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H.824

Introduced by Representatives Yacovone of Morristown and Keenan of
St. Albans City

Referred to Committee on

Date:

Subject: Health; Green Mountain Care Board; ambulatory surgical centers

Statement of purpose of bill as introduced: This bill proposes to establish a
regulatory framework for ambulatory surgical centers.

An act relating to regulation of ambulatory surgical centers

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

* * * Regulation of Ambulatory Surgical Centers * * *

Sec. 1. 18 V.S.A. chapter 49 is added to read:

CHAPTER 49. AMBULATORY SURGICAL CENTERS

Subchapter 1. General Provisions

§ 2141. DEFINITIONS

As used in this chapter:

(1) “Ambulatory surgical center” means any distinct entity that operates
exclusively for the purpose of providing outpatient surgical services and other
outpatient medical procedures to patients not requiring hospitalization and for

1 which the expected duration of services does not exceed 24 hours following an
2 admission.

3 (2) "Patient" means a person admitted to or receiving health care
4 services from an ambulatory surgical center.

5 (3) "Physician" means a physician licensed pursuant to 26 V.S.A.
6 chapter 23 or 33.

7 Subchapter 2. Licensure of Ambulatory Surgical Centers

8 § 2151. LICENSE

9 No person shall establish, maintain, or operate an ambulatory surgical
10 center in this State without first obtaining a license for the ambulatory surgical
11 center in accordance with this subchapter.

12 § 2152. APPLICATION; FEE

13 (a) An application for licensure of an ambulatory surgical center shall be
14 made to the Department of Health on forms provided by the Department and
15 shall include all information required by the Department. Each application for
16 a license shall be accompanied by a license fee.

17 (b) The annual licensing fee for an ambulatory surgical center shall be
18 \$2,000.00.

19 (c) Fees collected under this section shall be credited to a special fund
20 established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and

1 shall be available to the Department of Health to offset the costs of licensing
2 ambulatory surgical centers.

3 § 2153. LICENSE REQUIREMENTS

4 (a) Upon receipt of an application for a license and the licensing fee, the
5 Department of Health shall issue a license if it determines that the applicant
6 and the ambulatory surgical center facilities meet the following minimum
7 standards:

8 (1) The applicant shall demonstrate the capacity to operate an
9 ambulatory surgical center in accordance with rules adopted by the
10 Department.

11 (2) The applicant shall demonstrate that its facilities comply fully with
12 standards for health, safety, and sanitation as required by State law, including
13 standards set forth by the State Fire Marshal and the State Board of Health, and
14 municipal ordinance.

15 (3) The ambulatory surgical center shall not mix functions or operations
16 in a common space with another entity during concurrent or overlapping hours
17 of operation.

18 (4) The ambulatory surgical center shall enter into an agreement with
19 the federal Centers for Medicare and Medicaid Services to operate as a
20 Medicare-certified ambulatory surgical center.

1 (5) The ambulatory surgical center shall obtain accreditation from the
2 Joint Commission's Ambulatory Health Care Accreditation Program within
3 18 months after commencing operations and shall maintain the accreditation in
4 order to be eligible for license renewal.

5 (6) The ambulatory surgical center shall agree to be an active participant
6 in Vermont's health care reform initiatives.

7 (7) The ambulatory surgical center shall require each physician
8 performing procedures or surgeries, or both, at the ambulatory surgical center
9 to sign an agreement that includes the following principles:

10 (A) timely access to care;

11 (B) appropriate communication;

12 (C) adherence to widely accepted, evidence-based standards of
13 care; and

14 (D) support of the primary care practice as the medical home for
15 most patients.

16 (8)(A) The ambulatory surgical center shall have an effective procedure
17 for the immediate transfer to a hospital of patients requiring emergency
18 medical care beyond the capabilities of the ambulatory surgical center.

19 (B) The ambulatory surgical center shall have a transport agreement
20 with at least one emergency medical services provider for emergency patient
21 transportation.

1 (9) The clinical services provided by the ambulatory surgical center
2 shall be managed by a medical director, who shall be a physician.

3 (10)(A) The ambulatory surgical center shall ensure that all patients
4 admitted to or receiving services from the ambulatory surgical center shall be
5 under the care of a practicing physician. The ambulatory surgical center shall
6 use the uniform credentialing application form described in subsection
7 9408a(b) of this title.

8 (B) All physicians performing procedures or surgeries, or both, at the
9 ambulatory surgical center shall have admitting privileges at one or more
10 hospitals in the geographic region in which the ambulatory surgical center is
11 located.

12 (C) All physicians performing procedures or surgeries, or both, at the
13 ambulatory surgical center shall maintain after-hours on-call policies and 24-
14 hour call coverage to respond to patient inquiries.

