

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; or the provision of
20 insurance coverage for such services; or

1 (B) any act or omission undertaken to aid or encourage, or attempt to
2 aid or encourage, any person in the exercise and enjoyment, or attempted
3 exercise and enjoyment, of rights to reproductive health care services or
4 gender-affirming health care services secured by this State, **or to provide**
5 **insurance coverage for such services, provided that the provision of such a**
6 **health care service by a person duly licensed under the laws of this State**
7 **and physically present in this State and the provision of insurance coverage**
8 **for such services shall be legally protected if the service is permitted under**
9 **the laws of this State, regardless of the patient’s location; or**

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

18 (2) **“Legally protected health care activity” does not include any service**
19 **rendered below an applicable professional standard of care or that would**
20 **violate antidiscrimination laws of this State. **Except as provided in****
21 **subdivision (3) of this subsection (b), the protections applicable to “legally**

1 **protected health care activity” shall not apply to a lawsuit, judgment, or**
2 **civil, criminal, or administrative action that is based on conduct for which**
3 **an action would exist under the laws of this State if the course of conduct**
4 **that forms the basis for liability had occurred entirely in this State.**

5 **(3) Notwithstanding subdivision (2) of this subsection (b), the**
6 **provision of a health care service by a person duly licensed under the laws**
7 **of this State and physically present in this State and the provision of**
8 **insurance coverage for such services shall be legally protected if the service**
9 **is permitted under the laws of this State, regardless of the patient’s**
10 **location or whether the health care provider is licensed in the state where**
11 **the patient is located at the time the service is rendered.**

12 (c) “Reproductive health care services” means all supplies, care, and
13 services of a medical, behavioral health, mental health, surgical, psychiatric,
14 therapeutic, diagnostic, preventative, rehabilitative, or supportive nature
15 relating to pregnancy, contraception, assisted reproduction, pregnancy loss
16 management, or the termination of a pregnancy.

17
18 * * * Medical Malpractice * * *

19 Sec. 2. 8 V.S.A. chapter 129 is amended to read:

20 CHAPTER 129. INSURANCE TRADE PRACTICES

21 * * *

1 § 4722. DEFINITIONS

2 * * *

3 (4)(A) “Abusive litigation” means litigation or other legal action to
4 deter, prevent, sanction, or punish any person engaging in legally protected
5 health care activity by:

6 (i) filing or prosecuting any action in any other state where
7 liability, in whole or part, directly or indirectly, is based on legally protected
8 health care activity that occurred in this State, including any action in which
9 liability is based on any theory of vicarious, joint, or several liability derived
10 therefrom; or

11 (ii) attempting to enforce any order or judgment issued in
12 connection with any such action by any party to the action or any person acting
13 on behalf of a party to the action.

14 (B) A lawsuit shall be considered to be based on conduct that
15 occurred in this State if any part of any act or omission involved in the course
16 of conduct that forms the basis for liability in the lawsuit occurs or is initiated
17 in this State, whether or not such act or omission is alleged or included in any
18 pleading or other filing in the lawsuit.

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

21 * * *

1 § 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR
2 DECEPTIVE ACTS OR PRACTICES DEFINED

3 The following are hereby defined as unfair methods of competition or unfair
4 or deceptive acts or practices in the business of insurance:

5 * * *

6 (7) Unfair discrimination; arbitrary underwriting action.

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

11 * * *

12 (F)(i) Discriminating against a health care provider, as defined by
13 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider's
14 risk classification or premium charges on the basis that:

15 (I) the health care provider provides or assists in the provision
16 of legally protected health care activity in this State that is unlawful in another
17 state;

18 (II) another state's laws create potential or actual liability for
19 that activity; or

20 (III) abusive litigation against a provider concerning legally
21 protected health care activity resulted in a judgement against the provider; or

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

4 **(ii) For purposes of this subdivision (F), it shall not be unfairly**
5 **discriminatory nor an arbitrary underwriting action against a health care**
6 **provider if the risk classifications, premium charges, or other**
7 **underwriting considerations are based on the health care provider’s**
8 **claims loss experience or based on underwriting or rate-setting criteria**
9 **related to practices that do not meet the applicable professional standards**
10 **of care in the provision of legally protected health care services.**

11 * * *

12 * * * Insurance Coverage * * *

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

14 § 4088m. COVERAGE FOR GENDER-AFFIRMING HEALTH CARE

15 SERVICES

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

17 (1) “Gender-affirming health care services” has the same meaning as in
18 1 V.S.A. § 150.

