

No. 187. An act relating to health information technology and health information exchange.

(H.901)

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

Sec. 1. HEALTH INFORMATION TECHNOLOGY; HEALTH
INFORMATION EXCHANGE; PROGRESS REPORTS

(a) On or before May 1, 2018, the Department of Vermont Health Access and the Vermont Information Technology Leaders, Inc. (VITL) shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; and the Green Mountain Care Board a work plan detailing the process by which the Department and VITL shall implement the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 (Act 73 report). The work plan shall be informed by stakeholder and consumer input and by technology options and opportunities. The Plan shall identify potential steps for addressing issues of data ownership and issues of intellectual property. It shall also set forth both a timeline of tasks to be completed and a list of clear objectives to assist the General Assembly in evaluating the success or failure of the parties' work.

(b) On or before September 1, 2018, the Department of Vermont Health Access and VITL shall submit to the House Committees on Appropriations, on Health Care, on Energy and Technology, and on Ways and Means; the Senate

Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board a contingency plan for health information technology to be used if the Department and VITL are unable to implement the recommendations from the Act 73 report. The contingency plan shall contain the following:

(1) a description of the health information exchange services that would need to be replaced;

(2) a process for determining the manner in which the services would be replaced and the mechanism for acquiring the replacement services, such as a request for proposals;

(3) an assessment of the State's ownership interests in hardware systems, software systems, applications, data, and other physical and intellectual property that would need to be licensed to a future operator of Vermont's health information exchange;

(4) a plan for transitioning operations from VITL to the new operator or operators; and

(5) the impacts of the change on health care providers, health care consumers, State government, and Vermont's health care reform initiatives.

(c) On or before October 15, 2018, the Department of Vermont Health Access shall submit to the House Committees on Appropriations, on Health Care, on Energy and Technology, and on Ways and Means; the Senate

Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board the results of an evaluation, which shall be conducted by an independent entity with expertise in health information technology, of the work plan, the contingency plan, and the Department's and VITL's progress toward implementing the recommendations in the Act 73 report.

(d) On or before May 1, July 1, September 1, and November 1, 2018 and January 1, 2019, the Department of Vermont Health Access and VITL shall provide to the House Committees on Appropriations, on Health Care, on Energy and Technology, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board written updates on their progress toward implementing the recommendations contained in the Act 73 report.

(e) In addition to the written updates required by subsection (d) of this section, the Department of Vermont Health Access and VITL shall provide testimony on their progress toward implementing the recommendations contained in the Act 73 report at a meeting of the Health Reform Oversight Committee and at a meeting of the Joint Information Technology Oversight Committee, at least once every two months or more frequently if so requested

by a Committee. The testimony at each Committee's first meeting after the General Assembly has adjourned in 2018 shall also include information regarding the work plan required by subsection (a) of this section, and the testimony at each Committee's first meeting after September 1, 2018 shall also include information regarding the contingency plan required by subsection (b) of this section.

Sec. 2. 18 V.S.A. § 9351 is amended to read:

§ 9351. HEALTH INFORMATION TECHNOLOGY PLAN

(a)(1) ~~The Secretary of Administration or designee~~ Department of Vermont Health Access, in consultation with the Department's Health Information Exchange Steering Committee, shall be responsible for the overall coordination of Vermont's statewide Health Information Technology Plan. The Plan shall be revised annually and updated comprehensively every five years to provide a strategic vision for clinical health information technology.

(2) The Department shall submit the proposed Plan to the Green Mountain Care Board annually on or before November 1. The Green Mountain Care Board shall approve, reject, or request modifications to the Plan within 45 days following its submission; if the Board has taken no action after 45 days, the Plan shall be deemed to have been approved.

(3) ~~The Secretary or designee~~ Department, in consultation with the Steering Committee, shall administer the Plan, which shall include the implementation of an integrated electronic health information infrastructure for

the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients. The Plan shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, access to advance care planning documents, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.

* * *

(c) ~~The Secretary of Administration or designee may update the Plan~~ Department of Vermont Health Access, in consultation with the Steering Committee and subject to Green Mountain Care Board approval, may propose updates to the Plan in addition to the annual updates as needed to reflect emerging technologies, the State's changing needs, and such other areas as the ~~Secretary or designee~~ Department deems appropriate. The ~~Secretary or designee~~ Department shall solicit recommendations from ~~Vermont Information Technology Leaders, Inc. (VITL) and other entities~~ interested stakeholders in order to ~~update~~ propose updates to the Health Information Technology Plan pursuant to subsection (a) of this section and to this subsection, including applicable standards, protocols, and pilot programs, and following approval of the proposed updates by the Green Mountain Care Board, may enter into a contract or grant agreement with ~~VITL or other~~ appropriate entities to update some or all of the Plan. Upon approval ~~by the Secretary~~ of the updated Plan by the Green Mountain Care Board, the Department of Vermont Health Access

~~shall distribute the updated Plan shall be distributed~~ to the Secretary of Administration; the ~~Commissioner of Information and Innovation~~ Secretary of Digital Services; the Commissioner of Financial Regulation; ~~the Commissioner of Vermont Health Access~~; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; the House Committee on Health Care; affected parties; and interested stakeholders. Unless major modifications are required, the ~~Secretary~~ Department may present updated information about the Plan to the ~~Green Mountain Care Board~~ and legislative committees of jurisdiction in lieu of creating a written report.

