

1 S.28

2 An act relating to access to certain legally protected health care services

3 The House proposes to the Senate that the bill be amended by striking out
4 all after the enacting clause and inserting in lieu thereof the following:

5 Sec. 1. 1 V.S.A. § 150 is amended to read:

6 § 150. LEGALLY PROTECTED HEALTH CARE ACTIVITY

7 * * *

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

9 * * *

10 (4) The protections applicable to persons who engage in “legally
11 protected health care activity” shall also apply to a person who has previously
12 undertaken one or more acts or omissions while in another U.S. jurisdiction to
13 aid or encourage, or attempt to aid or encourage, any person in the exercise and
14 enjoyment, or attempted exercise and enjoyment, of rights to reproductive
15 health care services or gender-affirming health care services that would have
16 been protected by this State if they had been undertaken in this State, provided
17 that the acts or omissions were permissible under the laws of the jurisdiction in
18 which the person was located at the time they were undertaken.

19 * * *

1 Sec. 2. 1 V.S.A. § 317(c) is amended to read:

2 (c) The following public records are exempt from public inspection and
3 copying:

4 * * *

5 (44) Records held by the Office of Professional Regulation, Board of
6 Medical Practice, or another public agency that issues one or more licenses,
7 certificates, or registrations to engage in a State-regulated profession or
8 occupation if the records contain the telephone number, email address,
9 physical address, or mailing address, or a combination of these, of an
10 individual who has applied for or has been granted a license, certificate, or
11 registration to practice a profession or occupation in this State, except that the
12 public agency shall disclose any address that the individual has designated as a
13 public address in the record.

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

15 § 129a. UNPROFESSIONAL CONDUCT

16 (a) In addition to any other provision of law, the following conduct by a
17 licensee constitutes unprofessional conduct. When that conduct is by an
18 applicant or person who later becomes an applicant, it may constitute grounds
19 for denial of a license or other disciplinary action. Any one of the following

1 items or any combination of items, whether the conduct at issue was
2 committed within or outside the State, shall constitute unprofessional conduct:

3 (1) Fraudulent or deceptive procurement or use of a license.

4 (2) Advertising, including advertising about health care services, that is
5 intended or has a tendency to deceive or mislead.

6 * * *

7 (6) Delegating professional responsibilities, including the delivery of
8 health care services, to a person whom the licensed professional knows, or has
9 reason to know, is not qualified by training, experience, education, or licensing
10 credentials to perform them, or knowingly providing professional supervision
11 or serving as a preceptor to a person who has not been licensed or registered as
12 required by the laws of that person's profession.

13 * * *

14 (21) Permitting one's name or license to be used by a person, group, or
15 corporation when not actually in charge of ~~or~~ responsible for, or actively
16 overseeing the professional services provided.

17 * * *

18 (f)(1) Health care providers. Notwithstanding subsection (e) of this section
19 or any other law to the contrary, no health care provider who is certified,
20 registered, or licensed in Vermont shall be subject to professional disciplinary
21 action by a board or the Director, nor shall a board or the Director take adverse

1 action on an application for certification, registration, or licensure of a
2 qualified health care provider, based solely on:

3 * * *

4 (2) Definitions. As used in this subsection:

5 * * *

6 (B) "Health care services" means services for the diagnosis,
7 prevention, treatment, cure, or relief of a physical or mental health condition,
8 including counseling, procedures, products, devices, and medications.

9 * * *

10 Sec. 4. 9 V.S.A. chapter 63, subchapter 11 is amended to read:

11 Subchapter 11. ~~Pregnancy Services Centers~~ Health Care Services

12 § 2491. FINDINGS; LEGISLATIVE INTENT

13 ~~(a) Findings.~~ The General Assembly finds that:

14 (1) ~~Centers that seek to counsel clients against abortion, often referred to~~
15 ~~as crisis pregnancy centers or limited-services pregnancy centers, have become~~
16 ~~common across the country, including in Vermont. Accurate information~~
17 ~~about the services that a limited-services pregnancy center performs, in~~
18 ~~addition to forthright acknowledgement of its limitations, is essential to enable~~
19 ~~individuals in this State to make informed decisions about their care. This~~
20 ~~includes individuals being informed of whether they are receiving services~~
21 ~~from a licensed and qualified health care provider at a limited services~~

1 ~~pregnancy center, as this allows individuals to determine if they need to seek~~
2 ~~medical care elsewhere in order to continue or terminate a pregnancy.~~