15 (11) The ambulatory surgical center's nursing service shall be directed
16 at all times by a registered nurse or advanced practice registered nurse licensed
17 pursuant to 26 V.S.A. chapter 28.

18 (12) A physician shall examine each patient immediately prior to a
19 procedure or surgery to evaluate the risk of anesthesia and of the procedure or
20 surgery to be performed.

1 (13) The ambulatory surgical center shall require each physician
2 performing procedures or surgeries, or both, at the ambulatory surgical center
3 to certify that he or she will accept patients without regard to payer type,
4 insurance status, or ability to pay for services.

5 (14) The ambulatory surgical center shall maintain a policy to provide
6 charity care to patients that is comparable to those of the hospitals in the
7 geographic region in which the ambulatory surgical center is located.

8 (15) The ambulatory surgical center shall have an organized medical
9 staff of not fewer than three members that shall meet as frequently as
10 recommended by the Joint Commission.

11 (16) Professional case records shall be compiled for all patients and
12 signed by the treating physician. These records shall be kept on file for a
13 minimum of 10 years.

14 (17) Accounting records of all operating procedures shall be kept on a
15 monthly basis, and complete operating and financial statements shall be
16 compiled at least once annually and kept on file for 20 years.

17 (18) The ambulatory surgical center shall obtain the Department's
18 approval, in addition to any certificate of need that may be required pursuant to
19 chapter 221, subchapter 5 of this title, prior to beginning any expansion or
20 remodeling of the center.

1 (19) The ambulatory surgical center facilities, including the buildings
2 and grounds, shall be subjected to inspection by the Department, its designees,
3 and other authorized entities at all times.

4 (20) A license is not transferable or assignable and shall be issued only
5 for the premises and persons named in the application.

6 (21) The ambulatory surgical center shall submit to the Department a
7 plan for implementing the provisions of section 1852 of this title to the extent
8 applicable to ambulatory surgical centers and a plan for handling patient
9 complaints, which shall become effective upon approval by the Department.

10 Plans under this subdivision (21) shall include:

11 (A) contact information for the Office of the Health Care Advocate;

12 (B) a method by which each patient shall be made aware of the
13 ambulatory surgical center's complaint procedure;

14 (C) an appeals mechanism within the ambulatory surgical center;

15 (D) a published time frame for processing and resolving complaints
16 and appeals made within the ambulatory surgical center and notification that
17 further appeals of the ambulatory surgical center's resolution of complaints
18 may be made to the Department of Health; and

19 (E) periodic reporting to the Department of the nature of complaints
20 filed and action taken.

1 (22) All ambulatory surgical centers shall accept payment for
2 compensation claims of uninsured crime victims paid for by the Victims
3 Compensation Board established in 13 V.S.A. § 5352 at 70 percent of billed
4 charges and shall not bill any balance to the uninsured crime victim.

5 (23) All ambulatory surgical centers shall comply with the rules adopted
6 by the Commissioner of Health pursuant to section 2176 of this title. License
7 applications shall certify compliance with the rules.

8 (b) In conducting its reviews, the Department shall evaluate the quality and
9 financial indicators published by the Commissioner of Health pursuant to
10 subsection 9405b(c) of this title.

11 § 2154. REVOCATION OF LICENSE, HEARING

12 The Department of Health, after notice and opportunity for hearing to the
13 applicant or licensee, is authorized to deny, suspend, or revoke a license in any
14 case in which it finds that there has been a substantial failure to comply with
15 the requirements established under this chapter. Such notice shall be served by
16 registered mail or by personal service, shall set forth the reasons for the
17 proposed action, and shall set a date not less than 60 days from the date of the
18 mailing or service on which the applicant or licensee shall be given
19 opportunity for a hearing. After the hearing, or upon default of the applicant or
20 licensee, the Department shall file its findings of fact and conclusions of law.
21 A copy of the findings and decision shall be sent by registered mail or served

1 personally upon the applicant or licensee. The procedure governing hearings
2 authorized by this section shall be in accordance with the usual and customary
3 rules provided for such hearings.

4 § 2155. APPEAL

5 Any applicant or licensee, or the State acting through the Attorney General,
6 aggrieved by the decision of the Department of Health after a hearing may,
7 within 30 days after entry of the decision as provided in section 2174 of this
8 title, appeal to the Superior Court for the district in which the appellant is
9 located. The court may affirm, modify, or reverse the Department's decision,
10 and either the applicant or licensee or the Department or State may appeal to
11 the Vermont Supreme Court for such further review as is provided by law.