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Sec. 3. 18 V.S.A. § 9352 is amended to read:

§ 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

(a)(1) Governance. The Vermont Information Technology Leaders, Inc. (VITL) Board of Directors shall consist of no fewer than nine nor more than 14 members. The term of each member shall be two years, except that of the members first appointed, approximately one-half shall serve a term of one year and approximately one-half shall serve a term of two years, and members shall continue to hold office until their successors have been duly appointed. The Board of Directors shall comprise ~~the following:~~

~~(A) one member of the General Assembly, appointed jointly by the Speaker of the House and the President Pro Tempore of the Senate, who shall be entitled to the same per diem compensation and expense reimbursement pursuant to 2 V.S.A. § 406 as provided for attendance at sessions of the General Assembly;~~

~~(B) one individual appointed by the Governor;~~

~~(C) one representative of the business community;~~

~~(D) one representative of health care consumers;~~

~~(E) one representative of Vermont hospitals;~~

~~(F) one representative of Vermont physicians;~~

~~(G) one practicing clinician licensed to practice medicine in Vermont;~~

~~(H) one representative of a health insurer licensed to do business in Vermont;~~

~~(I) the President of VITL, who shall be an ex officio, nonvoting member;~~

~~(J) two individuals familiar with health information technology, at least one of whom shall be the chief technology officer for a health care provider; and~~

~~(K) two at-large members~~
representatives of the business community, of health care consumers, of Vermont hospitals, of Vermont-licensed clinicians, and of health insurers

licensed to offer plans in Vermont, as well as individuals familiar with health information technology, including, to the extent practicable, one or more individuals who are or have served as the chief technology officer for a health care facility.

~~(2) Except for the members appointed pursuant to subdivisions (1)(A) and (B) of this subsection, whenever a vacancy on the Board occurs, the members of the Board of Directors then serving shall appoint a new member who shall meet the same criteria as the member he or she replaces.~~

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(c)(1) Health information exchange operation. VITL shall be designated in the Health Information Technology Plan approved by the Green Mountain Care Board pursuant to section 9351 of this title to operate the exclusive statewide health information exchange network for this State. ~~After the~~ The Plan shall determine the manner in which Vermont's health information exchange network shall be managed. ~~The~~ Green Mountain Care Board ~~approves~~ shall have the authority to approve VITL's ~~core activities and~~ budget pursuant to chapter 220 of this title, ~~the Secretary of Administration or designee shall enter into procurement grant agreements with VITL pursuant to~~ ~~8 V.S.A. § 4089k.~~ Nothing in this chapter shall impede local community providers from the exchange of electronic medical data.

(2) Notwithstanding any provision of 3 V.S.A. § 2222 or 2283b to the contrary, upon request of the Secretary of Administration, the ~~Department of~~

~~Information and Innovation~~ Agency of Digital Services shall review VITL's technology for security, privacy, and interoperability with State government information technology, consistent with the State's health information technology plan required by section 9351 of this title.

(d) Privacy. The standards and protocols implemented by VITL shall be consistent with those adopted by the statewide Health Information Technology Plan pursuant to subsection 9351(e) of this title.

(e) Report. ~~No later than~~ On or before January 15 of each year, VITL shall file a report with ~~the Green Mountain Care Board;~~ the Secretary of Administration; ~~the Commissioner of Information and Innovation~~ Secretary of Digital Services; the Commissioner of Financial Regulation; the Commissioner of Vermont Health Access; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; and the House Committee on Health Care. The report shall include an assessment of progress in implementing health information technology in Vermont and recommendations for additional funding and legislation required. In addition, VITL shall publish minutes of VITL meetings and any other relevant information on a public website. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(f) Funding authorization. VITL is authorized to seek matching funds to assist with carrying out the purposes of this section. In addition, it may accept any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from the federal or any local government, or any agency thereof, and from any person, firm, foundation, or corporation for any of its purposes and functions under this section and may receive and use the same, subject to the terms, conditions, and regulations governing such donations, gifts, and grants. VITL shall not use any State funds for health care consumer advertising, marketing, or similar services unless necessary to comply with the terms of a contract or grant that requires a contribution of State funds.

(g) Waivers. The Secretary of ~~Administration~~ Human Services or designee, in consultation with VITL, may seek any waivers of federal law, of rule, or of regulation that might assist with implementation of this section.

(h) [Repealed.]

(i) Certification of meaningful use and connectivity.

(1) To the extent necessary to support Vermont's health care reform goals or as required by federal law, VITL shall be authorized to certify the meaningful use of health information technology and electronic health records by health care providers licensed in Vermont.