3 ~~(2) Although some limited services pregnancy centers openly~~
4 ~~acknowledge in their advertising, on their websites, and at their facilities that~~
5 ~~they neither provide abortions nor refer clients to other providers of abortion~~
6 ~~services, others provide confusing and misleading information to pregnant~~
7 ~~individuals contemplating abortion by leading those individuals to believe that~~
8 ~~their facilities offer abortion services and unbiased counseling. Some limited~~
9 ~~services pregnancy centers have promoted patently false or biased medical~~
10 ~~claims about abortion, pregnancy, contraception, and reproductive health care~~
11 ~~providers.~~

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

20 ~~(4) Telling the truth is how trained health care providers demonstrate~~
21 ~~respect for patients, foster trust, promote self-determination, and cultivate an~~

1 environment where best practices in shared decision-making can flourish.

2 Without veracity in information and communication, it is difficult for
3 individuals to make informed, voluntary choices that are essential to one's
4 sense of personal agency and autonomy.

5 ~~(5)~~(2) Advertising strategies and educational information about health
6 care options that lack transparency, use misleading or ambiguous terminology,
7 misrepresent or obfuscate services provided, or provide factually inaccurate
8 information are a form of manipulation that disrespects individuals,
9 undermines trust, broadens health disparity, and can result in patient harm.

10 ~~(b) Intent.~~

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

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

1 § 2492. ~~DEFINITIONS~~ DEFINITION

2 As used in this subchapter:

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) ~~“Client” means an individual who is inquiring about or seeking~~
7 ~~services at a pregnancy services center.~~

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

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

14 (5) ~~“Limited services pregnancy center” means a pregnancy services~~
15 ~~center that does not directly provide, or provide referrals to clients for,~~
16 ~~abortions or emergency contraception.~~

17 (6) ~~“Pregnancy services center” means a facility, including a mobile~~
18 ~~facility, where the primary purpose is to provide services to individuals who~~
19 ~~are or may be pregnant and that either offers obstetric ultrasounds, obstetric~~
20 ~~sonograms, or prenatal care to pregnant individuals or has the appearance of a~~

1 ~~medical facility. A pregnancy services center has the appearance of a medical~~
2 ~~facility if two or more of the following factors are present:~~

3 ~~(A) The center offers pregnancy testing or pregnancy diagnosis, or~~
4 ~~both.~~

5 ~~(B) The center has staff or volunteers who wear medical attire or~~
6 ~~uniforms.~~

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

8 ~~(D) The center contains a private or semiprivate room or area~~
9 ~~containing medical supplies or medical instruments.~~

10 ~~(E) The center has staff or volunteers who collect health information~~
11 ~~from clients.~~

12 ~~(F) The center is located on the same premises as a State-licensed~~
13 ~~medical facility or provider or shares facility space with a State-licensed~~
14 ~~medical provider.~~

15 ~~(7) “Premises” means land and improvements or appurtenances or any~~
16 ~~part thereof “health care services” means all supplies, care, and services of a~~
17 medical, dental, behavioral health, mental health, substance use disorder
18 treatment, surgical, psychiatric, therapeutic, diagnostic, preventative,
19 rehabilitative, or supportive nature, including medication.

1 § 2493. UNFAIR AND DECEPTIVE ACT

2 (a) It is an unfair and deceptive act and practice in commerce and a
3 violation of section 2453 of this title for any ~~limited-services pregnancy center~~
4 person to disseminate or cause to be disseminated to the public any advertising
5 about ~~the~~ health care services or proposed services performed ~~at that center in~~
6 this State that is untrue or clearly designed to mislead the public about the
7 nature of the services provided. Advertising includes representations made
8 directly to consumers; marketing practices; communication in any print
9 medium, such as newspapers, magazines, mailers, or handouts; and any
10 broadcast medium, such as television or radio, telephone marketing, or
11 advertising over the ~~Internet~~ internet such as through websites ~~and~~, web ads
12 advertisements, and social media. For purposes of this chapter, advertising ~~or~~
13 ~~the provision of services by a limited-services pregnancy center~~ about health
14 care services is an act in commerce.