12 Pending final disposition of the matter, the status quo of the applicant or
13 licensee shall be preserved, except as the court otherwise orders in the public
14 interest.

15 § 2156. INSPECTIONS

16 The Department shall make or cause to be made such inspections and
17 investigation as it deems necessary.

18 § 2157. RECORDS

19 Information that identifies or may lead to the identification of one or more
20 individuals is exempt from public inspection and copying under the Public

1 Records Act and shall be kept confidential except as it relates to a proceeding
2 regarding licensure of an ambulatory surgical center.

3 § 2158. RULES

4 The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed
5 to carry out the purposes of this subchapter and subchapter 3 of this chapter.

6 Subchapter 3. Transparency and Reporting Requirements

7 § 2171. INFORMATION FOR PATIENTS AND PROSPECTIVE

8 PATIENTS

9 (a) Each ambulatory surgical center shall maintain information on its
10 website for patients and prospective patients, including all of the following:

11 (1) For each physician performing procedures or surgeries, or both, at
12 the ambulatory surgical center:

13 (A) the physician's name, professional credentials, and area or areas
14 of specialization;

15 (B) the types of procedures and surgeries that the physician offers
16 and performs at the ambulatory surgical center;

17 (C) the name and location of the hospital or hospitals at which the
18 physician has admitting privileges; and

19 (D) the extent of the physician's ownership interest in the ambulatory
20 surgical center, if any.

1 (2) The commercial insurance, self-pay, and Medicare prices for each of
2 the 25 procedures and surgeries most frequently performed at the ambulatory
3 surgical center. The ambulatory surgical center shall update the information at
4 least quarterly, regardless of whether there has been any change in the prices or
5 in the procedures and surgeries most frequently performed.

6 (b) Each physician performing procedures or surgeries, or both, at the
7 ambulatory surgical center shall provide his or her contact and on-call
8 information to patients for use after business hours and on weekends.

9 (c)(1) Each ambulatory surgical center, upon request, shall provide
10 potential patients with written price estimates for their procedures and
11 surgeries.

12 (2) At least seven days prior to the scheduled date of each procedure or
13 surgery, the ambulatory surgical center shall provide the patient with a written
14 disclosure outlining the total price of the scheduled procedure or surgery and
15 the portion of that amount for which the patient is responsible.

16 § 2172. QUALITY AND PAYER MIX REPORTING REQUIREMENTS

17 (a) The ambulatory surgical center shall participate in the Centers for
18 Medicare and Medicaid Services' Ambulatory Surgical Center Quality
19 Reporting Program and shall periodically, but not less often than annually, post
20 its performance on each quality measure on the ambulatory surgical center's
21 website.

1 (b) Within 45 days following the close of each calendar quarter, the
2 ambulatory surgical center shall provide to the Green Mountain Care Board,
3 and post to the ambulatory surgical center's website, the ambulatory surgical
4 center's payer mix for the preceding calendar quarter by number of procedures
5 and surgeries and by revenues.

6 § 2173. HIGH-VOLUME SURGERIES AND PROCEDURES; REPORT

7 Annually on or before January 15, the Green Mountain Care Board shall
8 provide to the House Committee on Health Care and the Senate Committees on
9 Finance and on Health and Welfare a report showing, for each of the surgeries
10 and procedures identified by ambulatory surgical centers pursuant to
11 subdivision 2171(a)(2) of this title, using claims data, the total number of each
12 such surgery or procedure performed in this State during each of the previous
13 five years, based on the ambulatory surgical centers' fiscal year.

14 * * * Oversight and Quality Measures * * *

15 Sec. 2. 18 V.S.A. § 9374(h)(1) is amended to read:

16 (h)(1) Except as otherwise provided in subdivision (2) of this subsection,
17 expenses incurred to obtain information, analyze expenditures, review hospital
18 and ambulatory surgical center budgets, and for any other contracts authorized
19 by the Board shall be borne as follows:

20 (A) ~~40~~ 35 percent by the State from State monies;

21 (B) 15 percent by the hospitals;

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

3 (D) 15 percent by health insurance companies licensed under
4 8 V.S.A. chapter 101; ~~and~~

5 (E) 15 percent by health maintenance organizations licensed under
6 8 V.S.A. chapter 139; and

7 (F) five percent by ambulatory surgical centers.

8 Sec. 3. 18 V.S.A. § 9375(b) is amended to read:

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

10 * * *

11 (7) Review and establish hospital budgets pursuant to chapter 221,
12 subchapter 7 of this title, ~~beginning July 1, 2012~~ and ambulatory surgical
13 center budgets pursuant to chapter 49, subchapter 4 of this title.

