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H.30

Introduced by Representatives Hubert of Milton, Ainsworth of Royalton,  
Batchelor of Derby, Beck of St. Johnsbury, Beyor of Highgate,  
Frenier of Chelsea, Gage of Rutland City, Graham of  
Williamstown, Higley of Lowell, Lawrence of Lyndon,  
Lefebvre of Newark, Lewis of Berlin, Morrissey of Bennington,  
Pearce of Richford, Quimby of Concord, Rosenquist of  
Georgia, Savage of Swanton, Smith of Derby, Smith of New  
Haven, Tate of Mendon, and Viens of Newport City

Referred to Committee on

Date:

Subject: Health; Green Mountain Care Board; Department of Financial  
Regulation

Statement of purpose of bill as introduced: This bill proposes to dissolve and  
defund the Green Mountain Care Board and transfer many of its duties,  
including health insurance rate review and oversight over certificates of need  
and hospital budgets, to the Department of Financial Regulation.

An act relating to dissolution of the Green Mountain Care Board

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

2 Sec. 1. DISSOLUTION OF GREEN MOUNTAIN CARE BOARD

3 It is the intent of the General Assembly to dissolve and defund the Green  
4 Mountain Care Board and to transfer its duties to the Department of Financial  
5 Regulation or any other appropriate State agency or department.

6 Sec. 2. 8 V.S.A. § 4062 is amended to read:

7 § 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

8 (a)(1) No policy of major medical health insurance or certificate under a  
9 policy of major medical health insurance filed by an insurer offering health  
10 insurance as defined in subdivision 3301(a)(2) of this title, a nonprofit hospital  
11 or medical service corporation, a health maintenance organization, or a  
12 managed care organization and not exempted by subdivision 3368(a)(4) of this  
13 title shall be delivered or issued for delivery in this State, nor shall any  
14 endorsement, rider, or application which becomes a part of any such policy be  
15 used, until a copy of the form and of the rules for the classification of risks and  
16 a copy of the premium rates has been filed with the Department of Financial  
17 Regulation and ~~a copy of the premium rates has been filed with the Green~~  
18 ~~Mountain Care Board; and the Green Mountain Care Board~~ the Department  
19 has issued a decision approving, modifying, or disapproving the proposed rate.

20 (2)(A) ~~The Green Mountain Care Board~~ Department of Financial  
21 Regulation shall review rate requests and shall approve, modify, or disapprove

1 a rate request within 90 calendar days after receipt of an initial rate filing from  
2 an insurer. If an insurer fails to provide necessary materials or other  
3 information to the ~~Board~~ Department in a timely manner, the ~~Board~~  
4 Department may extend its review for a reasonable additional period of time,  
5 not to exceed 30 calendar days.

6 ~~(B) Prior to the Board's decision on a rate request, the Department of~~  
7 ~~Financial Regulation shall provide the Board with an analysis and opinion on~~  
8 ~~the impact of the proposed rate on the insurer's solvency and reserves.~~

9 (3) The ~~Board~~ Department shall determine whether a rate is affordable,  
10 promotes quality care, promotes access to health care, protects insurer  
11 solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the  
12 laws of this State. ~~In making this determination, the Board shall consider the~~  
13 ~~analysis and opinion provided by the Department of Financial Regulation~~  
14 ~~pursuant to subdivision (2)(B) of this subsection.~~

15 (b) In conjunction with a rate filing required by subsection (a) of this  
16 section, an insurer shall file a plain language summary of the proposed rate.  
17 All summaries shall include a brief justification of any rate increase requested,  
18 the information that the Secretary of the U.S. Department of Health and  
19 Human Services (HHS) requires for rate increases over 10 percent, and any  
20 other information required by the ~~Board~~ Department. The plain language  
21 summary shall be in the format required by the Secretary of HHS pursuant to

1 the Patient Protection and Affordable Care Act of 2010, Public Law 111-148,  
2 as amended by the Health Care and Education Reconciliation Act of 2010,  
3 Public Law 111-152, and shall include notification of the public comment  
4 period established in subsection (c) of this section. In addition, the insurer  
5 shall post the summaries on its website.

6 (c)(1) The ~~Board~~ Department shall provide information to the public on the  
7 ~~Board's~~ Department's website about the public availability of the filings and  
8 summaries required under this section.

9 (2)(A) ~~Beginning no later than January 1, 2014, the Board~~ The  
10 Department shall post the rate filings pursuant to subsection (a) of this section  
11 and summaries pursuant to subsection (b) of this section on the ~~Board's~~  
12 Department's website within five calendar days of filing. The ~~Board~~  
13 Department shall also establish a mechanism by which members of the public  
14 may request to be notified automatically each time a proposed rate is filed with  
15 the ~~Board~~ Department.

16 (B) The ~~Board~~ Department shall provide an electronic mechanism for  
17 the public to comment on all rate filings. The ~~Board~~ Department shall accept  
18 public comment on each rate filing for 21 calendar days from the date on  
19 which the ~~Board~~ Department posts the rate filing on its website pursuant to  
20 subdivision (A) of this subdivision (2) ~~until 15 calendar days after the Board~~  
21 ~~posts on its website the analyses and opinions of the Department of Financial~~

1 ~~Regulation and of the Board's consulting actuary, if any, as required by~~  
2 ~~subsection (d) of this section.~~ The ~~Board~~ Department shall review and  
3 consider the public comments prior to issuing its decision.

4 (3)(A) In addition to the public comment provisions set forth in this  
5 subsection, the Office of the Health Care Advocate established in 18 V.S.A.  
6 chapter 229, acting on behalf of health insurance consumers in this State, may,  
7 within 30 calendar days after the ~~Board~~ Department receives an insurer's rate  
8 request pursuant to this section, submit to the ~~Board~~ Department, in writing,  
9 suggested questions regarding the filing for the ~~Board~~ Department to provide  
10 to its ~~contracting~~ actuary, ~~if any~~.

11 (B) The Office of the Health Care Advocate may also submit to the  
12 ~~Board~~ Department written comments on an insurer's rate request. The ~~Board~~  
13 Department shall post the comments on its website and shall consider the  
14 comments prior to issuing its decision.

15 (d)(1) No later than 60 calendar days after receiving an insurer's rate  
16 request pursuant to this section, the ~~Green Mountain Care Board~~ Department  
17 of Financial Regulation shall make available to the public the insurer's rate  
18 filing, the Department's analysis and opinion of the effect of the proposed rate  
19 on the insurer's solvency, and the analysis and opinion of the rate filing by the  
20 ~~Board's contracting~~ Department's actuary, ~~if any~~.

1           (2) The ~~Board~~ Department shall post on its website, after redacting any  
2 confidential or proprietary information relating to the insurer or to the insurer's  
3 rate filing:

4           (A) all questions the ~~Board~~ Department poses to its ~~contracting~~  
5 actuary, ~~if any~~, and the actuary's responses to the ~~Board's~~ Department's  
6 questions; and

7           (B) all questions ~~the Board, the Board's contracting actuary, if any,~~  
8 ~~or the Department poses~~ or its actuary pose to the insurer and the insurer's  
9 responses to those questions.

10          (e) Within the time period set forth in subdivision (a)(2)(~~A~~) of this section,  
11 the ~~Board~~ Department shall:

12           (1) conduct a public hearing, at which the ~~Board~~ Department shall:

13           ~~(A) call as witnesses the Commissioner of Financial Regulation or~~  
14 ~~designee and the Board's contracting actuary, if any, unless all parties agree to~~  
15 ~~waive such testimony; and~~

16           ~~(B)~~ provide an opportunity for testimony from the insurer; the Office  
17 of the Health Care Advocate; and members of the public;

18           (2) at a public hearing, announce the ~~Board's~~ Department's decision of  
19 whether to approve, modify, or disapprove the proposed rate; and

20           (3) issue its decision in writing.

1 (f)(1) The insurer shall notify its policyholders of the ~~Board's~~ Department's  
2 decision in a timely manner, as defined by the ~~Board~~ Department by rule.

3 (2) Rates shall take effect on the date specified in the insurer's rate  
4 filing.

5 (3) If the ~~Board~~ Department has not issued its decision by the effective  
6 date specified in the insurer's rate filing, the insurer shall notify its  
7 policyholders of its pending rate request and of the effective date proposed by  
8 the insurer in its rate filing.

9 (g) An insurer, the Office of the Health Care Advocate, and any member of  
10 the public with party status, as defined by the ~~Board~~ Department by rule, may  
11 appeal a decision of the ~~Board~~ Department approving, modifying, or  
12 disapproving the insurer's proposed rate to the Vermont Supreme Court.

13 ~~(h)(1) The authority of the Board under this section shall apply only to the~~  
14 ~~rate review process for policies for major medical insurance coverage and shall~~  
15 ~~not apply to the policy forms for major medical insurance coverage or to the~~  
16 ~~rate and policy form review process for policies for specific disease, accident,~~  
17 ~~injury, hospital indemnity, dental care, vision care, disability income, long-~~  
18 ~~term care, student health insurance coverage, Medicare supplemental coverage,~~  
19 ~~or other limited benefit coverage, or to benefit plans that are paid directly to an~~  
20 ~~individual insured or to his or her assigns and for which the amount of the~~  
21 ~~benefit is not based on potential medical costs or actual costs incurred.~~

1 ~~Premium rates and rules for the classification of risk for Medicare~~  
2 ~~supplemental insurance policies shall be governed by sections 4062b and~~  
3 ~~4080e of this title.~~

4       (2) The Department shall review and approve or disapprove the policy  
5 forms for major medical insurance coverage, as well as the policy forms,  
6 premium rates, and rules for the classification of risk for policies for specific  
7 disease, accident, injury, hospital indemnity, dental care, vision care, disability  
8 income, long-term care, student health insurance coverage, Medicare  
9 supplemental coverage, and other limited benefit coverage, as well as for  
10 benefit plans that are paid directly to an individual insured or to his or her  
11 assigns for which the amount of the benefit is not based on potential medical  
12 costs or actual costs incurred. In making ~~his or her~~ its determination, the  
13 ~~Commissioner~~ Department shall consider whether a policy form, premium rate,  
14 or rule is affordable and is not unjust, unfair, inequitable, misleading, or  
15 contrary to the laws of this State. The ~~Commissioner~~ Department shall make  
16 ~~his or her~~ its determination within 30 days after the date the insurer filed the  
17 policy form, premium rate, or rule with the Department. At the expiration of  
18 the 30-day period, the form, premium rate, or rule shall be deemed approved  
19 unless prior to then it has been affirmatively approved or disapproved by the  
20 ~~Commissioner~~ Department or found to be incomplete. The ~~Commissioner~~  
21 Department shall notify an insurer in writing if the insurer files any form,

1 premium rate, or rule containing a provision that does not meet the standards  
2 expressed in this subsection. In such notice, the ~~Commissioner~~ Department  
3 shall state that a hearing will be granted within 20 days upon the insurer's  
4 written request.

5 (3) ~~[Repealed.]~~

6 (i) Notwithstanding the procedures and timelines set forth in subsections  
7 (a) through (e) of this section, the ~~Board~~ Department may establish, by rule, a  
8 streamlined rate review process for certain rate decisions, including proposed  
9 rates affecting fewer than a minimum number of covered lives and proposed  
10 rates for which a de minimis increase, as defined by the ~~Board~~ Department by  
11 rule, is sought.

12 Sec. 3. 18 V.S.A. § 9404 is amended to read:

13 § 9404. ADMINISTRATION

14 (a) The Commissioner ~~and the Green Mountain Care Board~~ shall supervise  
15 and direct the execution of all laws vested in the Department ~~and the Board,~~  
16 ~~respectively~~, by this chapter, and shall formulate and carry out all policies  
17 relating to this chapter.

18 (b) The Commissioner ~~and the Board~~ may:

19 (1) apply for and accept gifts, grants, or contributions from any person  
20 for purposes consistent with this chapter;



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\* \* \*

(10) ~~“Green Mountain Care Board” or “Board” means the Green Mountain Care Board established in chapter 220 of this title. [Repealed.]~~

(c) Approval required for conversion of qualifying amount of charitable assets. A nonprofit hospital may convert a qualifying amount of charitable assets only with the approval of the ~~Green Mountain Care Board~~ Commissioner of Financial Regulation, and either the Attorney General or the Superior Court, pursuant to the procedures and standards set forth in this section.

\* \* \*

(e) Application. Prior to consummating any conversion of a qualifying amount of charitable assets, the parties shall submit an application to the Attorney General and the ~~Green Mountain Care Board~~ Commissioner of Financial Regulation, together with any attachments complying with subsection (f) of this section. If any material change occurs in the proposal set forth in the filed application, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Attorney General and the ~~Board~~ Commissioner within two business days, or as soon thereafter as practicable, after any party to the conversion learns of such change. If the conversion involves a hospital system, and one or more of the hospitals in the system desire to convert

1 charitable assets, the Attorney General, in consultation with the ~~Board~~  
2 Commissioner, shall determine whether an application shall be required from  
3 the hospital system.

4 (f) Completion and contents of application.

5 (1) Within 30 days of receipt of the application, or within 10 days of  
6 receipt of any amendment thereto, whichever is longer, the Attorney General,  
7 with the ~~Green Mountain Care Board's~~ Commissioner's agreement, shall  
8 determine whether the application is complete. The Attorney General shall  
9 promptly notify the parties of the date the application is deemed complete, or  
10 of the reasons for a determination that the application is incomplete. A  
11 complete application shall include the following:

12 \* \* \*

13 (N) any additional information the Attorney General or ~~Board~~  
14 Commissioner of Financial Regulation finds necessary or appropriate for the  
15 full consideration of the application.

16 \* \* \*

17 (g) Notice and hearing for public comment on application.

18 (1) The Attorney General and the ~~Green Mountain Care Board~~  
19 Commissioner of Financial Regulation shall hold one or more public hearings  
20 on the transaction or transactions described in the application. A record shall  
21 be made of any hearing. The hearing shall commence within 30 days of the

1 determination by the Attorney General that the application is complete. If a  
2 hearing is continued or multiple hearings are held, any hearing shall be  
3 completed within 60 days of the Attorney General's determination that an  
4 application is complete. In determining the number, location, and time of  
5 hearings, the Attorney General, in consultation with the ~~Board~~ Commissioner,  
6 shall consider the geographic areas and populations served by the nonprofit  
7 hospital and most affected by the conversion and the interest of the public in  
8 commenting on the application.

9 (2) The Attorney General shall provide reasonable notice of any hearing  
10 to the parties, the ~~Board~~ Commissioner, and the public, and may order that the  
11 parties bear the cost of notice to the public. Notice to the public shall be  
12 provided in newspapers having general circulation in the region affected and  
13 shall identify the applicants and the proposed conversion. A copy of the public  
14 notice shall be sent to the State health care and long-term care ombudspersons  
15 and to the Senators and members of the House of Representatives representing  
16 the county and district and to the clerk, chief municipal officer, and legislative  
17 body, of the municipality in which the nonprofit hospital is principally located.  
18 Upon receipt, the clerk shall post notice in or near the clerk's office and in at  
19 least two other public places in the municipality. Any person may testify at a  
20 hearing under this section and, within such reasonable time as the Attorney

1 General may prescribe, file written comments with the Attorney General and  
2 ~~Board~~ Commissioner concerning the proposed conversion.

3 (h) Determination by the ~~Green Mountain Care Board~~ Commissioner.

4 (1) The ~~Green Mountain Care Board~~ Commissioner shall consider the  
5 application, together with any report and recommendations from the ~~Board's~~  
6 Department's staff requested by the ~~Board~~ Commissioner, and any other  
7 information submitted into the record, and approve or deny it within 50 days  
8 following the last public hearing held pursuant to subsection (g) of this section,  
9 unless the ~~Board~~ Commissioner extends such time up to an additional 60 days  
10 with notice prior to its expiration to the Attorney General and the parties.

11 (2) The ~~Board~~ Commissioner shall approve the proposed transaction if  
12 the ~~Board~~ Commissioner finds that the application and transaction will satisfy  
13 the criteria established in section 9437 of this title. For purposes of applying  
14 the criteria established in section 9437, the term "project" shall include a  
15 conversion or other transaction subject to the provisions of this subchapter.

16 (3) A denial by the ~~Board~~ Commissioner may be appealed to the  
17 Supreme Court ~~pursuant to section 9381 of this title~~. If no appeal is taken or if  
18 the ~~Board's~~ Commissioner's order is affirmed by the Supreme Court, the  
19 application shall be terminated. A failure of the ~~Board~~ Commissioner to  
20 approve of an application in a timely manner shall be considered a final order  
21 in favor of the applicant.

1 (i) Determination by Attorney General. The Attorney General shall make a  
2 determination as to whether the conversion described in the application meets  
3 the standards provided in subsection (j) of this section.

4 \* \* \*

5 (3) The notice of approval or disapproval by the Attorney General under  
6 this subsection shall be provided no later than either 60 days following the date  
7 of the last hearing held under subsection (g) of this section or ten days  
8 following approval of the conversion by the ~~Board~~ Commissioner, whichever  
9 is later. The Attorney General, for good cause, may extend this period an  
10 additional 60 days.

11 (j) Standards for Attorney General's review. In determining whether to  
12 approve a conversion under subsection (i) of this section, the Attorney General  
13 shall consider whether:

14 \* \* \*

15 (7) the application contains sufficient information and data to permit the  
16 Attorney General and the ~~Green Mountain Care Board~~ Commissioner to  
17 evaluate the conversion and its effects on the public's interests in accordance  
18 with this section; and

19 \* \* \*

20 (k) Investigation by Attorney General. The Attorney General may conduct  
21 an investigation relating to the conversion pursuant to the procedures set forth

1 generally in 9 V.S.A. § 2460. The Attorney General may contract with such  
2 experts or consultants the Attorney General deems appropriate to assist in an  
3 investigation of a conversion under this section. The Attorney General may  
4 order any party to reimburse the Attorney General for all reasonable and actual  
5 costs incurred by the Attorney General in retaining outside professionals to  
6 assist with the investigation or review of the conversion.

7 (l) Superior Court action. If the Attorney General does not approve the  
8 conversion described in the application and any amendments, the parties may  
9 commence an action in the Superior Court of Washington County, or with the  
10 agreement of the Attorney General, of any other county, within 60 days of the  
11 Attorney General's notice of disapproval provided to the parties under  
12 subdivision (i)(2) of this section. The parties shall notify the ~~Green Mountain~~  
13 ~~Care Board~~ Commissioner of the commencement of an action under this  
14 subsection. The ~~Board~~ Commissioner shall be permitted to request that the  
15 ~~Court~~ court consider the ~~Board's~~ Commissioner's determination under  
16 subsection (h) of this section in its decision under this subsection.

17 (m) Court determination and order.

18 \* \* \*

19 (4) Nothing herein shall prevent the Attorney General, while an action  
20 brought under subsection (l) of this section is pending, from approving the  
21 conversion described in the application, as modified by such terms as are

1 agreed between the parties, the Attorney General, and the ~~Green Mountain~~  
2 ~~Care Board~~ Commissioner to bring the conversion into compliance with the  
3 standards set forth in subsection (j) of this section.

4 (n) Use of converted assets or proceeds of a conversion approved pursuant  
5 to this section. If at any time following a conversion, the Attorney General has  
6 reason to believe that converted assets or the proceeds of a conversion are not  
7 being held or used in a manner consistent with information provided to the  
8 Attorney General, the ~~Board~~ Commissioner, or a court in connection with any  
9 application or proceedings under this section, the Attorney General may  
10 investigate the matter pursuant to procedures set forth generally in 9 V.S.A.  
11 § 2460 and may bring an action in Washington Superior Court or in the  
12 Superior Court of any county where one of the parties has a principal place of  
13 business. The ~~Court~~ court may order appropriate relief in such circumstances,  
14 including avoidance of the conversion or transfer of the converted assets or  
15 proceeds or the amount of any private inurement to a person or party for use  
16 consistent with the purposes for which the assets were held prior to the  
17 conversion, and the award of costs of investigation and prosecution under this  
18 subsection, including the reasonable value of legal services.

19 (o) Remedies and penalties for violations.

20 (1) The Attorney General may bring or maintain a civil action in the  
21 Washington Superior Court, or any other county in which one of the parties

1 has its principal place of business, to enjoin, restrain, or prevent the  
2 consummation of any conversion which has not been approved in accordance  
3 with this section or where approval of the conversion was obtained on the basis  
4 of materially inaccurate information furnished by any party to the Attorney  
5 General or the ~~Board~~ Commissioner.

6 \* \* \*

7 (p) Conversion of less than a qualifying amount of assets.

8 \* \* \*

9 (2) The Attorney General, in consultation with the ~~Green Mountain Care~~  
10 ~~Board~~ Commissioner, may bring an action with respect to any conversion of  
11 less than a qualifying amount of assets, according to the procedures set forth in  
12 subsection (n) of this section. The Attorney General shall notify the ~~Board~~  
13 Commissioner of any action commenced under this subsection. The ~~Board~~  
14 Commissioner shall be permitted to investigate and determine whether the  
15 transaction satisfies the criteria established in subdivision (g)(2) of this section,  
16 and to request that the Court consider the ~~Board's~~ Commissioner's  
17 recommendation in its decision under this subsection. In such an action, the  
18 Superior Court may enjoin or void any transaction and may award any other  
19 relief as provided under subsection (n) of this section.

20 \* \* \*

1 (q) Other preexisting authority.

2 (1) Nothing in this section shall be construed to limit the authority of the  
3 ~~Green Mountain Care Board~~ Commissioner of Financial Regulation, Attorney  
4 General, Department of Health, or a court of competent jurisdiction under  
5 existing law, or the interpretation or administration of a charitable gift under  
6 14 V.S.A. § 2328.

7 (2) This section shall not be construed to limit the regulatory and  
8 enforcement authority of the ~~Board~~ Commissioner, or exempt any applicant  
9 or other person from requirements for licensure or other approvals required  
10 by law.

11 Sec. 5. 18 V.S.A. chapter 221, subchapter 5 is amended to read:

12 Subchapter 5. Health Facility Planning

13 § 9431. POLICY AND PURPOSE

14 (a) It is declared to be the public policy of this ~~state~~ State that the general  
15 welfare and protection of the lives, health, and property of the people of this  
16 ~~state~~ State require that all new health care projects be offered or developed in a  
17 manner which avoids unnecessary duplication and contains or reduces  
18 increases in the cost of delivering services, while at the same time maintaining  
19 and improving the quality of and access to health care services, and promoting  
20 rational allocation of health care resources in the ~~state~~ State; and that the need,  
21 cost, type, level, quality, and feasibility of providing any new health care

1 project be subject to review and assessment prior to any offering or  
2 development.

