

1 H.583

2 Introduced by Representatives Black of Essex and Bluemle of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Health; health care facilities; Attorney General; health care entity
6 transactions; corporate practice of medicine

7 Statement of purpose of bill as introduced: This bill proposes to prohibit
8 certain financial transactions involving health care entities. It would also
9 prohibit corporations from practicing medicine or otherwise interfering with
10 health care providers' professional judgment and clinical decision making.
11 The bill would deem violations of these prohibitions to be violations of the
12 Consumer Protection Act. The bill would also require public reporting on
13 ownership and control of certain health care entities.

14 ~~An act relating to health care financial transactions and clinical decision~~
15 ~~making~~

An act relating to clinical decision making

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

17 ~~Sec. 1. 18 V.S.A. chapter 226 is added to read:~~

18 ~~CHAPTER 226. TRANSACTION LIMITATIONS AND CLINICAL~~

19 ~~DECISION MAKING~~

1 Subchapter 1. General Provisions

2 § 9521. DEFINITIONS

3 As used in this chapter:

4 (1) “Acquisition” means the direct or indirect purchase in any manner,
5 including by lease, transfer, exchange, option, receipt of a conveyance,
6 creation of a joint venture, or any other manner of purchase, such as by a
7 health care system, private equity group, hedge fund, publicly traded company,
8 real estate investment trust, management services organization, insurance
9 company, or a subsidiary of any of these entities, of a material amount of the
10 assets or operations of a health care entity.

11 (2) “Affiliate” means:

12 (A) a person who directly, indirectly, or through one or more
13 intermediaries, controls, is controlled by, or is under common control or
14 ownership of another person;

15 (B) a person whose business is operated under a lease, management,
16 or operating agreement by another entity, or a person substantially all of whose
17 property is operated under a management or operating agreement with that
18 other entity;

19 (C) an entity that operates the business or substantially all of the
20 property of another entity under a lease, management, or operating agreement;

21 or

1 ~~(D) any out of state operations or corporate affiliate of an affiliate, as~~
2 defined in subdivision (A), (B), or (C) of this subdivision (2), including
3 significant equity investors, health care real estate investment trusts, and
4 management services organizations.

5 (3) “Change of control” means an arrangement in which any other
6 person acquires direct or indirect control over the operations of a health care
7 entity in whole or in substantial part. As used in this subdivision,
8 “arrangement” includes any agreement, association, partnership, joint venture,
9 management services agreement, professional services agreement, health care
10 staffing company agreement, or other arrangement that results in a change of
11 governance or control of a health care entity or a department, subdivision, or
12 subsidiary of a health care entity.

13 (4) “Control,” including “controlling,” “controlled by,” and “under
14 common control with,” means the direct or indirect power through ownership,
15 contractual agreement, or otherwise, to:

16 (A) vote more than 10 percent of any class of voting shares of a
17 health care entity; or

18 (B) direct the actions or policies of the specified entity.

19 (5) “Health care entity” means a health care provider, health care
20 facility, provider organization, pharmacy benefit manager as defined in section

1 ~~3602 of this title, or health insurer as defined in section 9402 of this title that~~
2 offers a health insurance plan in this State.

3 (6) “Health care facility” has the same meaning as in section 9432 of
4 this title.

5 (7) “Health care provider” has the same meaning as in section 9402 of
6 this title.

7 (8) “Health care services” has the same meaning as in section 9481 of
8 this title and includes all of the following:

9 (A) inpatient, outpatient, habilitative, rehabilitative, dental,
10 palliative, therapeutic, supportive, nursing home, home health, mental health,
11 and substance use disorder services provided by a health care entity;

12 (B) pharmacy services, including drugs, devices, and medical
13 supplies;

14 (C) performance of functions to refer, arrange, and coordinate care;

15 (D) durable medical equipment, diagnostic equivalent, surgical
16 devices, and infusion equipment; and

17 (E) technology associated with providing the services and equipment
18 set forth in subdivisions (A)–(D) of this subdivision (8), such as telehealth,
19 electronic health records, software, claims processing, and utilization systems.

20 (9) “Health care staffing company” means a person engaged in the
21 business of providing or procuring health care personnel for temporary

1 ~~employment or contracting by a health care facility, but does not include an~~
2 individual who independently provides the individual's own services on a
3 temporary basis to health care facilities as an employee or contractor.

4 (10) "Licensee" means an individual licensed in this State as a physician
5 pursuant to 26 V.S.A. chapter 23 or 33, as an advanced practice registered
6 nurse pursuant to 26 V.S.A. chapter 28, or as a physician assistant pursuant to
7 26 V.S.A. chapter 31 who is authorized to diagnose and treat in the applicable
8 clinical setting.

9 (11) "Management services organization" means any organization or
10 entity that contracts with a health care provider or provider organization to
11 perform management or administrative services relating to, supporting, or
12 facilitating the provision of health care services.