(2) VITL, in consultation with health care providers and health care facilities, shall establish criteria for creating or maintaining connectivity to the

State's health information exchange network. VITL shall provide the criteria annually ~~by~~ on or before March 1 to the Green Mountain Care Board established pursuant to chapter 220 of this title.

(j) Scope of activities. VITL and any person who serves as a member, director, officer, or employee of VITL with or without compensation shall not be considered a health care provider as defined in subdivision 9432 of this title for purposes of any action taken in good faith pursuant to or in reliance upon provisions of this section relating to VITL's:

(1) governance;

(2) electronic exchange of health information and operation of the statewide Health Information Exchange Network as long as nothing in such exchange or operation constitutes the practice of medicine pursuant to 26 V.S.A. chapter 23 or 33;

(3) implementation of privacy provisions;

(4) funding authority;

(5) application for waivers of federal law;

(6) establishment and operation of a financing program providing electronic health records systems to providers; or

(7) certification of health care providers' meaningful use of health information technology.

Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

* * *

(2)(A) Review and approve Vermont's statewide Health Information Technology Plan pursuant to section 9351 of this title to ensure that the necessary infrastructure is in place to enable the State to achieve the principles expressed in section 9371 of this title. ~~In performing its review, the Board shall consult with and consider any recommendations regarding the plan received from the Vermont Information Technology Leaders, Inc. (VITL).~~

(B) Review and approve the criteria required for health care providers and health care facilities to create or maintain connectivity to the State's health information exchange as set forth in section 9352 of this title. Within 90 days following this approval, the Board shall issue an order explaining its decision.

(C) Annually review ~~the budget and all activities of VITL~~ and approve the budget, consistent with available funds, ~~and the core activities associated with public funding, which shall include establishing the interconnectivity of electronic medical records held by health care professionals and the storage, management, and exchange of data received from such health care professionals, for the purpose of improving the quality of and efficiently providing health care to Vermonters~~ of the Vermont Information Technology Leaders, Inc. (VITL). This review shall take into account VITL's responsibilities pursuant to section 9352 of this title and the availability of funds needed to support those responsibilities.

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Sec. 5. 2013 Acts and Resolves No. 73, Sec. 60(10), as amended by 2017 Acts and Resolves No. 73, Sec. 14, is further amended to read:

(10) Secs. 48-51 (health claims tax) shall take effect on July 1, 2013 and 52 and 53 (health claims tax revenue; Health IT-Fund; sunset) shall take effect on July 1, ~~2018~~ 2019.

Sec. 6. FUTURE OF HEALTH INFORMATION EXCHANGE NETWORK;

LEGISLATIVE INTENT

It is essential to the future of health information technology and health information exchange in Vermont that the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 are successfully implemented in a thorough and timely manner. If they are not successfully implemented pursuant to the timeline adopted in the work plan described in Sec. 1 of this act, it is the intent of the General Assembly to eliminate the designation of Vermont Information Technology Leaders, Inc. to operate the exclusive statewide health information exchange network for Vermont pursuant to 18 V.S.A. § 9352.

Sec. 7. HEALTH INFORMATION EXCHANGE; CONSENT POLICY;

REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc., the Office of the Health Care Advocate,

and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding whether individual consent to the exchange of health care information through the Vermont Health Information Exchange should be on an opt-in or opt-out basis.

Sec. 8. IMPROVING INTEROPERABILITY OF ELECTRONIC HEALTH RECORDS SYSTEMS; REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc. and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding ways to improve the utility and interoperability of electronic health records and health information exchange in Vermont.

Sec. 8a. 2 V.S.A. chapter 18 is added to read:

CHAPTER 18. JOINT INFORMATION TECHNOLOGY
OVERSIGHT COMMITTEE

§ 614. JOINT INFORMATION TECHNOLOGY OVERSIGHT

COMMITTEE

(a) Creation. There is created the Joint Information Technology Oversight Committee to oversee investments in and use of information technology in Vermont.

(b) Membership. The Committee shall be composed of six members as follows:

(1) three members of the House of Representatives, not all of whom shall be from the same political party, who shall be appointed by the Speaker of the House; and

(2) three members of the Senate, not all of whom shall be from the same political party, who shall be appointed by the Committee on Committees.

(c) Powers and duties. The Committee shall oversee, evaluate, and make recommendations on the following:

(1) the State's current deployment, management, and oversight of information technology in the furtherance of State governmental activities, including data processing systems, telecommunications networks, and related technologies, particularly with regard to issues of compatibility among existing and proposed technologies;

(2) issues related to the storage of, maintenance of, access to, privacy of, and restrictions on use of computerized records;

(3) issues of public policy related to the development and promotion of the private, commercial, and nonprofit information infrastructure in the State, its relationship to the State government information infrastructure, and its integration with national and international information networks; and

(4) cybersecurity.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(e) Meetings.

(1) The Committee shall elect a chair and vice chair from among its members and shall adopt rules of procedure. The Chair shall rotate biennially between the House and Senate members.

(2) A majority of the membership shall constitute a quorum.

(3) The Committee may meet when the General Assembly is not in session or at the call of the Chair.

(f) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 28, 2018