

1 H.393

2 Introduced by Representatives Pugh of South Burlington, Christie of Hartford,
3 and Mrowicki of Putney

4 Referred to Committee on

5 Date:

6 Subject: Human services; pain management clinics; certificate of need

7 Statement of purpose of bill as introduced: This bill proposes to require a pain
8 management clinic to obtain a certificate of need prior to commencing
9 operation.

10 An act relating to obtaining a certificate of need prior to operating a pain
11 management clinic

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

13 Sec. 1. 18 V.S.A. chapter 221, subchapter 5 is amended to read:

14 Subchapter 5. Health Facility Planning

15 * * *

16 § 9432. DEFINITIONS

17 As used in this subchapter:

18 * * *

19 (8) "Health care facility" means all persons or institutions, including
20 mobile facilities, whether public or private, proprietary or not for profit, which

1 offer diagnosis, treatment, inpatient, or ambulatory care to two or more
2 unrelated persons, and the buildings in which those services are offered.

3 The term shall not apply to any institution operated by religious groups relying
4 solely on spiritual means through prayer for healing, but shall include ~~but is~~
5 ~~not limited to:~~

6 (A) hospitals, including general hospitals, ~~mental~~ psychiatric
7 hospitals, chronic disease facilities, birthing centers, maternity hospitals, and
8 psychiatric facilities, including any hospital conducted, maintained, or operated
9 by the ~~state~~ State of Vermont, or its subdivisions, or a duly authorized agency
10 thereof;

11 (B) nursing homes, health maintenance organizations, home health
12 agencies, outpatient diagnostic or therapy programs, kidney disease treatment
13 centers, mental health agencies or centers, diagnostic imaging facilities,
14 independent diagnostic laboratories, cardiac catheterization laboratories,
15 radiation therapy facilities, pain management clinics, or any inpatient or
16 ambulatory surgical, diagnostic, or treatment center.

17 * * *

18 (15) “Pain management clinic” means a health care facility that offers
19 Schedule II or III controlled substances to patients for treatment of chronic
20 pain that is unrelated to cancer or a terminal condition, but fails to offer
21 complementary treatment to patients. “Complementary treatment” means

1 services that supplement a health care provider's prescription of a Schedule II
2 or III controlled substance for pain, including at least the following:
3 prescribing rehabilitative services, performing pain relieving procedures,
4 counseling patients and families, and coordinating care with other health care
5 providers.

6 * * *

7 § 9434. CERTIFICATE OF NEED; GENERAL RULES

8 (a) A health care facility ~~other than a hospital~~ shall not develop, or have
9 developed on its behalf a new health care project without issuance of a
10 certificate of need by the ~~board~~ Board.

11 ~~(1) For purposes of this subsection~~ In relation to a health care facility
12 other than a hospital and pain management clinic, a "new health care project"
13 ~~includes~~ shall include the following:

14 ~~(1)(A)~~ (A) The construction, development, purchase, renovation, or other
15 establishment of a health care facility, or any capital expenditure by or on
16 behalf of a health care facility, for which the capital cost exceeds
17 \$1,500,000.00.

18 ~~(2)(B)~~ (B) A change from one licensing period to the next in the number
19 of licensed beds of a health care facility through addition or conversion, or
20 through relocation from one physical facility or site to another.

1 ~~(3)~~(C) The offering of any home health service, or the transfer or
2 conveyance of more than a 50 percent ownership interest in a health care
3 facility other than a hospital.

4 ~~(4)~~(D) The purchase, lease, or other comparable arrangement of a
5 single piece of diagnostic and therapeutic equipment for which the cost, or in
6 the case of a donation the value, is in excess of \$1,000,000.00. For purposes of
7 this subdivision, the purchase or lease of one or more articles of diagnostic or
8 therapeutic equipment which are necessarily interdependent in the performance
9 of their ordinary functions or which would constitute any health care facility
10 included under subdivision 9432(8)(B) of this title, as determined by the ~~board~~
11 Board, shall be considered together in calculating the amount of an
12 expenditure. The ~~board's~~ Board's determination of functional interdependence
13 of items of equipment under this subdivision shall have the effect of a final
14 decision and is subject to appeal under section 9381 of this title.

15 ~~(5)~~(E) The offering of a health care service or technology having an
16 annual operating expense which exceeds \$500,000.00 for either of the next two
17 budgeted fiscal years, if the service or technology was not offered or
18 employed, either on a fixed or a mobile basis, by the health care facility within
19 the previous three fiscal years.

20 ~~(6)~~(F) The construction, development, purchase, lease, or other
21 establishment of an ambulatory surgical center.

1 ~~(b)(2)~~ A hospital shall not develop or have developed on its behalf a
2 new health care project without issuance of a certificate of need by the board.
3 For purposes of this subsection In relation to a hospital, a “new health care
4 project” ~~includes~~ shall include the following:

5 ~~(1)(A)~~ The construction, development, purchase, renovation, or other
6 establishment of a health care facility, or any capital expenditure by or on
7 behalf of a hospital, for which the capital cost exceeds \$3,000,000.00.

8 ~~(2)(B)~~ The purchase, lease, or other comparable arrangement of a
9 single piece of diagnostic and therapeutic equipment for which the cost, or in
10 the case of a donation the value, is in excess of \$1,000,000.00. For purposes of
11 this subdivision, the purchase or lease of one or more articles of diagnostic or
12 therapeutic equipment which are necessarily interdependent in the performance
13 of their ordinary functions or which would constitute any health care facility
14 included under subdivision 9432(8)(B) of this title, as determined by the ~~board~~
15 Board, shall be considered together in calculating the amount of an
16 expenditure. The ~~board's~~ Board's determination of functional interdependence
17 of items of equipment under this subdivision shall have the effect of a final
18 decision and is subject to appeal under section 9381 of this title.

