

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 278 entitled “An act relating to regulation of ambulatory surgical centers”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 * * * Regulation of Ambulatory Surgical Centers * * *

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

9 CHAPTER 49. AMBULATORY SURGICAL CENTERS

10 Subchapter 1. General Provisions

11 § 2141. DEFINITIONS

12 As used in this chapter:

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) **“Clinician” means one of the following individuals acting within**
19 **their scope of practice:**

20 **(A) a physician licensed pursuant to 26 V.S.A. chapter 23 or 33;**

1 **(B) an advanced practice registered nurse licensed pursuant to 26**

2 **V.S.A. chapter 28;**

3 **(C) a physician assistant licensed pursuant to 26 V.S.A. chapter**

4 **31; or**

5 **(D) a podiatrist licensed pursuant to 26 V.S.A. chapter 7;**

6 (3) “Patient” means a person admitted to or receiving health care
7 services from an ambulatory surgical center.

8 ~~**(3) “Physician” means a physician licensed pursuant to 26 V.S.A.**~~
9 ~~**chapter 23 or 33.**~~

10 Subchapter 2. Licensure of Ambulatory Surgical Centers

11 § 2151. LICENSE

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

15 § 2152. APPLICATION; FEE

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

20 (b) The annual licensing fee for an ambulatory surgical center shall be
21 \$2,000.00.

1 (c) Fees collected under this section shall be credited to a special fund
2 established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and
3 shall be available to the Department of Health to offset the costs of licensing
4 ambulatory surgical centers.

5 § 2153. LICENSE REQUIREMENTS

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

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

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

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

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

4 (5) The ambulatory surgical center shall obtain accreditation from the
5 Joint Commission’s Ambulatory Health Care Accreditation Program within
6 18 months after commencing operations and shall maintain the accreditation in
7 order to be eligible for license renewal.

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

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

13 (A) timely access to care;

14 (B) appropriate communication;

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

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

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

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

4 (9) The clinical services provided by the ambulatory surgical center
5 shall be managed by a medical director, who shall be a physician **licensed**
6 **pursuant to 26 V.S.A. chapter 23 or 33.**

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

12 (B) All **physicians clinicians** performing procedures or surgeries, or
13 both, at the ambulatory surgical center shall have admitting privileges at one or
14 more hospitals in the geographic region in which the ambulatory surgical
15 center is located.

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

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

1 (12) A **physician clinician** shall examine each patient immediately prior
2 to a procedure or surgery to evaluate the risk of anesthesia and of the
3 procedure or surgery to be performed.

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

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

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

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

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

20 (18) The ambulatory surgical center shall obtain the Department's
21 approval, in addition to any certificate of need that may be required pursuant to

1 chapter 221, subchapter 5 of this title, prior to beginning any expansion or
2 remodeling of the center.

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

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

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

12 Plans under this subdivision (21) shall include:

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

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

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

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

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

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

7 (23) All ambulatory surgical centers shall comply with the rules adopted
8 by the Commissioner of Health pursuant to section **2176 2158** of this title.
9 License applications shall certify compliance with the rules.

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

13 § 2154. REVOCATION OF LICENSE, HEARING

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

1 licensee, the Department shall file its findings of fact and conclusions of law.
2 A copy of the findings and decision shall be sent by registered mail or served
3 personally upon the applicant or licensee. The procedure governing hearings
4 authorized by this section shall be in accordance with the usual and customary
5 rules provided for such hearings.

6 § 2155. APPEAL

7 Any applicant or licensee, or the State acting through the Attorney General,
8 aggrieved by the decision of the Department of Health after a hearing may,
9 within 30 days after entry of the decision as provided in section **2174 2158** of
10 this title, appeal to the Superior Court for the district in which the appellant is
11 located. The court may affirm, modify, or reverse the Department's decision,
12 and either the applicant or licensee or the Department or State may appeal to
13 the Vermont Supreme Court for such further review as is provided by law.
14 Pending final disposition of the matter, the status quo of the applicant or
15 licensee shall be preserved, except as the court otherwise orders in the public
16 interest.