14 Sec. 4. 18 V.S.A. § 9402 is amended to read:

15 § 9402. DEFINITIONS

16 As used in this chapter, unless otherwise indicated:

17 * * *

18 (18) “Ambulatory surgical center” shall have the same meaning as in
19 section 2141 of this title.

1 Sec. 5. 18 V.S.A. § 9405 is amended to read:

2 § 9405. STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION

3 PLAN

4 * * *

5 (b) On or before July 1, 2005, the Green Mountain Care Board, in
6 consultation with the Secretary of Human Services, shall submit to the
7 Governor a four-year Health Resource Allocation Plan. The Plan shall identify
8 Vermont needs in health care services, programs, and facilities; the resources
9 available to meet those needs; and the priorities for addressing those needs on a
10 statewide basis.

11 (1) The Plan shall include:

12 (A) A statement of principles reflecting the policies enumerated in
13 sections 9401 and 9431 of this chapter to be used in allocating resources and in
14 establishing priorities for health services.

15 (B) Identification of the current supply and distribution of hospital,
16 nursing home, and other inpatient services; home health and mental health
17 services; treatment and prevention services for alcohol and other drug abuse;
18 emergency care; ambulatory care services, including primary care resources,
19 federally qualified health centers, and free clinics; major medical equipment;
20 and health screening and early intervention services.

1 (C) Consistent with the principles set forth in subdivision (A) of this
2 subdivision (1), recommendations for the appropriate supply and distribution
3 of resources, programs, and services identified in subdivision (B) of this
4 subdivision (1), options for implementing such recommendations and
5 mechanisms which will encourage the appropriate integration of these services
6 on a local or regional basis. To arrive at such recommendations, the Green
7 Mountain Care Board shall consider at least the following factors:

8 * * *

9 (xi) the overall quality and cost of services as reported in the
10 annual hospital community reports and ambulatory surgical center community
11 reports;

12 (xii) individual hospital and ambulatory surgical center four-year
13 capital budget projections; and

14 (xiii) the four-year projection of health care expenditures prepared
15 by the Board.

16 * * *

17 Sec. 6. 18 V.S.A. § 9405a is amended to read:

18 § 9405a. PUBLIC PARTICIPATION AND STRATEGIC PLANNING

19 (a) Each hospital and ambulatory surgical center shall have a protocol for
20 meaningful public participation in its strategic planning process for identifying
21 and addressing health care needs that the hospital or ambulatory surgical center

1 provides or could provide in its service area. Needs identified through the
2 process shall be integrated with the hospital's or ambulatory surgical center's
3 long-term planning. Each hospital and ambulatory surgical center shall post on
4 its website a description of its identified needs, strategic initiatives developed
5 to address the identified needs, annual progress on implementation of the
6 proposed initiatives, and opportunities for public participation. Hospitals may
7 meet the community health needs assessment and implementation plan
8 requirement through compliance with the relevant Internal Revenue Service
9 community health needs assessment requirements for nonprofit hospitals.

10 (b) When a hospital or ambulatory surgical center is working on a new
11 community health needs assessment, the hospital or ambulatory surgical center
12 shall post on its website information about the process for developing the
13 community needs assessment and opportunities for public participation in the
14 process.

15 Sec. 7. 18 V.S.A. § 9405b is amended to read:

16 § 9405b. HOSPITAL AND AMBULATORY SURGICAL CENTER

17 COMMUNITY REPORTS

18 (a) The Commissioner of Health, in consultation with representatives from
19 hospitals, ambulatory surgical centers, other groups of health care
20 professionals, and members of the public representing patient interests, shall
21 adopt rules establishing a statewide comparative hospital quality report and a

1 statewide comparative ambulatory surgical center quality report. Hospitals and
2 ambulatory surgical centers located outside this State ~~which~~ that serve a
3 significant number of Vermont residents, as determined by the Commissioner
4 of Health, shall be invited to participate in the community report process
5 established by this section. The ~~report~~ reports shall include:

6 (1) Measures of quality, including process and performance measures,
7 that are valid, reliable, and useful, including comparisons to appropriate
8 national benchmarks for high quality and successful results.

9 (2) Measures of patient safety that are valid, reliable, and useful,
10 including comparisons to appropriate industry benchmarks for safety.

11 (3) Measures of ~~hospital-acquired~~ health care-associated infections that
12 are valid, reliable, and useful, including comparisons to appropriate industry
13 benchmarks.

14 (4) Valid, reliable, and useful information on nurse staffing, including
15 comparisons to appropriate industry benchmarks for safety. This information
16 may include system-centered measures such as skill mix, nursing care hours
17 per patient day, and other system-centered measures for which reliable industry
18 benchmarks become available.