13 (12)(A) "Material change transaction" means any of the following,
14 occurring during a single transaction or in a series of related transactions
15 involving a health care entity within the State that has total assets, annual
16 revenues, or anticipated annual revenues for new entities, of at least
17 \$1,000,000.00, including both in-state and out-of-state assets and revenues:

18 (i) a corporate merger including one or more health care entities;

19 (ii) an acquisition of one or more health care entities, including

20 insolvent health care entities,

1 ~~(iii) any affiliation, arrangement, or contract that results in a~~
2 change of control for a health care entity;

3 (iv) the formation of a partnership, joint venture, accountable care
4 organization, parent organization, or management services organization for the
5 purpose of administering contracts with health insurers, third-party
6 administrators, pharmacy benefit managers, or health care providers;

7 (v) a sale, purchase, lease, affiliation, or transfer of control of a
8 board of directors or governing body of a health care entity;

9 (vi) a real estate sale or lease agreement involving a material
10 amount of assets of a health care entity; or

11 (vii) the closure of a health care facility, or the closure,
12 discontinuance, or significant reduction of any essential health service
13 provided by a health care entity that is either a provider organization or health
14 care facility or any new contracts or clinical or contractual affiliations that will
15 eliminate or significantly reduce essential services.

16 (B) "Material change transaction" does not include any of the
17 following:

18 (i) a clinical affiliation of health care entities formed solely for the
19 purpose of collaborating on clinical trials;

20 ~~(ii) graduate medical education programs,~~

1 ~~(iii) the mere offer of employment to, or hiring of, an individual~~
2 health care provider; or

3 (iv) situations in which the health care entity directly, or indirectly
4 through one or more intermediaries, already controls, is controlled by, or is
5 under common control with, all other parties to the transaction, such as a
6 corporate restructuring.

7 (13) "Medical practice" means a corporate entity or partnership
8 organized for the purpose of practicing medicine and permitted to practice
9 medicine in this State, including partnerships, professional corporations,
10 limited liability companies, and limited liability partnerships.

11 (14) "Noncompetition agreement" means a written agreement between a
12 licensee and another person in which the licensee agrees that the licensee,
13 either alone or as an employee, associate, or affiliate of a third person, will not
14 compete with the other person in providing products, processes, or services
15 that are similar to the other person's products, processes, or services for a
16 period of time or within a specified geographic area after termination of
17 employment or termination of a contract under which the licensee supplied
18 goods to or performed services for the other person.

19 (15) "Nondisclosure agreement" means a written agreement under the
20 terms of which a licensee must refrain from disclosing partially, fully, directly,
21 or indirectly to any person, other than another party to the written agreement

1 or to a person specified in the agreement as a third-party beneficiary of the
2 agreement:

3 (A) a policy or practice that a party to the agreement required the
4 licensee to use in patient care, other than individually identifiable health
5 information that the licensee must not disclose under the Health Insurance
6 Portability and Accountability Act of 1996, Pub. L. No. 104-191;

7 (B) a policy, practice, or other information about or associated with
8 the licensee's employment, conditions of employment, or rate or amount of
9 pay or other compensation; or

10 (C) any other information the licensee possesses or to which the
11 licensee has access by reason of the licensee's employment by, or provision of
12 services for or on behalf of, a party to the agreement, other than information
13 that is subject to protection under applicable law as a trade secret of, or
14 otherwise proprietary to, another party to the agreement or to a person
15 specified in the agreement as a third-party beneficiary of the agreement.

16 (16) "Nondisparagement agreement" means a written agreement under
17 which a licensee must refrain from making to a third party a statement about
18 another party to the agreement or about another person specified in the
19 agreement as a third-party beneficiary of the agreement, the effect of which
20 causes or threatens to cause harm to the other party's or person's reputation,
21 business relations, or other economic interests.

1 ~~(17) “Ownership or investment interest” means any of the following:~~

2 ~~(A) direct or indirect possession of equity in the capital, stock, or~~
3 ~~profits totaling more than five percent of an entity;~~

4 ~~(B) interest held by an investor or group of investors who engage in~~
5 ~~the raising or returning of capital and who invest, develop, or dispose of~~
6 ~~specified assets; or~~

7 ~~(C) interest held by a pool of funds by investors, including a pool of~~
8 ~~funds managed or controlled by private limited partnerships, if those investors~~
9 ~~or the management of that pool or private limited partnership employs~~
10 ~~investment strategies of any kind to earn a return on that pool of funds.~~

11 ~~(18) “Private equity fund” means a publicly traded or nonpublicly~~
12 ~~traded company that collects capital investments from individuals or entities~~
13 ~~and purchases a direct or indirect ownership share or controlling interest of a~~
14 ~~health care entity.~~

15 ~~(19) “Provider organization” means any corporation, partnership,~~
16 ~~business trust, association, or organized group of persons that is in the business~~
17 ~~of health care delivery or management, whether incorporated or not, that~~
18 ~~represents one or more health care providers in contracting with health insurers~~
19 ~~for payment for health care services. The term includes physician~~
20 ~~organizations, physician-hospital organizations, independent practice~~
21 ~~associations, provider networks, accountable care organizations, management~~

1 ~~services organizations, and any other organization that contracts with health~~
2 ~~insurers for payment for health care services.~~

3 ~~(20) "Significant equity investor" means:~~

4 ~~(A) any private equity fund with a direct or indirect ownership or~~
5 ~~investment interest in a health care facility;~~

6 ~~(B) an investor, group of investors, or other entity with a direct or~~
7 ~~indirect possession of equity in the capital, stock, or profits totaling more than~~
8 ~~10 percent of a provider or provider organization; or~~

