

1 H.482

2 Introduced by Committee on Health Care

3 Date:

4 Subject: Health; hospitals; health insurers; Green Mountain Care Board;  
5 hospital observer

6 Statement of purpose of bill as introduced: This bill proposes to authorize the  
7 Green Mountain Care Board to reduce a health insurer's reimbursement rates  
8 to one or more hospitals if the health insurer is at imminent risk of insolvency.  
9 The bill would permit the Board to reduce a hospital's budget for the  
10 forthcoming fiscal year to account for the hospital's budget overage in the  
11 previous fiscal year. The bill would also allow the Board to appoint an  
12 independent observer to oversee a hospital and its operations if the Board finds  
13 the hospital has made a material misrepresentation or is out of compliance with  
14 its budget and the Board believes that appointing an independent observer is in  
15 the public interest.

16 An act relating to Green Mountain Care Board authority to adjust a  
17 hospital's reimbursement rates and to appoint a hospital observer

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

19 ~~Sec. 1, 18 V.S.A. § 9284 is added to read:~~

~~§ 9284. REDUCTION OR REALLOCATION OF REIMBURSEMENT~~

RATES; RISKS TO HEALTH INSURER SOLVENCY

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

(1) "Hospital" has the same meaning as in section 9451 of this title.

(2) "Hospital network" means a system comprising two or more affiliated hospitals, and may include other health care professionals and facilities, that derives 50 percent or more of its operating revenue, at the consolidated network level, from Vermont hospitals and in which the affiliated hospitals deliver health care services in a coordinated manner using an integrated financial and governance structure.

(b) If the Green Mountain Care Board determines, after consultation with the Commissioner of Financial Regulation, that a domestic health insurer faces an acute and immediate threat to its solvency because its risk-based capital level has triggered a regulatory action level event pursuant to 8 V.S.A. § 8304, the Board may order a reduction of the insurer's reimbursement rates to one or more Vermont hospitals as set forth in subsection (c) of this section until such time as the amount of the insurer's risk-based capital exceeds the company action level risk-based capital threshold defined in 8 V.S.A. § 8301.

(c)(1) The Board shall only order a reduction in the reimbursement rates to a hospital that meets one or both of the following criteria.

1 ~~(A) the hospital has more than 135 days' cash on hand and had a~~  
2 positive operating margin in the previous fiscal year; or

3 (B) the hospital is a member of a hospital network that, at the  
4 consolidated network level, has more than 135 days' cash on hand or had a  
5 positive operating margin in the previous fiscal year, or both.

6 (2) The Board shall order a reduction in reimbursement rates to a  
7 hospital pursuant to this subsection only to the extent necessary to remediate  
8 the threat to the domestic health insurer's solvency.

9 (3) In no event shall a reduction ordered by the Board pursuant to this  
10 section result in a decrease to a hospital's or hospital network's projected days'  
11 cash on hand to below 125 days.

12 Sec. 2. 18 V.S.A. § 9456 is amended to read:

13 § 9456. BUDGET REVIEW

14 \* \* \*

15 (c) Individual hospital budgets established under this section shall:

16 \* \* \*

17 (4) reflect budget performances for prior years reconcile any significant  
18 deviation in revenue during the previous fiscal year in excess of the budget  
19 established for the hospital pursuant to this section, using a methodology  
20 established by the Board,

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

6 (2) The Board may, on its own initiative, adjust the commercial health  
7 insurance reimbursement rates payable to a hospital at any time during the  
8 hospital's fiscal year in order to ensure that the hospital operates within the  
9 budget established under this section.

10 (g)(1) The Board may request, and a hospital shall provide, information  
11 determined by the Board to be necessary to determine whether the hospital is  
12 operating within a budget established under this section. For purposes of this  
13 subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this  
14 title, the Board's authority shall extend to an affiliated corporation or other  
15 person in the control of or controlled by the hospital to the extent that such  
16 authority is necessary to carry out the purposes of this subsection, subsection  
17 (h) of this section, or subdivision 9454(a)(7) of this title. As used in this  
18 subsection, a rebuttable presumption of "control" is created if the entity  
19 hospital, or other person, directly or indirectly, owns, controls, holds with the  
20 ~~power to vote, or holds proxies representing 20 percent or more of the voting~~

1 ~~securities or membership interest or other governing interest of the hospital or~~  
2 other controlled entity.

3 (2)(A) The Board may, upon finding that a hospital has made a material  
4 misrepresentation in information or documents provided to the Board or that a  
5 hospital is materially noncompliant with the budget established by the Board  
6 pursuant to this section, appoint an independent observer with respect to any  
7 matter related to the Board's review or enforcement under this section if the  
8 Board believes that doing so is in the public interest. At the direction of the  
9 Board, the independent observer may monitor the hospital's operations, obtain  
10 information from the hospital, and report findings and recommendations to the  
11 Board.

12 (B) An independent observer appointed pursuant to this subdivision  
13 (2) shall have the right to receive copies of all materials related to the Board's  
14 review under this section and the hospital shall provide any information  
15 requested by the independent observer, including any information regarding  
16 the hospital's participation in a hospital network. The independent observer  
17 shall share information provided by the hospital with the Board and with the  
18 Office of the Health Care Advocate in accordance with subdivision (d)(3) of  
19 this section but shall not otherwise disclose any confidential or proprietary  
20 information that the independent observer obtained from the hospital.