19 (2) “Health insurance plan” means Medicaid and any other public health
20 care assistance program, any individual or group health insurance policy, any
21 hospital or medical service corporation or health maintenance organization

1 subscriber contract, or any other health benefit plan offered, issued, or renewed
2 for any person in this State by a health insurer as defined by 18 V.S.A. § 9402.
3 For purposes of this section, health insurance plan shall include any health
4 benefit plan offered or administered by the State or any subdivision or
5 instrumentality of the State. The term shall not include benefit plans providing
6 coverage for a specific disease or other limited benefit coverage, except that it
7 shall include any accident and sickness health plan.

8 (b) Coverage.

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

11 **(A) are medically necessary and clinically appropriate for the**
12 **individual's diagnosis or health condition;**

13 **(B) are included in the State's essential health benefits**
14 **benchmark plan; and**

15 **(C) that meet generally accepted practice standards, such as**
16 **recommendations and guidelines issued by the World Professional**
17 **Association for Transgender Health, its successor, or a comparable**
18 **organization identified by the Department of Financial Regulation.**

19 **(2) Coverage provided pursuant to this section:**

1 **(A) may be subject to a prior authorization requirement under**
2 **the health insurance plan concerning the amount, frequency, and duration**
3 **of treatment; and**

4 **(B) for commercial health insurance plans, shall be provided in**
5 **compliance with rules and guidance issued by the Department of Financial**
6 **Regulation regarding gender-affirming health care services; and**

7 **(C) for Medicaid or any other public health care assistance**
8 **program, shall comply with all federal requirements imposed by the**
9 **Centers for Medicare and Medicaid Services.**

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

13 (c) Cost sharing. ~~The coverage required by this section shall not be subject~~
14 ~~to any co-payment, deductible, coinsurance, or other cost-sharing requirement~~
15 ~~or additional charge.~~ **A health insurance plan shall not impose greater**
16 **coinsurance, co-payment, deductible, or other cost-sharing requirements**
17 **for coverage of gender-affirming health care services than apply to the**
18 **diagnosis and treatment of any other physical or mental condition under**
19 **the plan.**

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

21 § 4099e. COVERAGE FOR ABORTION AND ABORTION-RELATED

1 SERVICES

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

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

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

16 (b) Coverage. **Subject to requirements under federal law,** a health
17 insurance plan shall provide coverage for abortion and abortion-related care.

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

21 Sec. 5. STATE PLAN AMENDMENT

1 The Agency of Human Services shall seek a state plan amendment from the
2 Centers for Medicare and Medicaid Services or federal authorities if needed to
3 allow Vermont’s Medicaid program to provide coverage consistent with this
4 act.

* * * Professional Regulation * * *

6 Sec. 6. 3 V.S.A. § 129a is amended to read:

7 § 129a. UNPROFESSIONAL CONDUCT

* * *

9 (f)(1) Health care providers. Notwithstanding subsection (e) of this section
10 or any other law to the contrary, no health care provider shall be subject to
11 professional disciplinary action by a board or the Director, **nor shall a board**
12 **or the Director take adverse action on an application for certification,**
13 **registration, or licensure of a qualified health care provider, based** solely
14 for on:

15 (1) **the health care provider** providing or assisting in the provision of
16 legally protected health care activity; **or**

17 (2) ~~A board or the Director shall not take adverse action on an~~
18 application for certification, registration, or licensure of a qualified health care
19 provider based a criminal or civil action or disciplinary action against **the**
20 **health care provider** by a licensing board of another state **that arises from**

1 **based solely on the provider provision of or assistance in providing or**
2 **assisting in the provision of** legally protected health care activity.