17 § 2156. INSPECTIONS

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

20 § 2157. RECORDS

1 Information that identifies or may lead to the identification of one or more
2 individuals is exempt from public inspection and copying under the Public
3 Records Act and shall be kept confidential except as it relates to a proceeding
4 regarding licensure of an ambulatory surgical center.

5 § 2158. RULES

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

8 Subchapter 3. Transparency and Reporting Requirements

9 § 2171. INFORMATION FOR PATIENTS AND PROSPECTIVE

10 PATIENTS

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

13 (1) For each **physician clinician** performing procedures or surgeries, or
14 both, at the ambulatory surgical center:

15 (A) the **physician's clinician's** name, professional credentials, and
16 area or areas of specialization;

17 (B) the types of procedures and surgeries that the **physician clinician**
18 offers and performs at the ambulatory surgical center;

19 (C) the name and location of the hospital or hospitals at which the
20 **physician clinician** has admitting privileges; and

1 (D) the extent of the **physician's clinician's** ownership interest in the
2 ambulatory surgical center, if any.

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

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

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

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

18 § 2172. QUALITY AND PAYER MIX REPORTING REQUIREMENTS

19 (a) The ambulatory surgical center shall participate in the Centers for
20 Medicare and Medicaid Services' Ambulatory Surgical Center Quality
21 Reporting Program and shall periodically, but not less often than annually, post

1 its performance on each quality measure on the ambulatory surgical center's
2 website.

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

8 § 2173. HIGH-VOLUME SURGERIES AND PROCEDURES; REPORT

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

16 * * * Oversight and Quality Measures * * *

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

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

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~~ that will encourage the appropriate integration of these
6 services on a local or regional basis. To arrive at such recommendations, the
7 Green 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
20 for meaningful public participation in its strategic planning process for
21 identifying and addressing health care needs that the hospital or ambulatory

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

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

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

2 § 9405b. HOSPITAL AND AMBULATORY SURGICAL CENTER

3 COMMUNITY REPORTS

4 (a) The Commissioner of Health, in consultation with representatives from
5 hospitals, ambulatory surgical centers, other groups of health care
6 professionals, and members of the public representing patient interests, shall
7 adopt rules establishing a statewide comparative hospital quality report and a
8 statewide comparative ambulatory surgical center quality report. Hospitals and
9 ambulatory surgical centers located outside this State ~~which~~ that serve a
10 significant number of Vermont residents, as determined by the Commissioner
11 of Health, shall be invited to participate in the community report process
12 established by this section. The ~~report~~ reports shall include:

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

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

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

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

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

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

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

16 (b) Each hospital and ambulatory surgical center shall publish on its
17 website:

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

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

4 (3) information on membership and governing body qualifications; a
5 listing of the current governing body members, including each member's
6 name, town of residence, occupation, employer, and job title, and the amount
7 of compensation, if any, for serving on the governing body; and means of
8 obtaining a schedule of meetings of the hospital's or ambulatory surgical
9 center's governing body, including times scheduled for public
10 participation; and

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

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

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

18 § 9408a. UNIFORM PROVIDER CREDENTIALING

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

20 (1) "Credentialing" means a process through which an insurer,
21 ambulatory surgical center, or hospital makes a determination, based on

1 criteria established by the insurer, ambulatory surgical center, or hospital,
2 concerning whether a provider is eligible to:

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

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

6 * * *

7 (b) The Department shall prescribe the credentialing application form used
8 by the Council for Affordable Quality Healthcare (CAQH), or a similar,
9 nationally recognized form prescribed by the Commissioner, in electronic or
10 paper format, which must be used beginning January 1, 2007 by an insurer,
11 ambulatory surgical center, or a hospital that performs credentialing. The
12 Commissioner may grant a hospital an extension to the implementation date
13 for up to one year.

14 (c) An insurer, ambulatory surgical center, or a hospital shall notify a
15 provider concerning a deficiency on a completed credentialing application
16 form submitted by the provider not later than 30 business days after the
17 insurer, ambulatory surgical center, or hospital receives the completed
18 credentialing application form.