19 (5) Measures of the hospital's or ambulatory surgical center's financial
20 health, including comparisons to appropriate national benchmarks for efficient
21 operation and fiscal health.

1 (6) A summary of the hospital's or ambulatory surgical center's budget,
2 including revenue by source, the one-year and four-year capital expenditure
3 plans, the depreciation schedule for existing facilities, and quantification of
4 cost shifting to private payers.

5 (7) Data that provides valid, reliable, useful, and efficient information
6 for payers and the public for the comparison of charges for higher volume
7 health care services.

8 (b) Each hospital and ambulatory surgical center shall publish on its
9 website:

10 (1) the hospital's or ambulatory surgical center's process for achieving
11 openness, inclusiveness, and meaningful public participation in its strategic
12 planning and decision making;

13 (2) the hospital's or ambulatory surgical center's consumer complaint
14 resolution process, including identification of the ~~hospital~~ officer or employee
15 responsible for its implementation;

16 (3) information on membership and governing body qualifications; a
17 listing of the current governing body members, including each member's
18 name, town of residence, occupation, employer, and job title, and the amount
19 of compensation, if any, for serving on the governing body; and means of
20 obtaining a schedule of meetings of the hospital's or ambulatory surgical

1 center's governing body, including times scheduled for public
2 participation; and

3 (4) a link to the comparative statewide hospital quality report or
4 statewide comparative ambulatory surgical center quality report, as applicable.

5 (c) The Commissioner of Health shall publish the statewide comparative
6 hospital quality report and the statewide comparative ambulatory surgical
7 center quality report on a public website and shall update the ~~report~~ reports at
8 least annually beginning on June 1, 2017.

9 Sec. 8. 18 V.S.A. § 9408a is amended to read:

10 § 9408a. UNIFORM PROVIDER CREDENTIALING

11 (a) Definitions. As used in this section:

12 (1) "Credentialing" means a process through which an insurer,
13 ambulatory surgical center, or hospital makes a determination, based on
14 criteria established by the insurer, ambulatory surgical center, or hospital,
15 concerning whether a provider is eligible to:

16 (A) provide health care services to an insured or to hospital or
17 ambulatory surgical center patients; and

18 (B) receive reimbursement for the health care services.

19 * * *

20 (b) The Department shall prescribe the credentialing application form used
21 by the Council for Affordable Quality Healthcare (CAQH), or a similar,

1 nationally recognized form prescribed by the Commissioner, in electronic or
2 paper format, which must be used beginning January 1, 2007 by an insurer,
3 ambulatory surgical center, or a hospital that performs credentialing. The
4 Commissioner may grant a hospital an extension to the implementation date
5 for up to one year.

6 (c) An insurer, ambulatory surgical center, or a hospital shall notify a
7 provider concerning a deficiency on a completed credentialing application
8 form submitted by the provider not later than 30 business days after the
9 insurer, ambulatory surgical center, or hospital receives the completed
10 credentialing application form.

11 (d) A hospital or ambulatory surgical center shall notify a provider
12 concerning the status of the provider's completed credentialing application not
13 later than:

14 (1) ~~sixty~~ 60 days after the hospital or ambulatory surgical center
15 receives the completed credentialing application form; and

16 (2) every 30 days after the notice is provided under subdivision (1) of
17 this subsection, until the hospital or ambulatory surgical center makes a final
18 credentialing determination concerning the provider.

19 * * *

1 Sec. 9. 18 V.S.A. § 9416(c) is amended to read:

2 (c)(1) Expenses incurred under this section by the Vermont Program for
3 Quality in Health Care, Inc. shall be borne as follows:

4 (A) 35 percent by the hospitals;

5 (B) five percent by ambulatory surgical centers;

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

8 (D) 50 45 percent by health insurance companies licensed under
9 8 V.S.A. chapter 101; and health maintenance organizations licensed under
10 8 V.S.A. chapter 139.

11 (2) Expenses allocated under this section to persons licensed under
12 8 V.S.A. chapters 101 and 139 shall be billed based on premiums paid for
13 health insurance coverage as defined in subsection 9415(b) of this title.

14 (3) Expenses allocated under this section shall not exceed 75 percent of
15 the operating budget of the Vermont Program for Quality in Health Care, Inc.