19 ~~(3)(C)~~ The offering of a health care service or technology having an
20 annual operating expense which exceeds \$500,000.00 for either of the next two
21 budgeted fiscal years, if the service or technology was not offered or

1 employed, either on a fixed or a mobile basis, by the hospital within the
2 previous three fiscal years.

3 ~~(4)(D)~~ A change from one licensing period to the next in the number
4 of licensed beds of a health care facility through addition or conversion, or
5 through relocation from one physical facility or site to another.

6 (3) In relation to a pain management clinic, a “new health care project”
7 shall include the following:

8 (A) The construction, development, purchase, renovation, or other
9 establishment of a pain management clinic, or any capital expenditure by or on
10 behalf of a pain management clinic, for which the capital cost exceeds
11 \$20,000.00.

12 (B) The transfer or conveyance of more than a 50 percent ownership
13 interest in a pain management clinic.

14 (C) The purchase, lease, or other comparable arrangement of a single
15 piece of diagnostic and therapeutic equipment for which the cost, or in the case
16 of a donation the value, is in excess of \$20,000.00. For purposes of this
17 subdivision, the purchase or lease of one or more articles of diagnostic or
18 therapeutic equipment which are necessarily interdependent in the performance
19 of their ordinary functions or which would constitute any health care facility
20 included under subdivision 9432(8)(B), as determined by the Board, shall be
21 considered together in calculating the amount of an expenditure. The Board’s

1 determination of functional interdependence of items of equipment under this
2 subdivision shall have the effect of a final decision and is subject to appeal
3 under section 9381 of this title.

4 (D) The offering of a health care service or technology having an
5 annual operating expense which exceeds \$20,000.00 for either of the next two
6 budgeted fiscal years, if the service or technology was not offered or
7 employed, either on a fixed or a mobile basis, by the pain management clinic
8 within the previous three fiscal years.

9 (e)(b) In the case of a project which requires a certificate of need under this
10 section, expenditures for which are anticipated to be in excess of
11 \$30,000,000.00, the applicant first shall secure a conceptual development
12 phase certificate of need, in accordance with the standards and procedures
13 established in this subchapter, which permits the applicant to make
14 expenditures for architectural services, engineering design services, or any
15 other planning services, as defined by the ~~board~~ Board, needed in connection
16 with the project. Upon completion of the conceptual development phase of the
17 project, and before offering or further developing the project, the applicant
18 shall secure a final certificate of need, in accordance with the standards and
19 procedures established in this subchapter. Applicants shall not be subject to
20 sanctions for failure to comply with the provisions of this subsection if such
21 failure is solely the result of good faith reliance on verified project cost

1 estimates issued by qualified persons, which cost estimates would have led a
2 reasonable person to conclude the project was not anticipated to be in excess of
3 \$30,000,000.00 and therefore not subject to this subsection. The provisions of
4 this subsection notwithstanding, expenditures may be made in preparation for
5 obtaining a conceptual development phase certificate of need, which
6 expenditures shall not exceed \$20,000.00 for pain management clinics,
7 \$1,500,000.00 for ~~non-hospitals~~ health care facilities other than hospitals and
8 pain management clinics, or \$3,000,000.00 for hospitals.

9 ~~(d)~~(c) If the ~~board~~ Board determines that a person required to obtain a
10 certificate of need under this subchapter has separated a single project into
11 components in order to avoid cost thresholds or other requirements under this
12 subchapter, the person shall be required to submit an application for a
13 certificate of need for the entire project, and the ~~board~~ Board may proceed
14 under section 9445 of this title. The ~~board's~~ Board's determination under this
15 subsection shall have the effect of a final decision and is subject to appeal
16 under section 9381 of this title.

17 ~~(e)~~(d) Beginning on January 1, 2013, and biannually thereafter, the ~~board~~
18 Board may by rule adjust the monetary jurisdictional thresholds contained in
19 this section. In doing so, the ~~board~~ Board shall reflect the same categories of
20 health care facilities, services, and programs recognized in this section. Any

1 adjustment by the ~~board~~ Board shall not exceed the consumer price index rate
2 of inflation.

3 § 9435. EXCLUSIONS

4 (a) Excluded from this subchapter are offices of physicians, dentists, or
5 other practitioners of the healing arts, meaning the physical places which are
6 occupied by such providers on a regular basis in which such providers perform
7 the range of diagnostic and treatment services usually performed by such
8 providers on an outpatient basis unless they are subject to review under
9 subdivision 9434(a)(4) of this title, but not pain management clinics.

10 * * *

11 § 9438. ADDITIONAL CRITERIA FOR PAIN MANAGEMENT CLINICS

12 In addition to the criteria described in section 9437 of this subchapter, a
13 certificate of need shall be granted to a pain management clinic only if the
14 applicant demonstrates and the Board finds that:

15 (1) treatment provided at the pain management clinic reduces reliance
16 on opioids and supports public health efforts in Vermont;

17 (2) the pain management clinic is managed by a physician licensed
18 pursuant to 26 V.S.A. chapter 23 or 33 who:

19 (A) has completed a pain management fellowship that is accredited
20 by the Accreditation Council for Graduate Medical Education or other similar
21 program approved by the Vermont Board of Medical Practice; or

1 (B) holds a current board certification by the American Board of Pain
2 Medicine or current board certification by the American Board of
3 Anesthesiology or other similar board approved by the Vermont Board of
4 Medical Practice; and

5 (3) the pain management clinic’s managing physician has never been
6 convicted or plead guilty or nolo contendere to a felony offense for the receipt
7 or distribution of a diverted controlled substance.

8 * * *

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on July 1, 2017.