15 (b) ~~Health care providers certified, registered, or licensed under Title 26 of~~
16 ~~the Vermont Statutes Annotated who are employed by, contracted to provide~~
17 ~~services for or on behalf of, or volunteer to provide services at a limited-~~
18 ~~services pregnancy center shall be responsible for conducting and providing~~
19 ~~health care services, information, and counseling at the center. The failure of a~~
20 ~~health care professional certified, registered, or licensed under Title 26 of the~~
21 ~~Vermont Statutes Annotated to conduct or to ensure that health care services,~~

1 ~~information, and counseling at the limited services pregnancy services center~~
2 ~~are conducted in accordance with State law and professional standards of~~
3 ~~practice may constitute unprofessional conduct under 3 V.S.A. § 129a and 26~~
4 ~~V.S.A. § 1354. [Repealed.]~~

5 (c) The Attorney General has the same authority to make rules, conduct
6 civil investigations, and bring civil actions with respect to violations of
7 ~~subsection (a) of this section as provided under subchapter 1 of this chapter.~~
8 Sec. 5. 12 V.S.A. § 7306 is amended to read:

9 § 7306. NONCOOPERATION

10 (a) No public agency or employee, appointee, officer or official, or any
11 other ~~person~~ individual acting on behalf of a public agency may knowingly
12 provide any information or expend or use time, money, facilities, property,
13 equipment, personnel, or other resources in furtherance of any interstate or
14 federal investigation or proceeding seeking to impose civil or criminal liability
15 upon ~~a person~~ an individual or entity for:

16 (1) the provision, seeking or receipt of, or inquiring about legally
17 protected health care activity that is legal in this State; or

18 (2) assisting any ~~person~~ individual or entity providing, seeking,
19 receiving, or responding to an inquiry about legally protected health care
20 activity that is legal in this State.

1 (b) This section shall not apply to:

2 (1) any investigation or proceeding where the conduct subject to
3 potential liability under the investigation or proceeding would be subject to
4 liability under the laws of this State if committed in this State;

5 (2) any ~~action taken by the Judicial Branch in judicial proceedings~~ order
6 issued by a Vermont State court or a federal court; or

7 (3) a public agency or employee, appointee, officer or official, or any
8 other individual acting on behalf of a public agency who, in the course of
9 normal business, is responding to a warrant or extradition demand on the good
10 faith belief that the warrant or demand is valid in this State.

11 Sec. 6. 18 V.S.A. § 1881 is amended to read:

12 § 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

13 PROHIBITED

14 (a) As used in this section:

15 (1) “Business associate” has the same meaning as in 45 C.F.R. §
16 160.103.

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

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

20 (4) “Protected health information” has the same meaning as in 45 C.F.R.
21 § 160.103.

1 (5) “Telehealth” has the same meaning as in 26 V.S.A. § 3052.

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

5 (c)(1) ~~In~~ Notwithstanding any provision of subsection (b) of this section to
6 the contrary, in order to protect patients and providers who engage in legally
7 protected health care activity and except as set forth in in subdivision (2) of
8 this subsection, a covered entity or business associate shall not disclose
9 protected health information that is identifiable or susceptible to
10 reidentification and is related to a legally protected health care activity:

11 (A) to any government entity other than the State of Vermont or its
12 political subdivisions or instrumentalities if the covered entity or business
13 associate has reason to believe that the information will be used:

14 (i) to conduct a criminal, civil, administrative, or professional
15 disciplinary investigation into any individual for the mere act of seeking,
16 obtaining, providing, or facilitating a legally protected health care activity;

17 (ii) to impose criminal, civil, or administrative liability or
18 professional disciplinary action on any individual for the mere act of seeking,
19 obtaining, providing, or facilitating a legally protected health care activity; or

20 (iii) to identify any individual for any of the activities described in
21 subdivision (i) or (ii) of this subdivision (A); or

1 (B) for use in a civil or criminal action; a proceeding preliminary to a
2 civil or criminal action; or a probate, legislative, or administrative proceeding
3 ~~unless.~~

4 (2) Notwithstanding any provision of subdivision (1) of this subsection
5 to the contrary, a covered entity or business associate may disclose protected
6 health information that is identifiable or susceptible to reidentification and is
7 related to a legally protected health care activity if the disclosure meets one or
8 more of the following conditions:

9 ~~(1)(A)~~ (A) The disclosure is authorized by the patient or the patient's
10 conservator, guardian, or other authorized legal representative.