16 Sec. 10. 18 V.S.A. § 9607(b)(1) is amended to read:

17 (b)(1) Expenses incurred by the Office of the Health Care Advocate for
18 services related to the Green Mountain Care Board's and Department of
19 Financial Regulation's regulatory and supervisory duties shall be borne as
20 follows:

21 (A) ~~27.5~~ 20 percent by the State from State monies;

1 (B) 24.2 percent by the hospitals;

2 (C) 7.5 percent by ambulatory surgical centers licensed under chapter
3 49 of this title;

4 (D) 24.2 percent by nonprofit hospital and medical service
5 corporations licensed under 8 V.S.A. chapter 123 or 125; and

6 ~~(D)~~(E) 24.2 percent by health insurance companies licensed under
7 8 V.S.A. chapter 101.

8 * * * Budget Review * * *

9 Sec. 11. 18 V.S.A. chapter 221, subchapter 7 is amended to read:

10 Subchapter 7. Hospital and Ambulatory Surgical Center Budget Review

11 § 9451. DEFINITIONS

12 As used in this subchapter:

13 (1) “Ambulatory surgical center” means any distinct entity that operates
14 exclusively for the purpose of providing outpatient surgical services and other
15 outpatient medical procedures to patients not requiring hospitalization and for
16 which the expected duration of services does not exceed 24 hours following an
17 admission.

18 (2) “Hospital” means a general hospital licensed under chapter 43 of
19 this title.

1 ~~(2)~~(3) “Volume” means the number of inpatient days of care or
2 admissions and the number of all inpatient and outpatient ancillary services
3 rendered to patients by a hospital.

4 § 9453. POWERS AND DUTIES

5 (a) The ~~board~~ Green Mountain Care Board shall:

6 (1) adopt uniform formats that hospitals and ambulatory surgical centers
7 shall use to report financial, scope-of-services, and utilization data and
8 information;

9 (2) designate a data organization with which hospitals and ambulatory
10 surgical centers shall file financial, scope-of-services, and utilization data and
11 information; and

12 (3) designate a data organization or organizations to process, analyze,
13 store, or retrieve data or information.

14 (b) To effectuate the purposes of this subchapter, the ~~board~~ Board may
15 adopt rules under 3 V.S.A. chapter 25.

16 § 9454. HOSPITALS AND AMBULATORY SURGICAL CENTERS;
17 DUTIES

18 (a) Hospitals and ambulatory surgical centers shall file the following
19 information at the time and place and in the manner established by the Board:

20 (1) a budget for the forthcoming fiscal year;

1 (2) financial information, including costs of operation, revenues, assets,
2 liabilities, fund balances, other income, rates, charges, units of services, and
3 wage and salary data;

4 (3) scope-of-service and volume-of-service information, including
5 inpatient services, outpatient services, and ancillary services by type of service
6 provided;

7 (4) utilization information;

8 (5) new hospital or ambulatory surgical center services and programs
9 proposed for the forthcoming fiscal year;

10 (6) known depreciation schedules on existing buildings, a four-year
11 capital expenditure projection, and a one-year capital expenditure plan; and

12 (7) such other information as the ~~board~~ Board may require.

13 (b) Hospitals and ambulatory surgical centers shall adopt a fiscal year
14 ~~which~~ that shall begin on October 1.

15 § 9456. BUDGET REVIEW

16 (a) The Board shall conduct reviews of each hospital's and ambulatory
17 surgical center's proposed budget based on the information provided pursuant
18 to this subchapter and in accordance with a schedule established by the Board.

19 (b) In conjunction with budget reviews, the Board shall:

20 (1) review utilization information;

1 (2) consider the goals and recommendations of the ~~health resource~~
2 ~~allocation plan~~ Health Resource Allocation Plan;

3 (3) consider the expenditure analysis for the previous year and the
4 proposed expenditure analysis for the year under review;

5 (4) consider any reports from professional review organizations;

6 (5) solicit public comment on all aspects of hospital or ambulatory
7 surgical center costs and use, as applicable, and on the budgets proposed by
8 individual hospitals and ambulatory surgical centers;

9 (6) meet with hospitals and ambulatory surgical centers to review and
10 discuss ~~hospital~~ their budgets for the forthcoming fiscal year;

11 (7) give public notice of the meetings with hospitals and ambulatory
12 surgical centers, and invite the public to attend and to comment on the
13 proposed budgets;

14 (8) consider the extent to which costs incurred by the hospital or
15 ambulatory surgical center in connection with services provided to Medicaid
16 beneficiaries are being charged to non-Medicaid health benefit plans and other
17 non-Medicaid payers;

18 (9) require each hospital and ambulatory surgical center to file an
19 analysis that reflects a reduction in net revenue needs from non-Medicaid
20 payers equal to any anticipated increase in Medicaid, Medicare, or another

1 public health care program reimbursements, and to any reduction in bad debt
2 or charity care due to an increase in the number of insured individuals;

3 (10) require each hospital and ambulatory surgical center to provide
4 information on administrative costs, as defined by the Board, including
5 specific information on the amounts spent on marketing and advertising
6 costs; and

7 (11) require each hospital and ambulatory surgical center to create or
8 maintain connectivity to the State's Health Information Exchange Network in
9 accordance with the criteria established by the Vermont Information
10 Technology Leaders, Inc., pursuant to subsection 9352(i) of this title, provided
11 that the Board shall not require a hospital or ambulatory surgical center to
12 create a level of connectivity that the State's Exchange is unable to support.

13 (c) Individual hospital and ambulatory surgical center budgets established
14 under this section shall:

15 (1) be consistent with the Health Resource Allocation Plan;

16 (2) take into consideration national, regional, or ~~instate~~ in-state peer
17 group norms, according to indicators, ratios, and statistics established by the
18 Board;

19 (3) promote efficient and economic operation of the hospital or
20 ambulatory surgical center;

21 (4) reflect budget performances for prior years; and

1 (5) include a finding that the analysis provided in subdivision (b)(9) of
2 this section is a reasonable methodology for reflecting a reduction in net
3 revenues for non-Medicaid payers.

4 (d)(1) Annually, the Board shall establish a budget for each hospital and
5 ambulatory surgical center on or before September 15, followed by a written
6 decision by October 1. Each hospital and ambulatory surgical center shall
7 operate within the budget established under this section.

8 (2)(A) It is the General Assembly's intent that hospital cost containment
9 ~~conduct is~~ and ambulatory surgical center cost containment conduct be
10 afforded ~~state~~ State action immunity under applicable federal and State
11 antitrust laws, if:

12 (i) the Board requires or authorizes the conduct in any hospital or
13 ambulatory surgical center budget established by the Board under this section;

14 (ii) the conduct is in accordance with standards and procedures
15 prescribed by the Board; and

16 (iii) the conduct is actively supervised by the Board.

17 (B) A hospital's or ambulatory surgical center's violation of the
18 Board's standards and procedures shall be subject to enforcement pursuant to
19 subsection (h) of this section.

1 (3)(A) The Office of the Health Care Advocate shall have the right to
2 receive copies of all materials related to ~~the~~ hospital and ambulatory surgical
3 center budget review and may:

4 (i) ask questions of employees of the Green Mountain Care Board
5 related to the Board's hospital and ambulatory surgical center budget review;

6 (ii) submit written questions to the Board that the Board will ask
7 of hospitals and ambulatory surgical centers in advance of any hearing held in
8 conjunction with the Board's hospital and ambulatory surgical center budget
9 review;

10 (iii) submit written comments for the Board's consideration; and

11 (iv) ask questions and provide testimony in any hearing held in
12 conjunction with the Board's hospital and ambulatory surgical center budget
13 review.

14 (B) The Office of the Health Care Advocate shall not ~~further~~ disclose
15 further any confidential or proprietary information provided to the Office
16 pursuant to this subdivision (3).

17 (e) The Board may establish a process to define, on an annual basis, criteria
18 for hospitals and ambulatory surgical centers to meet, such as utilization and
19 inflation benchmarks. The Board may waive one or more of the review
20 processes listed in subsection (b) of this section.

1 (f) The Board may, upon application, adjust a budget established under this
2 section upon a showing of need based upon exceptional or unforeseen
3 circumstances in accordance with the criteria and processes established under
4 section 9405 of this title.

5 (g) The Board may request, and a hospital or ambulatory surgical center
6 shall provide, information determined by the Board to be necessary to
7 determine whether the hospital or ambulatory surgical center is operating
8 within a budget established under this section. For purposes of this subsection,
9 subsection (h) of this section, and subdivision 9454(a)(7) of this title, the
10 Board's authority shall extend to an affiliated corporation or other person in
11 the control of or controlled by the hospital or ambulatory surgical center to the
12 extent that such authority is necessary to carry out the purposes of this
13 subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title.
14 As used in this subsection, a rebuttable presumption of "control" is created if
15 the entity, hospital, ambulatory surgical center, or other person, directly or
16 indirectly, owns, controls, holds with the power to vote, or holds proxies
17 representing 20 percent or more of the voting securities or membership interest
18 or other governing interest of the hospital, ambulatory surgical center, or other
19 controlled entity.

20 (h)(1) If a hospital or ambulatory surgical center violates a provision of this
21 section, the Board may maintain an action in the Superior Court of the county

1 in which the hospital or ambulatory surgical center is located to enjoin,
2 restrain, or prevent such violation.

