

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill  
3 No. 37 entitled “An act relating to access to legally protected health care  
4 activity and regulation of health care providers” respectfully reports that it has  
5 considered the same and recommends that the bill be amended by striking out  
6 all after the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Definitions \* \* \*

8 Sec. 1. 1 V.S.A. § 150 is added to read:

9 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

10 (a) “Gender-affirming health care services” means all supplies, care, and  
11 services of a medical, behavioral health, mental health, surgical, psychiatric,  
12 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature  
13 relating to the treatment of gender dysphoria and gender incongruence.  
14 “Gender-affirming health care services” does not include conversion therapy as  
15 defined by 18 V.S.A. § 8351.

16 (b)(1) “Legally protected health care activity” means:

17 (A) the exercise and enjoyment, or attempted exercise and  
18 enjoyment, by any person of rights to reproductive health care services or  
19 gender-affirming health care services secured by this State;

20 (B) any act or omission undertaken to aid or encourage, or attempt to  
21 aid or encourage, any person in the exercise and enjoyment, or attempted

1 exercise and enjoyment, of rights to reproductive health care services or  
2 gender-affirming health care services secured by this State, provided that the  
3 provision of such a health care service by a person duly licensed under the  
4 laws of this State and physically present in this State shall be legally protected  
5 if the service is permitted under the laws of this State, regardless of the  
6 patient’s location; or

7 (C) the provision, issuance, or use of, or enrollment in, insurance or  
8 other health coverage for reproductive health care services or gender-affirming  
9 health care services that are legal in this State, or any act to aid or encourage,  
10 or attempt to aid or encourage, any person in the provision, issuance, or use of,  
11 or enrollment in, insurance or other health coverage for those services,  
12 regardless of the location of the insured or individual seeking insurance or  
13 health coverage, if the insurance or health coverage is permitted under the laws  
14 of this State.

15 (2) Except as provided in subdivision (3) of this subsection, the  
16 protections applicable to “legally protected health care activity” shall not apply  
17 to a lawsuit, judgment, or civil, criminal, or administrative action that is based  
18 on conduct for which an action would exist under the laws of this State if the  
19 course of conduct that forms the basis for liability had occurred entirely in this  
20 State.





1 (7) Unfair discrimination; arbitrary underwriting action.

2 (A) Making or permitting any unfair discrimination between insureds  
3 of the same class and equal risk in the rates charged for any contract of  
4 insurance, or in the dividends or other benefits payable thereon, or in any other  
5 of the terms and conditions of such contracts.

6 \* \* \*

7 (F)(i) Discriminating against a health care provider, as defined by  
8 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider’s  
9 risk classification or premium charges on the basis that:

10 (I) the health care provider provides or assists in the provision  
11 of legally protected health care activity that is unlawful in another state;

12 (II) another state’s laws create potential or actual liability for  
13 that activity;

14 (III) abusive litigation against a provider concerning legally  
15 protected health care activity resulted in a claim, settlement, or judgement  
16 against the provider; or

17 (IV) the license of the provider has been disciplined in any way  
18 by another state based solely on the provider’s provision of legally protected  
19 health care activity.

20 (ii) For purposes of this subdivision (F), it shall not be unfairly  
21 discriminatory nor an arbitrary underwriting action against a health care

1 provider if the risk classifications, premium charges, or other underwriting  
2 considerations are based on factors other than those listed in subdivision (i) of  
3 this subdivision (F).

4 \* \* \*

5 \* \* \* Insurance Coverage \* \* \*

6 Sec. 3. 8 V.S.A. § 4088m is added to read:

7 § 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE

8 SERVICES

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

10 (1) “Gender-affirming health care services” has the same meaning as in  
11 1 V.S.A. § 150.

12 (2) “Health insurance plan” means Medicaid and any other public health  
13 care assistance program, any individual or group health insurance policy, any  
14 hospital or medical service corporation or health maintenance organization  
15 subscriber contract, or any other health benefit plan offered, issued, or renewed  
16 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.  
17 For purposes of this section, health insurance plan includes any health benefit  
18 plan offered or administered by the State or any subdivision or instrumentality  
19 of the State. The term does not include benefit plans providing coverage for a  
20 specific disease or other limited benefit coverage, except that it includes any  
21 accident and sickness health plan.

