applicants and the proposed conversion. A copy of the public notice shall~~
17 ~~be sent to the state health care and long-term care ombudspersons and to the~~
18 ~~senators and members of the house of representatives representing the county~~
19 ~~and district and to the clerk, chief municipal officer, and legislative body, of~~
20 ~~the municipality in which the nonprofit hospital is principally located. Upon~~
21 ~~receipt, the clerk shall post notice in or near the clerk's office and in at least~~

1 ~~two other public places in the municipality. Any person may testify at a~~
2 ~~hearing under this section and, within such reasonable time as the attorney~~
3 ~~general may prescribe, file written comments with the attorney general and~~
4 ~~commissioner concerning the proposed conversion.~~

5 (h) ~~Determination by commissioner.~~

6 (1) ~~The commissioner shall consider the application, together with any~~
7 ~~report and recommendations from the staff of the department requested by the~~
8 ~~commissioner, and any other information submitted into the record, and~~
9 ~~approve or deny it within 50 days following the last public hearing held~~
10 ~~pursuant to subsection (g) of this section, unless the commissioner extends~~
11 ~~such time up to an additional 60 days with notice prior to its expiration to the~~
12 ~~attorney general and the parties.~~

13 (2) ~~The commissioner shall approve the proposed transaction if the~~
14 ~~commissioner finds that the application and transaction will satisfy the criteria~~
15 ~~established in section 9437 of this title. For purposes of applying the criteria~~
16 ~~established in section 9437, the term "project" shall include a conversion or~~
17 ~~other transaction subject to the provisions of this subchapter.~~

18 (3) ~~A denial by the commissioner may be appealed to the supreme court~~
19 ~~pursuant to the procedures and standards set forth in 8 V.S.A. § 16. If no~~
20 ~~appeal is taken or if the commissioner's order is affirmed by the supreme~~
21 ~~court, the application shall be terminated. A failure of the commissioner to~~

1 ~~approve of an application in a timely manner shall be considered a final order~~
2 ~~in favor of the applicant.~~

3 ~~(i) Determination by attorney general. The attorney general shall make a~~
4 ~~determination as to whether the conversion described in the application meets~~
5 ~~the standards provided in subsection (j) of this section.~~

6 ~~(1) If the attorney general determines that the conversion described in the~~
7 ~~application meets the standards set forth in subsection (j) of this section, the~~
8 ~~attorney general shall approve the conversion and so notify the parties in~~
9 ~~writing.~~

10 ~~(2) If the attorney general determines that the conversion described in the~~
11 ~~application does not meet such standards, the attorney general may not approve~~
12 ~~the conversion and shall so notify the parties of such disapproval and the basis~~
13 ~~for it in writing, including identification of the standards listed in subsection (j)~~
14 ~~of this section that the attorney general finds not to have been met by the~~
15 ~~proposed conversion. Nothing in this subsection shall prevent the parties from~~
16 ~~amending the application to meet any objections of the attorney general.~~

17 ~~(3) The notice of approval or disapproval by the attorney general under~~
18 ~~this subsection shall be provided no later than either 60 days following the date~~
19 ~~of the last hearing held under subsection (g) of this section or ten days~~
20 ~~following approval of the conversion by the commissioner, whichever is later.~~

1 ~~The attorney general, for good cause, may extend this period an additional 60~~
2 ~~days.~~

3 ~~(j) Standards for attorney general's review. In determining whether to~~
4 ~~approve a conversion under subsection (i) of this section, the attorney general~~
5 ~~shall consider whether:~~

6 ~~(1) the governing body of the nonprofit hospital exercised due diligence~~
7 ~~in deciding to engage in the conversion, selecting the acquiring party, and~~
8 ~~ensuring that the terms and conditions of the conversion are fair and reasonable~~
9 ~~to the nonprofit hospital;~~