3 (3) Definitions. As used in this subsection:

4 (A) “Health care provider” has the same meaning as in 18 V.S.A.
5 § 9496.

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

8 Sec. 7. 26 V.S.A. § 1354 is amended to read:

9 § 1354. UNPROFESSIONAL CONDUCT

10 * * *

11 (d)(4) Health care providers. Notwithstanding any other law to the
12 contrary, no health care provider shall be subject to professional disciplinary
13 action by the Board, **nor shall the Board take adverse action on an**
14 **application for certification, registration, or licensure of a qualified health**
15 **care provider, based solely for on:**

16 (1) **the health care provider** providing or assisting in the provision of
17 legally protected health care activity; **or**

18 (2) **The Board shall not take adverse action on an application for**
19 **certification, registration, or licensure of a qualified health care provider based**
20 **a criminal or civil action or disciplinary action against the health care**
21 **provider by a licensing board of another state that arises from based solely on**

1 the **provider** ~~provision of or assistance in providing or assisting in the~~
2 **provision of** legally protected health care activity.

3 (3) Definitions. As used in this subsection:

4 (A) “Health care provider” has the same meaning as in 18 V.S.A.
5 § 9496.

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

8 * * * Pregnancy Centers * * *

9 Sec. 8. 9 V.S.A. chapter 63, subchapter 11 is added to read:

10 Subchapter 11. Pregnancy Services Center Fraud

11 § 2491. DEFINITIONS

12 As used in this subchapter:

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

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

18 (3) “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.

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

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

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

13 (A) The center offers pregnancy testing or pregnancy diagnosis, or
14 both.

15 (B) The center has staff or volunteers who wear medical attire or
16 uniforms.

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

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

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

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

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

6 § 2492. UNFAIR AND DECEPTIVE ACT

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

18 **(b) The medical director of a pregnancy services center, or the**
19 **individual charged with supervising health care services provided by**
20 **center staff or volunteers at a pregnancy services center, shall be**
21 **responsible, legally and professionally, for the activities of staff and**

1 **volunteers performing duties for and on behalf of the pregnancy services**
2 **center. The medical director or individual shall ensure that the staff of the**
3 **pregnancy services center, including the medical director or individual,**
4 **and any volunteers providing health care services maintain a level of**
5 **supervision, training, and practice consistent with legal requirements**
6 **established under Vermont law, including those set forth in Title 26, and**
7 **professional standards of practice.**

8 **(c)** The Attorney General or State’s Attorney has the same authority to
9 make rules, conduct civil investigations, and bring civil actions with respect to
10 violations of subsection (a) of this section as provided under subchapter 1 of
11 this chapter.

12 * * * Reports * * *

13 **Sec. 9. DEPARTMENT OF HEALTH; ACCESS TO REPRODUCTIVE**
14 **HEALTH AND GENDER-AFFIRMING CARE SERVICES;**
15 **REPORT**

16 On or before January 15, 2024, the Department of Health and the Green
17 Mountain Care Board shall, following consultation with relevant stakeholders,
18 submit a report to the House Committee on Health Care and the Senate
19 Committee on Health and Welfare identifying areas of the State in which
20 people do not have access to abortion or birth care or gender-affirming health

1 care services within a 50-mile radius, including recommendations to facilitate
2 access to those services in the identified areas.

3 Sec. 10. BOARD OF MEDICAL PRACTICE; OFFICE OF PROFESSIONAL
4 REGULATION; INTERSTATE COMPACTS; REPORT

5 On or before November 1, 2024, the Board of Medical Practice, in
6 consultation with the Office of Professional Regulation, shall submit a report
7 to the House Committee on Health Care and the Senate Committee on Health
8 and Welfare with findings and recommendations for legislative action to
9 address any concerns regarding the State’s participation in interstate licensure
10 compacts as a result of the provisions of this act, specifically the State’s
11 participation in the Nurse Licensure Compact pursuant to 26 V.S.A. chapter
12 28, subchapter 5 and the Interstate Medical Licensure Compact pursuant to 26
13 V.S.A. chapter 23, subchapter 3A.

