

1 S.92

2 Introduced by Committee on Finance

3 Date: February 17, 2015

4 Subject: Court procedure; mediation; medical malpractice actions

5 Statement of purpose of bill as introduced: This bill proposes to reenact the  
6 procedures for mediation in medical malpractice actions that the General  
7 Assembly passed in 2012 Acts and Resolves No. 171. The procedures were  
8 repealed on February 1, 2015.

9 An act relating to mediation in medical malpractice actions

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

11 Sec. 1. 12 V.S.A. chapter 215, subchapter 2 is added to read:

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

13 § 7011. PURPOSE

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

1     § 7012. PRESUIT MEDIATION; SERVICE

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

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

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

16          (d) Nothing in this chapter precludes potential plaintiffs and defendants  
17    from presuit negotiation or other presuit dispute resolution to settle potential  
18    claims.

19    § 7013. MEDIATION RESPONSE

20          (a) Within 60 days of service of the request to participate in presuit  
21    mediation, each potential defendant shall accept or reject the potential

1 plaintiff's request for presuit mediation by mailing a certified letter to counsel  
2 or if the party is unrepresented to the potential plaintiff.

3 (b) If the potential defendant agrees to participate, within 60 days of the  
4 service of the request to participate in presuit mediation, each potential  
5 defendant shall serve a responsive certificate on the potential plaintiff by  
6 mailing a certified letter indicating that he or she, or his or her counsel, has  
7 consulted with a qualified expert within the meaning of section 1643 of this  
8 title and that expert is of the opinion that there are reasonable grounds to  
9 defend the potential plaintiff's claims of medical negligence. Notwithstanding  
10 the potential defendant's acceptance of the request to participate, if the  
11 potential defendant does not serve such a responsive certificate within the  
12 60-day period, then the potential plaintiff need not participate in the presuit  
13 mediation under this title and may file suit. If the potential defendant is willing  
14 to participate, presuit mediation may take place without a responsive certificate  
15 of merit from the potential defendant at the plaintiff's election.

16 § 7014. PROCESS; TIME FRAMES

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

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

5                (1) within 90 days of the potential plaintiff's receipt of the potential  
6        defendant's letter refusing mediation, the failure of the potential defendant to  
7        file a responsive certificate of merit within the specified time period, or the  
8        mediator's signed letter certifying that mediation was not appropriate or that  
9        the process was complete; or

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

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

15        § 7015. CONFIDENTIALITY

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

20        Sec. 2. REPEAL

21        12 V.S.A. chapter 215, subchapter 2 shall be repealed on July 1, 2020.

1       Sec. 3. REPORT

2           On or before December 1, 2019, the Secretary of Administration or  
3       designee shall report to the Senate Committees on Health and Welfare and on  
4       Judiciary and the House Committees on Health Care and on Judiciary on the  
5       impacts of 12 V.S.A. § 1042 (certificate of merit) and this act. The report shall  
6       address the impacts that these reforms have had on:

7           (1) consumers, physicians, and the provision of health care services;

8           (2) the rights of consumers to due process of law and to access to the  
9       court system; and

10          (3) any other service, right, or benefit that was or may have been  
11       affected by the establishment of the medical malpractice reforms in 12 V.S.A.  
12       § 1042 and this act.

13       Sec. 4. EFFECTIVE DATE

14          This act shall take effect on passage.