

1 H.203

2 Introduced by Representative Lippert of Hinesburg

3 Referred to Committee on

4 Date:

5 Subject: Health; Vermont Health Benefit Exchange; Green Mountain Care

6 Board; health information technology; medical malpractice

7 Statement of purpose of bill as introduced: This bill proposes to expand the  
8 authority of the Green Mountain Care Board, increase the cost-sharing  
9 assistance available to certain eligible individuals in the Vermont Health  
10 Benefit Exchange, and specify the membership of the board of directors for the  
11 Vermont Information Technology Leaders, Inc. It would also extend the use  
12 of confidential presuit mediation in medical malpractice claims and maintain  
13 indefinitely a claims tax to fund health information technology.

14 An act relating to advancing Vermont's health care reform initiatives

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

16 \* \* \* Purpose \* \* \*

17 Sec. 1. PURPOSE

18 The purpose of this act is to set forth the Administration's health care policy  
19 proposals for 2015.



1 ~~Service by registered or certified mail shall be effective three business days~~  
2 ~~after mailing. Any subpoena or notice to produce shall provide at least six~~  
3 ~~business days' time from service within which to comply, except that the Chair~~  
4 ~~may shorten the time for compliance for good cause shown. Any subpoena or~~  
5 ~~notice to produce sent by registered or certified mail, postage prepaid, shall~~  
6 ~~constitute service on the person to whom it is addressed. Each witness who~~  
7 ~~appears before the Chair under subpoena shall receive a fee and mileage as~~  
8 ~~provided for witnesses in civil cases in Superior Courts; provided, however,~~  
9 ~~any person subject to the Board's authority shall not be eligible to receive fees~~  
10 ~~or mileage under this section. [Repealed.]~~

11 (j) ~~A person who fails or refuses to appear, to testify, or to produce papers~~  
12 ~~or records for examination before the Chair upon properly being ordered to do~~  
13 ~~so may be assessed an administrative penalty by the Chair of not more than~~  
14 ~~\$2,000.00 for each day of noncompliance and proceeded against as provided in~~  
15 ~~the Administrative Procedure Act, and the Chair may recommend to the~~  
16 ~~appropriate licensing entity that the person's authority to do business be~~  
17 ~~suspended for up to six months. [Repealed.]~~

18 Sec. 3. 18 V.S.A. § 9374a is added to read:

19 § 9374a. GENERAL POWERS

20 (a) The Board shall have the powers of a court of record in the  
21 determination and adjudication of all matters of which it has jurisdiction.

1 It may render judgments, make orders and decrees, and enforce the same by  
2 any suitable process issuable by courts in this State.

3 (b)(1) In addition to any other penalties and in order to enforce the  
4 provisions of this chapter and empower the Board to perform its duties, the  
5 Chair of the Board may issue subpoenas, examine persons, administer oaths,  
6 and require production of papers and records. Any subpoena or notice to  
7 produce may be served by registered or certified mail or in person by an agent  
8 of the Chair. Service by registered or certified mail shall be effective three  
9 business days after mailing. Any subpoena or notice to produce shall provide  
10 at least six business days' time from service within which to comply, except  
11 that the Chair may shorten the time for compliance for good cause shown.  
12 Any subpoena or notice to produce sent by registered or certified mail, postage  
13 prepaid, shall constitute service on the person to whom it is addressed. Each  
14 witness who appears before the Chair under subpoena shall receive a fee and  
15 mileage as provided for witnesses in civil cases in Superior Courts; provided,  
16 however, any person subject to the Board's authority shall not be eligible to  
17 receive fees or mileage under this section.

18 (2) A person who fails or refuses to appear, to testify, or to produce  
19 papers or records for examination before the Chair upon properly being  
20 ordered to do so may be assessed an administrative penalty by the Chair of not  
21 more than \$2,000.00 for each day of noncompliance and proceeded against as

1 provided in the Administrative Procedure Act, and the Chair may recommend  
2 to the appropriate licensing entity that the person's authority to do business be  
3 suspended for up to six months.

4 (c)(1) The Board may conduct an inquiry into the cost containment  
5 activities; delivery system reforms; payment methodologies; payment rates;  
6 or administration, finances, or budget of a health insurer, accountable care  
7 organization, hospital, health care system, or other entity regulated by the  
8 Board under this title in order to further the purposes set forth in section 9372  
9 of this title. Notwithstanding this authority to investigate, the Board shall not  
10 supersede the Department of Financial Regulation's authority, including its  
11 determinations of solvency, over the entities it regulates. Information  
12 furnished under this section by an entity regulated by the Department of  
13 Financial Regulation shall be subject to the confidentiality and information  
14 sharing agreement provisions in 8 V.S.A. § 22 and shall be treated as though  
15 that information were furnished to the Board by the Department of Financial  
16 Regulation.

17 (2) A majority of the Board, which majority must include the chair, may  
18 institute an inquiry pursuant to this subsection and may appoint a hearing  
19 officer or a single member of the Board to act as a hearing officer.

1           (3)(A) A hearing officer may administer oaths in all inquiries and  
2           examinations, so far as the exercise of that power is properly incidental to the  
3           performance of his or her duties under this subsection.

4           (B) A hearing officer shall report his or her findings of fact in writing  
5           to the Board in the form of a proposal for decision. A copy shall be served  
6           upon the parties and an opportunity to file exceptions and present briefs and  
7           oral arguments shall be afforded consistent with 3 V.S.A. § 811. A final order  
8           on such findings shall be rendered only by a majority of the Board.

9           (C) Upon written request to the Board by a majority of the parties at  
10          least five days prior to the proceeding, the Chair may appoint at least a  
11          majority of the Board to conduct the proceeding.

12          (D) In any proceeding held in accordance with this subsection, the  
13          hearing office shall permit intervention by any interested party that will, in the  
14          hearing officer's discretion, materially advance the proceeding. The burden is  
15          on the party seeking to intervene to demonstrate that the party's participation  
16          will materially advance the proceeding. For purposes of this section,  
17          "interested party" status shall be available only to persons or organizations  
18          who demonstrate that they will be substantially and directly affected by the  
19          proceeding. Persons able to render material assistance to the Board by  
20          providing nonduplicative evidence relevant to the proceeding may be admitted  
21          in an amicus curiae capacity but shall not be considered parties.

1           (4) After conducting an inquiry as set forth in this section, the Board  
2           may enter such orders as are necessary to further the purposes set forth in  
3           section 9372 of this title. Notwithstanding this authority, the Board shall not  
4           supersede the Department of Financial Regulation's authority, including its  
5           determinations of solvency, over the entities it regulates.

6           Sec. 4. 18 V.S.A. § 9374b is added to read:

7           § 9374b. SERVICE OF PROCESS; NOTICE OF HEARINGS;

8                           TEMPORARY RESTRAINING ORDERS

9           (a) All process issued by the Board shall state the time and place of return  
10          in those cases in which return is to be made to the Board. Orders, notices, and  
11          other process issued by the Board shall be served personally, by first class  
12          mail, or by electronic means, except that the Board may direct that service be  
13          made by registered or certified mail. If the whereabouts of a person are  
14          unknown, or if the number of respondents is so great that personal service or  
15          service by mail is impracticable, service may be made by publications.

16          (b) Except as provided in subsections (c), (d), and (e) of this section, the  
17          Board shall give 12 days' notice of all hearings.

18          (c) A prehearing or procedural conference may be held upon any  
19          reasonable notice.

20          (d) An evidentiary hearing, once commenced upon proper notice, may be  
21          continued to a subsequent date upon any reasonable notice.







1 conducted by the Public Service Board pursuant to 30 V.S.A. §§ 209, 218,  
2 231, and 248a.

3 (c) On or before February 1, 2017, the Board shall report to the House  
4 Committee on Health Care, the Senate Committees on Health and Welfare and  
5 on Finance, and the Governor with its findings and recommendations regarding  
6 the implementation of a public utility model for the regulation of health care  
7 reimbursement.

8 Sec. 8. PROVIDER RATE SETTING

9 On or before January 1, 2017, and to the extent permitted under federal law,  
10 the Green Mountain Care Board shall establish the payment amounts and  
11 methods required by 18 V.S.A. § 9376 for at least one health care sector and  
12 shall continue to establish amounts and methods for additional health care  
13 sectors on an ongoing basis.

14 \* \* \* Vermont Information Technology Leaders \* \* \*

15 Sec. 9. 18 V.S.A. § 9352 is amended to read:

16 § 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

17 (a)(1) Governance. ~~The General Assembly and the Governor shall each~~  
18 ~~appoint one representative to the~~ Vermont Information Technology Leaders,  
19 Inc. (VITL) Board of Directors shall consist of nine members. The term of  
20 each member shall be three years, except that of the members first appointed,

1 four shall serve a term of two years and five shall serve a term of three years.

2 The Board of Directors shall comprise the following:

3 (A) one member of the General Assembly, appointed by the Speaker  
4 of the House and the President Pro Tempore of the Senate, who shall be  
5 entitled to the same per diem compensation and expense reimbursement  
6 pursuant to 2 V.S.A. § 406 as provided for attendance at sessions of the  
7 General Assembly;

8 (B) one individual appointed by the Governor;

9 (C) one representative of the business community;

10 (D) one representative of health care consumers;

11 (E) one representative of Vermont hospitals;

12 (F) one representative of Vermont physicians;

13 (G) one practicing clinician licensed to practice medicine in  
14 Vermont; and

15 (H) two individuals familiar with health information technology,  
16 at least one of whom shall be the chief technology officer for a health care  
17 provider.

18 (2) Except for the members appointed pursuant to subdivisions (1)(A)  
19 and (B) of this subsection, whenever a vacancy on the Board occurs, the  
20 members of the Board of Directors then serving shall appoint a new member  
21 who shall meet the same criteria as the member he or she replaces.

1 (b) Conflict of interest. In carrying out their responsibilities under this  
2 section, Directors of VITL shall be subject to conflict of interest policies  
3 established by the Secretary of Administration to ensure that deliberations and  
4 decisions are fair and equitable.

5 (c)(1) Health information exchange operation. VITL shall be designated in  
6 the Health Information Technology Plan pursuant to section 9351 of this title  
7 to operate the exclusive statewide health information exchange network for  
8 this State. ~~The~~ After the Green Mountain Care Board approves VITL's core  
9 activities and budget pursuant to chapter 220 of this title, the Secretary of  
10 Administration or designee shall enter into procurement grant agreements with  
11 VITL pursuant to 8 V.S.A. § 4089k. Nothing in this chapter shall impede local  
12 community providers from the exchange of electronic medical data.

13 (2) Notwithstanding any provision of 3 V.S.A. § 2222 or 2283b to the  
14 contrary, upon request of the Secretary of Administration, the Department of  
15 Information and Innovation shall review VITL's technology for security,  
16 privacy, and other appropriate technical issues.

17 \* \* \*

18 \* \* \* Waivers \* \* \*

19 Sec. 10. WAIVER APPLICATIONS; REPORTING

20 When the General Assembly is not in session, the Secretary of  
21 Administration or designee, the Secretary of Human Services, and the Chair of

1 the Green Mountain Care Board shall provide status reports to the Health  
2 Reform Oversight Committee established pursuant to 2 V.S.A. chapter 20  
3 regarding any activities related to waivers required by 2010 Acts and Resolves  
4 No. 128, Sec. 17, and 2012 Acts and Resolves No. 171, Sec. 34a.

5 \* \* \* Cost-Sharing Financial Assistance \* \* \*

6 Sec. 11. 33 V.S.A. § 1812(b) is amended to read:

7 (b)(1) An individual or family with income at or below 300 percent of the  
8 federal poverty guideline shall be eligible for cost-sharing assistance, including  
9 a reduction in the out-of-pocket maximums established under Section 1402 of  
10 the Affordable Care Act.

11 (2) The Department of Vermont Health Access shall establish  
12 cost-sharing assistance on a sliding scale based on modified adjusted gross  
13 income for the individuals and families described in subdivision (1) of this  
14 subsection. Cost-sharing assistance shall be established as follows:

15 (A) for households with income at or below 150 percent of the  
16 federal poverty level (FPL): 94 percent actuarial value;

17 (B) for households with income above 150 percent FPL and at or  
18 below 200 percent FPL: 87 percent actuarial value;

19 (C) for households with income above 200 percent FPL and at or  
20 below 250 percent FPL: ~~77~~ 83 percent actuarial value;

1 (D) for households with income above 250 percent FPL and at or  
2 below 300 percent FPL: ~~73~~ 79 percent actuarial value.

3 (3) Cost-sharing assistance shall be available for the same qualified  
4 health benefit plans for which federal cost-sharing assistance is available and  
5 administered using the same methods as set forth in Section 1402 of the  
6 Affordable Care Act.

7 \* \* \* Extension of Presuit Mediation for Medical Malpractice Claims \* \* \*

8 Sec. 12. 12 V.S.A. chapter 215, subchapter 2 is added to read:

9 Subchapter 2. Mediation Prior to Filing a Complaint of Malpractice

10 § 7011. PURPOSE

11 The purpose of mediation prior to filing a medical malpractice case is to  
12 identify and resolve meritorious claims and reduce areas of dispute prior to  
13 litigation, which will reduce the litigation costs, reduce the time necessary to  
14 resolve claims, provide fair compensation for meritorious claims, and reduce  
15 malpractice-related costs throughout the system.