14 * * * Emergency Contraception * * *

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

16 Subchapter 1. General Provisions

17 * * *

18 § 2022. DEFINITIONS

19 As used in this chapter:

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

§ 2023. CLINICAL PHARMACY; PRESCRIBING

* * *

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

* * *

(2) State protocol.

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

* * *

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

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

(xi) emergency contraception.

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

§ 2077. EMERGENCY CONTRACEPTION; VENDING MACHINES

(a) A retail or institutional drug outlet licensed under this chapter may make over-the-counter emergency contraception and other nonprescription drugs or articles for the prevention of pregnancy or conception available through a vending machine or similar device.

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

* * * Higher Education; Health Care Services * * *

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

CHAPTER 78. ACCESS TO REPRODUCTIVE AND GENDER-

AFFIRMING HEALTH CARE SERVICES

§ 2501. DEFINITIONS

As used in this chapter:

(1) “Gender-affirming health care readiness” means each institution’s preparedness to provide gender-affirming health care services to students or assist students in obtaining gender-affirming health care services, including

1 having in place equipment, protocols, patient educational materials,
2 informational websites, and training for staff; provided, however, that gender-
3 affirming health care readiness may include the provision of gender-affirming
4 health care services.

5 (2) “Gender-affirming health care services” has the same meaning as in
6 1 V.S.A. § 150.

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

9 (4) “Medication abortion” means an abortion provided by medication
10 techniques.

11 ~~(5) “Medication abortion readiness” means each institution’s~~
12 ~~preparedness to provide medication abortions to students or assist students in~~
13 ~~obtaining medication abortions, including having in place equipment,~~
14 ~~protocols, patient educational materials, informational websites, and training~~
15 ~~for staff; provided, however, that medication abortion readiness may include~~
16 ~~the provision of medication abortions.~~

17 **(5) “Reproductive health care services” has the same meaning as in**
18 **1 V.S.A. § 150 and includes medication abortion.**

19 **(6) “Reproductive health care readiness” means each institution’s**
20 **preparedness to provide reproductive health care services to students or**
21 **assist students in obtaining reproductive health care services, including**

1 **having in place equipment, protocols, patient educational materials,**
2 **informational websites, and training for staff; provided, however, that**
3 **reproductive health care readiness may include the provision of**
4 **reproductive health care services.**

5 § 2502. GENDER-AFFIRMING HEALTH CARE AND **MEDICATION**
6 **ABORTION SERVICES REPRODUCTIVE HEALTH CARE**
7 **READINESS PLANS; REPORTS**

8 (a) Each institution shall **develop report to the Department of Health**
9 **annually, on or before November 1, on the current status of its** gender-
10 **affirming health care and medication abortion readiness plans for**
11 **reproductive health care readiness, including the types of services and**
12 **supports it makes available to** its students.

13 (b) On or before January 31 of each year, the Department of Health shall
14 **determine whether the plans are adequate in proportion to each institution's**
15 **capacity. The Department shall provide further guidance to institutions with**
16 **plans deemed inadequate that includes remedial measures for the institution to**
17 **develop an adequate plan. compile the materials submitted pursuant to**
18 **subsection (a) of this section and report to the House Committees on**
19 **Education, on Health Care, and on Human Services and the Senate**
20 **Committees on Education and on Health and Welfare on the status of**

1 gender-affirming health care and reproductive health care readiness at
2 Vermont's institutions.