1       **(b) Coverage.**

2               **(1) A health insurance plan shall provide coverage for gender-affirming**  
3 **health care services that:**

4                       **(A) are medically necessary and clinically appropriate for the**  
5 **individual’s diagnosis or health condition; and**

6                       **(B) are included in the State’s essential health benefits benchmark**  
7 **plan.**

8               **(2) Coverage provided pursuant to this section by Medicaid or any other**  
9 **public health care assistance program shall comply with all federal**  
10 **requirements imposed by the Centers for Medicare and Medicaid Services.**

11               **(3) Nothing in this section shall prohibit a health insurance plan from**  
12 **providing greater coverage for gender-affirming health care services than is**  
13 **required under this section.**

14               **(c) Cost sharing. A health insurance plan shall not impose greater**  
15 **coinsurance, co-payment, deductible, or other cost-sharing requirements for**  
16 **coverage of gender-affirming health care services than apply to the diagnosis**  
17 **and treatment of any other physical or mental condition under the plan.**

18       Sec. 4. 8 V.S.A. § 4099e is added to read:

19       **§ 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED**

20               **SERVICES**

21               **(a) Definitions. As used in this section:**

1           (1) “Abortion” means any medical treatment intended to induce the  
2           termination of, or to terminate, a clinically diagnosable pregnancy except for  
3           the purpose of producing a live birth.

4           (2) “Health insurance plan” means Medicaid and any other public health  
5           care assistance program, any individual or group health insurance policy, any  
6           hospital or medical service corporation or health maintenance organization  
7           subscriber contract, or any other health benefit plan offered, issued, or renewed  
8           for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.  
9           For purposes of this section, health insurance plan shall include any health  
10           benefit plan offered or administered by the State or any subdivision or  
11           instrumentality of the State. The term shall not include benefit plans providing  
12           coverage for a specific disease or other limited benefit coverage, except that it  
13           shall include any accident and sickness health plan.

14           (b) Coverage. A health insurance plan shall provide coverage for abortion  
15           and abortion-related care.

16           (c) Cost sharing. The coverage required by this section shall not be subject  
17           to any co-payment, deductible, coinsurance, or other cost-sharing requirement  
18           or additional charge, except:

19           (1) to the extent such coverage would disqualify a high-deductible  
20           health plan from eligibility for a health savings account pursuant to 26 U.S.C.  
21           § 223; and







1 individuals contemplating abortion by leading those individuals to believe that  
2 their facilities offer abortion services and unbiased counseling. Many limited-  
3 services pregnancy centers have promoted patently false or biased medical  
4 claims about abortion, pregnancy, contraception, and reproductive health care  
5 providers.

6 (3) False and misleading advertising by centers that do not offer or refer  
7 clients for abortion is of special concern to the State because of the time-  
8 sensitive and constitutionally protected nature of the decision to continue or  
9 terminate a pregnancy. When a pregnant individual is misled into believing  
10 that a center offers services that it does not in fact offer or receives false or  
11 misleading information regarding health care options, the individual loses time  
12 crucial to the decision whether to terminate a pregnancy and may lose the  
13 option to choose a particular method or to terminate a pregnancy at all.

14 (4) Telling the truth is how trained health care providers demonstrate  
15 respect for patients, foster trust, promote self-determination, and cultivate an  
16 environment where best practices in shared decision-making can flourish.  
17 Without veracity in information and communication, it is difficult for  
18 individuals to make informed, voluntary choices essential in fulfilling  
19 autonomy-based obligations.

20 (5) Advertising strategies and educational information about health care  
21 options that lack transparency, use misleading or ambiguous terminology,

1 misrepresent or obfuscate services provided, or provide factually inaccurate  
2 information are a form of manipulation that disrespects individuals,  
3 undermines trust, broadens health disparity, and can result in patient harm.

4 (b) Intent.

5 (1) It is the intent of the General Assembly to ensure that the public is  
6 provided with accurate, factual information about the types of health care  
7 services that are available to pregnant individuals in this State. The General  
8 Assembly respects the constitutionally protected right of each individual to  
9 personal reproductive autonomy, which includes the right to receive clear,  
10 honest, and nonmisleading information about the individual’s options and to  
11 make informed, voluntary choices after considering all relevant information.

12 (2) The General Assembly respects the right of limited-services  
13 pregnancy centers to counsel individuals against abortion, and nothing in this  
14 subchapter should be construed to regulate, limit, or curtail such advocacy.

15 § 2492. DEFINITIONS

16 As used in this subchapter:

17 (1) “Abortion” means any medical treatment intended to induce the  
18 termination of, or to terminate, a clinically diagnosable pregnancy except for  
19 the purpose of producing a live birth.

20 (2) “Client” means an individual who is inquiring about or seeking  
21 services at a pregnancy services center.

1           (3) “Emergency contraception” means any drug approved by the U.S.  
2           Food and Drug Administration as a contraceptive method for use after sexual  
3           intercourse, whether provided over the counter or by prescription.

4           (4) “Health information” means any oral or written information in any  
5           form or medium that relates to health insurance or the past, present, or future  
6           physical or mental health or condition of a client.

7           (5) “Limited-services pregnancy center” means a pregnancy services  
8           center that does not directly provide, or provide referrals to clients, for  
9           abortions or emergency contraception.

10           (6) “Pregnancy services center” means a facility, including a mobile  
11           facility, where the primary purpose is to provide services to individuals who  
12           are or may be pregnant and that either offers obstetric ultrasounds, obstetric  
13           sonograms, or prenatal care to pregnant individuals or has the appearance of a  
14           medical facility. A pregnancy services center has the appearance of a medical  
15           facility if two or more of the following factors are present:

16           (A) The center offers pregnancy testing or pregnancy diagnosis, or  
17           both.

18           (B) The center has staff or volunteers who wear medical attire or  
19           uniforms.

20           (C) The center contains one or more examination tables.

1           (D) The center contains a private or semiprivate room or area  
2           containing medical supplies or medical instruments.

3           (E) The center has staff or volunteers who collect health information  
4           from clients.

5           (F) The center is located on the same premises as a State-licensed  
6           medical facility or provider or shares facility space with a State-licensed  
7           medical provider.

8           (7) “Premises” means land and improvements or appurtenances or any  
9           part thereof.

10       § 2493. UNFAIR AND DECEPTIVE ACT

11       (a) It is an unfair and deceptive act and practice in commerce and a  
12       violation of section 2453 of this title for any limited-services pregnancy center  
13       to disseminate or cause to be disseminated to the public any advertising about  
14       the services or proposed services performed at that center that is untrue or  
15       clearly designed to mislead the public about the nature of services provided.  
16       Advertising includes representations made directly to consumers; marketing  
17       practices; communication in any print medium, such as newspapers,  
18       magazines, mailers, or handouts; and any broadcast medium, such as television  
19       or radio, telephone marketing, or advertising over the Internet such as through  
20       websites and web ads. For purposes of this chapter, advertising or the

1 provision of services by a limited-services pregnancy center is an act in  
2 commerce.

3 (b) The medical director of a pregnancy services center, or the individual  
4 charged with supervising health care services provided by center staff or  
5 volunteers at a pregnancy services center, shall be responsible, legally and  
6 professionally, for the activities of staff and volunteers performing duties for  
7 and on behalf of the pregnancy services center. The medical director or  
8 individual shall ensure that the staff of the pregnancy services center, including  
9 the medical director or individual, and any volunteers providing health care  
10 services maintain a level of supervision, training, and practice consistent with  
11 legal requirements established under Vermont law, including those set forth in  
12 Title 26, and professional standards of practice. Failure to conduct or to ensure  
13 that health care services are conducted in accordance with State law and  
14 professional standards of practice may constitute unprofessional conduct under  
15 3 V.S.A. § 129a and 26 V.S.A. § 1354.

16 (c) The Attorney General has the same authority to make rules, conduct  
17 civil investigations, and bring civil actions with respect to violations of  
18 subsection (a) of this section as provided under subchapter 1 of this chapter.



1 26 V.S.A. chapter 28, subchapter 5 and the Interstate Medical Licensure  
2 Compact pursuant to 26 V.S.A. chapter 23, subchapter 3A.

3 Sec. 10a. 26 V.S.A. chapter 56 is amended to read:

4 CHAPTER 56. OUT-OF-STATE TELEHEALTH LICENSURE &  
5 REGISTRATION AND INTERSTATE COMPACTS

6 Subchapter 1. Out-of-State Telehealth Licensure And Registration

7 \* \* \*

8 Subchapter 2. Interstate Compacts; Health Care Provider Compacts

9 § 3071. HEALTH CARE PROVIDER COMPACTS; DIRECTION TO

10 VERMONT REPRESENTATIVES

11 (a) The General Assembly finds that a state’s prohibition of or limitation on  
12 the provision of gender-affirming health care services or reproductive health  
13 care services, or both, as defined by 1 V.S.A. § 150, prohibits health care  
14 providers from following health care best practices and is a failure on the part  
15 of the state to provide health care services that are medically necessary and  
16 clinically appropriate for its residents. Therefore, it is the General Assembly’s  
17 intent to protect the ability of professionals licensed, certified, or registered in  
18 Vermont, and applicants from other member states seeking to practice a  
19 profession in Vermont pursuant to an interstate compact or agreement, to have  
20 the benefit of compacts and agreements while at the same time engaging in,

1 providing, or otherwise facilitating, personally or professionally, gender-  
2 affirming health care and reproductive health care services.

3 (b) Vermont’s representative or delegate for an interstate compact or  
4 agreement related to health care shall seek an amendment or exception to the  
5 compact or agreement language, rules, or bylaws, as necessary, so that if a  
6 licensee is disciplined by another state solely for providing or assisting in the  
7 provision of gender-affirming health care services or reproductive health care  
8 services that would be legal and meet professional standards of care if  
9 provided in Vermont, the compact or agreement does not require that Vermont  
10 take professional disciplinary action against the licensee.

11 \* \* \* Emergency Contraception \* \* \*

12 Sec. 11. 26 V.S.A. chapter 36, subchapter 1 is amended to read:

13 Subchapter 1. General Provisions

14 \* \* \*

15 § 2022. DEFINITIONS

16 As used in this chapter:

17 \* \* \*

18 (22) “Emergency contraception” means any drug approved by the U.S.  
19 Food and Drug Administration as a contraceptive method for use after sexual  
20 intercourse, whether provided over the counter or by prescription.

21 § 2023. CLINICAL PHARMACY; PRESCRIBING

1 \* \* \*

2 (b) A pharmacist may prescribe in the following contexts:

3 \* \* \*

4 (2) State protocol.

5 (A) A pharmacist may prescribe, order, or administer in a manner  
6 consistent with valid State protocols that are approved by the Commissioner of  
7 Health after consultation with the Director of Professional Regulation and the  
8 Board and the ability for public comment:

9 \* \* \*

10 (ix) emergency prescribing of albuterol or glucagon while  
11 contemporaneously contacting emergency services; ~~and~~

12 (x) tests for SARS-CoV for asymptomatic individuals or related  
13 serology for individuals by entities holding a Certificate of Waiver pursuant to  
14 the Clinical Laboratory Amendments of 1988 (42 U.S.C. § 263a); and

15 (xi) emergency contraception.

16 \* \* \*

17 Sec. 11a. 26 V.S.A. § 2077 is added to read:

18 § 2077. EMERGENCY CONTRACEPTION; VENDING MACHINES

19 (a) A retail or institutional drug outlet licensed under this chapter or a  
20 postsecondary school, as defined in and subject to 16 V.S.A. § 176, may make  
21 over-the-counter emergency contraception and other nonprescription drugs or

1 articles for the prevention of pregnancy or conception available through a  
2 vending machine or similar device.