10 ~~(2) the nonprofit hospital will receive fair market value for its charitable~~
11 ~~assets, and whether the market value of those assets has not been manipulated~~
12 ~~by the actions of the parties in a manner that causes the value of the assets to~~
13 ~~decrease;~~

14 ~~(3) the conversion will not result in a breach of fiduciary duty, including~~
15 ~~any undisclosed or material conflicts of interest related to payments or benefits~~
16 ~~to officers, directors, board members, executives, or experts employed or~~
17 ~~retained by the parties;~~

18 ~~(4) the conversion will not result in private inurement to any person;~~

19 ~~(5) the proceeds of the conversion will be used in a manner and place~~
20 ~~consistent with the public benefit purposes of the nonprofit hospital;~~

1 ~~(6) any foundation established to hold the proceeds of the conversion~~
2 ~~will be representative of and broadly based in the community served by the~~
3 ~~nonprofit hospital and will be subject to appropriate public accountability~~
4 ~~standards;~~

5 ~~(7) the application contains sufficient information and data to permit the~~
6 ~~attorney general and commissioner to evaluate the conversion and its effects on~~
7 ~~the public's interests in accordance with this section; and~~

8 ~~(8) the conversion plan has made reasonable provision for reports, upon~~
9 ~~request, to the attorney general on the conduct and affairs of any person that, as~~
10 ~~a result of the conversion, is to receive charitable assets or proceeds from the~~
11 ~~conversion to carry on any part of the public purposes of the nonprofit hospital.~~

12 ~~(k) Investigation by attorney general. The attorney general may conduct an~~
13 ~~investigation relating to the conversion pursuant to the procedures set forth~~
14 ~~generally in 9 V.S.A. § 2460. The attorney general may contract with such~~
15 ~~experts or consultants the attorney general deems appropriate to assist in an~~
16 ~~investigation of a conversion under this section. The attorney general may~~
17 ~~order any party to reimburse the attorney general for all reasonable and actual~~
18 ~~costs incurred by the attorney general in retaining outside professionals to~~
19 ~~assist with the investigation or review of the conversion.~~

20 ~~(l) Superior court action. If the attorney general does not approve the~~
21 ~~conversion described in the application and any amendments, the parties may~~

1 ~~commence an action in the superior court of Washington County, or with the~~
2 ~~agreement of the attorney general, of any other county, within 60 days of the~~
3 ~~attorney general's notice of disapproval provided to the parties under~~
4 ~~subdivision (i)(2) of this section. The parties shall notify the commissioner of~~
5 ~~the commencement of an action under this subsection. The commissioner shall~~
6 ~~be permitted to request that the court consider the commissioner's~~
7 ~~determination under subsection (h) of this section in its decision under this~~
8 ~~subsection.~~

9 ~~(m) Court determination and order.~~

10 ~~(1) Within 45 days of the commencement of an action under subsection~~
11 ~~(l) of this section, the court shall hold a hearing to determine whether the~~
12 ~~conversion described in the application and any amendments submitted prior to~~
13 ~~the attorney general's notice of disapproval satisfy the standards under~~
14 ~~subsection (j) of this section that the attorney general identified in the notice of~~
15 ~~disapproval as not having been met by the transaction described in the~~
16 ~~application. The court shall determine the matter within 45 days of the~~
17 ~~conclusion of the hearing. The court, for good cause, may extend each of the~~
18 ~~time periods provided in this subsection for its hearing and determination for~~
19 ~~an additional 30 days, or for a longer period if agreed to by the parties and the~~
20 ~~attorney general. The attorney general shall represent the interests of the public~~
21 ~~at any hearing under this subsection. The parties shall have the burden to~~

1 ~~establish that the application, with any amendments that were submitted prior~~
2 ~~to the attorney general's notice of disapproval, meets each of the standards of~~
3 ~~subsection (j) of this section identified in the attorney general's notice of~~
4 ~~disapproval as not having been met by the application.~~