9 ~~(C) any private equity fund, investor, group of investors, or other~~
10 ~~entity with a direct or indirect controlling interest in a health care entity or that~~
11 ~~operates the business or substantially all the property of a health care entity~~
12 ~~under a lease, management, or operating agreement.~~

13 Subchapter 2. Prohibited Transactions

14 § 9525. PROHIBITED TRANSACTIONS

15 (a) The following transactions are prohibited:

16 (1) a transaction that would give a party ownership of the core business
17 operations of an essential community provider, as defined in 45 C.F.R.
18 § 156.235(c);

19 (2) a transaction that involves financing the acquisition of a health care
20 entity through the use of debt that will become an obligation of one or more of
21 the health care entities that are party to the transaction,

1 ~~(3) a transaction that involves issuing dividends or other shareholder~~
2 returns financed by debt that will become an obligation of one or more of the
3 health care entities that are party to the transaction;

4 (4) a transaction that involves entering into any contract or other service
5 or purchasing an arrangement with an affiliated legal entity, except for a contract
6 or arrangement to provide services or products, or both, that are necessary to
7 accomplish the legitimate health care purposes of the relevant health care
8 entity and the contract or arrangement provides for compensation or
9 reimbursement that is consistent with the fair market value of the services
10 rendered or products delivered; or

11 (5) a transaction that would result in one or more health care entities
12 that does not accept, or that places limitations on, patients covered by
13 Medicaid, original Medicare, or Medicare Advantage.

14 (b) Nothing in this section shall be construed to limit or alter any existing
15 authority of the Attorney General or any other State agency to enforce any
16 other law, including State or federal antitrust law, or to review transactions
17 involving nonprofit entities.

18 Subchapter 3. Prohibition on Corporate Practice of Medicine

19 § 9531. CORPORATE PRACTICE OF MEDICINE PROHIBITED

20 (a) It is unlawful for an individual, corporation, partnership, or
21 any other entity without a license under 26 V.S.A. chapter 25 or 33 to own a

1 ~~medical practice, employ licensees, or otherwise engage in the practice of~~
2 medicine.

3 (b) Notwithstanding subsection (a) of this section, an individual,
4 corporation, partnership, or any other entity without a license under 26 V.S.A.
5 chapter 23 or 33 that is permitted to employ licensees under section 9532 of
6 this chapter shall not indirectly or directly interfere with, control, or otherwise
7 direct the professional judgment or clinical decisions of a licensee.

8 § 9532. CORPORATE ENTITIES PERMITTED TO EMPLOY

9 PHYSICIANS

10 (a) A medical practice organized for the purpose of practicing medicine
11 may employ physicians and engage in the practice of medicine only if all of
12 the following conditions are met:

13 (1) Licensees who are licensed in this State to practice medicine must
14 hold the majority of each class of shares that are entitled to vote.

15 (2) Licensees who are licensed in this State to practice medicine must
16 comprise a majority of the directors.

17 (3) All officers except the secretary and treasurer, if any, must be
18 licensees who are licensed in this State to practice medicine. The same
19 individual may hold any two or more offices.

1 ~~(b) Notwithstanding any provision of subsection (a) of this section to the~~
2 contrary, the following entities may employ physicians and engage in the
3 practice of medicine:

4 (1) federally qualified health centers;

5 (2) rural health clinics;

6 (3) free and referral clinics;

7 (4) nonprofit hospitals;

8 (5) hospitals and other health care facilities owned or operated, or both,

9 by the State;

10 (6) ambulatory surgical centers; and

11 (7) school-based health clinics, including student health centers at

12 postsecondary schools.

13 § 9533. REGULATION OF CONTRACTS BETWEEN MEDICAL

14 PRACTICES AND MANAGEMENT SERVICES

15 ORGANIZATIONS

16 (a) Prohibition on straw ownership.

17 (1) Each licensee owner of a medical practice shall exhibit meaningful
18 ownership of the medical practice.

19 (2) Meaningful ownership means that each licensee owner is duly
20 licensed and present in this State and is substantially engaged in delivering
21 medical care or managing the medical practice, or both.

1 ~~(b) Prohibition on dual ownership or interests.~~

2 ~~(1) Except as provided in subdivision (2) of this subsection, a~~
3 ~~shareholder, director, or officer of a medical practice shall not do any of the~~
4 ~~following:~~

5 ~~(A) own or control shares in, serve as a director or officer of, be an~~
6 ~~employee of or an independent contractor with, or otherwise participate in~~
7 ~~managing both the medical practice and a management services organization~~
8 ~~with which the medical practice has a contract; or~~

9 ~~(B) receive substantial compensation or remuneration from a~~
10 ~~management services organization in return for ownership or management of~~
11 ~~the medical practice.~~

12 ~~(2) Subdivision (1) of this subsection shall not apply to the~~
13 ~~shareholders, directors, or officers of a medical practice if the medical practice~~
14 ~~owns a majority of the interest in the management services organization or~~
15 ~~separate legal entity.~~

16 ~~(c) Prohibition on stock transfer restriction agreements.~~

17 ~~(1) A medical practice shall not transfer or relinquish control over the~~
18 ~~sale, the restriction of the sale, or the encumbrance of the sale of the medical~~
19 ~~practice's shares or assets.~~

20 ~~(2) A medical practice shall not transfer or relinquish control over the~~
21 ~~issuing of shares of stock in the medical practice, in a subsidiary of the~~

1 ~~medical practice or an entity affiliated with the medical practice, or the paying~~
2 ~~of dividends.~~

3 (d) Prohibition on restrictive covenants.