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

13 ~~(3)(B)~~ (B) The disclosure is ordered by a court of competent jurisdiction
14 pursuant to federal law, Vermont law, or rules adopted by the Vermont
15 Supreme Court. ~~An~~ A State court order compelling disclosure under this
16 subdivision (B) shall include the court's determination that ~~good cause exists~~
17 ~~to require disclosure of the information related to~~ the information will not be
18 used to impose criminal, civil, or administrative liability or professional
19 disciplinary action on any individual based solely on the fact that the person
20 sought, obtained, provided, or facilitated a legally protected health care
21 activity.

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

8 ~~(5)~~(D) The disclosure is to Vermont's Board of Medical Practice or
9 Office of Professional Regulation, as applicable, in connection with a bona fide
10 investigation in Vermont of a licensed, certified, or registered health care
11 provider or a bona fide investigation of whether an individual who is not
12 licensed, certified, or registered to practice a health care profession in Vermont
13 engaged in unauthorized practice in this State, whether in person or through
14 telehealth.

15 ~~(6)~~(E) The disclosure is to the Vermont Department of Health or the
16 Vermont Department of Disabilities, Aging, and Independent Living, or both,
17 in connection with a bona fide investigation of a licensed health care facility in
18 Vermont.

19 (F) Subject to the limitations set forth in 12 V.S.A. § 7306, the
20 disclosure is required in the ordinary course of business of Vermont's
21 Medicaid program.

1 (5) “Natural organic reduction” has the same meaning as in section 5302
2 of this title.

3 Sec. 9. 18 V.S.A. § 5222 is amended to read:

4 § 5222. REPORTS

5 (a)(1) The following fetal deaths shall be reported by the hospital,
6 ~~physician~~ licensed health care professional, or funeral director directly to the
7 Commissioner within seven days after delivery on forms prescribed by the
8 Department:

9 (1)(A) All fetal deaths of 20 or more weeks of gestation or, if gestational
10 age is unknown, of 400 or more grams, 15 or more ounces, fetal weight shall
11 be reported.

12 (2)(B) All therapeutic or induced abortions, as legally authorized to be
13 performed, of any length gestation or weight shall be reported.

14 (3)(2) Spontaneous abortions and ectopic pregnancies of less than 20
15 weeks gestation are not required to be reported.

16 (b) The ~~physician~~ licensed health care professional who treats a ~~woman~~
17 patient as a result of a miscarriage or abortion shall report the fetal death if it is
18 not known to be previously reported under subsection (a) of this section. If
19 there is evidence of violence or other unusual or suspicious circumstances, the
20 medical examiner shall be immediately notified, and ~~he or she~~ the medical
21 examiner shall complete at least the medical items on the report. If a funeral

1 director is to be involved, the ~~physician~~ licensed health care professional may
2 delegate to the funeral director the responsibility for completing items other
3 than those of a medical nature. Similarly, the ~~physician~~ licensed health care
4 professional may delegate the responsibility for completion of nonmedical
5 items to appropriate personnel having access to records containing the
6 information.

7 (c) If a fetal death occurs on a moving conveyance, the place of occurrence
8 shall be given as the town or city where removal from the vehicle took place.

9 (d) ~~Fetal death reports~~ Reports made pursuant to this section are for
10 statistical purposes only and are not public records. They shall be kept
11 confidential; shall not be disclosed or discoverable in any civil, criminal,
12 administrative, or other proceeding; and shall be destroyed after five two years.

13 Sec. 10. 26 V.S.A. § 1354 is amended to read:

14 § 1354. UNPROFESSIONAL CONDUCT

15 (a) Prohibited conduct. The Board shall find that any one of the following,
16 or any combination of the following, whether the conduct at issue was
17 committed within or outside the State, constitutes unprofessional conduct:

18 * * *

19 (2) all advertising ~~of~~ about health care services or a medical business
20 that is intended or has a tendency to mislead or deceive the public or impose

1 upon credulous or ignorant persons and so be harmful or injurious to public
2 morals or safety;

3 * * *

4 (21) permitting one's name or license to be used by a person, group, or
5 corporation when not actually in charge of, ~~or~~ responsible for, or actively
6 overseeing the treatment given or other health care services provided;

7 * * *

8 (29) delegation of professional responsibilities, including delivery of
9 any health care services, to a person whom the licensed professional knows, or
10 has reason to know, is not qualified by training, experience, education, or
11 licensing credentials to perform them;

12 * * *

13 (33)(A) providing, prescribing, dispensing, or furnishing medical
14 services or prescription medication or prescription-only devices to a person in
15 response to any communication transmitted or received by computer or other
16 electronic means, when the licensee fails to take the following actions to
17 establish and maintain a proper physician-patient relationship:

