



Date: February 13, 2025
To: Vermont Senate Health & Welfare Committee
From: Jessa Barnard, Executive Director, Vermont Medical Society, jbarnard@vtmd.org
RE: S. 28 - An act relating to access to certain legally protected health care services

The Vermont Medical Society is Vermont's largest physician and physician assistant membership association, representing 3100 physicians and PAs across Vermont. We have strong policies in favor of supporting patient access to reproductive and gender affirming health care services, and advocated strongly in favor of Acts 14 and 15 of 2023, the "shield laws" protecting patients and providers from legal tactics we see in other states being used to harass those who seek or provide such services.

We thank the sponsors of S. 28 and believe the bill fills important gaps we are now aware of from Acts 14 and 15. **We testify in support of the bill with the request for additional time to refine language regarding unprofessional conduct.** In detail:

Section 1 – Truthful Advertising – support

Section 1 expands Vermont's consumer protection laws to state that advertising for health care services – whether or not there is a charge for such services – cannot be untrue or clearly designed to mislead the public. We support this addition.

Section 2 – Confidentiality of Fetal Death Reporting – support

Section 2 clarifies that reports submitted by Vermont clinicians regarding fetal deaths are confidential. VMS supports this clarification.

Section 3 & 5 – Adaptive Questionnaire (pages 11 & 17) – support

VMS supports amending Vermont statute to allow establishing a clinician- patient relationship and prescribing via adaptive questionnaire for the provision of medication abortion services. Evidence supports the safety and efficacy of fully remote, asynchronous medication abortion care using a published protocol.¹ The online asynchronous consultation covers all of the points that would be covered in a live practice setting including the date of the last menstrual period, the patient's medications, allergies, past medical history, obstetrical history -especially as pertains to prior cesarean sections and history of ectopic pregnancy. The form asks about any contraindications to medication abortion such as current use of blood thinner medications, serious medical issues, history of hereditary porphyria, IUD in place, adrenal insufficiency or high dose steroid use or gestation age above 11 weeks. The physician reviews the form and can ask for follow up information. See a more full description of the protocol and screening questions here: [https://www.contraceptionjournal.org/article/S0010-7824\(20\)30108-6/pdf](https://www.contraceptionjournal.org/article/S0010-7824(20)30108-6/pdf). Reasons patients may choose this approach include cost, privacy and stigma.²

Currently, Board of Medical Practice for MDs and OPR statute for APRNs does not authorize this practice. This is in comparison to guidance from the Federation of State Medical Boards,³ and also

¹ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783451>;
[https://www.contraceptionjournal.org/article/S0010-7824\(22\)00263-3/abstract](https://www.contraceptionjournal.org/article/S0010-7824(22)00263-3/abstract);
<https://www.sciencedirect.com/science/article/pii/S2667193X22000175>

² [https://www.contraceptionjournal.org/article/S0010-7824\(21\)00142-6/fulltext](https://www.contraceptionjournal.org/article/S0010-7824(21)00142-6/fulltext)

³ <https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>

arguably conflict with Vermont's Shield Laws, which prohibits a board from subjecting a health care provider to professional disciplinary action based solely on the health care provider providing or assisting in the provision of reproductive health care services (26 V.S.A. § 1354(d)(1)), as well as 18 V.S.A. § 9497, which states a public entity shall not "prohibit a health care provider, acting within the scope of the health care provider's license, from terminating or assisting in the termination of a patient's pregnancy." It is important to note that statute holds a prescriber responsible for meeting the same standard of care when using telehealth as when providing in person care (18 V.S.A. § 9361(b)) and requires patient consent for telehealth services – this would be a service requested by a patient.

Section 8 – Request to Remove Contact Information from Prescriptions – Support

VMS supports the option for prescribers to request that their facility rather than name be listed on a prescription for medication for reproductive health services or gender affirming care. The need for this option arises from cases such as those recently brought against a New York physician, Margaret Carpenter, by both Texas and Louisiana after she prescribed abortion medication to patients located in those states. As prescribing medication for abortion and gender affirming care become more and more politicized and legally risky for both patients and prescribers, removing prescriber identifying information from pill bottles that may cross state lines is one additional step Vermont can take to protect access to these evidence-based medications.

Section 3-7 & 9 – Unprofessional Conduct – concerns with current draft

VMS has been meeting with OPR, VDH and others to discuss language in these sections regarding unprofessional conduct. We support the concept ensuring that medical directors are providing sufficient oversight for staff who they are supervising or delegating tasks to. However, we have significant concern that the breadth of existing language such as "failing to review and approve information about treatment or health care services that are provided ... prior to communication of the information" could bring health care services to a halt in many settings. We would appreciate additional time to continue these conversations and reach agreement on language on a more focused approach.

Additional recommendations:

VMS has two additional recommendations for strengthening Vermont's shield law protections:

- 1) Adding additional **confidentiality protections** for OPR licensees who have listed email addresses or phone numbers on licensure applications by exempting them from public records act requests.
- 2) Adding further **prohibitions on sharing data** regarding legally protected health care activity for federal investigations and proceedings, not just those brought by other states, as follows:

12 VSA §7306 (a): No public agency or employee, appointee, officer or official, or any other person acting on behalf of a public agency may knowingly provide any information or expend or use time, money, facilities, property, equipment, personnel, or other resources in furtherance of any interstate or federal investigation or proceeding seeking to impose civil or criminal liability upon a person or entity for... the provision, seeking or receipt of, or inquiring about legally protected health care activity that is legal in this State...

Thank you again for taking up this important bill and for considering our feedback. We look forward to working with your Committee to pass the bill as soon as possible.