4 (1) Noncompetition agreements.

5 (A) Except as provided in subdivision (B) of this subdivision (d)(1),
6 a noncompetition agreement between a licensee and another person is void and
7 unenforceable.

8 (B) Notwithstanding subdivision (A) of this subdivision (d)(1), a
9 noncompetition agreement between a licensee and another person is valid and
10 enforceable if the licensee is a shareholder or member of the other person or
11 otherwise owns or controls an ownership or membership interest that is
12 equivalent to 25 percent or more of the entire ownership or membership
13 interest that exists in the other person.

14 (2) Nondisclosure and nondisparagement agreements.

15 (A) Except as provided in subdivision (B) of this subdivision (d)(2),
16 a nondisclosure agreement or nondisparagement agreement between a licensee
17 and a management services organization is void and unenforceable.

18 (B) Subdivision (A) of this subdivision (d)(2) shall not be deemed to
19 limit or otherwise affect any cause of action that:

20 (i) a party to, or third-party beneficiary of, the agreement may
21 have with respect to a statement of a licensee that constitutes libel, slander, a

1 ~~tortious interference with contractual relations, or another tort for which the~~
2 party has a cause of action against the licensee; and

3 (ii) does not depend upon or derive from a breach or violation of
4 an agreement described in subdivision (1) of this subsection (d).

5 (e) Limitations on advertising. It is unlawful for a management services
6 organization or other legal entity that is not the medical practice to advertise
7 the medical practice's services under the name of the entity that is not the
8 medical practice.

9 (f) Prohibition on relinquishing control of medical practice.

10 (1) A medical practice shall not, by means of a contract or other
11 agreement or arrangement, by providing in the medical practice's articles of
12 incorporation or bylaws, by forming a subsidiary or affiliated entity, or by
13 other means, relinquish control over or otherwise transfer de facto control over
14 any of the medical practice's administrative, business, or clinical operations
15 that may affect clinical decision making or the nature or quality of medical
16 care that the medical practice delivers.

17 (2) Conduct prohibited under subdivision (1) of this subsection
18 includes relinquishing ultimate decision-making authority over:

19 (A) hiring or termination, setting work schedules and compensation,
20 or otherwise specifying terms of employment of employees who are licensed

1 to practice medicine in this State or who are licensed in this State as a

2 physician assistant or advanced practice registered nurse;

3 (B) the disbursement of revenue generated from physician fees and
4 other revenue generated by physician services;

5 (C) collaboration and negotiation with hospitals and other health care
6 facilities in which the licensees of the medical practice may deliver clinical
7 care, including controlling licensee schedules as a means of discipline;

8 (D) setting staffing levels, or specifying the period of time that a
9 licensee may spend with a patient, for any location that serves patients;

10 (E) making diagnostic coding decisions;

11 (F) setting clinical standards or policies;

12 (G) setting policies for patient, client, or customer billing and
13 collection;

14 (H) setting the prices, rates, or amounts the medical practice charges
15 for a licensee's services; or

16 (I) negotiating, executing, performing, enforcing, or terminating
17 contracts with third-party payers or persons who are not employees of the
18 medical practice.

19 (3) The conduct described in subdivision (2) of this subsection does not
20 prohibit.

1 ~~(A) collection of quality metrics as required by law or in accordance~~
2 ~~with an agreement to which the medical practice is a party; or~~

3 ~~(B) setting criteria for reimbursement under a contract between the~~
4 ~~medical practice and an insurer or a payer or entity that otherwise reimburses~~
5 ~~the medical practice for providing medical care.~~

6 ~~(4) A medical practice may relinquish or transfer control over the~~
7 ~~medical practice's administrative, business, or clinical operations that will not~~
8 ~~affect clinical decision making or the nature or quality of medical care that the~~
9 ~~medical practice delivers, provided that the medical practice executes a~~
10 ~~shareholder agreement exclusively between or among and for the benefit of a~~
11 ~~majority of shareholders who are physicians licensed in this State to practice~~
12 ~~medicine and the shareholder agreement.~~

13 § 9534. PROTECTIONS FOR EMPLOYED LICENSEES

14 (a) Application. The provisions set forth in this section apply to licensees
15 who are employed by, or who provide health care services under contract with,
16 an unlicensed person, corporation, or other entity under section 9532 of this
17 chapter.

18 (b) Prohibition on restrictive covenants.

19 (1) Noncompetition agreements. A noncompetition agreement between
20 a licensee and an employer or other entity is void and unenforceable.

21 ~~(2) Nondisclosure and nondisparagement agreements.~~

1 ~~(A) Except as provided in subdivision (B) of this subdivision (b)(2),~~
2 a nondisclosure agreement or nondisparagement agreement between a licensee
3 and an employer or other entity is void and unenforceable.

4 (B) Subdivision (A) of this subdivision (b)(2) shall not be deemed to
5 limit or otherwise affect any cause of action that:

6 (i) a party to, or third-party beneficiary of, the agreement may
7 have with respect to a statement of a licensee that constitutes libel, slander, a
8 tortious interference with contractual relations, or another tort for which the
9 party has a cause of action against the licensee; and

10 (ii) does not depend upon or derive from a breach or violation of
11 an agreement described in subdivision (1) of this subsection (b).