18 (i) a reasonable effort to verify that the person requesting
19 medication is in fact the patient, and is in fact who the person claims to be;

20 (ii) establishment of documented diagnosis through the use of
21 accepted medical practices; and

1 (iii) maintenance of a current medical record;

2 (B) for the purposes of this subdivision (33), an electronic, ~~on-line~~
3 online, or telephonic evaluation by questionnaire is inadequate for the initial
4 evaluation of the patient, except as otherwise provided in subdivision (C)(iv)
5 of this subdivision (33);

6 (C) the following would not be in violation of this subdivision (33) if
7 transmitted or received by computer or other electronic means:

8 (i) initial admission orders for newly hospitalized patients;

9 (ii) prescribing for a patient of another physician for whom the
10 prescriber has taken the call;

11 (iii) prescribing for a patient examined by a licensed advanced
12 practice registered nurse, physician assistant, or other advanced practitioner
13 authorized by law and supported by the physician;

14 (iv) in furtherance of 18 V.S.A. chapter 223, prescribing
15 medication for an individual to terminate the individual's pregnancy based on
16 an adaptive questionnaire developed by or in consultation with health care
17 providers with clinically appropriate expertise that allows the licensee to obtain
18 additional medical history and ask follow-up questions as needed;

19 (v) continuing medication on a short-term basis for a new patient,
20 prior to the patient's first appointment; or

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2 that is intended or has a tendency to mislead or deceive the public;

(3) exercising undue influence on or taking improper advantage of a person using the individual's services, or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the practitioner or of a third party;

7 (4) failing to comply with provisions of federal or state statutes or rules
8 governing the profession;

9 (5) conviction of a crime related to the profession; and

10 (6) conduct that evidences unfitness to practice in the profession.

11 * * *

(d) As used in this section, “health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a physical or mental health condition, including counseling, procedures, products, devices, and medications.

16 Sec. 13. 26 V.S.A. § 2024 is added to read:

17 § 2024. CONFIDENTIALITY OF PRESCRIBER AND PHARMACIST
18 INFORMATION ON MEDICATIONS FOR LEGALLY
19 PROTECTED HEALTH CARE ACTIVITY

20 (a) As used in this section:

1 (1) “Gender-affirming health care services” and “reproductive health
2 care services” have the same meanings as in 1 V.S.A. § 150.

3 (2) “Noncontrolled medication” means a medication that is not a
4 controlled substance as defined in 21 U.S.C. § 802.

5 (b)(1) Upon the request of a prescribing practitioner and to the extent not
6 expressly required under federal law, a pharmacist or other licensed member of
7 the pharmacy staff shall redact or otherwise remove the practitioner’s name or
8 initials from a fulfilled prescription for a noncontrolled medication for gender-
9 affirming health care services or reproductive health care services, and from
10 any accompanying printed materials.

11 (2) A pharmacist may, or, upon the pharmacist’s request, another
12 licensed member of the pharmacy staff shall, redact or otherwise remove the
13 pharmacist’s name or initials from a fulfilled prescription for a noncontrolled
14 medication for gender-affirming health care services or reproductive health
15 care services, and from any accompanying printed materials.

16 (3) If a prescribing practitioner dispenses medication directly to patients
17 for gender-affirming health care services or reproductive health care services,
18 or both, the practitioner may redact or otherwise remove the practitioner’s own
19 name or initials from a fulfilled prescription for a noncontrolled medication for
20 gender-affirming health care services or reproductive health care services, and
21 from any accompanying printed materials.

1 (c) Nothing in this chapter or the rules governing the pharmacy profession
2 shall be construed to require a pharmacist or other licensed member of a
3 pharmacy's staff to list the prescribing practitioner's or pharmacist's name or
4 initials on a fulfilled prescription for noncontrolled medication for gender-
5 affirming health care services or reproductive health care services.

6 (d) A pharmacist or other licensed member of a pharmacy's staff shall be
7 immune from civil and administrative liability for failing to redact or remove
8 the name of a prescriber or pharmacist when requested to do so pursuant to
9 subdivision (b)(1) or (2) of this section; provided, however, that this immunity
10 shall not apply to gross negligence, recklessness, or intentional misconduct by
11 a pharmacist or other licensed member of the pharmacy staff.

12 Sec. 14. EFFECTIVE DATE

13 This act shall take effect on passage.