3 (b) The Board may adopt rules in accordance with 3 V.S.A. chapter 25 to  
4 regulate the location, operation, utilization, and oversight of the vending  
5 machines and similar devices described in subsection (a) of this section in a  
6 manner that balances consumer access with appropriate safeguards for theft  
7 prevention and safety.

8 \* \* \* Higher Education; Health Care Services \* \* \*

9 Sec. 12. 16 V.S.A. chapter 78 is added to read:

10 CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-  
11 AFFIRMING HEALTH CARE SERVICES

12 § 2501. DEFINITIONS

13 As used in this chapter:

14 (1) “Gender-affirming health care readiness” means each institution’s  
15 preparedness to provide gender-affirming health care services to students or  
16 assist students in obtaining gender-affirming health care services, including  
17 having in place equipment, protocols, patient educational materials,  
18 informational websites, and training for staff; provided, however, that gender-  
19 affirming health care readiness may include the provision of gender-affirming  
20 health care services.

1           (2) “Gender-affirming health care services” has the same meaning as in  
2           1 V.S.A. § 150.

3           (3) “Institution” means the University of Vermont or a college in the  
4           Vermont State College system.

5           (4) “Medication abortion” means an abortion provided by medication  
6           techniques.

7           (5) “Reproductive health care services” has the same meaning as in 1  
8           V.S.A. § 150 and includes medication abortion.

9           (6) “Reproductive health care readiness” means each institution’s  
10          preparedness to provide reproductive health care services to students or assist  
11          students in obtaining reproductive health care services, including having in  
12          place equipment, protocols, patient educational materials, informational  
13          websites, and training for staff; provided, however, that reproductive health  
14          care readiness may include the provision of reproductive health care services.

15          (7) “Telehealth” has the same meaning as in 26 V.S.A. § 3052.  
16          § 2502. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE

17                   HEALTH CARE READINESS; REPORTS

18          (a) Each institution shall report to the Agency of Human Services annually,  
19          on or before November 1, on the current status of its gender-affirming health  
20          care and reproductive health care readiness, including:

21                  (1) whether the institution has an operational health center on campus;

1           (2) whether the institution employs health care providers on campus;

2           (3) the types of gender-affirming health care services and reproductive  
3 health care services that the institution offers to its students on campus and the  
4 supports that the institution provides to students who receive those services;

5           (4) the institution’s efforts to assist students with obtaining gender-  
6 affirming health care services and reproductive health care services from  
7 licensed health care professionals through telehealth;

8           (5) the institution’s proximity to a hospital, clinic, or other facility that  
9 provides gender-affirming health care services or reproductive health care  
10 services, or both, that are not available to students on campus;

11           (6) the referral information that the institution provides regarding  
12 facilities that offer gender-affirming health care services and reproductive  
13 health care services that are not available to students on campus, including  
14 information regarding the scope of the services that are available at each such  
15 facility; and

16           (7) the availability, convenience, and cost of public transportation  
17 between the institution and the closest facility that provides gender-affirming  
18 health care services or reproductive health care services, or both, and whether  
19 the institution provides transportation.

20           (b) On or before January 31 of each year, the Agency of Human Services  
21 shall compile the materials submitted pursuant to subsection (a) of this section

1 and report to the House Committees on Education, on Health Care, and on  
2 Human Services and the Senate Committees on Education and on Health and  
3 Welfare on the status of gender-affirming health care and reproductive health  
4 care readiness at Vermont’s institutions.

5 Sec. 13. GENDER-AFFIRMING HEALTH CARE AND REPRODUCTIVE  
6 HEALTH CARE READINESS; IMPLEMENTATION

7 Each institution shall submit its first report on the status of its gender-  
8 affirming health care and reproductive health care readiness as required under  
9 16 V.S.A. § 2502(a) to the Agency of Human Services on or before November  
10 1, 2023, and the Agency shall provide its first legislative report on or before  
11 January 31, 2024.