12 (c) Prohibition on directing licensee's professional judgment or clinical
13 decisions. Conduct prohibited under subsection 9531(b) of this chapter
14 includes controlling, either directly or indirectly, through discipline,
15 punishment, threats, adverse employment actions, coercion, retaliation,
16 excessive pressure, or otherwise, any one or more of the following:

17 (1) the period of time a licensee may spend with a patient, including the
18 time permitted for a licensee to triage patients in the emergency department or
19 evaluate admitted patients;

20 ~~(2) the period of time within which a licensee must discharge a patient,~~

1 ~~(3) the clinical status of a patient, including whether the patient should~~
2 ~~be admitted to inpatient status, whether the patient should be kept in~~
3 ~~observation status, whether the patient should receive palliative care, and~~
4 ~~whether and where the patient should be referred upon discharge, such as a~~
5 ~~skilled nursing facility;~~

6 ~~(4) the diagnoses, diagnostic terminology, or codes that are entered into~~
7 ~~the medical record by the licensee;~~

8 ~~(5) the range of clinical orders available to licensees, including by~~
9 ~~configuring the medical record to prohibit or significantly limit the options~~
10 ~~available to the licensee; or~~

11 ~~(6) any other action specified by rule to constitute impermissible~~
12 ~~interference or control over the clinical judgment and decision making of a~~
13 ~~licensee.~~

14 Subchapter 4. Transparency in Ownership and Control of Health Care Entities

15 § 9541. REPORTING OF OWNERSHIP AND CONTROL OF HEALTH

16 CARE ENTITIES

17 (a) Except as otherwise provided in subsection (b) of this section, each
18 health care entity shall report to the Attorney General and the Green Mountain
19 Care Board at least once every two years and upon the consummation of a
20 material change transaction involving the entity, in a form and manner
21 required by the Green Mountain Care Board, the following information.

- 1 ~~(1) the health care entity's legal name;~~
- 2 ~~(2) the health care entity's business address;~~
- 3 ~~(3) the locations of the health care entity's operations;~~
- 4 ~~(4) the health care entity's business identification numbers, as~~
5 ~~applicable, including:~~
- 6 ~~(A) taxpayer identification number (TIN);~~
- 7 ~~(B) national provider identifier (NPI);~~
- 8 ~~(C) employer identification number (EIN);~~
- 9 ~~(D) Centers for Medicare and Medicaid Services certification number~~
10 ~~(CCN);~~
- 11 ~~(E) National Association of Insurance Commissioners (NAIC)~~
12 ~~identification number;~~
- 13 ~~(F) a personal identification number associated with a license issued~~
14 ~~by the Department of Financial Regulation; and~~
- 15 ~~(G) a pharmacy benefit manager identification number associated~~
16 ~~with a license issued to a pharmacy benefit manager in the State;~~
- 17 ~~(5) the name and contact information of a representative of the health~~
18 ~~care entity;~~
- 19 ~~(6) the name, business address, and business identification numbers~~
20 ~~listed in subdivision (4) of this subsection for each person who, with respect to~~
21 ~~the relevant health care entity.~~

- 1 ~~(A) has an ownership or investment interest;~~
- 2 (B) has a controlling interest;
- 3 (C) is a management services organization; or
- 4 (D) is a significant equity investor;
- 5 (7) a current organizational chart showing the business structure of the
6 health care entity, including:
- 7 (A) any entity listed in subdivision (6) of this subsection (a);
- 8 (B) affiliates, including entities that control or are under common
9 control as the health care entity; and
- 10 (C) subsidiaries;
- 11 (8) for a health care entity that is a provider organization or a health
12 care facility:
- 13 (A) the affiliated health care providers identified by name, license
14 type, specialty, NPI, and other applicable identification number listed in
15 subdivision (4) of this subsection (a); the address of each health care
16 provider's principal practice location; and whether the health care provider is
17 employed or contracted by the entity; and
- 18 (B) the name and address of affiliated health care facilities by license
19 number, license type, and capacity;
- 20 ~~(9) the names, NPI, if applicable, and compensation of.~~

1 ~~(A) the members of the health care entity's governing board, board~~
2 ~~of directors, or similar governance body;~~

3 ~~(B) any entity that is owned or controlled by, affiliated with, or under~~
4 ~~common control as the health care entity; and~~

5 ~~(C) any entity listed in subdivision (6) of this subsection (a); and~~

6 ~~(10) comprehensive financial reports of the health care entity and any~~
7 ~~ownership and control entities, including audited financial statements, cost~~
8 ~~reports, annual costs, annual receipts, realized capital gains and losses,~~
9 ~~accumulated surplus, and accumulated reserves.~~

10 ~~(b) The following health care entities are exempt from the reporting~~
11 ~~requirements set forth in subsection (a) of this section:~~

12 ~~(1) a health care entity that is an independent provider organization,~~
13 ~~without any ownership or control entities, consisting of two or fewer~~
14 ~~physicians; provided, however, that if such health care entity experiences a~~
15 ~~material change transaction under subchapter 2 of this chapter, the health care~~
16 ~~entity is subject to reporting under subsection (a) of this section upon the~~
17 ~~consummation of the transaction; and~~

18 ~~(2) a health care provider or provider organization that is owned or~~
19 ~~controlled by another health care entity, if the health care provider~~
20 ~~organization is shown in the organizational chart submitted under subdivision~~
21 ~~(a)(7) of this section and the controlling health care entity reports all the~~

1 ~~information required under subsection (a) of this section on behalf of the~~
2 ~~controlled or owned entity; provided, however, that health care facilities are~~
3 ~~not subject to this exemption.~~

4 § 9542. SHARING OF OWNERSHIP INFORMATION TO IMPROVE
5 TRANSPARENCY

6 (a) Information provided under this section shall be public information and
7 shall not be considered confidential, proprietary, or a trade secret; provided,
8 however, that any individual health care provider's taxpayer ID that is also the
9 individual's Social Security number shall be exempt from public inspection
10 and copying under the Public Records Act and shall be kept confidential.

11 (b) On or before February 1, 2027, and every two years thereafter, the
12 Green Mountain Care Board shall post on its website a report with respect to
13 the previous two-year period, including:

14 (1) the number of health care entities reporting for such year,
15 disaggregated by the business structure of each specified entity;

16 (2) the names, addresses, business structure of any entities with an
17 ownership or controlling interest in each health care entity;

18 (3) any change in ownership or control for each health care entity;

19 (4) any change in the tax identification number of a health care entity;

20 (5) as applicable, the name, address, tax identification number, and
21 business structure of other affiliates under common control, subsidiaries, and

1 ~~management services entities as the health care entity, including the business~~
2 type and the tax identification number of each; and

3 (c) an analysis of trends in horizontal and vertical consolidation,
4 disaggregated by business structure and provider type.

5 (c) The Green Mountain Care Board may share information reported under
6 this subchapter with the Attorney General, the Secretary of State, other State
7 agencies, and other State officials to reduce or avoid duplication in reporting
8 requirements or to facilitate oversight or enforcement pursuant to the Vermont
9 law, or both, and any tax identification numbers that are individual Social
10 Security numbers may be shared with the Attorney General, other State
11 agencies, and other State officials who agree to maintain the confidentiality of
12 such information. The Board may, in consultation with the relevant State
13 agencies, merge similar reporting requirements where appropriate.

14 Subchapter 5. Enforcement of Chapter

15 § 9547. ENFORCEMENT OF CHAPTER

16 (a) A violation of this chapter shall be deemed a violation of the Consumer
17 Protection Act, 9 V.S.A. chapter 63. The Attorney General shall have the
18 same authority as provided in 9 V.S.A. chapter 63, subchapter 1.

19 (b) Notwithstanding any provision of 9 V.S.A. § 2458 to the contrary:

20 (1) for a violation of section 9531, 9532, or 9534 of this chapter, the
21 civil penalty imposed shall be not more than \$10,000.00 per violation, and

1 ~~(2) for a violation of section 9525 or 9523 of this chapter, the civil~~
2 ~~penalty imposed shall be not less than \$100,000.00 per violation.~~

3 ~~(c) Penalties collected pursuant to this section shall be deposited in the~~
4 ~~Transaction Oversight and Clinical Decision-Making Fund established~~
5 ~~pursuant to section 9548 of this chapter.~~

6 ~~§ 9548. TRANSACTION OVERSIGHT AND CLINICAL DECISION-~~
7 ~~MAKING FUND~~

8 ~~There is established the Transaction Oversight and Clinical Decision-~~
9 ~~Making Fund as a special fund pursuant to 32 V.S.A. chapter 7, subchapter 5,~~
10 ~~for the purpose of providing a financial means for the Office of the Attorney~~
11 ~~General to administer its duties under this chapter, including hiring outside~~
12 ~~experts and investigators as needed. The Fund shall consist of the penalty~~
13 ~~sums collected pursuant to section 9547 of this chapter.~~

14 Sec. 2. EFFECTIVE DATE

15 ~~This act shall take effect on July 1, 2026.~~

Sec. 1. 18 V.S.A. chapter 233 is added to read:

CHAPTER 233. CLINICAL DECISION MAKING

§ 9771. DEFINITIONS

As used in this chapter:

(1) "Health care facility" has the same meaning as in section 9432 of
this title.

(2) “Health care provider” has the same meaning as in section 9402 of this title.

(3) “Health care services” has the same meaning as in section 9481 of this title and includes all of the following:

(A) inpatient; outpatient; habilitative; rehabilitative; dental; palliative, including hospice; therapeutic; supportive; nursing home; home health; mental health; and substance use disorder services, provided by a health care facility;

(B) pharmacy services, including drugs, devices, and medical supplies;

(C) performance of functions to refer, arrange, and coordinate care;

(D) durable medical equipment, diagnostic equipment, surgical devices, and infusion equipment; and

(E) technology associated with providing the services and equipment set forth in subdivisions (A)–(D) of this subdivision (3), such as telehealth, electronic health records, software, claims processing, and utilization systems.

(4) “Health care staffing company” means a person engaged in the business of providing or procuring health care personnel for temporary employment or contracting by a health care facility, but does not include an individual who independently provides the individual’s own services on a temporary basis to health care facilities as an employee or contractor.

(5)(A) “Hedge fund” means a pool of funds managed by investors for the purpose of earning a return on those funds, regardless of the strategies used to manage the funds. Hedge funds include a pool of funds managed or controlled by private limited partnerships.

(B) “Hedge fund” does not include:

(i) individuals or entities that contribute, or promise to contribute, funds to a hedge fund but do not participate in the management of the hedge fund or the fund’s assets or in any change of control of the hedge fund or the fund’s assets; or

(ii) entities that solely provide or manage debt financing secured in whole or in part by the assets of a health care facility, including banks, credit unions, commercial real estate lenders, bond underwriters, and trustees.

(6) “Management services organization” means any organization or entity that contracts with a health care provider or provider organization to perform management or administrative services relating to, supporting, or facilitating the provision of health care services.

(7) “Ownership or investment interest” means any of the following:

(A) direct or indirect possession of equity in the capital, stock, or profits totaling more than five percent of an entity;

(B) interest held by an investor or group of investors who engage in the raising or returning of capital and who invest, develop, or dispose of specified assets; or

(C) interest held by a pool of funds by investors, including a pool of funds managed or controlled by private limited partnerships, if those investors or the management of that pool or private limited partnership employs investment strategies of any kind to earn a return on that pool of funds.

(8)(A) “Private equity group” means an investor or group of investors who primarily engage in the raising or returning of capital and who invest, develop, dispose of, or purchase any equity interest in assets, either as a parent company or through another entity the investor or investors completely or partially own or control.

(B) “Private equity group” does not include individuals or entities that contribute, or promise to contribute, funds to the private equity group but otherwise do not participate in the management of the private equity group or the group’s assets, or in any change in control of the private equity group or the group’s assets.

(9) “Provider organization” means any corporation, partnership, business trust, association, or organized group of persons that is in the business of health care delivery or management, whether incorporated or not, that represents one or more health care providers in contracting with health

insurers for payment for health care services. The term includes physician organizations, physician-hospital organizations, independent practice associations, provider networks, accountable care organizations, management services organizations, and any other organization that contracts with health insurers for payment for health care services.

(10) "Significant equity investor" means:

(A) any private equity group with a direct or indirect ownership or investment interest in a health care facility or management services organization;

(B) an investor, group of investors, or other entity with a direct or indirect possession of equity in the capital, stock, or profits totaling more than 10 percent of a health care provider or provider organization; or

(C) any private equity group, investor, group of investors, or other entity with a direct or indirect controlling interest in a health care facility or management services organization or that operates the business or substantially all the real or personal property, or both, of a health care facility or management services organization under a lease, management, or operating agreement.

§ 9772. LIMITATIONS ON CONTROL OVER CLINICAL DECISION

MAKING BY PRIVATE EQUITY GROUP OR HEDGE FUND

(a) The purpose of this section is to ensure that clinical decision making and treatment decisions are exclusively in the hands of health care providers and to safeguard against nonlicensed individuals or entities, such as private equity groups and hedge funds, exerting influence or control over health care delivery.

(b) A private equity group or hedge fund involved in any manner with a health care facility doing business in this State, including as an investor in a health care facility or as an investor or owner of the assets of a health care facility, shall not do any of the following with respect to the health care facility:

(1) interfere with the judgment of health care providers in making health care decisions, including any of the following:

(A) determining which diagnostic tests are appropriate for a particular condition;

(B) determining the need for referrals to or consultation with another health care provider;

(C) determining the patient's care plan, including the treatment options available to the patient; and

(D) determining how many patients a health care provider shall see in any given period of time or how many hours a health care provider shall work; or

(2) exercise control over, or be delegated the power to do, any of the following:

(A) setting clinical standards or policies, including clinical staffing levels;

(B) controlling or otherwise determining the content of patient medical records;

(C) hiring or firing health care providers, clinical staff, or medical assistants, or any combination of these, based in whole or in part on clinical competency or proficiency;

(D) setting the parameters under which a health care provider or health care facility shall enter into contractual relationships with third-party payers;

(E) setting the prices, rates, or amounts the health care facility charges for a health care provider's services;

(F) setting the clinical competency or proficiency parameters under which a health care provider shall enter into contractual relationships with other health care providers for the delivery of health care services;

(G) making decisions regarding the coding and billing of diagnoses and procedures for patient care services; and

(H) selecting or approving the selection of medical equipment and medical supplies for the health care facility.

(c) A private equity group or hedge fund, or an entity controlled directly in whole or in part by a private equity group or hedge fund, shall not enter into an agreement or arrangement with a health care facility doing business in this State if the agreement or arrangement would enable the person to interfere with the ability of health care providers to make health care decisions, as set forth in subdivision (b)(1) of this section, or to exercise control over or be delegated the powers set forth in subdivision (b)(2) of this section.

(d)(1) The organizational form of a health care facility as a sole proprietorship, partnership, foundation, or corporate entity of any kind shall not affect the applicability of this section.

(2) Nothing in this section shall be construed to prohibit an unlicensed individual or entity from providing nonclinical management, administrative, or business services to; assisting; or consulting with a health care facility doing business in this State with respect to the decisions and activities described in subdivision (b)(2) of this section, provided that a licensed health care provider retains the ultimate responsibility for or approval of those decisions and activities and the services provided do not constitute an exercise of de facto

control over the administrative, business, or clinical operations of a health care facility in a manner that affects a health care provider's clinical decision making or the nature or quality of the health care services that the health care facility delivers.

(e) A health care provider who is aggrieved by the actions of a private equity group or hedge fund, or an entity controlled directly in whole or in part by a private equity group or hedge fund, in violation of this section may bring an action in Superior Court for appropriate equitable relief, actual damages, reasonable costs, and attorney's fees.

§ 9773. REPORTING OF OWNERSHIP AND CONTROL OF CERTAIN

HEALTH CARE ENTITIES

(a) On or before ~~July 1, 2026~~ March 1, 2027, each health care facility and each management services organization shall provide to the Green Mountain Care Board either:

(1) for a health care facility or management services organization in which one or more private equity groups or hedge funds held an ownership or investment interest as of June 1, 2026, the information required by subsection (b) of this section; or

(2) for a health care facility or management services organization in which no private equity group or hedge fund held an ownership or investment interest as of June 1, 2026, an attestation that the health care facility or

management services organization currently has no private equity or hedge fund ownership or investment.

(b) Each health care facility or management services organization in which one or more private equity groups or hedge funds holds an ownership or investment interest as of June 1, 2026, shall report the following information to the Green Mountain Care Board, in a form and manner required by the Board:

(1) the name, business address, and business identification numbers for each person that, with respect to the relevant health care facility or management services organization:

(A) has an ownership or investment interest;

(B) has a controlling interest;

(C) for health care facilities only, is a management services organization; or

(D) is a significant equity investor;

(2) a current organizational chart showing the business structure of the health care facility or management services organization, including:

(A) any entity listed in subdivision (1) of this subsection (b);

(B) affiliates, including entities that control or are under common control as the health care facility or management services organization; and

(C) subsidiaries; and

(3) the health care facility's or management services organization's most recent fiscal year's profit and loss statement and balance sheet.

(c) After ~~July 1, 2026~~ March 1, 2027, a health care facility or management services organization shall report the information described in subsection (b) of this section any time that:

(1) a private equity group or hedge fund takes on an ownership or investment interest in the health care facility or management services organization that had not previously been reported to the Green Mountain Care Board in accordance with subsection (b) of this section; or

(2) there is a modification to a private equity group's or hedge fund's existing ownership or investment interest in the health care facility or management services organization.

(d) The Green Mountain Care Board shall collaborate with relevant stakeholders to develop the processes for reporting data pursuant to this section and the Agency of Human Services shall provide relevant, necessary data to the Board.

~~(d)~~(e) The following entities are exempt from the reporting requirements set forth in this section:

(1) nursing homes, as defined in 33 V.S.A. § 7102;

(2) health care staffing companies;

(3) federally qualified health centers; and

(4) entities whose health care services delivered in Vermont are provided exclusively through telehealth, including services delivered using telemedicine and store-and-forward means, as those terms are defined in 8 V.S.A. § 4098a, and all forms of remote patient monitoring.

~~(e)~~(f) Information provided pursuant to this section shall be public information and shall not be considered confidential, proprietary, or a trade secret, except that:

(1) any individual health care provider's taxpayer ID that is also the individual's Social Security number, and any nonbusiness telephone number, email address, physical address, or mailing address of any individual health care provider, shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential; and

(2) all profit and loss statements and balance sheets submitted pursuant to subdivision (b)(3) of this section shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the Board shall provide copies of these materials, or the information contained in them, to the Office of the Health Care Advocate, which shall not further disclose this confidential information.

~~(f)~~(g)(1) A health care facility or management services organization that knowingly fails to report the information required by this section is liable to the State for a civil penalty of not more than \$50.00 for each day, not to exceed

a total of \$10,000.00 for each year, that it fails to report the required information.

(2) A health care facility or management services organization that makes a material misrepresentation in a report required under this section is liable to the State for a civil penalty of not more than \$25,000.00 for each material misrepresentation included in the report.

(3) The Attorney General may maintain an action in Superior Court to collect the penalties imposed in this subsection and to seek appropriate injunctive relief.

§ 9774. SHARING OF OWNERSHIP INFORMATION TO IMPROVE

TRANSPARENCY

(a) On or before ~~February~~ July 1, 2027, and every two years thereafter, the Green Mountain Care Board shall post on its website a report regarding the information provided to the Board pursuant to section 9773 of this chapter during the previous two-year period, including:

(1) the number of health care facilities and management services organizations reporting for such year, disaggregated by the business structure of each specified entity;

(2) the names, addresses, and business structure of any entities with an ownership or controlling interest in each health care facility or management services organization;

(3) any change in ownership or control for each health care facility or management services organization;

(4) any change in the tax identification number of a health care facility or management services organization; and

(5) as applicable, the name, address, tax identification number, and business structure of other affiliates under common control, subsidiaries, and management services entities as the health care facility or management services organization, including the business type and the tax identification number of each.

(b) Information provided pursuant to this section shall be public information and shall not be considered confidential, proprietary, or a trade secret; provided, however, that any individual health care provider's taxpayer ID that is also the individual's Social Security number shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

(c) The Green Mountain Care Board may share information reported under this chapter with the Attorney General, the Secretary of State, other State agencies, and other State officials to reduce or avoid duplication in reporting requirements or to facilitate oversight or enforcement pursuant to Vermont law, or both, and any tax identification numbers that are individual Social Security numbers and other confidential information may be shared with the Attorney

General, other State agencies, and other State officials who agree to maintain the confidentiality of such information. The Board may, in consultation with the relevant State agencies, merge similar reporting requirements where appropriate.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2026.