1 ~~(C) The Board may order a hospital to pay for all or a portion of the~~  
2 ~~costs of an independent-observer appointed for the hospital pursuant to this~~  
3 ~~subdivision (2).~~

4 \* \* \*

5 Sec. 3. INDEPENDENT HOSPITAL OBSERVER AUTHORITY;  
6 PROSPECTIVE REPEAL

7 18 V.S.A. § 9456(g)(2) (authority to appoint independent hospital observer)  
8 is repealed on January 1, 2030.

9 Sec. 4. EFFECTIVE DATE

10 ~~This act shall take effect on passage.~~

*Sec. 1. 18 V.S.A. § 9384 is added to read:*

*§ 9384. REDUCTION OR REALLOCATION OF REIMBURSEMENT*

*RATES; RISKS TO HEALTH INSURER SOLVENCY*

*(a) As used in this section:*

*(1) "Hospital" has the same meaning as in section 9451 of this title.*

*(2) "Hospital network" means a system comprising two or more affiliated hospitals, and may include other health care professionals and facilities, that derives 50 percent or more of its operating revenue, at the consolidated network level, from Vermont hospitals and in which the affiliated hospitals deliver health care services in a coordinated manner using an integrated financial and governance structure.*

(b) If the Green Mountain Care Board determines, after consultation with the Commissioner of Financial Regulation, that a domestic health insurer faces an acute and immediate threat to its solvency because its risk-based capital level has triggered a regulatory action level event pursuant to 8 V.S.A. § 8304, the Board may order a reduction of the insurer's reimbursement rates to one or more Vermont hospitals as set forth in subsection (c) of this section until such time as the amount of the insurer's risk-based capital exceeds the company action level risk-based capital threshold defined in 8 V.S.A. § 8301. Notwithstanding any provision of 3 V.S.A. chapter 25 to the contrary, the Board's activities under this section shall not be construed to be a contested case. Any person aggrieved by a final Board action, order, or determination under this section may appeal as set forth in section 9381 of this title.

(c)(1) The Board shall only order a reduction in the reimbursement rates to a hospital that meets one or both of the following criteria:

(A) the hospital has more than 135 days' cash on hand and had a positive operating margin in the previous fiscal year; or

(B) the hospital is a member of a hospital network that, at the consolidated network level, has more than 135 days' cash on hand or had a positive operating margin in the previous fiscal year, or both.

(2) The Board shall order a reduction in reimbursement rates to a hospital pursuant to this section only to the extent necessary to remediate the

threat to the domestic health insurer's solvency. In determining whether and to what extent to reduce a hospital's reimbursement rates pursuant to this section, the Board shall consider the competing financial obligations of the hospital and of the domestic health insurer.

(3) The Board shall provide a hospital with the opportunity to request relief from a rate reduction ordered pursuant to this section.

(4) In no event shall a reduction ordered by the Board pursuant to this section result in a decrease to a hospital's or hospital network's projected days' cash on hand to below 125 days.

Sec. 2. 18 V.S.A. § 9456 is amended to read:

§ 9456. BUDGET REVIEW

\* \* \*

(c) Individual hospital budgets established under this section shall:

\* \* \*

(4) reflect budget performances for prior years and, if not already addressed pursuant to subsection (h) of this section, account for any significant deviation in revenue during the most recently completed fiscal year in excess of the budget established for the hospital pursuant to this section;

\* \* \*

(f)(1) The Board may, upon application, adjust a budget established under this section upon a showing of need based upon exceptional or unforeseen



*circumstances in accordance with the criteria and processes established under section 9405 of this title.*

*(2) The Board may, on its own initiative, adjust the commercial health insurance reimbursement rates payable to a hospital at any time during the hospital's fiscal year in order to ensure that the hospital operates within the budget established under this section.*

*(g)(1) The Board may request, and a hospital shall provide, information determined by the Board to be necessary to determine whether the hospital is operating within a budget established under this section. For purposes of this subsection, subsection (h) of this section, and subdivision 9454(a)(7) of this title, the Board's authority shall extend to an affiliated corporation or other person in the control of or controlled by the hospital to the extent that such authority is necessary to carry out the purposes of this subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable presumption of "control" is created if the entity, hospital, or other person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 20 percent or more of the voting securities or membership interest or other governing interest of the hospital or other controlled entity.*

*(2)(A) The Board may, upon finding that a hospital has made a material misrepresentation in information or documents provided to the Board or that a*

hospital is materially noncompliant with the budget established by the Board pursuant to this section, appoint an independent observer with respect to any matter related to the Board's review or enforcement under this section if the Board believes that doing so is in the public interest. The independent observer shall be a person with experience and expertise relevant to the specific circumstances. At the direction of the Board, the independent observer may monitor the hospital's operations, obtain information from the hospital, and report findings and recommendations to the Board.

(B) An independent observer appointed pursuant to this subdivision (2) shall have the right to receive copies of all materials related to the Board's review under this section and the hospital shall provide any information requested by the independent observer, including any information regarding the hospital's participation in a hospital network. The independent observer shall share information provided by the hospital with the Board and with the Office of the Health Care Advocate in accordance with subdivision (d)(3) of this section but shall not otherwise disclose any confidential or proprietary information that the independent observer obtained from the hospital.

(C) The Board may order a hospital to pay for all or a portion of the costs of an independent observer appointed for the hospital pursuant to this subdivision (2).

\* \* \*

*Sec. 3. INDEPENDENT HOSPITAL OBSERVER AUTHORITY;*

*PROSPECTIVE REPEAL*

*18 V.S.A. § 9456(g)(2) (authority to appoint independent hospital observer)*  
*is repealed on January 1, 2030.*

*Sec. 4. EFFECTIVE DATE*

*This act shall take effect on passage.*