12 \* \* \* Prohibition on Disclosure of Protected Health Information \* \* \*

13 Sec. 14. 18 V.S.A. § 1881 is amended to read:

14 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION  
15 PROHIBITED

16 (a) As used in this section:

17 (1) “Business associate” has the same meaning as in 45 C.F.R.  
18 § 160.103.

19 (2) “Covered entity” shall have has the same meaning as in 45 C.F.R.  
20 § 160.103.

1           (3) “Legally protected health care activity” has the same meaning as in  
2           1 V.S.A. § 150.

3           ~~(2)~~(4) “Protected health information” shall have has the same meaning  
4           as in 45 C.F.R. § 160.103.

5           (b) A covered entity or business associate shall not disclose protected  
6           health information unless the disclosure is permitted under the Health  
7           Insurance Portability and Accountability Act of 1996 (HIPAA).

8           (c) In order to protect patients and providers who engage in legally  
9           protected health care activity, a covered entity or business associate shall not  
10           disclose protected health information related to a legally protected health care  
11           activity for use in a civil or criminal action; a proceeding preliminary to a civil  
12           or criminal action; or a probate, legislative, or administrative proceeding unless  
13           the disclosure meets one or more of the following conditions:

14           (1) The disclosure is authorized by the patient or the patient’s  
15           conservator, guardian, or other authorized legal representative.

16           (2) The disclosure is specifically required by federal law, Vermont law,  
17           or rules adopted by the Vermont Supreme Court.

18           (3) The disclosure is ordered by a court of competent jurisdiction  
19           pursuant to federal law, Vermont law, or rules adopted by the Vermont  
20           Supreme Court. An order compelling disclosure under this subdivision shall

1 include the court’s determination that good cause exists to require disclosure of  
2 the information related to legally protected health care activity.

3 (4) The disclosure is to be made to a person designated by the covered  
4 entity or business associate and will be used solely in the defense of the  
5 covered entity or business associate against a claim that has been made, or  
6 there is a reasonable belief will be made, against the covered entity or business  
7 associate in a civil or criminal action, a proceeding preliminary to a civil or  
8 criminal action, or a probate, legislative, or administrative proceeding.

9 (5) The disclosure is to Vermont’s Board of Medical Practice or Office  
10 of Professional Regulation, as applicable, in connection with a bona fide  
11 investigation in Vermont of a licensed, certified, or registered health care  
12 provider.

13 \* \* \* Effective Dates \* \* \*

14 Sec. 15. EFFECTIVE DATES

15 (a) This section, Sec. 1 (definitions), Sec. 2 (medical malpractice), Secs. 6  
16 and 7 (unprofessional conduct), Sec. 8 (pregnancy services centers), Secs. 9  
17 and 10 (reports), Sec. 11a (emergency contraception; vending machines), Secs.  
18 12 and 13 (gender-affirming health care and reproductive health care  
19 readiness; reports), and Sec. 14 (prohibition on disclosure of protected health  
20 information) shall take effect on passage.

1        (b) Secs. 3 and 4 (insurance coverage) shall take effect on January 1, 2024  
2        and shall apply to all health insurance plans issued on and after January 1,  
3        2024 on such date as a health insurer offers, issues, or renews the health  
4        insurance plan, but in no event later than January 1, 2025.

5        (c) Sec. 5 (state plan amendment) shall take effect on January 1, 2024,  
6        except that the Agency of Human Services shall submit its request for approval  
7        of Medicaid coverage of the services prescribed in Sec. 4 of this act, if needed,  
8        to the Centers for Medicare and Medicaid Services on or before July 1, 2023,  
9        and the Medicaid coverage shall begin on the later of the date of approval or  
10       January 1, 2024.

11       (d) Sec. 10a (interstate compacts; state representatives) shall take effect on  
12       July 1, 2023.

13       (e) Sec. 11 (emergency contraception) shall take effect on or before  
14       September 1, 2023, on such date as the Commissioner of Health approves the  
15       State protocol.

16  
17

18       (Committee vote: \_\_\_\_\_)

19

\_\_\_\_\_

20

Senator \_\_\_\_\_

21

FOR THE COMMITTEE