

1 S.92

2 Introduced by Committee on Finance

3 Date:

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8 repealed on February 1, 2015.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.