5 (2) ~~If the court finds that the parties have shown that the conversion~~
6 ~~described in the application meets the standards of subsection (j) of this section~~
7 ~~identified in the attorney general's notice of disapproval as not having been~~
8 ~~met by the application, the court shall set aside the determination of the~~
9 ~~attorney general, and the parties may proceed under this section as if the~~
10 ~~attorney general had approved the conversion described in the application.~~

11 (3) ~~If the attorney general substantially prevails in the action, the court~~
12 ~~may order the parties to reimburse the state for the reasonable value of the~~
13 ~~attorney general's services and expenses in defending the action, separate and~~
14 ~~apart from any amounts the parties are required to pay pursuant to subsection~~
15 ~~(k) of this section.~~

16 (4) ~~Nothing herein shall prevent the attorney general, while an action~~
17 ~~brought under subsection (l) of this section is pending, from approving the~~
18 ~~conversion described in the application, as modified by such terms as are~~
19 ~~agreed between the parties, the attorney general, and the commissioner to bring~~
20 ~~the conversion into compliance with the standards set forth in subsection (j) of~~
21 ~~this section.~~

1 ~~(n) Use of converted assets or proceeds of a conversion approved pursuant~~
2 ~~to this section. If at any time following a conversion, the attorney general has~~
3 ~~reason to believe that converted assets or the proceeds of a conversion are not~~
4 ~~being held or used in a manner consistent with information provided to the~~
5 ~~attorney general, the commissioner, or a court in connection with any~~
6 ~~application or proceedings under this section, the attorney general may~~
7 ~~investigate the matter pursuant to procedures set forth generally in 9 V.S.A. §~~
8 ~~2460 and may bring an action in Washington superior court or in the superior~~
9 ~~court of any county where one of the parties has a principal place of business.~~
10 ~~The court may order appropriate relief in such circumstances, including~~
11 ~~avoidance of the conversion or transfer of the converted assets or proceeds or~~
12 ~~the amount of any private inurement to a person or party for use consistent~~
13 ~~with the purposes for which the assets were held prior to the conversion, and~~
14 ~~the award of costs of investigation and prosecution under this subsection,~~
15 ~~including the reasonable value of legal services.~~

16 ~~(o) Remedies and penalties for violations.~~

17 ~~(1) The attorney general may bring or maintain a civil action in the~~
18 ~~Washington superior court, or any other county in which one of the parties has~~
19 ~~its principal place of business, to enjoin, restrain, or prevent the consummation~~
20 ~~of any conversion which has not been approved in accordance with this section~~
21 ~~or where approval of the conversion was obtained on the basis of materially~~

1 ~~inaccurate information furnished by any party to the attorney general or the~~
2 ~~comissioner.~~

3 ~~(2) A conversion entered into in violation of any provision of this section~~
4 ~~may be voided, upon petition of the attorney general, by the superior court of~~
5 ~~Washington County or the county in which any party has its principal place of~~
6 ~~business.~~

7 ~~(3) If a person violates a provision of this section or any lawful order of a~~
8 ~~court acting pursuant to this section, the court, upon petition of the attorney~~
9 ~~general, may order that person to pay to the state the value of services and~~
10 ~~expenses incurred by the attorney general in the investigation and prosecution~~
11 ~~of the violation, and may:~~

12 ~~(A) order that person to cease such activity or other appropriate~~
13 ~~injunctive relief;~~

14 ~~(B) order the disgorgement of any private inurement; and~~

15 ~~(C) impose a penalty on that person of up to \$1 million.~~

16 ~~(4) In determining whether to grant relief under this subsection, and the~~
17 ~~nature of such relief, the court shall consider whether:~~

18 ~~(A) the violation was willful;~~

19 ~~(B) any person has derived, or may derive, an economic benefit from~~
20 ~~the conversion;~~

1 ~~(C) the purposes for which the assets had been held by the nonprofit~~
2 ~~hospital have been frustrated by the violation; and~~

3 ~~(D) the interests of the public or the community served by the~~
4 ~~nonprofit hospital would be jeopardized by voiding the contract.~~

5 ~~(p) Conversion of less than a qualifying amount of assets.~~

6 ~~(1) The attorney general may conduct an investigation relating to a~~
7 ~~conversion pursuant to the procedures set forth generally in 9 V.S.A. § 2460 if~~
8 ~~the attorney general has reason to believe that a nonprofit hospital has~~
9 ~~converted or is about to convert less than a qualifying amount of its assets in~~
10 ~~such a manner that would:~~

11 ~~(A) if it met the qualifying amount threshold, require an application~~
12 ~~under subsection (e) of this section; and~~

13 ~~(B) constitute a conversion that does not meet one or more of the~~
14 ~~standards set forth in subsection (j) of this section.~~

15 ~~(2) The attorney general, in consultation with the commissioner, may~~
16 ~~bring an action with respect to any conversion of less than a qualifying amount~~
17 ~~of assets, according to the procedures set forth in subsection (n) of this section.~~

18 ~~The attorney general shall notify the commissioner of any action commenced~~
19 ~~under this subsection. The commissioner shall be permitted to investigate and~~
20 ~~determine whether the transaction satisfies the criteria established in~~
21 ~~subdivision (g)(2) of this section, and to request that the court consider the~~

1 ~~commissioner's recommendation in its decision under this subsection. In such~~
2 ~~an action, the superior court may enjoin or void any transaction and may award~~
3 ~~any other relief as provided under subsection (n) of this section.~~

4 ~~(3) In any action brought by the attorney general under this subdivision,~~
5 ~~the attorney general shall have the burden to establish that the conversion:~~

6 ~~(A) violates one or more of the standards listed in subdivision (j)(1),~~
7 ~~(3), (4), or (6); or~~

8 ~~(B) substantially violates one or more of the standards set forth in~~
9 ~~subdivisions (j)(2) and (5) of this section.~~

10 ~~(q) Other preexisting authority.~~

11 ~~(1) Nothing in this section shall be construed to limit the authority of the~~
12 ~~commissioner, attorney general, department of health, or a court of competent~~
13 ~~jurisdiction under existing law, or the interpretation or administration of a~~
14 ~~charitable gift under 14 V.S.A. § 2328.~~

15 ~~(2) This section shall not be construed to limit the regulatory and~~
16 ~~enforcement authority of the commissioner, or exempt any applicant or other~~
17 ~~person from requirements for licensure or other approvals required by law.~~

18 Sec. 2. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

**** Principles ****

Sec. 1. PRINCIPLES FOR HEALTH CARE FINANCING

The General Assembly adopts the following principles to guide the financing of health care in Vermont:

(1) All Vermont residents have the right to high-quality health care.

(2) To the extent that Green Mountain Care is financed through taxes, including mandatory premiums, the taxes shall be levied equitably, taking into account an individual's ability to pay and the value of the health benefits provided.

(3) As provided in 33 V.S.A. § 1827, Green Mountain Care shall be the payer of last resort for Vermont residents who continue to receive health care through plans provided by an employer, by another state, by a foreign government, or as a retirement benefit.

(4) Vermont's system for financing health care shall raise revenue sufficient to provide medically necessary health care services to all enrolled Vermont residents, including maternity and newborn care, pediatric care, vision and dental care for children, surgery and hospital care, emergency care, outpatient care, treatment for mental health conditions, and prescription drugs.

** * * Vermont Health Benefit Exchange * * **

Sec. 2. 33 V.S.A. § 1803 is amended to read:

§ 1803. VERMONT HEALTH BENEFIT EXCHANGE

** * **

(b)(1)(A) The Vermont Health Benefit Exchange shall provide qualified individuals and qualified employers with qualified health benefit plans, including the multistate plans required by the Affordable Care Act, with effective dates beginning on or before January 1, 2014. The Vermont Health Benefit Exchange may contract with qualified entities or enter into intergovernmental agreements to facilitate the functions provided by the Vermont Health Benefit Exchange.

* * *

(4) To the extent permitted by the U.S. Department of Health and Human Services, the Vermont Health Benefit Exchange shall permit qualified employers to purchase qualified health benefit plans through the Exchange website, through navigators, by telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

* * *

Sec. 3. 33 V.S.A. § 1811(b) is amended to read:

(b)(1) No person may provide a health benefit plan to an individual ~~or small employer~~ unless the plan is offered through the Vermont Health Benefit Exchange ~~and complies with the provisions of this subchapter.~~

(2) To the extent permitted by the U.S. Department of Health and Human Services, a small employer or an employee of a small employer may purchase a health benefit plan through the Exchange website, through

navigators, by telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

(3) No person may provide a health benefit plan to an individual or small employer unless the plan complies with the provisions of this subchapter.

Sec. 4. PURCHASE OF SMALL GROUP PLANS DIRECTLY FROM
CARRIERS

To the extent permitted by the U.S. Department of Health and Human Services and notwithstanding any provision of State law to the contrary, the Department of Vermont Health Access shall permit employers purchasing qualified health benefit plans on the Vermont Health Benefit Exchange to purchase the plans through the Exchange website, through navigators, by telephone, or directly from a health insurer under contract with the Vermont Health Benefit Exchange.

* * * Health Insurance Rate Review * * *

Sec. 5. 8 V.S.A. § 4062(h) is amended to read:

(h)(1) ~~This~~ The authority of the Board under this section shall apply only to the rate review process for policies for major medical insurance coverage and shall not apply to the policy forms for major medical insurance coverage or to the rate and policy form review process for policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, student health insurance coverage, or other limited benefit

coverage; to Medicare supplemental insurance; or to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred.

(2) The policy forms for major medical insurance coverage, as well as the policy forms, premium rates, and rules for the classification of risk for the other lines of insurance described in subdivision (1) of this subsection shall be reviewed and approved or disapproved by the Commissioner. In making his or her determination, the Commissioner shall consider whether a policy form, premium rate, or rule is affordable and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State. The Commissioner shall make his or her determination within 30 days after the date the insurer filed the policy form, premium rate, or rule with the Department. At the expiration of the 30-day period, the form, premium rate, or rule shall be deemed approved unless prior to then it has been affirmatively approved or disapproved by the Commissioner or found to be incomplete. The Commissioner shall notify an insurer in writing if the insurer files any form, premium rate, or rule containing a provision that does not meet the standards expressed in this subsection. In such notice, the Commissioner shall state that a hearing will be granted within 20 days upon the insurer's written request.

(3) Medicare supplemental insurance policies shall be exempt only from

the requirement in subdivisions (a)(1) and (2) of this section for the Green Mountain Care Board's approval on rate requests and shall be subject to the remaining provisions of this section.

* * * *Green Mountain Care* * * *

Sec. 6. 33 V.S.A. § 1827 is amended to read:

§ 1827. ADMINISTRATION; ENROLLMENT

* * *

(e) [Repealed.]

(f) *Green Mountain Care shall be the ~~secondary~~ payer of last resort with respect to any health service that may be covered in whole or in part by any other health benefit plan, including Medicare, private health insurance, retiree health benefits, or federal health benefit plans offered by ~~the Veterans' Administration,~~ by the military, or to federal employees.*

* * *

Sec. 7. CONTRACT FOR ADMINISTRATION OF CERTAIN ELEMENTS
OF GREEN MOUNTAIN CARE; REPORT

On or before January 15, 2015, the Secretary of Human Services shall report to the General Assembly the elements of Green Mountain Care, such as claims administration and provider relations, for which the Agency plans to solicit bids for administration pursuant to 33 V.S.A. § 1827(a), as well as the dates by which the Agency will solicit bids for administration of those elements

and by which it will award the contracts.

Sec. 8. CONCEPTUAL WAIVER APPLICATION

On or before November 15, 2014, the Secretary of Administration or designee shall submit to the federal Center for Consumer Information and Insurance Oversight a conceptual waiver application expressing the intent of the State of Vermont to pursue a Waiver for State Innovation pursuant to Sec. 1332 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and the State's interest in commencing the application process.

** * * Green Mountain Care Board * * **

Sec. 9. 2000 Acts and Resolves No. 152, Sec. 117b, as amended by 2013 Acts and Resolves No. 79, Sec, 42, is further amended to read:

Sec. 117b. MEDICAID COST SHIFT REPORTING

** * **

(b) Notwithstanding 2 V.S.A. § 20(d), annually on or before ~~December~~ January 15, the ~~chair~~ Chair of the Green Mountain Care Board, the Commissioner of Vermont Health Access, and each acute care hospital shall file with the Joint Fiscal Committee, the House Committee on Health Care, and the Senate Committee on Health and Welfare, in the manner required by the Joint Fiscal Committee, such information as is necessary to carry out the

purposes of this section. Such information shall pertain to the provider delivery system to the extent it is available. The Green Mountain Care Board may satisfy its obligations under this section by including the information required by this section in the annual report required by 18 V.S.A. § 9375(d).

* * *

Sec. 10. 2013 Acts and Resolves No. 79, Sec. 5b is amended to read:

*Sec. 5b. STANDARDIZED HEALTH INSURANCE CLAIMS AND
EDITS*

(a)(1) As part of moving away from fee-for-service and toward other models of payment for health care services in Vermont, the Green Mountain Care Board, in consultation with the Department of Vermont Health Access, health care providers, health insurers, and other interested stakeholders, shall develop a complete set of standardized edits and payment rules based on Medicare or on another set of standardized edits and payment rules appropriate for use in Vermont. The Board and the Department shall adopt by rule the standards and payment rules that health care providers, health insurers, and other payers shall use beginning on January 1, ~~2015~~ 2016 and that Medicaid shall use beginning on January 1, 2017.

* * *

** * * Non-Emergency Walk-In Centers * * **

Sec. 11. 18 V.S.A. § 9492 is added to read:

§ 9492. NON-EMERGENCY WALK-IN CENTERS:

NONDISCRIMINATION

(a) A non-emergency walk-in center shall accept patients of all ages for diagnosis and treatment of illness, injury, and disease during all hours that the center is open to see patients. A non-emergency walk-in center shall not discriminate against any patient or prospective patient on the basis of insurance status or type of health coverage.

(b) As used in this section, "non-emergency walk-in center" means an outpatient or ambulatory diagnostic or treatment center at which a patient without making an appointment may receive medical care that is not of an emergency, life threatening nature. The term includes facilities that are self-described as urgent care centers, retail health clinics, and convenient care clinics.

* * * Pharmacy Benefit Managers * * *

Sec. 12. 18 V.S.A. § 9472 is amended to read:

§ 9472. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES
WITH RESPECT TO HEALTH INSURERS

(c) ~~Unless the contract provides otherwise, a~~ A pharmacy benefit manager that provides pharmacy benefit management for a health plan shall:

* * *

(4) ~~If~~ Unless the contract provides otherwise, if the pharmacy benefit

manager derives any payment or benefit for the dispensation of prescription drugs within the ~~state~~ State based on volume of sales for certain prescription drugs or classes or brands of drugs within the ~~state~~ State, pass that payment or benefit on in full to the health insurer.

* * *

(d) At least annually, a pharmacy benefit manager that provides pharmacy benefit management for a health plan shall disclose to the health insurer, the Department of Financial Regulation, and the Green Mountain Care Board the aggregate amount the pharmacy benefit manager retained on all claims charged to the health insurer for prescriptions filled during the preceding calendar year in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

(e) Compliance with the requirements of this section is required for pharmacy benefit managers entering into contracts with a health insurer in this ~~state~~ State for pharmacy benefit management in this ~~state~~ State.

Sec. 13. 18 V.S.A. § 9473 is redesignated to read:

§ ~~9473~~ 9474. ENFORCEMENT

Sec. 14. 18 V.S.A. § 9473 is added to read:

*§ 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES
WITH RESPECT TO PHARMACIES*

(a) Within 14 calendar days following receipt of a pharmacy claim, a

pharmacy benefit manager or other entity paying pharmacy claims shall do one of the following:

(1) Pay or reimburse the claim.

(2) Notify the pharmacy in writing that the claim is contested or denied.

The notice shall include specific reasons supporting the contest or denial and a description of any additional information required for the pharmacy benefit manager or other payer to determine liability for the claim.

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; or

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer.

Sec. 15. 9 V.S.A. § 2466a is amended to read:

§ 2466a. CONSUMER PROTECTIONS; PRESCRIPTION DRUGS

(a) A violation of 18 V.S.A. § 4631 shall be considered a prohibited practice under section 2453 of this title.

(b) As provided in 18 V.S.A. § ~~9473~~ 9474, a violation of 18 V.S.A. § 9472

or 9473 shall be considered a prohibited practice under section 2453 of this title.

* * *

** * * Adverse Childhood Experiences * * **

Sec. 16. ADVERSE CHILDHOOD EXPERIENCES; REPORT

On or before January 15, 2015, the Director of the Blueprint for Health and the Chair of the Green Mountain Care Board or their designees shall review evidence-based materials on the relationship between adverse childhood experiences (ACEs) and population health and recommend to the General Assembly whether, how, and at what expense ACE-informed medical practice should be integrated into Blueprint practices and community health teams. The Director and the Chair or their designees shall also develop a methodology by which the Blueprint will evaluate emerging health care delivery quality initiatives to determine whether, how, and to what extent they should be integrated into the Blueprint for Health.

** * * Reports * * **

Sec. 17. CHRONIC CARE MANAGEMENT; BLUEPRINT; REPORT

On or before October 1, 2014, the Secretary of Administration or designee shall recommend to the House Committees on Health Care and on Human Services and the Senate Committees on Health and Welfare and on Finance whether and to what extent to increase payments to health care providers and

community health teams for their participation in the Blueprint for Health and whether to expand the Blueprint to include additional services or chronic conditions such as obesity, mental conditions, and oral health.

*Sec. 18. HEALTH INSURER SURPLUS; LEGAL CONSIDERATIONS;
REPORT*

The Department of Financial Regulation, in consultation with the Office of the Attorney General, shall identify the legal and financial considerations involved in the event that a private health insurer offering major medical insurance plans, whether for-profit or nonprofit, ceases doing business in this State, including appropriate disposition of the insurer's surplus funds. On or before July 15, 2014, the Department shall report its findings to the House Committees on Health Care, on Commerce, and on Ways and Means and the Senate Committees on Health and Welfare and on Finance.

Sec. 19. INDEPENDENT PHYSICIAN PRACTICES; REPORT

On or before December 1, 2014, the Secretary of Administration or designee shall recommend to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance whether the State should prohibit health insurers from reimbursing physicians in independent practices at lower rates than those at which they reimburse physicians in hospital-owned practices for providing the same services.

Sec. 20. INCREASING MEDICAID RATES; REPORT

On or before January 15, 2015, the Secretary of Administration or designee, in consultation with the Green Mountain Care Board, shall report to the House Committees on Health Care and on Ways and Means and the Senate Committees on Health and Welfare and on Finance regarding the impact of increasing Medicaid reimbursement rates to providers to match Medicare rates. The issues to be addressed in the report shall include:

(1) the amount of State funds needed to effect the increase;

(2) the projected impact of the increase on health insurance premiums; and

(3) to the extent that premium reductions would likely result in a decrease in the aggregate amount of federal premium tax credits for which Vermont residents would be eligible, whether there are specific timing considerations for the increase as it relates to Vermont's application for a Waiver for State Innovation pursuant to Section 1332 of the Patient Protection and Affordable Care Act.

Sec. 21. HEALTH INFORMATION TECHNOLOGY AND
INTELLECTUAL PROPERTY; REPORT

On or before October 1, 2014, the Office of the Attorney General, in consultation with the Vermont Information Technology Leaders, shall report to the House Committees on Health Care, on Commerce and Economic Development, and on Ways and Means and the Senate Committees on Health

and Welfare, on Economic Development, Housing and General Affairs, and on Finance regarding the need for intellectual property protection with respect to Vermont's Health Information Exchange and other health information technology initiatives, including the potential for receiving patent, copyright, or trademark protection for health information technology functions, the estimated costs of obtaining intellectual property protection, and projected revenues to the State from protecting intellectual property assets or licensing protected interests to third parties.

** * * Health Care Workforce Symposium * * **

Sec. 22. HEALTH CARE WORKFORCE SYMPOSIUM

On or before January 15, 2015, the Secretary of Administration or designee, in collaboration with the Vermont Medical Society, the Vermont Association of Hospitals and Health Systems, and the Vermont Assembly of Home Health and Hospice Agencies, shall organize and conduct a symposium to address the impacts of moving toward universal health care coverage on Vermont's health care workforce and on its projected workforce needs.

** * * Global Hospital Budgets * * **

*Sec. 23. GREEN MOUNTAIN CARE BOARD; GLOBAL HOSPITAL
PILOT PROJECTS*

(a) The Green Mountain Care Board may develop and implement global budgeting pilot projects involving multiple payers at up to two hospitals in this

State. The Board shall ensure that a hospital's existing or pending contracts with accountable care organizations and any shared savings or other financial arrangements related to such contracts are accurately accounted for when establishing global hospital budgets pursuant to this section.

(b) The Green Mountain Care Board may take such steps as are necessary to include all payers in the global hospital budget pilot projects, including negotiating with the federal Center for Medicare & Medicaid Innovation to involve Medicare and Medicaid.

(c) In the event that at least one pilot project authorized under this section is being developed or implemented on or before January 15, 2015, on that date and quarterly thereafter through January 2017, the Green Mountain Care Board shall provide updates to the House Committee on Health Care, the Senate Committees on Health and Welfare and on Finance, and the Health Care Oversight Committee regarding the development and implementation of the global hospital budget pilot projects authorized by this section, including any effect on hospital budget growth, any impact on care delivery and patient outcomes, and recommendations about whether to continue global hospital budgets at the participating hospital or hospitals and whether to implement global hospital budgets for other Vermont hospitals.

* * * Repeal * * *

Sec. 24. REPEAL

3 V.S.A. § 635a (legislators and session-only legislative employees eligible to purchase State Employees Health Benefit Plan at full cost) is repealed.

** * * Effective Dates * * **

Sec. 25. EFFECTIVE DATES

This act shall take effect on passage, except that:

(1) notwithstanding 1 V.S.A. § 214, Sec. 24 (repeal of legislator eligibility to purchase State Employees Health Benefit Plan) shall take effect on passage and shall apply retroactively to January 1, 2014, except that members and session-only employees of the General Assembly who were enrolled in the State Employees Health Benefit Plan on January 1, 2014 may continue to receive coverage under the plan through the remainder of the 2014 plan year; and

(2) Sec. 14 (18 V.S.A. § 9473; pharmacy benefit managers) shall take effect on July 1, 2014 and shall apply to contracts entered into or renewed on or after that date.