

1 Introduced by Committee on Health Care

2 Date:

3 Subject: Health; health insurance; Vermont Health Benefit Exchange; medical
4 malpractice; presuit mediation

5 Statement of purpose of bill as introduced: This bill proposes to allow
6 individuals to enroll directly in 2016 Exchange plans if the Exchange website
7 will not be sufficiently functional. It would also extend the use of confidential
8 presuit mediation in medical malpractice claims until 2018.

9 An act relating to direct enrollment in Exchange plans and to presuit
10 mediation in medical malpractice claims

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

12 Sec. 1. 33 V.S.A. § 1811(c) is amended to read:

13 (b)(1) ~~No person may provide a health benefit plan to an individual unless~~
14 ~~the plan is offered through the Vermont Health Benefit Exchange~~ To the extent
15 permitted by the U.S. Department of Health and Human Services, an
16 individual may purchase a health benefit plan through the Exchange website,
17 through navigators, by telephone, or directly from a registered carrier under
18 contract with the Vermont Health Benefit Exchange, if the carrier elects to
19 make direct enrollment available. A registered carrier enrolling individuals

1 directly in Exchange plans shall comply with all open enrollment and special
2 enrollment periods applicable to the Vermont Health Benefit Exchange.

3 (2) To the extent permitted by the U.S. Department of Health and
4 Human Services, a small employer or an employee of a small employer may
5 purchase a health benefit plan through the Exchange website, through
6 navigators, by telephone, or directly from a ~~health insurer~~ registered carrier
7 under contract with the Vermont Health Benefit Exchange.

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

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

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

12 § 7011. PURPOSE

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

18 § 7012. PRESUIT MEDIATION; SERVICE

19 (a) A potential plaintiff may serve upon each known potential defendant a
20 request to participate in presuit mediation prior to filing a civil action in tort or
21 in contract alleging that an injury or death resulted from the negligence of a

1 health care provider and to recover damages resulting from the personal injury
2 or wrongful death.

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

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

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

15 § 7013. MEDIATION RESPONSE

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

20 (b) If the potential defendant agrees to participate, within 60 days of the
21 service of the request to participate in presuit mediation, each potential

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

12 § 7014. PROCESS; TIME FRAMES

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

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

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

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

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

11 § 7015. CONFIDENTIALITY

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

16 Sec. 3. BLUEPRINT FOR HEALTH; REPORTS

17 (a) The 2016 annual report of the Blueprint for health shall present an
18 analysis of the value-added benefits and return on investment to the Medicaid
19 program of the new funds appropriated in the fiscal year 2016 budget,
20 including the identification of any costs avoided that can be directly attributed

1 to those funds, and the means of the analysis that was used to draw any such
2 conclusions.

3 (b) The Blueprint for Health shall explore and report back to the General
4 Assembly on or before January 15, 2016 on potential wellness incentives.

5 Sec. 4. REPEALS

6 12 V.S.A. chapter 215, subchapter 2 (presuit mediation) is repealed on
7 February 1, 2018.

8 Sec. 5. EFFECTIVE DATES

9 (a) Sec. 1 (direct enrollment in Exchange plans) shall take effect July 1,
10 2015 and shall apply beginning with the 2016 open enrollment period.

11 (b) The remainder of this act shall take effect on passage.