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

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

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

5 ~~(b)(1) Expenses incurred by the Office of the Health Care Advocate for~~
6 ~~services related to the Green Mountain Care Board's and Department of~~
7 ~~Financial Regulation's regulatory and supervisory duties shall be borne as~~
8 ~~follows:~~

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

10 ~~(B) 24.2 percent by the hospitals;~~

11 ~~(C) 7.5 percent by ambulatory surgical centers licensed under~~
12 ~~chapter 49 of this title;~~

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

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

17 * * * Budget Review * * *

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

19 Subchapter 7. Hospital and Ambulatory Surgical Center Budget Review

20 § 9451. DEFINITIONS

21 As used in this subchapter:

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

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

8 ~~(2)~~(3) “Volume” means the number of inpatient days of care or
9 admissions and the number of all inpatient and outpatient ancillary services
10 rendered to patients by a hospital.

11 § 9453. POWERS AND DUTIES

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

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

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

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

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

3 § 9454. HOSPITALS AND AMBULATORY SURGICAL CENTERS;
4 DUTIES

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

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

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

11 (3) scope-of-service and volume-of-service information, including
12 inpatient services, outpatient services, and ancillary services by type of service
13 provided;

14 (4) utilization information;

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

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

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

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

1 § 9456. BUDGET REVIEW

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

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

6 (1) review utilization information;

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

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

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

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

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

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

20 (8) consider the extent to which costs incurred by the hospital or
21 ambulatory surgical center in connection with services provided to Medicaid

1 beneficiaries are being charged to non-Medicaid health benefit plans and other
2 non-Medicaid payers;

3 (9) require each hospital and ambulatory surgical center to file an
4 analysis that reflects a reduction in net revenue needs from non-Medicaid
5 payers equal to any anticipated increase in Medicaid, Medicare, or another
6 public health care program reimbursements, and to any reduction in bad debt
7 or charity care due to an increase in the number of insured individuals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or other governing interest of the hospital, ambulatory surgical center, or other
2 controlled entity.

3 (h)(1) If a hospital or ambulatory surgical center violates a provision of this
4 section, the Board may maintain an action in the Superior Court of the county
5 in which the hospital or ambulatory surgical center is located to enjoin,
6 restrain, or prevent such violation.

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

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

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

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

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

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

1 the Board in the administrative proceeding, and the standard of review shall be
2 as provided in 8 V.S.A. § 16.

3 (3)(A) The Board shall require the officers and directors of a hospital or
4 ambulatory surgical center to file under oath, on a form and in a manner
5 prescribed by the Board, any information designated by the Board and required
6 pursuant to this subchapter. The authority granted to the Board under this
7 subsection is in addition to any other authority granted to the Board under law.

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

13 **~~*** Ambulatory Surgical Center Provider Tax ***~~**

14 **~~Sec. 12. 33 V.S.A. § 1951 is amended to read:~~**

15 **~~§ 1951. DEFINITIONS~~**

16 **~~As used in this subchapter:~~**

17 **~~***~~**

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

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

2 **§ 1960. AMBULATORY SURGICAL CENTER ASSESSMENT**

3 **(a) Beginning on July 1, 2019, each ambulatory surgical center's**
4 **annual assessment shall be six percent of its net patient revenues.**

5 **(b) The Department shall provide written notification of the**
6 **assessment amount to each ambulatory surgical center. The assessment**
7 **amount determined shall be considered final unless the ambulatory**
8 **surgical center requests reconsideration. Requests for reconsideration**
9 **shall be subject to the provisions of section 1958 of this title.**

10 **(c) Each ambulatory surgical center shall remit its assessment to the**
11 **Department according to a schedule adopted by the Commissioner. The**
12 **Commissioner may permit variations in the schedule of payment as**
13 **deemed necessary.**

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

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

2 (1) the Department of Health shall begin the rulemaking process prior to
3 that date in order to ensure that its rules are in effect on or before July 1,
4 2019; and

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

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE