

1 S.283

2 Introduced by Senator Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Human services; nursing homes; Department of Long-Term Care

6 Statement of purpose of bill as introduced: This bill proposes to establish the  
7 Department of Long-Term Care to regulate and oversee all aspects of nursing  
8 homes, assisted living residences, and residential care homes. The new  
9 department would assume responsibility for long-term care-related duties  
10 currently administered by the Department of Disabilities, Aging, and  
11 Independent Living, the Office of Professional Regulation, the Green  
12 Mountain Care Board, and the Division of Rate Setting.

13 An act relating to establishing the Department of Long-Term Care

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

15 Sec. 1. 3 V.S.A. § 122 is amended to read:

16 § 122. OFFICE OF PROFESSIONAL REGULATION

17 The Office of Professional Regulation is created within the Office of the  
18 Secretary of State. The Office shall have a director who shall be appointed by  
19 the Secretary of State and shall be an exempt employee. The following boards  
20 or professions are attached to the Office of Professional Regulation:

1 \* \* \*

2 (11) ~~Nursing Home Administrators~~ [Repealed.]

3 \* \* \*

4 Sec. 2. 3 V.S.A. § 212 is amended to read:

5 § 212. DEPARTMENTS CREATED

6 The following administrative departments are hereby created, through the  
7 instrumentality of which the Governor, under the Constitution, shall exercise  
8 such functions as are by law assigned to each department respectively:

9 \* \* \*

10 (25) The Department of Long-Term Care

11 Sec. 3. 3 V.S.A. § 3002(a) is amended to read:

12 (a) ~~An~~ The Agency of Human Services is created consisting of the  
13 following:

14 \* \* \*

15 (8) The Department of Long-Term Care.

16 Sec. 4. 3 V.S.A. § 3085 is added to read:

17 § 3085. DEPARTMENT OF LONG-TERM CARE

18 The Department of Long-Term Care is created within the Agency of Human  
19 Services as the successor to and the continuation of the long-term care-related  
20 portion of the duties of the Department of Disabilities, Aging, and Independent

1 Living, the Office of Professional Regulation, the Green Mountain Care Board,  
2 and the Division of Rate Setting.

3 Sec. 5. 3 V.S.A. § 3091(a) is amended to read:

4 (a) An applicant for or a recipient of assistance, benefits, or social services  
5 from the Department for Children and Families, of Vermont Health Access, of  
6 Disabilities, Aging, and Independent Living, of Long-Term Care, or of Mental  
7 Health, or an applicant for a license from one of those departments, or a  
8 licensee may file a request for a fair hearing with the Human Services Board.

9 An opportunity for a fair hearing will be granted to any individual requesting a  
10 hearing because his or her claim for assistance, benefits, or services is denied;  
11 or is not acted upon with reasonable promptness; or because the individual is  
12 aggrieved by any other Agency action affecting his or her receipt of assistance,  
13 benefits, or services, or license or license application; or because the individual  
14 is aggrieved by Agency policy as it affects his or her situation.

15 Sec. 6. 18 V.S.A. § 9432 is amended to read:

16 § 9432. DEFINITIONS

17 As used in this subchapter:

18 \* \* \*

19 (4) “Bed capacity” means the number of licensed beds operated by the  
20 facility under its most current license under chapter 43 of this title ~~and of~~  
21 ~~facilities under 33 V.S.A. chapter 71.~~

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(8) “Health care facility” means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, ~~which~~ that offer diagnosis, treatment, inpatient care, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include ~~but is~~ not limited to:

(A) hospitals, including general hospitals, mental hospitals, chronic disease facilities, birthing centers, maternity hospitals, and psychiatric facilities, including any hospital conducted, maintained, or operated by the ~~state~~ State of Vermont, ~~or~~ its subdivisions, or a duly authorized agency thereof; and

(B) ~~nursing homes~~, health maintenance organizations, home health agencies, outpatient diagnostic or therapy programs, kidney disease treatment centers, mental health agencies or centers, diagnostic imaging facilities, independent diagnostic laboratories, cardiac catheterization laboratories, radiation therapy facilities, or any inpatient or ambulatory surgical, diagnostic, or treatment center.

\* \* \*

1 Sec. 7. 18 V.S.A. § 9433 is amended to read:

2 § 9433. ADMINISTRATION

3 \* \* \*

4 (c) The ~~board~~ Board shall consult with hospitals, ~~nursing homes and~~  
5 professional associations and societies, the ~~secretary of human services~~  
6 Secretary of Human Services, and other interested parties in matters of policy  
7 affecting the administration of this subchapter.

8 (d) The ~~board~~ Board shall administer the certificate of need program as it  
9 relates to hospitals and to health care facilities other than nursing homes,  
10 assisted living residences, and residential care homes; the certificate of need  
11 program for those facilities shall be administered by the Department of Long-  
12 Term Care pursuant to 33 V.S.A. chapter 71, subchapter 6.

13 Sec. 8. 18 V.S.A. § 9440(c) is amended to read:

14 (c) The application process shall be as follows:

15 \* \* \*

16 (9) The Office of the Health Care Advocate established under chapter  
17 229 of this title ~~or, in the case of nursing homes, the Long Term Care~~  
18 ~~Ombudsman's Office established under 33 V.S.A. § 7502~~ is authorized but not  
19 required to participate in any administrative or judicial review of an application  
20 under this subchapter and shall be considered an interested party in such  
21 proceedings upon filing a notice of intervention with the Board.

1 Sec. 9. 33 V.S.A. chapter 2 is added to read:

2 CHAPTER 2. DEPARTMENT OF LONG-TERM CARE

3 § 201. DEFINITIONS

4 As used in this chapter:

5 (1) “Commissioner” means the Commissioner of Long-Term Care.

6 (2) “Department” means the Department of Long-Term Care.

7 (3) “Older Americans Act” means the Older Americans Act of 1965, as  
8 amended at any time and codified as 42 U.S.C. chapter 35, as well as any  
9 regulations adopted pursuant to the Act.

10 (4) “Provider” means any entity, excluding a hospital or physician,  
11 providing services to State-assisted persons pursuant to a contract or other  
12 form of agreement with the State.

13 (5) “Social Security Act” means the Social Security Act of 1935, as  
14 amended at any time and codified as 42 U.S.C. chapter 7, as well as any  
15 regulations adopted pursuant to the Act.

16 (6) “State-assisted person” means a person eligible for or receiving  
17 benefits administered by or in coordination with the Agency of Human  
18 Services.

19 § 202. COMPOSITION OF DEPARTMENT

20 The Department of Long-Term Care, created under 3 V.S.A. § 3085, shall  
21 consist of the Commissioner of Long-Term Care and all divisions and units

1 within the Department, including the Division of Rate Setting, the Division of  
2 Licensing and Protection, and the Division of Survey and Certification.

3 § 203. DUTIES OF DEPARTMENT

4 The Department shall administer all laws and programs specifically  
5 assigned to it for administration, including:

6 (1) in coordination with the Department of Disabilities, Aging, and  
7 Independent Living, federally funded services for older persons living in  
8 nursing homes, assisted living residences, and residential care homes in  
9 accordance with the Older Americans Act;

10 (2) federally required survey and certification of health care facilities  
11 participating in Medicare or Medicaid, as provided by Titles XVIII and XIX of  
12 the Social Security Act;

13 (3) the duties, responsibilities, and authority of the Division of  
14 Licensing and Protection pertaining to Level IV facilities pursuant to the  
15 authority granted in chapter 71 of this title and by any other provision of law;

16 (4) the duties, responsibilities, and authority of the Division of  
17 Licensing and Protection pertaining to Level I and II nursing homes and  
18 Level III residential care homes, hospitals, and home health services pursuant  
19 to the authority granted in chapter 71 of this title and by any other provision of  
20 law; and







1 ownership interest in the home or whether his or her functions and duties are  
2 shared with one or more other individuals.

3 Subchapter 2. Licensing of Long-Term Care Facilities

4 § 7103. LICENSE

5 (a) A person shall not operate a nursing home, assisted living residence,  
6 home for persons who are terminally ill, residential care home, or therapeutic  
7 community residence without first obtaining a license.

8 (b) A person shall not operate a nursing home as defined in this chapter ~~or~~  
9 ~~as defined in 18 V.S.A. chapter 46~~ except under the supervision of an  
10 administrator licensed in the manner provided in ~~18 V.S.A. chapter 46~~  
11 subchapter 5 of this chapter.

12 \* \* \*

13 § 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

14 \* \* \*

15 (e) In the ~~interest~~ interests of the public health, and safety, and pursuant to  
16 the provisions for the summary suspension of a license in 3 V.S.A. § 814(c),  
17 the licensing agency shall suspend the license of a nursing home ~~which~~ that has  
18 been administered by a provisional administrator licensed under ~~18 V.S.A. §~~  
19 ~~2061~~ section 7247 of this title for the preceding 90 days and ~~which nursing~~  
20 ~~home~~ that is not presently administered by an administrator who is  
21 permanently licensed under ~~18 V.S.A. § 2055~~ section 7241 of this title.

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(h) The Commissioner of Long-Term Care or of Disabilities, Aging, and Independent Living, the Attorney General, or a resident or a resident's legal representative may bring an action as provided for in subchapter 3 of this chapter.

\* \* \*

§ 7114. REPORT

The licensee shall file annually and on request such information, data, statistics, or schedules as the licensing agency may require. The agency shall have the power to examine the books and accounts of any facility operated by any licensee if it is the opinion of the ~~Secretary~~ Commissioner that the examination is necessary to carry out the purposes of this chapter.

\* \* \*

§ 7117. RULES

\* \* \*

(b) ~~Not~~ Not later than January 1, 1997, the Secretary of Human Services shall adopt comprehensive rules for licensing of nursing homes to include criteria deemed appropriate by the Secretary, including criteria for accessibility, quality, and safety standards. The rules for nursing home licensing shall:



1 licensing agency or Attorney General denies the petition or fails to file a  
2 complaint within five days, the party bringing the petition may file a complaint  
3 in the Superior Court of the county in which the licensing agency or the facility  
4 is located, requesting the appointment of a receiver on the same grounds listed  
5 in subsection (a) of this section. Prior to a hearing for the appointment of a  
6 receiver, the Commissioner of ~~Disabilities, Aging, and Independent Living~~  
7 Long-Term Care shall file an affidavit describing the results of any  
8 investigation conducted, including a statement of findings with respect to the  
9 resident's petition and the reasons for not filing an action under this section.  
10 The Commissioner shall include the two most recent reports of deficiencies in  
11 the facility, if any.

12 \* \* \*

13 § 7216. REVIEW AND TERMINATION

14 (a) The ~~Court~~ court shall review the necessity of the receivership at least  
15 semiannually.

16 (b) Either party or the Commissioner of ~~Disabilities, Aging, and~~  
17 ~~Independent Living~~ Long-Term Care may petition the ~~Court~~ court to terminate  
18 the receivership. The petition shall include a certification from the  
19 Commissioner or designee that the conditions that prompted the appointment  
20 have been corrected or, in the case of a discontinuance of operation, when the  
21 residents are safely relocated.

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Subchapter 5. Nursing Home Administrators

§ 7241. GENERAL REQUIREMENTS FOR NURSING HOME

ADMINISTRATOR LICENSURE

A person shall not practice nursing home administration in this State unless all of the following conditions are met:

(1) the applicant has made written application for a license to the Commissioner, accompanied by satisfactory proof that he or she is at least 18 years of age and is not in violation of the rules regarding the nursing home administrator profession or any other provision of Vermont law;

(2) in the Commissioner’s judgment, the applicant has satisfactorily completed a course of instruction or training in nursing home administration and has met all other requirements specified by the Commissioner by rule; and

(3) the applicant has passed an examination administered by the Commissioner or designee that is designed to test for proficiency and competence regarding Vermont statutes and rules relating to nursing home administration.

§ 7242. COMMISSIONER’S POWER AND DUTIES

(a) The Commissioner shall:

- (1) set requirements for licensure as a nursing home administrator;
- (2) provide general information to applicants;

1           (3) explain complaint and appeal procedures to licensees, applicants,  
2           and the public; and

3           (4) receive applications for licensure; license applicants pursuant to this  
4           subchapter; renew licenses; and revoke, reinstate, or condition licenses.

5           (b) The Commissioner may adopt, in accordance with 3 V.S.A. chapter 25,  
6           rules of professional conduct, rules concerning continuing education  
7           requirements, and other rules as necessary to perform his or her duties under  
8           this subchapter.

9           (c) The Commissioner shall have the exclusive authority to determine the  
10          qualifications, skill, and fitness of any person to serve as an administrator of a  
11          nursing home under the provisions of this subchapter, and an individual  
12          licensed pursuant to this subchapter shall be qualified to serve as the  
13          administrator of a nursing home.

14          § 7243. LICENSING

15          (a) The Commissioner shall license nursing home administrators in  
16          accordance with this subchapter and rules adopted in accordance with this  
17          subchapter. A nursing home administrator's license is not transferable and  
18          shall be valid until surrendered for cancellation or suspended or revoked for  
19          violation of this subchapter, this chapter, or any other law or rule relating to the  
20          proper administration and management of a nursing home. An individual who  
21          has been denied a license or renewal or whose license has been suspended or

1 revoked under this subchapter may request a fair hearing before the Human  
2 Services Board in the manner provided in 3 V.S.A. § 3091.

3 (b) Each holder of a nursing home administrator's license shall renew it  
4 biennially by making application to the Commissioner. Renewals of licenses  
5 shall be granted as a matter of course unless the Commissioner or designee  
6 finds, after due notice and hearing, that the applicant has acted or failed to act  
7 in such manner, or under such circumstances, as would constitute grounds for  
8 suspension or revocation of a license. The Commissioner may require, by rule,  
9 that a licensee complete not more than 40 hours of approved instruction every  
10 two years as a condition of license renewal.

11 § 7244. LICENSE FEES

12 Applicants and licensees regulated under this subchapter shall be subject to  
13 the following fees:

14 (1) Application \$100.00

15 (2) Biennial renewal \$200.00

16 § 7245. LICENSURE BY ENDORSEMENT

17 The Commissioner may issue a nursing home administrator's license,  
18 without examination for proficiency and competence, to any person who holds  
19 a current license as a nursing home administrator from another jurisdiction,  
20 provided the Commissioner finds that the standards for licensure in the other  
21 jurisdiction are substantially equivalent to those in this State.



1     § 7246. VIOLATIONS AND PENALTIES

2           (a) A person is practicing the profession of nursing home administration  
3     without authority if the person does one or more of the following:

4           (1) practices or offers to practice nursing home administration in this  
5     State without being licensed in accordance with this chapter;

6           (2) presents or attempts to use as his or her own the license of another;

7           (3) gives any false or forged evidence of any kind in attempting to  
8     obtain a license;

9           (4) falsely impersonates another licensee;

10          (5) attempts to use an expired or revoked license; or

11          (6) otherwise violates any provision of this subchapter.

12          (b) A person who engages in the unauthorized practice of nursing home  
13     administration shall be fined not more than \$5,000.00 or imprisoned not more  
14     than one year, or both. Prosecution under this section shall not act as a bar to  
15     civil or administrative proceedings involving the same conduct.

16     § 7247. PROVISIONAL LICENSE

17           In the event of the inability of the regular licensed administrator of a  
18     nursing home to perform his or her duties or if, through death or other causes, a  
19     nursing home is without a licensed administrator, a provisional administrator  
20     may, in the Commissioner's discretion, be issued a provisional license to  
21     administer that home for a period not to exceed 90 days from the date on which

1 the regular licensed administrator first ceased to perform his or her duties. The  
2 Commissioner shall not renew such a provisional license, nor shall the  
3 Commissioner issue a provisional license to any other person to administer a  
4 home that has been administered by a provisional administrator for the  
5 preceding 90 days.

6 Subchapter 6. Certificate of Need

7 § 7261. ADMINISTRATION

8 (a) The Department shall issue or deny certificates of need for nursing  
9 homes, assisted living residences, and residential care homes in accordance  
10 with this subchapter.

11 (b) The Department may adopt rules governing the review of certificate of  
12 need applications for nursing homes, assisted living residences, and residential  
13 care homes pursuant to 3 V.S.A. chapter 25. To the extent practicable and  
14 applicable, the rules shall be consistent with those adopted by the Green  
15 Mountain Care Board that apply to hospitals and other health care facilities  
16 pursuant to the Board's administration of the certificate of need program  
17 established in 18 V.S.A. chapter 221, subchapter 5.

18 § 7262. CERTIFICATE OF NEED; GENERAL RULES

19 (a) A nursing home, assisted living residence, or residential care home shall  
20 not develop or have developed on its behalf a new health care project without

1 issuance of a certificate of need by the Department. For purposes of this  
2 subsection, a “new health care project” includes the following:

3 (1) The construction, development, purchase, renovation, or other  
4 establishment of a nursing home, assisted living residence, or residential care  
5 home, or any capital expenditure by or on behalf of a nursing home, assisted  
6 living residence, or residential care home, for which the capital cost exceeds  
7 \$1,500,000.00.

8 (2) A change from one licensing period to the next in the number of  
9 licensed beds of a nursing home, assisted living residence, or residential care  
10 home through addition or conversion, or through relocation from one physical  
11 facility or site to another.

12 (3) The transfer or conveyance of more than a 50 percent ownership  
13 interest in a nursing home, assisted living residence, or residential care home.

14 (4) The purchase, lease, or other comparable arrangement of a single  
15 piece of diagnostic and therapeutic equipment for which the cost, or in the case  
16 of a donation the value, is in excess of \$1,000,000.00. For purposes of this  
17 subdivision, the purchase or lease of one or more articles of diagnostic or  
18 therapeutic equipment that are necessarily interdependent in the performance  
19 of their ordinary functions, as determined by the Department, shall be  
20 considered together in calculating the amount of an expenditure.

1           (5) The offering of a health care service or technology having an annual  
2           operating expense exceeding \$500,000.00 for either of the next two budgeted  
3           fiscal years, if the service or technology was not offered or employed, either on  
4           a fixed or a mobile basis, by the nursing home, assisted living residence, or  
5           residential care home within the previous three fiscal years.

6           (b) In the case of a project that requires a certificate of need under this  
7           section, expenditures for which are anticipated to be in excess of  
8           \$30,000,000.00, the applicant first shall secure a conceptual development  
9           phase certificate of need, in accordance with the standards and procedures  
10           established in this subchapter, that permits the applicant to make expenditures  
11           for architectural services, engineering design services, or any other planning  
12           services, as defined by the Department, needed in connection with the project.  
13           Upon completion of the conceptual development phase of the project, and  
14           before offering or further developing the project, the applicant shall secure a  
15           final certificate of need in accordance with the standards and procedures  
16           established in this subchapter. Applicants shall not be subject to sanctions for  
17           failure to comply with the provisions of this subsection if the failure is solely  
18           the result of good-faith reliance on verified project cost estimates issued by  
19           qualified persons, which cost estimates would have led a reasonable person to  
20           conclude the project was not anticipated to be in excess of \$30,000,000.00 and  
21           therefore not subject to this subsection. Notwithstanding the provisions of this

1 subsection, expenditures of up to \$1,500,000.00 may be made in preparation  
2 for obtaining a conceptual development phase certificate of need.

3 (c) If the Department determines that a person required to obtain a  
4 certificate of need under this subchapter has separated a single project into  
5 components in order to avoid cost thresholds or other requirements under this  
6 subchapter, the person shall be required to submit an application for a  
7 certificate of need for the entire project, and the Department may proceed  
8 under section 7271 of this title.

9 (d) The Department may by rule adjust the monetary jurisdictional  
10 thresholds contained in this section; provided, however, that any such  
11 adjustment shall not exceed the consumer price index rate of inflation.

12 § 7263. CRITERIA

13 A certificate of need shall be granted if the applicant demonstrates and the  
14 Department finds that:

15 (1) The application is consistent with the need for the proposed level of  
16 nursing home, assisted living residence, or residential care home services in the  
17 geographic region in which the applicant operates or plans to operate.

18 (2) The cost of the project is reasonable, because:

19 (A) the applicant's financial condition will sustain any financial  
20 burden likely to result from completion of the project; and

1           (B) the project will not result in an undue increase in the cost of long-  
2 term care services.

3           (3) There is an identifiable, existing, or reasonably anticipated need for  
4 the proposed project that is appropriate for the applicant to provide.

5           (4) The project will improve the quality of long-term care services in the  
6 State or provide greater access to long-term care services for Vermont's  
7 residents, or both.

8           (5) The project will not have an undue adverse impact on any other  
9 existing services provided by the applicant.

10          (6) The project will serve the public good.

11          § 7264. COMPETING APPLICATIONS

12          (a) The Department shall provide by rule a process by which any person  
13 wishing to offer or develop a new health care project involving a nursing  
14 home, assisted living residence, or residential care home may submit a  
15 competing application when a substantially similar application is pending. The  
16 competing application must be filed and completed in a timely manner, and the  
17 original application and all competing applications shall be reviewed  
18 concurrently.

19          (b) Nothing in this subchapter shall be construed to restrict the Department  
20 to granting a certificate of need to only one applicant for a new health care  
21 project.

1     § 7265. PROCEDURES

2           (a) Notwithstanding any provision of 3 V.S.A. chapter 25 to the contrary, a  
3     certificate of need application shall be in accordance with the procedures of  
4     this section.

5           (b)(1) The application shall be in such form and contain such information  
6     as the Department requires. In addition, the Department may require of an  
7     applicant any or all of the following information that the Department deems  
8     necessary:

9           (A) Institutional utilization data, including an explanation of the  
10    unique character of services and a description of case mix.

11           (B) A population-based description of the facility's service area.

12           (C) The applicant's financial statements.

13           (D) Third-party reimbursement data.

14           (E) Copies of feasibility studies, surveys, designs, plans, working  
15    drawings, or specifications developed in relation to the proposed project.

16           (F) Annual reports and four-year long-range plans.

17           (G) Leases, contracts, or agreements of any kind that might affect the  
18    quality of care or the nature of services provided.

19           (H) The status of all certificates issued to the applicant under this  
20    subchapter during the three years preceding the date of the application. As a  
21    condition to deeming an application complete under this section, the

1 Department may require that an applicant meet with the Department to discuss  
2 the resolution of the applicant's compliance with those prior certificates.

3 (I) Additional information as needed by the Department, including  
4 information from affiliated corporations or other persons in the control of or  
5 controlled by the applicant.

6 (2) In addition to the information required for submission, an applicant  
7 may submit, and the Department shall consider, any other information relevant  
8 to the application or the review criteria.