3 (b)(1) The Department of Health shall issue guidance to all institutions
4 regarding the required contents of gender-affirming health care and medication
5 abortion readiness plans in accordance with the relative capabilities of each
6 institution to provide services, including directly providing gender-affirming
7 health care services or medication abortions, or both, in a health center;
8 providing referrals for gender-affirming health care services or medication
9 abortions, or both, not provided in a health center; providing information to
10 students about obtaining gender-affirming health care services or medication
11 abortions, or both, available off campus; and providing clinical and supportive
12 care in a health center for medication abortions using medication lawfully
13 dispensed through a retail or mail-order pharmacy.

14 (2) In developing the guidance, the Department shall consider factors
15 including:

16 (A) whether the institution has an operational health center on
17 campus;

18 (B) the institution's proximity to a hospital, clinic, or other facility
19 that provides gender-affirming health care services or medication abortions, as
20 applicable;

1 ~~(C) the availability, convenience, and cost of public transportation~~
2 ~~between the institution and the closest facility that provides gender-affirming~~
3 ~~health care services or medication abortions, or both; and~~

4 ~~(D) whether the institution employs health care providers on campus.~~

5 ~~(e) The Department of Health shall review gender-affirming health care~~
6 ~~and medication abortion readiness plans annually, taking into consideration~~
7 ~~any changes to the capacity of each institution to provide services to students~~
8 ~~since the preceding approval of the plans.~~

9 ~~(d) Each institution shall submit to the Department of Health annually any~~
10 ~~amendments or revisions to its gender-affirming health care and medication~~
11 ~~abortion readiness plans.~~

12 Sec. 13. GENDER-AFFIRMING HEALTH CARE AND ~~MEDICATION~~
13 ~~ABORTION SERVICES~~ **REPRODUCTIVE HEALTH CARE**
14 **READINESS PLANS**; IMPLEMENTATION

15 Each institution shall submit its first **report on the status of its** gender-
16 affirming health care and ~~medication abortion services~~ **reproductive health**
17 **care** readiness ~~plans~~ **as** required under 16 V.S.A. § 2502(a) to the Department
18 of Health on or before ~~November 30, 2024~~ **November 1, 2023**, and the
19 Department shall ~~review the plans for suitability on or before January 31, 2025~~
20 **provide its first legislative report on or before January 31, 2024.**

21 * * * Prohibition on Disclosure of Protected Health Information * * *

1 Sec. 14. 18 V.S.A. § 1881 is amended to read: **(REWRITTEN)**

2 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

3 PROHIBITED

4 (a) As used in this section:

5 (1) “Business associate” has the same meaning as in 45 C.F.R.

6 § 160.103.

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

8 160.103.

9 (3) “Legally protected health care activity” has the same meaning as in 1

10 V.S.A. § 150.

11 (4) “Protected health information” ~~shall have~~ has the same meaning as

12 in 45 C.F.R. § 160.103.

13 (b) A covered entity or business associate shall not disclose protected

14 health information unless the disclosure is permitted under the Health

15 Insurance Portability and Accountability Act of 1996 (HIPAA).

16 (c) In order to protect patients and providers who engage in legally

17 protected health care activity, a covered entity or business associate shall not

18 disclose protected health information related to a legally protected health care

19 activity for use in a civil or criminal action, a proceeding preliminary to a civil

20 or criminal action, or a probate, legislative, or administrative proceeding that is

1 adverse to a patient or to a patient’s health care provider unless the disclosure
2 meets one or more of the following conditions:

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

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

7 (3) The disclosure is ordered by a court pursuant to federal law,
8 Vermont law, or rules adopted by the Vermont Supreme Court. An order
9 compelling disclosure under this subdivision shall include the court’s
10 determination that good cause exists to require disclosure of the information
11 related to legally protected health care activity.

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

18 (5) The disclosure is to the Board of Medical Practice or the Office of
19 Professional Regulation, as applicable, in connection with a bona fide
20 investigation of a licensed, certified, or registered health care provider.