16 § 7012. PRESUIT MEDIATION; SERVICE

17 (a) A potential plaintiff may serve upon each known potential defendant a  
18 request to participate in presuit mediation prior to filing a civil action in tort or  
19 in contract alleging that an injury or death resulted from the negligence of a  
20 health care provider and to recover damages resulting from the personal injury  
21 or wrongful death.

1        (b) Service of the request required in subsection (a) of this section shall be  
2        in letter form and shall be served on all known potential defendants by certified  
3        mail. The date of mailing such request shall toll all applicable statutes of  
4        limitations.

5        (c) The request to participate in presuit mediation shall name all known  
6        potential defendants, contain a brief statement of the facts that the potential  
7        plaintiff believes are grounds for relief, and be accompanied by a certificate of  
8        merit prepared pursuant to section 1051 of this title, and may include other  
9        documents or information supporting the potential plaintiff's claim.

10       (d) Nothing in this chapter precludes potential plaintiffs and defendants  
11       from presuit negotiation or other presuit dispute resolution to settle potential  
12       claims.

13       § 7013. MEDIATION RESPONSE

14       (a) Within 60 days of service of the request to participate in presuit  
15       mediation, each potential defendant shall accept or reject the potential  
16       plaintiff's request for presuit mediation by mailing a certified letter to counsel  
17       or if the party is unrepresented to the potential plaintiff.

18       (b) If the potential defendant agrees to participate, within 60 days of the  
19       service of the request to participate in presuit mediation, each potential  
20       defendant shall serve a responsive certificate on the potential plaintiff by  
21       mailing a certified letter indicating that he or she, or his or her counsel, has

1 consulted with a qualified expert within the meaning of section 1643 of this  
2 title and that expert is of the opinion that there are reasonable grounds to  
3 defend the potential plaintiff's claims of medical negligence. Notwithstanding  
4 the potential defendant's acceptance of the request to participate, if the  
5 potential defendant does not serve such a responsive certificate within the  
6 60-day period, then the potential plaintiff need not participate in the presuit  
7 mediation under this title and may file suit. If the potential defendant is willing  
8 to participate, presuit mediation may take place without a responsive certificate  
9 of merit from the potential defendant at the plaintiff's election.

10 § 7014. PROCESS; TIME FRAMES

11 (a) The mediation shall take place within 60 days of the service of all  
12 potential defendants' acceptance of the request to participate in presuit  
13 mediation. The parties may agree to an extension of time. If in good faith the  
14 mediation cannot be scheduled within the 60-day time period, the potential  
15 plaintiff need not participate and may proceed to file suit.

16 (b) If presuit mediation is not agreed to, the mediator certifies that  
17 mediation is not appropriate, or mediation is unsuccessful, the potential  
18 plaintiff may initiate a civil action as provided in the Vermont Rules of Civil  
19 Procedure. The action shall be filed:

20 (1) within 90 days of the potential plaintiff's receipt of the potential  
21 defendant's letter refusing mediation, the failure of the potential defendant to



1 file a responsive certificate of merit within the specified time period, or the  
2 mediator's signed letter certifying that mediation was not appropriate or that  
3 the process was complete; or

4 (2) prior to the expiration of the applicable statute of limitations,  
5 whichever is later.

6 (c) If presuit mediation is attempted unsuccessfully, the parties shall not be  
7 required to participate in mandatory mediation under Rule 16.3 of the Vermont  
8 Rules of Civil Procedure.

9 § 7015. CONFIDENTIALITY

10 All written and oral communications made in connection with or during the  
11 mediation process set forth in this chapter shall be confidential. The mediation  
12 process shall be treated as a settlement negotiation under Rule 408 of the  
13 Vermont Rules of Evidence.

14 \* \* \* Repeals \* \* \*

15 Sec. 13. REPEALS

16 (a) 2013 Acts and Resolves No. 73, Secs. 52 and 53 (elimination of claims  
17 tax to fund health information technology) are repealed on July 1, 2015.

18 (b) 12 V.S.A. chapter 215, subchapter 2 (presuit mediation) is repealed on  
19 February 1, 2018.

1  
2  
3  
4  
5

\* \* \* Effective Dates \* \* \*

Sec. 14. EFFECTIVE DATES

(a) Sec. 12 (extension of presuit mediation) and this section shall take effect on passage.

(b) Secs. 1–11 and 13 shall take effect on July 1, 2015.