9 (c) The application process shall be as follows:

10 (1) Applications shall be accepted only at such times as the Department  
11 shall establish by rule.

12 (2)(A) Prior to filing an application for a certificate of need, an applicant  
13 shall file an adequate letter of intent with the Department not less than 30 days  
14 or, in the case of review cycle applications under section 7264 of this title, not  
15 less than 45 days prior to the date on which the application is to be filed. The  
16 letter of intent shall form the basis for determining the applicability of this  
17 subchapter to the proposed expenditure or action. A letter of intent shall  
18 become invalid if an application is not filed within six months following the  
19 date that the letter of intent is received or, in the case of review cycle  
20 applications under section 7264 of this title, within such time limits as the  
21 Department shall establish by rule. The Department shall post public notice of



1 such letters of intent on its website electronically within five business days  
2 following receipt. The public notice shall identify the applicant, the proposed  
3 new health care project, and the date by which a competing application or  
4 petition to intervene must be filed.

5 (B) Applicants who agree that their proposals are subject to  
6 jurisdiction pursuant to section 7262 of this title shall not be required to file a  
7 letter of intent pursuant to subdivision (A) of this subdivision (2) and may file  
8 an application without further process. Public notice of the application shall be  
9 posted electronically on the Department's website in the same manner as  
10 provided for letters of intent in subdivision (A) of this subdivision (2).

11 (3) The Department shall review each letter of intent and, if the letter  
12 contains the information required for letters of intent as established by the  
13 Department by rule, the Department shall, within 30 days, determine whether  
14 the project described in the letter will require a certificate of need. If the  
15 Department determines that a certificate of need is required for a proposed  
16 expenditure or action, an application for a certificate of need shall be filed  
17 before development of the project begins.

18 (4) Within 90 days following receipt of an application, the Department  
19 shall notify the applicant that the application contains all necessary information  
20 required and is complete, or that the application review period is complete  
21 notwithstanding the absence of necessary information. The Department may

1 extend the 90-day application review period for an additional 60 days, or for a  
2 period of time in excess of 150 days with the consent of the applicant. The  
3 time during which the applicant is responding to the Department's notice that  
4 additional information is required shall not be included within the maximum  
5 review period permitted under this subsection. The Department may determine  
6 that the certificate of need application shall be denied if the applicant has failed  
7 to provide all necessary information required to review the application.

8 (5) An applicant seeking expedited review of a certificate of need  
9 application may file with the Department simultaneously a request for  
10 expedited review and an application. After receiving the request and an  
11 application, the Department shall issue public notice of the request and  
12 application in the manner set forth in subdivision (2) of this subsection.  
13 Not less than 20 days after the public notice is issued, if no competing  
14 application has been filed and no party has sought and been granted, nor is  
15 likely to be granted, interested party status, the Department, upon making a  
16 determination that the proposed project may be uncontested and does not  
17 substantially alter services, as defined by rule, or upon making a determination  
18 that the application relates to a nursing home, assisted living residence, or  
19 residential care home affected by bankruptcy proceedings, may formally  
20 declare the application uncontested and may issue a certificate of need without  
21 further process, or with such abbreviated process as the Department deems

1 appropriate. If a competing application is filed or a person opposing the  
2 application is granted interested party status, the applicant shall follow the  
3 certificate of need standards and procedures in this section, except that in the  
4 case of a nursing home, assisted living residence, or residential care home  
5 affected by bankruptcy proceedings, the Department may, after notice and an  
6 opportunity to be heard, issue a certificate of need with such abbreviated  
7 process as the Department deems appropriate, notwithstanding the contested  
8 nature of the application.

9 (6) If an applicant fails to respond to an information request under  
10 subdivision (4) of this subsection within six months or, in the case of review  
11 cycle applications under section 7264 of this title, within such time limits as  
12 the Department shall establish by rule, the application will be deemed inactive  
13 unless the applicant, within six months, requests in writing that the application  
14 be reactivated and the Department grants the request. If an applicant fails to  
15 respond to an information request within 12 months or, in the case of review  
16 cycle applications under section 7264 of this title, within such time limits as  
17 the Department shall establish by rule, the application will become invalid  
18 unless the applicant requests, and the Department grants, an extension.

19 (7) For purposes of this section, “interested party” status shall be  
20 granted to persons or organizations representing the interests of persons who  
21 demonstrate that they will be substantially and directly affected by the new

1 health care project under review. Persons able to render material assistance to  
2 the Department by providing nonduplicative evidence relevant to the  
3 determination may be admitted in an amicus curiae capacity but shall not be  
4 considered parties. A petition seeking party or amicus curiae status must be  
5 filed within 20 days following public notice of the letter of intent, or within 20  
6 days following public notice that the petition is complete. The Department  
7 shall grant or deny a petition to intervene under this subdivision within 15 days  
8 after the petition is filed. The Department shall grant or deny the petition  
9 within an additional 30 days upon finding that good cause exists for the  
10 extension. Once interested party status is granted, the Department shall  
11 provide the information necessary to enable the party to participate in the  
12 review process, including information about procedures, copies of all written  
13 correspondence, and copies of all entries in the application record.

14 (8) Once an application has been deemed to be complete, public notice  
15 of the application shall be provided in newspapers having general circulation in  
16 the region of the State affected by the application. The notice shall identify the  
17 applicant, the proposed new health care project, and the date by which a  
18 competing application under section 7264 of this title or a petition to intervene  
19 must be filed.

20 (9) The State Long-Term Care Ombudsman's Office established under  
21 section 7502 of this title is authorized but not required to participate in any

1 administrative or judicial review of an application under this subchapter and  
2 shall be considered an interested party in such proceedings upon filing a notice  
3 of intervention with the Department.

4 (d) The review process shall be as follows:

5 (1) The Department shall review:

6 (A) the application materials provided by the applicant; and

7 (B) any information, evidence, or arguments raised by interested  
8 parties or amicus curiae, and any other public input.