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

1 ~~§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION~~

2 ~~PROHIBITED~~

3 ~~(a) As used in this section:~~

4 ~~(1) “Covered entity” shall have has the same meaning as in 45 C.F.R. §~~
5 ~~160.103.~~

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

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

10 ~~(b) A Except as provided in subsection (c) of this section, a covered entity~~
11 ~~shall not disclose protected health information unless the disclosure is~~
12 ~~permitted under the Health Insurance Portability and Accountability Act of~~
13 ~~1996 (HIPAA).~~

14 ~~(c)(1) Except as provided in subsection (d) of this section, unless the~~
15 ~~patient or the patient’s conservator, guardian, or other authorized legal~~
16 ~~representative explicitly consents in writing to the disclosure, a covered entity~~
17 ~~shall not disclose any of the following in any civil or criminal action; in any~~
18 ~~proceeding preliminary to a civil or criminal action; or in any probate,~~
19 ~~legislative, or administrative proceeding, whether in or outside this State:~~

20 ~~(A) any communication made to the covered entity by, or any~~
21 ~~information obtained by the covered entity from, a patient or a patient’s~~

1 ~~conservator, guardian, or other authorized legal representative relating to any~~
2 ~~legally protected health care activity; or~~

3 ~~(B) any information obtained by personal examination of a patient~~
4 ~~relating to any legally protected health care activity.~~

5 ~~(2) A covered entity shall inform the patient or the patient’s conservator,~~
6 ~~guardian, or other authorized legal representative of the patient’s right to~~
7 ~~withhold written consent to disclosure of the communications and information~~
8 ~~described in subdivisions (1)(A) and (B) of this subsection.~~

9 ~~(d) Notwithstanding any provision of subsection (c) of this section to the~~
10 ~~contrary, the written consent of the patient or the patient’s conservator,~~
11 ~~guardian, or other authorized legal representative shall not be required for the~~
12 ~~disclosure of the communications and information described in subdivisions~~
13 ~~(c)(1)(A) and (B) of this section.~~

14 ~~(1) pursuant to federal law, Vermont law, or rules adopted by the~~
15 ~~Vermont Supreme Court;~~

16 ~~(2) by a covered entity against whom a claim has been made, or there is~~
17 ~~a reasonable belief will be made, in a civil or criminal action; in a proceeding~~
18 ~~preliminary to a civil or criminal action; or in a probate, legislative, or~~
19 ~~administrative proceeding to the covered entity’s attorney or professional~~
20 ~~liability insurer or the insurer’s agent for use in the defense of the action or~~
21 ~~proceeding;~~

1 ~~(3) to the Commissioner of Health for records of a patient of a covered~~
2 ~~entity in connection with an investigation of a complaint, if the records are~~
3 ~~related to the complaint; or~~

4 ~~(4) if child abuse; abuse of a vulnerable adult, as defined in 33 V.S.A.~~
5 ~~§ 6902; abuse of an individual with a developmental disability, as defined in~~
6 ~~section 8722 of this title; or abuse of an individual with an intellectual~~
7 ~~disability, as defined in 1 V.S.A. § 146, is known or is in good faith suspected.~~

8 ~~(e) Nothing in this section shall be construed to impede the lawful sharing~~
9 ~~of medical records as permitted by federal law, Vermont law, or rules adopted~~
10 ~~by the Vermont Supreme Court, except in the case of a subpoena commanding~~
11 ~~the production, copying, or inspection of medical records relating to legally~~
12 ~~protected health care activity.~~

13 * * * Effective Dates * * *

14 Sec. 15. EFFECTIVE DATES

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

20 ~~(b) Secs. 3–4 (insurance coverage) shall take effect on January 1, 2024 and~~
21 ~~shall apply to all health insurance plans issued on and after January 1, 2024 on~~

1 such date as a health insurer offers, issues, or renews the health insurance plan,
2 but in no event later than January 1, 2025.

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

9 (d) Sec. 11 (emergency contraception) shall take effect on **or before**
10 September 1, 2023, **except that the Department of Health shall issue the**
11 **standing order, which shall take effect on September 1, 2023, on or before that**
12 **date, on such date as the Commissioner of Health approves the State**
13 **protocol.**

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18 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE