

Administration's Health Policy Proposal

1 Introduced by

2 Referred to Committee on

3 Date:

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

5 Board; health information technology

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

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

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

15 \* \* \* Green Mountain Care Board \* \* \*

16 Sec. 1. 18 V.S.A. § 9374 is amended to read:

17 § 9374. BOARD MEMBERSHIP; AUTHORITY

18 \* \* \*

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1 (h)(1) Except as otherwise provided in subdivision (2) of this subsection,  
2 expenses incurred to obtain information, analyze expenditures, review hospital  
3 budgets, conduct proceedings authorized by sections 9374a–9374c of this title,  
4 and for any other contracts authorized by the Board shall be borne as follows:

5 (A) 40 percent by the State from ~~state~~ State monies;

6 (B) 15 percent by the hospitals;

7 (C) 15 percent by nonprofit hospital and medical service corporations  
8 licensed under 8 V.S.A. chapter 123 or 125;

9 (D) 15 percent by health insurance companies licensed under  
10 8 V.S.A. chapter 101; and

11 (E) 15 percent by health maintenance organizations licensed under  
12 8 V.S.A. chapter 139.

13 \* \* \*

14 ~~(i) In addition to any other penalties and in order to enforce the provisions~~  
15 ~~of this chapter and empower the Board to perform its duties, the Chair of the~~  
16 ~~Board may issue subpoenas, examine persons, administer oaths, and require~~  
17 ~~production of papers and records. Any subpoena or notice to produce may be~~  
18 ~~served by registered or certified mail or in person by an agent of the Chair.~~  
19 ~~Service by registered or certified mail shall be effective three business days~~  
20 ~~after mailing. Any subpoena or notice to produce shall provide at least six~~

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

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

16 Sec. 2. 18 V.S.A. § 9374a is added to read:

17 § 9374a. GENERAL POWERS

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

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1 may render judgments, make orders and decrees, and enforce the same by any  
2 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

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1 more than \$2,000.00 for each day of noncompliance and proceeded against as  
2 provided in the Administrative Procedure Act, and the Chair may recommend  
3 to the appropriate licensing entity that the person's authority to do business be  
4 suspended for up to six months.

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

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

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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

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1 providing nonduplicative evidence relevant to the proceeding may be admitted  
2 in an amicus curiae capacity but shall not be considered parties.

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

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

9 § 9374b. SERVICE OF PROCESS; NOTICE OF HEARINGS;

10 TEMPORARY RESTRAINING ORDERS

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

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

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

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

5       (e) Notwithstanding any other provision of this section, the Board or a  
6       single member may grant temporary restraining orders in the manner provided  
7       by and subject to the limitations prescribed by the Vermont Rules of Civil  
8       Procedure.

9       Sec. 4. 18 V.S.A. § 9374c is added to read:

10       § 9374c. PLEADINGS; RULES OF PRACTICE; FINDINGS OF FACT

11       (a) The Board shall prescribe the forms, pleadings, and rules of practice  
12       and procedure before it.

13       (b) The Board shall hear all matters within its jurisdiction and make its  
14       findings of fact. It shall state its rulings of law when they are excepted to.  
15       Upon appeal to the Supreme Court, its findings of fact shall be accepted unless  
16       clearly erroneous.

17       Sec. 5. 18 V.S.A. § 9375(b) is amended to read:

18       (b) The Board shall have the following duties:

19                                       \* \* \*



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1           (2)(A) Review and approve Vermont's statewide Health Information  
2           Technology Plan pursuant to section 9351 of this title to ensure that the  
3           necessary infrastructure is in place to enable the State to achieve the principles  
4           expressed in section 9371 of this title.

5                     (B) Review and approve the criteria required for health care  
6                     providers and health care facilities to create or maintain connectivity to the  
7                     State's health information exchange as set forth in section 9352 of this title.

8                     (C) Annually review and approve the core activities and budget,  
9                     consistent with available funds, of the Vermont Information Technology  
10                    Leaders, Inc., which shall include establishing the interconnectivity of  
11                    electronic medical records held by health care professionals and health care  
12                    systems for the purpose of improving the quality and efficiency of health care  
13                    provided to Vermonters. This review shall be conducted according to a  
14                    process established by the Board by rule pursuant to 3 V.S.A. chapter 25.

15   \* \* \*

16           Sec. 6. PUBLIC UTILITY MODEL

17                    (a) On or before January 1, 2016, the Green Mountain Care Board shall  
18                    initiate an inquiry regarding whether the public good would be served by  
19                    regulating health care reimbursement in Vermont as a public utility. The

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1 Board may authorize a hearing officer or a single Board member to conduct the  
2 hearing as provided in 18 V.S.A. § 9374a.

3 (b) The Board's inquiry shall include a review of whether the public good  
4 would be served by designating a regulated entity as a public utility through a  
5 process similar to the certificate of public good or an order of appointment  
6 conducted by the Public Service Board pursuant to 30 V.S.A. §§ 209, 218,  
7 231, and 248a.

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

13 Sec. 7. PROVIDER RATE SETTING

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

19 \* \* \* Vermont Information Technology Leaders \* \* \*

20 Sec. 8. 18 V.S.A. § 9352 is amended to read:

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1 § 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

2 (a)(1) Governance. ~~The General Assembly and the Governor shall each~~  
3 ~~appoint one representative to the~~ Vermont Information Technology Leaders,  
4 Inc. (VITL) Board of Directors shall consist of nine members. The term of  
5 each member shall be three years, except that of the members first appointed,  
6 four shall serve a term of two years and five shall serve a term of three years.  
7 The Board of Directors shall comprise the following:

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

13 (B) one individual appointed by the Governor;

14 (C) one representative of the business community;

15 (D) one representative of health care consumers;

16 (E) one representative of Vermont hospitals;

17 (F) one representative of Vermont physicians;

18 (G) one practicing clinician licensed to practice medicine in  
19 Vermont; and

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

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

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

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

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

5                               \* \* \*

6                               \* \* \* Waivers \* \* \*

7           Sec. 9. WAIVER APPLICATIONS; REPORTING

8           When the General Assembly is not in session, the Secretary of  
9           Administration or designee, the Secretary of Human Services, and the Chair of  
10           the Green Mountain Care Board shall provide status reports to the Health  
11           Reform Oversight Committee established pursuant to 2 V.S.A. chapter 20  
12           regarding any activities related to waivers required by 2010 Acts and Resolves  
13           No. 128, Sec. 17, and 2012 Acts and Resolves No. 171, Sec. 34a.

14                              \* \* \* Cost-Sharing Financial Assistance \* \* \*

15           Sec. 10. 33 V.S.A. § 1812(b) is amended to read:

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

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

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

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

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

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

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

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

18           Sec. 11. 2012 Acts and Resolves No. 171, Sec. 24d is amended to read:

19           Sec. 24d. SUNSET