9 (2) Except as otherwise provided in subdivision (c)(5) and subsection  
10 (e) of this section, the Department shall hold a public hearing during the course  
11 of a review.

12 (3) The Department shall make a final decision within 120 days after the  
13 date of notification under subdivision (c)(4) of this section. Whenever it is not  
14 practicable to complete a review within 120 days, the Department may extend  
15 the review period up to an additional 30 days. Any review period may be  
16 extended with the written consent of the applicant and all other applicants in  
17 the case of a review cycle process under section 7264 of this title.

18 (4) After reviewing each application, the Department shall make a  
19 decision either to issue or to deny the application for a certificate of need. The  
20 decision shall be in the form of an approval in whole or in part, or an approval  
21 subject to such conditions as the Department may impose in furtherance of the

1 purposes of this subchapter, or a denial. In granting a partial approval or a  
2 conditional approval, the Department shall not mandate a new health care  
3 project not proposed by the applicant or mandate the deletion of any existing  
4 service. Any partial approval or conditional approval must be directly within  
5 the scope of the project proposed by the applicant and the criteria used in  
6 reviewing the application.

7 (5) If the Department proposes to render a final decision denying an  
8 application in whole or in part, or approving a contested application, the  
9 Department shall serve the parties with notice of a proposed decision  
10 containing proposed findings of fact and conclusions of law and shall provide  
11 the parties an opportunity to file exceptions and to present briefs and oral  
12 argument to the Department. The Department may also permit the parties to  
13 present additional evidence.

14 (6) Notice of the final decision shall be sent to the applicant, competing  
15 applicants, and interested parties. The final decision shall include written  
16 findings and conclusions stating the basis of the decision.

17 (7) The Department shall establish rules governing the compilation of  
18 the record used by the Department in connection with decisions made on  
19 applications filed and certificates issued under this subchapter.

20 (e) The Department shall adopt rules governing procedures for the  
21 expeditious processing of applications for replacement, repair, rebuilding, or

1 reequipping of any part of a nursing home, assisted living residence, or  
2 residential care home destroyed or damaged as the result of fire, storm, flood,  
3 act of God, or civil disturbance, or any other circumstances beyond the control  
4 of the applicant if the Department finds that the circumstances require action in  
5 less time than normally required for review. If the nature of the emergency  
6 requires it, an application under this subsection may be reviewed by the  
7 Department only, without notice and opportunity for public hearing or  
8 intervention by any party.

9 (f) Any applicant, competing applicant, or interested party aggrieved by a  
10 final decision of the Department under this subchapter may request a fair  
11 hearing before the Human Services Board in the manner provided in 3 V.S.A.  
12 § 3091.

13 (g) If the Department has reason to believe that the applicant has violated a  
14 provision of this subchapter, a rule adopted pursuant to this subchapter, or the  
15 terms or conditions of a prior certificate of need, the Department may take into  
16 consideration such violation in determining whether to approve the application,  
17 deny the application, or approve the application subject to conditions. The  
18 applicant shall be provided an opportunity to contest whether such violation  
19 occurred, unless such an opportunity has already been provided. The  
20 Department may impose as a condition of approval of the application that a  
21 violation be corrected or remediated before the certificate may take effect.

1     § 7266. APPLICATIONS, INFORMATION, AND TESTIMONY; OATH

2             REQUIRED

3             (a) Each application filed under this subchapter, any written information  
4             required or permitted to be submitted in connection with an application or with  
5             the monitoring of an order, decision, or certificate issued by the Department,  
6             and any testimony taken before the Department or a hearing officer appointed  
7             by the Department shall be submitted or taken under oath. The form and  
8             manner of the submission shall be prescribed by the Department. The  
9             authority granted to the Department under this section is in addition to any  
10            other authority granted to the Department by law.

11            (b) Each application shall be filed by the applicant's chief executive officer  
12            under oath, as provided by subsection (a) of this section. The Department may  
13            direct that information submitted with the application be submitted under oath  
14            by persons with personal knowledge of such information.

15            (c) A person who knowingly makes a false statement under oath or who  
16            knowingly submits false information under oath to the Department or a hearing  
17            officer appointed by the Department or who knowingly testifies falsely in any  
18            proceeding before the Department or a hearing officer appointed by the  
19            Department shall be guilty of perjury and punished as provided in 13 V.S.A.

20     § 2901.



1     § 7267. FEES

2           (a) The Department shall charge a fee for the filing of a certificate of need  
3     application. The fee shall be calculated at the rate of 0.125 percent of project  
4     costs.

5           (b) The maximum fee shall not exceed \$20,000.00 and the minimum filing  
6     fee is \$250.00 regardless of project cost. No fee shall be charged on projects  
7     amended as part of the review process.

8           (c) The Department may retain such additional professional or other staff  
9     as needed to assist in particular proceedings under this subchapter and may  
10    assess and collect the reasonable expenses for such additional staff from the  
11    applicant. The Department, on petition by the applicant and opportunity for  
12    hearing, may reduce such assessment upon a proper showing by the applicant  
13    that such expenses were excessive or unnecessary. The authority granted to  
14    the Department under this section is in addition to any other authority granted  
15    to the Department under law.

16    § 7268. BONDS

17           In any circumstance in which bonds are to be or may be issued in  
18    connection with a new health care project subject to the provisions of this  
19    subchapter, the certificate of need shall include the requirement that all  
20    information required to be provided to the bonding agency shall be provided  
21    also to the Department within a reasonable period of time. The Department

1 shall be authorized to obtain any information from the bonding agency deemed  
2 necessary to carry out the duties of monitoring and oversight of a certificate of  
3 need. The bonding agency shall consider the recommendations of the  
4 Department in connection with any such proposed authorization.

5 § 7269. EXPIRATION OF CERTIFICATES OF NEED

6 (a) Unless otherwise specified in the certificate of need, a project shall be  
7 implemented within five years or the certificate shall be invalid.

8 (b) Not later than 180 days before the expiration date of a certificate of  
9 need, an applicant that has not yet implemented the project approved in the  
10 certificate of need may petition the Department for an extension of the  
11 implementation period. The Department may grant an extension in its  
12 discretion.

13 (c) Certificates of need shall expire on the date the Department accepts the  
14 final implementation report filed in connection with the project implemented  
15 pursuant to the certificate.

16 (d) An action or expenditure that is related to a service or expenditure that  
17 was the subject of a certificate of need shall not be considered a material or  
18 nonmaterial change to that project if the original certificate of need expired, as  
19 provided in this section, at least two years before the action is proposed. The  
20 proposed action shall require a certificate of need only if the change itself  
21 would be considered a new health care project under section 7262 of this title.

1     § 7270. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

2           (a) The Department may revoke a certificate of need for substantial  
3     noncompliance with the scope of the project as designated in the application,  
4     or for failure to comply with the conditions set forth in the certificate of need  
5     granted by the Department.

6           (b)(1) In the event that after a project has been approved, its proponent  
7     wishes to change the approved project materially, all such changes are subject  
8     to review under this subchapter.

9           (2) Applicants shall notify the Department of a nonmaterial change to  
10    the approved project. If the Department decides to review a nonmaterial  
11    change, the Department may provide for any necessary process, including a  
12    public hearing, before approval. If the Department decides not to review a  
13    change, such change will be deemed to have been granted a certificate of need.

14    § 7271. ENFORCEMENT

15           (a) If any person offers or develops any new health care project within the  
16    meaning of this subchapter without first obtaining a certificate of need as  
17    required in this subchapter or otherwise violates any of the provisions of this  
18    subchapter, the Department may order that no license or certificate permitted  
19    to be issued by any State agency shall be issued to the nursing home, assisted  
20    living residence, or residential care home to operate, offer, or develop any new

1 health care project for a specified period of time, or that remedial conditions be  
2 attached to the issuance of such licenses or certificates.

3 (b) In addition to any other sanction, if any person offers or develops any  
4 new health care project without first having been issued a certificate of need or  
5 certificate of exemption for the project, or violates any other provision of this  
6 subchapter or a rule adopted pursuant to this subchapter, the Department, the  
7 State Long-Term Care Ombudsman, and long-term care providers and  
8 consumers located in the State shall have standing to maintain a civil action in  
9 the Superior Court of the county in which such alleged violation has occurred,  
10 or in which such person may be found, to enjoin, restrain, or prevent such  
11 violation. Upon written request by the Department, it shall be the duty of the  
12 Vermont Attorney General to furnish appropriate legal services and to  
13 prosecute an action for injunctive relief to an appropriate conclusion.

14 (c) After notice and an opportunity for hearing, the Department may  
15 impose on a person who knowingly violates a provision of this subchapter, or a  
16 rule or order adopted pursuant to this subchapter, a civil administrative penalty  
17 of not more than \$40,000.00, or in the case of a continuing violation, a civil  
18 administrative penalty of not more than \$100,000.00 or one-tenth of one  
19 percent of the gross annual revenues of the nursing home, assisted living  
20 residence, or residential care home, whichever is greater, and the Department  
21 may order the entity to cease and desist from further violations and to take

1 such other actions as the Department deems necessary to remediate a violation.  
2 A person aggrieved by a decision of the Department under this subsection may  
3 request a fair hearing before the Human Services Board in the manner  
4 provided in 3 V.S.A. § 3091.

5 (d) The Department shall adopt by rule criteria for assessing the  
6 circumstances in which a violation of a provision of this subchapter, a rule  
7 adopted pursuant to this subchapter, or the terms or conditions of a certificate  
8 of need require that a penalty under this section shall be imposed, and criteria  
9 for assessing the circumstances in which a penalty under this section may be  
10 imposed.

11 Subchapter 7. Nursing Home Rate Setting

12 § 7281. REIMBURSEMENT OBJECTIVES

13 Reimbursement rates for nursing homes shall reflect the following  
14 objectives:

15 (1) maintain an equitable and fair balance between cost containment and  
16 quality care in nursing homes;

17 (2) encourage nursing homes to admit persons without regard to their  
18 source of payment;

19 (3) provide an incentive to nursing homes to admit and provide care to  
20 persons in need of comparatively greater care;

1           (4) be manageable administratively for both the State and nursing  
2           homes; and

3           (5) prevent unnecessary cost increases.

4           § 7282. DIVISION OF RATE SETTING; DIRECTOR

5           (a) The Division of Rate Setting within the Department of Long-Term Care  
6           shall maintain employees with specialized financial, accounting, auditing, and  
7           related legal expertise for the purpose of nursing home rate setting and such  
8           other duties as the Commissioner shall direct.

9           (b) The Division shall be headed by a director who shall report to the  
10          Commissioner.

11          § 7283. RATE SETTING

12          (a) The Director shall establish by rule procedures for determining payment  
13          rates for care of State-assisted persons for nursing homes and for such other  
14          providers as the Commissioner shall direct. The Director shall have the  
15          authority to establish rates that the Commissioner deems sufficient to ensure  
16          that the quality standards prescribed by section 7117 of this title are  
17          maintained, subject to the provisions of section 7285 of this title. The  
18          Medicaid budget for care of State-assisted persons in nursing homes shall  
19          employ an annual inflation factor that is reasonable and that adequately reflects  
20          economic conditions.

1       (b) No payment shall be made to any nursing home, on account of any  
2       State-assisted person, unless the nursing home is certified to participate in the  
3       State–federal medical assistance program and has in effect a provider  
4       agreement.

5       § 7284. BASIS FOR DETERMINATION OF NURSING HOME RATES

6       (a)(1) Consistent with the objectives established under section 7281 of this  
7       title, the Division shall develop a payment system based on cost categories  
8       established for each nursing home. The system shall include not fewer than  
9       the following three cost categories:

10       (A) direct care costs, which refer, at a minimum, to nursing salaries  
11       and nursing assistant wages, fringe benefits, and associated payroll taxes;

12       (B) indirect costs, which refer to all operating costs not established  
13       under subdivision (1) of this subsection (a); and

14       (C) property and related costs.

15       (2) At the discretion of the Director, the cost categories referred to in  
16       subdivision (1) of this subsection may be subdivided. Facilities may also be  
17       divided into groups, based on considerations such as size or other appropriate  
18       determinants within each cost category or subdivision thereof.

19       (b)(1) The basis for reimbursement within the direct care cost category  
20       shall be a resident classification system, which shall group residents into  
21       classes according to similarity of their assessed condition and required

1 services. Each resident shall be assigned to one of not fewer than three classes,  
2 based on the nature and extent of nursing care needed. The Director may  
3 subdivide these classes.

4 (2) The direct care component of a nursing home's payment rate shall be  
5 reflective of the necessary professional and paraprofessional nursing staff time  
6 and costs required to address the care needs of the residents of the facility.

7 (3) Assessments of residents for classification purposes shall be made  
8 on the basis of standardized information made available by each facility to the  
9 Division. Each nursing home shall assess all of its residents not less often than  
10 annually, in accordance with standards and a schedule developed by the  
11 Department. The accuracy of the information shall be verified and final  
12 classifications made by the Department.

13 (c) Rates shall be determined prospectively for each facility on the basis of  
14 cost reports submitted to the Director. The Director shall certify the rate for  
15 each facility annually by selecting a base year, setting a rate for the base year,  
16 and adjusting it annually by inflation factors that are reasonable and that  
17 adequately reflect economic conditions. The inflation factors may differ for  
18 direct care and other costs. The base years may be changed at different  
19 intervals for direct care and other costs. For direct care costs, such change  
20 shall occur not less frequently than once every three years, and, for other costs,



1 not less frequently than once every four years, unless the Commissioner  
2 certifies to the General Assembly that it is not necessary to do so.

3 § 7285. FACILITY PAYMENT

4 (a) The payment rate for each facility shall be the sum of its per diem  
5 allowance for each cost category, subject to such limitations as the  
6 Commissioner shall prescribe by rule pursuant to section 7286 of this title.

7 (b) The payment for each facility's direct care costs shall be a function of  
8 the number of resident days of each resident class and shall be adjusted in a  
9 timely manner to reflect changes in the assessed needs of residents.

10 § 7286. PAYMENT LIMITS

11 (a) The Director shall establish payment limits consistent with the  
12 provisions of section 7281 of this title to encourage the economic and efficient  
13 operation of nursing homes and other providers.

14 (b) The payment limits shall not act as a disincentive for nursing homes to  
15 address the assessed needs or improve the conditions of residents.

16 § 7287. POWERS AND DUTIES

17 (a) Each nursing home or other provider shall file with the Division, on  
18 request, such data, statistics, schedules, or information as the Division may  
19 require to enable it to carry out its function. Information received from a  
20 nursing home under this section shall be available to the public, except that the  
21 specific salary and wage rates of employees, other than the salary of an

1 administrator, shall not be disclosed unless disclosure is required under  
2 1 V.S.A. § 317(b).

3 (b) The Division shall have the power to examine books and accounts of  
4 any nursing home or other provider caring for State-assisted persons, to  
5 subpoena witnesses and documents, to administer oaths to witnesses, and to  
6 examine them on all matters of which the Division has jurisdiction.

7 (c) The Commissioner shall adopt all rules necessary for the  
8 implementation of this subchapter.

9 § 7288. APPEAL

10 (a) A nursing home that feels aggrieved by a final order of the Division  
11 may do any of the following:

12 (1) Have the right of direct appeal to the Vermont Supreme Court  
13 pursuant to the Vermont Rules of Civil Procedure and the Vermont Rules of  
14 Appellate Procedure under the same terms and conditions as if the appeal were  
15 taken to the Supreme Court from the Superior Court pursuant to the laws of  
16 Vermont.

17 (2) Have the right to appeal de novo to the Superior Court of the county  
18 where the nursing home facility is situated.

19 (3) Request a review by the Secretary of Human Services. The  
20 Secretary of Human Services shall designate an independent appeals officer  
21 who shall be a registered or certified public accountant. The appeals officer

1 shall conduct appeal hearings and make findings of fact and recommendations  
2 to the Secretary. The appeals officer shall have the power to subpoena  
3 witnesses and documents and administer oaths. A party aggrieved by a  
4 determination of the Secretary may obtain judicial review under the provisions  
5 of subdivision (1) or (2) of this subsection.

6 (b) An appeal from any determination made under this chapter shall not be  
7 made to the Human Services Board under 3 V.S.A. § 3091.

8 § 7289. AVAILABILITY OF PAYMENT FOR NURSING HOME

9 SERVICES

10 The Secretary may, with 90 days' notice to the nursing home, reduce the  
11 number of days of nursing home service or the number of nursing home beds  
12 for which payments are available under the State–federal medical assistance  
13 program in order to meet State budgetary goals, provided that the standards of  
14 care required by section 7117 of this title and by rule are maintained.

15 Sec. 12. REPEALS

16 (a) 18 V.S.A. chapter 46 (nursing home administrators) is repealed.

17 (b) 33 V.S.A. chapter 9 (Division of Rate Setting) is repealed.

18 Sec. 13. EFFECTIVE DATE

19 This act shall take effect on January 1, 2019.