3 (2)(A) After notice and an opportunity for hearing, the Board may
4 impose on a person who knowingly violates a provision of this subchapter, or a
5 rule adopted pursuant to this subchapter, a civil administrative penalty of no
6 more than \$40,000.00, or in the case of a continuing violation, a civil
7 administrative penalty of no more than \$100,000.00 or one-tenth of one
8 percent of the gross annual revenues of the hospital or ambulatory surgical
9 center, whichever is greater. This subdivision shall not apply to violations of
10 subsection (d) of this section caused by exceptional or unforeseen
11 circumstances.

12 (B)(i) The Board may order a hospital or ambulatory surgical
13 center to:

14 (I)(aa) cease material violations of this subchapter or of a
15 ~~regulation~~ rule or order issued pursuant to this subchapter; or

16 (bb) cease operating contrary to the budget established for
17 the hospital or ambulatory surgical center under this section, provided such a
18 deviation from the budget is material; and

19 (II) take such corrective measures as are necessary to remediate
20 the violation or deviation and to carry out the purposes of this subchapter.

1 (ii) Orders issued under this subdivision (2)(B) shall be issued
2 after notice and an opportunity to be heard, except where the Board finds that a
3 hospital's or ambulatory surgical center's financial or other emergency
4 circumstances pose an immediate threat of harm to the public or to the
5 financial condition of the hospital or ambulatory surgical center. Where there
6 is an immediate threat, the Board may issue orders under this subdivision
7 (2)(B) without written or oral notice to the hospital or ambulatory surgical
8 center. Where an order is issued without notice, the hospital or ambulatory
9 surgical center shall be notified of the right to a hearing at the time the order is
10 issued. The hearing shall be held within 30 days of receipt of the hospital's or
11 ambulatory surgical center's request for a hearing, and a decision shall be
12 issued within 30 days after conclusion of the hearing. The Board may increase
13 the time to hold the hearing or to render the decision for good cause shown.
14 Hospitals and ambulatory surgical centers may appeal any decision in this
15 subsection to Superior Court. Appeal shall be on the record as developed by
16 the Board in the administrative proceeding, and the standard of review shall be
17 as provided in 8 V.S.A. § 16.

18 (3)(A) The Board shall require the officers and directors of a hospital or
19 ambulatory surgical center to file under oath, on a form and in a manner
20 prescribed by the Board, any information designated by the Board and required

1 pursuant to this subchapter. The authority granted to the Board under this
2 subsection is in addition to any other authority granted to the Board under law.

3 (B) A person who knowingly makes a false statement under oath or
4 who knowingly submits false information under oath to the Board or to a
5 hearing officer appointed by the Board or who knowingly testifies falsely in
6 any proceeding before the Board or a hearing officer appointed by the Board
7 shall be guilty of perjury and punished as provided in 13 V.S.A. § 2901.

8 * * * Ambulatory Surgical Center Provider Tax * * *

9 Sec. 12. 33 V.S.A. § 1951 is amended to read:

10 § 1951. DEFINITIONS

11 As used in this subchapter:

12 * * *

13 (16) “Ambulatory surgical center” means an ambulatory surgical center
14 licensed pursuant to 18 V.S.A. chapter 49.

15 Sec. 13. 33 V.S.A. § 1960 is added to read:

16 § 1960. AMBULATORY SURGICAL CENTER ASSESSMENT

17 (a) Beginning on July 1, 2019, each ambulatory surgical center’s annual
18 assessment shall be six percent of its net patient revenues.

19 (b) The Department shall provide written notification of the assessment
20 amount to each ambulatory surgical center. The assessment amount
21 determined shall be considered final unless the ambulatory surgical center

1 requests reconsideration. Requests for reconsideration shall be subject to the
2 provisions of section 1958 of this title.

3 (c) Each ambulatory surgical center shall remit its assessment to the
4 Department according to a schedule adopted by the Commissioner. The
5 Commissioner may permit variations in the schedule of payment as deemed
6 necessary.

7 (d) Any ambulatory surgical center that fails to make a payment to the
8 Department on or before the specified schedule, or under any schedule of
9 delayed payments established by the Commissioner, shall be assessed not more
10 than \$1,000.00. The Commissioner may waive the late-payment assessment
11 provided in this subsection for good cause shown by the ambulatory surgical
12 center.

13 * * * Effective Date * * *

14 Sec. 14. EFFECTIVE DATE

15 This act shall take effect on July 1, 2019, provided that:

16 (1) the Department of Health shall begin the rulemaking process prior to
17 that date in order to ensure that its rules are in effect on or before July 1,
18 2019; and

19 (2) any ambulatory surgical center in operation on July 1, 2019 shall
20 have until July 1, 2020 to complete the licensure process set forth in Sec. 1.