3 (b) In order to carry out the policy goals of this subchapter, the ~~board~~  
4 Department of Financial Regulation shall adopt by rule ~~by~~ on or before  
5 January 1, ~~2013~~ 2018, certificate of need procedural guidelines to assist in its  
6 decision-making. The guidelines shall be consistent with the ~~state health plan~~  
7 ~~and the health resource allocation plan~~ State Health Plan and the Health  
8 Resource Allocation Plan.

9 \* \* \*

10 § 9433. ADMINISTRATION

11 (a) The ~~board~~ Commissioner shall exercise such duties and powers as shall  
12 be necessary for the implementation of the certificate of need program as  
13 provided by and consistent with this subchapter. The ~~board~~ Commissioner  
14 shall issue or deny certificates of need.

15 (b) The ~~board~~ Commissioner may adopt rules governing the review of  
16 certificate of need applications consistent with and necessary to the proper  
17 administration of this subchapter. All rules shall be adopted pursuant to  
18 3 V.S.A. chapter 25.

19 (c) The ~~board~~ Commissioner shall consult with hospitals, nursing homes,  
20 ~~and professional associations and societies, the secretary of human services~~

1 Secretary of Human Services, and other interested parties in matters of policy  
2 affecting the administration of this subchapter.

3 (d) The ~~board~~ Commissioner shall administer the certificate of need  
4 program.

5 § 9434. CERTIFICATE OF NEED; GENERAL RULES

6 (a) A health care facility other than a hospital shall not develop, or have  
7 developed on its behalf a new health care project without issuance of a  
8 certificate of need by the ~~board~~ Commissioner. For purposes of this  
9 subsection, a “new health care project” includes the following:

10 \* \* \*

11 (4) The purchase, lease, or other comparable arrangement of a single  
12 piece of diagnostic and therapeutic equipment for which the cost, or in the case  
13 of a donation the value, is in excess of \$1,000,000.00. For purposes of this  
14 subdivision, the purchase or lease of one or more articles of diagnostic or  
15 therapeutic equipment ~~which~~ that are necessarily interdependent in the  
16 performance of their ordinary functions or which would constitute any health  
17 care facility included under subdivision 9432(8)(B) of this title, as determined  
18 by the ~~board~~ Commissioner, shall be considered together in calculating the  
19 amount of an expenditure. The ~~board's~~ Commissioner's determination of  
20 functional interdependence of items of equipment under this subdivision shall

1 have the effect of a final decision and is subject to appeal under ~~section 9384~~  
2 ~~of this title~~ this subchapter.

3 \* \* \*

4 (b) A hospital shall not develop or have developed on its behalf a new  
5 health care project without issuance of a certificate of need by the ~~board~~  
6 Commissioner. For purposes of this subsection, a “new health care project”  
7 includes the following:

8 (1) The construction, development, purchase, renovation, or other  
9 establishment of a health care facility, or any capital expenditure by or on  
10 behalf of a hospital, for which the capital cost exceeds \$3,000,000.00.

11 (2) The purchase, lease, or other comparable arrangement of a single  
12 piece of diagnostic and therapeutic equipment for which the cost, or in the case  
13 of a donation the value, is in excess of \$1,000,000.00. For purposes of this  
14 subdivision, the purchase or lease of one or more articles of diagnostic or  
15 therapeutic equipment ~~which~~ that are necessarily interdependent in the  
16 performance of their ordinary functions or which would constitute any health  
17 care facility included under subdivision 9432(8)(B) of this title, as determined  
18 by the ~~board~~ Commissioner, shall be considered together in calculating the  
19 amount of an expenditure. The ~~board's~~ Commissioner's determination of  
20 functional interdependence of items of equipment under this subdivision shall

1 have the effect of a final decision and is subject to appeal under ~~section 9384~~  
2 ~~of this title~~ this subchapter.

3 \* \* \*

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

1 which expenditures shall not exceed \$1,500,000.00 for ~~non-hospitals~~  
2 nonhospitals or \$3,000,000.00 for hospitals.

3 (d) If the ~~board~~ Commissioner 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 ~~board~~ Commissioner may  
8 proceed under section 9445 of this title. The ~~board's~~ Commissioner's  
9 determination under this subsection shall have the effect of a final decision and  
10 is subject to appeal under ~~section 9381 of this title~~ this subchapter.

11 (e) Beginning on January 1, ~~2013~~ 2018, and biannually thereafter, the  
12 ~~board~~ Commissioner may by rule adjust the monetary jurisdictional thresholds  
13 contained in this section. In doing so, the ~~board~~ Commissioner shall reflect the  
14 same categories of health care facilities, services, and programs recognized in  
15 this section. Any adjustment by the ~~board~~ Commissioner shall not exceed the  
16 consumer price index rate of inflation.

17 § 9435. EXCLUSIONS

18 \* \* \*

19 (b) Excluded from this subchapter are community mental health or  
20 developmental disability center health care projects proposed by a designated  
21 agency and supervised by the ~~commissioner of mental health or the~~

1 ~~commissioner of disabilities, aging, and independent living~~ Commissioner of  
2 Mental Health or the Commissioner of Disabilities, Aging, and Independent  
3 Living, or both, depending on the circumstances and subject matter of the  
4 project, provided the appropriate commissioner or commissioners make a  
5 written approval of the proposed health care project. The designated agency  
6 shall submit a copy of the approval with a letter of intent to the ~~board~~  
7 Commissioner.

8 \* \* \*

9 (e) Upon request under 8 V.S.A. § 5102(f) by a Program for All-Inclusive  
10 Care for the Elderly (PACE) authorized under federal Medicare law, or by a  
11 Prepaid Inpatient Health Plan (PIHP) or Prepaid Ambulatory Health Plan  
12 (PAHP) established in accordance with federal Medicare or Medicaid laws and  
13 regulations, the ~~board~~ Commissioner may approve the exemption of the PACE  
14 program, PIHP, or PAHP from the provisions of this subchapter and from any  
15 other provisions of this chapter if the ~~board~~ Commissioner determines that the  
16 purposes of this subchapter and the purposes of any other provision of this  
17 chapter will not be materially and adversely affected by the exemption. In  
18 approving an exemption, the ~~board~~ Commissioner may prescribe such terms  
19 and conditions as the ~~board~~ Commissioner deems necessary to carry out the  
20 purposes of this subchapter and this chapter.

1 § 9437. CRITERIA

2 A certificate of need shall be granted if the applicant demonstrates and the  
3 ~~board~~ Commissioner finds that:

4 (1) the application is consistent with the ~~health resource allocation plan~~  
5 Health Resource Allocation Plan;

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

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

9 (B) the project will not result in an undue increase in the costs of  
10 medical care. In making a finding under this subdivision, the ~~board~~  
11 Commissioner shall consider and weigh relevant factors, including:

12 (i) the financial implications of the project on hospitals and other  
13 clinical settings, including the impact on their services, expenditures, and  
14 charges;

15 (ii) whether the impact on services, expenditures, and charges is  
16 outweighed by the benefit of the project to the public; and

17 (C) less expensive alternatives do not exist, would be unsatisfactory,  
18 or are not feasible or appropriate;

19 \* \* \*

1 § 9439. COMPETING APPLICATIONS

2 (a) The ~~board~~ Commissioner shall provide by rule a process by which any  
3 person wishing to offer or develop a new health care project may submit a  
4 competing application when a substantially similar application is pending. The  
5 competing application must be filed and completed in a timely manner, and the  
6 original application and all competing applications shall be reviewed  
7 concurrently. A competing applicant shall have the same standing for  
8 administrative and judicial review under this subchapter as the original  
9 applicant.

10 (b) When a letter of intent to compete has been filed, the review process is  
11 suspended and the time within which a decision must be made as provided in  
12 subdivision 9440(d)(4) of this title is stayed until the competing application  
13 has been ruled complete or for a period of 55 days from the date of notification  
14 under subdivision 9440(c)(8) as to the original application, whichever is  
15 shorter.

16 (c) Nothing in this subchapter shall be construed to restrict the ~~board~~  
17 Commissioner to granting a certificate of need to only one applicant for a new  
18 health care project.

19 (d) The ~~board~~ Commissioner may, by rule, establish regular review cycles  
20 for the addition of beds for skilled nursing or intermediate care.

1 (e) In the case of proposals for the addition of beds for skilled nursing or  
2 intermediate care, the ~~board~~ Commissioner shall identify in advance of the  
3 review the number of additional beds to be considered in that cycle or the  
4 maximum additional financial obligation to be incurred by the agencies of the  
5 ~~state~~ State responsible for financing long-term care. The number of beds shall  
6 be consistent with the number of beds determined to be necessary by the ~~health~~  
7 ~~resource management plan or state health plan~~ Health Resource Allocation  
8 Plan or State Health Plan, whichever applies, and shall take into account the  
9 number of beds needed to develop a new, efficient facility.

10 (f) Unless an application meets the requirements of subsection 9440(e) of  
11 this title, the ~~board~~ Commissioner shall consider disapproving a certificate of  
12 need application for a hospital if a project was not identified prospectively as  
13 needed at least two years prior to the time of filing in the hospital's four-year  
14 capital plan required under subdivision 9454(a)(6) of this title. The ~~board~~  
15 Commissioner shall review all hospital four-year capital plans as part of the  
16 review under subdivision 9437(2)(B) of this title.

17 § 9440. PROCEDURES

18 (a) Notwithstanding 3 V.S.A. chapter 25, a certificate of need application  
19 shall be in accordance with the procedures of this section.

20 (b)(1) The application shall be in such form and contain such information  
21 as the ~~Board~~ Commissioner establishes. In addition, the ~~Board~~ Commissioner

1 may require of an applicant any or all of the following information that the  
2 ~~Board~~ Commissioner deems necessary:

3 \* \* \*

4 (H) The status of all certificates issued to the applicant under this  
5 subchapter during the three years preceding the date of the application. As a  
6 condition to deeming an application complete under this section, the ~~Board~~  
7 Commissioner may require that an applicant meet with the ~~Board~~  
8 Commissioner to discuss the resolution of the applicant's compliance with  
9 those prior certificates.

10 (I) Additional information as needed by the ~~Board~~ Commissioner,  
11 including information from affiliated corporations or other persons in the  
12 control of or controlled by the applicant.

13 (2) In addition to the information required for submission, an applicant  
14 may submit, and the ~~Board~~ Commissioner shall consider, any other  
15 information relevant to the application or the review criteria.

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

17 (1) Applications shall be accepted only at such times as the ~~Board~~  
18 Commissioner shall establish by rule.

19 (2)(A) Prior to filing an application for a certificate of need, an applicant  
20 shall file an adequate letter of intent with the ~~Board~~ Commissioner no less than  
21 30 days or, in the case of review cycle applications under section 9439 of this

1 title, no less than 45 days prior to the date on which the application is to be  
2 filed. The letter of intent shall form the basis for determining the applicability  
3 of this subchapter to the proposed expenditure or action. A letter of intent shall  
4 become invalid if an application is not filed within six months of the date that  
5 the letter of intent is received or, in the case of review cycle applications under  
6 section 9439 of this title, within such time limits as the ~~Board~~ Commissioner  
7 shall establish by rule. The ~~Board~~ Commissioner shall post public notice of  
8 such letters of intent on its website electronically within five business days of  
9 receipt. The public notice shall identify the applicant, the proposed new health  
10 care project, and the date by which a competing application or petition to  
11 intervene must be filed.

12 (B) Applicants who agree that their proposals are subject to  
13 jurisdiction pursuant to section 9434 of this title shall not be required to file a  
14 letter of intent pursuant to subdivision (A) of this subdivision (2) and may file  
15 an application without further process. Public notice of the application shall be  
16 posted electronically on the ~~Board's~~ Commissioner's website as provided for  
17 in subdivision (A) of this subdivision (2) for letters of intent.

18 (3) The ~~Board~~ Commissioner shall review each letter of intent and, if the  
19 letter contains the information required for letters of intent as established by  
20 the ~~Board~~ Commissioner by rule, within 30 days, determine whether the  
21 project described in the letter will require a certificate of need. If the ~~Board~~

1 Commissioner determines that a certificate of need is required for a proposed  
2 expenditure or action, an application for a certificate of need shall be filed  
3 before development of the project begins.

4 (4) Within 90 days of receipt of an application, the ~~Board~~ Commissioner  
5 shall notify the applicant that the application contains all necessary information  
6 required and is complete, or that the application review period is complete  
7 notwithstanding the absence of necessary information. The ~~Board~~  
8 Commissioner may extend the 90-day application review period for an  
9 additional 60 days, or for a period of time in excess of 150 days with the  
10 consent of the applicant. The time during which the applicant is responding to  
11 the ~~Board's~~ Commissioner's notice that additional information is required shall  
12 not be included within the maximum review period permitted under this  
13 subsection. The ~~Board~~ Commissioner may determine that the certificate of  
14 need application shall be denied if the applicant has failed to provide all  
15 necessary information required to review the application.

16 (5) An applicant seeking expedited review of a certificate of need  
17 application may simultaneously file with the ~~Board~~ Commissioner a request  
18 for expedited review and an application. After receiving the request and an  
19 application, the ~~Board~~ Commissioner shall issue public notice of the request  
20 and application in the manner set forth in subdivision (2) of this subsection. At  
21 least 20 days after the public notice was issued, if no competing application

1 has been filed and no party has sought and been granted, nor is likely to be  
2 granted, interested party status, the ~~Board~~ Commissioner, upon making a  
3 determination that the proposed project may be uncontested and does not  
4 substantially alter services, as defined by rule, or upon making a determination  
5 that the application relates to a health care facility affected by bankruptcy  
6 proceedings, may formally declare the application uncontested and may issue a  
7 certificate of need without further process, or with such abbreviated process as  
8 the ~~Board~~ Commissioner deems appropriate. If a competing application is  
9 filed or a person opposing the application is granted interested party status, the  
10 applicant shall follow the certificate of need standards and procedures in this  
11 section, except that in the case of a health care facility affected by bankruptcy  
12 proceedings, the ~~Board~~ Commissioner after notice and an opportunity to be  
13 heard may issue a certificate of need with such abbreviated process as the  
14 ~~Board~~ Commissioner deems appropriate, notwithstanding the contested nature  
15 of the application.

16 (6) If an applicant fails to respond to an information request under  
17 subdivision (4) of this subsection within six months or, in the case of review  
18 cycle applications under section 9439 of this title, within such time limits as  
19 the ~~Board~~ Commissioner shall establish by rule, the application will be deemed  
20 inactive unless the applicant, within six months, requests in writing that the  
21 application be reactivated and the ~~Board~~ Commissioner grants the request. If

1 an applicant fails to respond to an information request within 12 months or, in  
2 the case of review cycle applications under section 9439 of this title, within  
3 such time limits as the ~~Board~~ Commissioner shall establish by rule, the  
4 application will become invalid unless the applicant requests, and the ~~Board~~  
5 Commissioner grants, an extension.

6 (7) For purposes of this section, “interested party” status shall be  
7 granted to persons or organizations representing the interests of persons who  
8 demonstrate that they will be substantially and directly affected by the new  
9 health care project under review. Persons able to render material assistance to  
10 the ~~Board~~ Commissioner by providing nonduplicative evidence relevant to the  
11 determination may be admitted in an amicus curiae capacity but shall not be  
12 considered parties. A petition seeking party or amicus curiae status must be  
13 filed within 20 days following public notice of the letter of intent, or within 20  
14 days following public notice that the petition is complete. The ~~Board~~  
15 Commissioner shall grant or deny a petition to intervene under this subdivision  
16 within 15 days after the petition is filed. The ~~Board~~ Commissioner shall grant  
17 or deny the petition within an additional 30 days upon finding that good cause  
18 exists for the extension. Once interested party status is granted, the ~~Board~~  
19 Commissioner shall provide the information necessary to enable the party to  
20 participate in the review process, including information about procedures,

1 copies of all written correspondence, and copies of all entries in the application  
2 record.

3 (8) Once an application has been deemed to be complete, public notice  
4 of the application shall be provided in newspapers having general circulation in  
5 the region of the State affected by the application. The notice shall identify the  
6 applicant, the proposed new health care project, and the date by which a  
7 competing application under section 9439 of this title or a petition to intervene  
8 must be filed.

9 (9) The Office of the Health Care Advocate established under chapter  
10 229 of this title or, in the case of nursing homes, the Long-Term Care  
11 Ombudsman's Office established under 33 V.S.A. § 7502 is authorized but not  
12 required to participate in any administrative or judicial review of an application  
13 under this subchapter and shall be considered an interested party in such  
14 proceedings upon filing a notice of intervention with the ~~Board~~ Commissioner.

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

16 (1) The ~~Board~~ Commissioner shall review:

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

18 (B) any information, evidence, or arguments raised by interested

19 parties or amicus curiae, and any other public input.

1           (2) Except as otherwise provided in subdivision (c)(5) and subsection  
2 (e) of this section, the ~~Board~~ Commissioner shall hold a public hearing during  
3 the course of a review.

4           (3) The ~~Board~~ Commissioner shall make a final decision within  
5 120 days after the date of notification under subdivision (c)(4) of this section.  
6 Whenever it is not practicable to complete a review within 120 days, the ~~Board~~  
7 Commissioner may extend the review period up to an additional 30 days. Any  
8 review period may be extended with the written consent of the applicant and  
9 all other applicants in the case of a review cycle process.

10          (4) After reviewing each application, the ~~Board~~ Commissioner shall  
11 make a decision either to issue or to deny the application for a certificate of  
12 need. The decision shall be in the form of an approval in whole or in part, or  
13 an approval subject to such conditions as the ~~Board~~ Commissioner may impose  
14 in furtherance of the purposes of this subchapter, or a denial. In granting a  
15 partial approval or a conditional approval, the ~~Board~~ Commissioner shall not  
16 mandate a new health care project not proposed by the applicant or mandate  
17 the deletion of any existing service. Any partial approval or conditional  
18 approval must be directly within the scope of the project proposed by the  
19 applicant and the criteria used in reviewing the application.

20          (5) If the ~~Board~~ Commissioner proposes to render a final decision  
21 denying an application in whole or in part, or approving a contested

1 application, the ~~Board~~ Commissioner shall serve the parties with notice of a  
2 proposed decision containing proposed findings of fact and conclusions of law,  
3 and shall provide the parties an opportunity to file exceptions and present  
4 briefs and oral argument to the ~~Board~~ Commissioner. The ~~Board~~  
5 Commissioner may also permit the parties to present additional evidence.

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

9 (7) The ~~Board~~ Commissioner shall establish rules governing the  
10 compilation of the record used by the ~~Board~~ Commissioner in connection with  
11 decisions made on applications filed and certificates issued under this  
12 subchapter.

13 (e) The ~~Board~~ Commissioner shall adopt rules governing procedures for the  
14 expeditious processing of applications for replacement, repair, rebuilding, or  
15 reequipping of any part of a health care facility or health maintenance  
16 organization destroyed or damaged as the result of fire, storm, flood, act of  
17 God, or civil disturbance, or any other circumstances beyond the control of the  
18 applicant where the ~~Board~~ Commissioner finds that the circumstances require  
19 action in less time than normally required for review. If the nature of the  
20 emergency requires it, an application under this subsection may be reviewed

1 by the ~~Board~~ Commissioner only, without notice and opportunity for public  
2 hearing or intervention by any party.

3 (f) Any applicant, competing applicant, or interested party aggrieved by a  
4 final decision of the ~~Board~~ Commissioner under this section may appeal  
5 ~~pursuant to the provisions of section 9381 of this title~~ to the Vermont Supreme  
6 Court.

7 (g) If the ~~Board~~ Commissioner has reason to believe that the applicant has  
8 violated a provision of this subchapter, a rule adopted pursuant to this  
9 subchapter, or the terms or conditions of a prior certificate of need, the ~~Board~~  
10 Commissioner may take into consideration such violation in determining  
11 whether to approve, deny, or approve the application subject to conditions.

12 The applicant shall be provided an opportunity to contest whether such  
13 violation occurred, unless such an opportunity has already been provided. The  
14 ~~Board~~ Commissioner may impose as a condition of approval of the application  
15 that a violation be corrected or remediated before the certificate may take  
16 effect.

17 § 9440a. APPLICATIONS, INFORMATION, AND TESTIMONY; OATH  
18 REQUIRED

19 (a) Each application filed under this subchapter, any written information  
20 required or permitted to be submitted in connection with an application or with  
21 the monitoring of an order, decision, or certificate issued by the ~~board~~

1 Commissioner, and any testimony taken before the ~~board~~ Commissioner or a  
2 hearing officer appointed by the ~~board~~ Commissioner shall be submitted or  
3 taken under oath. The form and manner of the submission shall be prescribed  
4 by the ~~board~~ Commissioner. The authority granted to the ~~board~~ Commissioner  
5 under this section is in addition to any other authority granted to the ~~board~~  
6 Commissioner under law.

7 (b) Each application shall be filed by the applicant's chief executive officer  
8 under oath, as provided by subsection (a) of this section. The ~~board~~  
9 Commissioner may direct that information submitted with the application be  
10 submitted under oath by persons with personal knowledge of such information.

11 (c) A person who knowingly makes a false statement under oath or who  
12 knowingly submits false information under oath to the ~~board~~ Commissioner or  
13 a hearing officer appointed by the ~~board~~ Commissioner or who knowingly  
14 testifies falsely in any proceeding before the ~~board~~ Commissioner or a hearing  
15 officer appointed by the ~~board~~ Commissioner shall be guilty of perjury and  
16 punished as provided in 13 V.S.A. § 2901.

17 § 9440b. INFORMATION TECHNOLOGY; REVIEW PROCEDURES

18 Notwithstanding the procedures in section 9440 of this title, upon approval  
19 by the ~~general assembly~~ General Assembly of the ~~health information~~  
20 ~~technology plan~~ Health Information Technology Plan developed under section  
21 9351 of this title, the ~~board~~ Commissioner shall establish by rule standards and

1 expedited procedures for reviewing applications for the purchase or lease of  
2 health care information technology that otherwise would be subject to review  
3 under this subchapter. Such applications may not be granted or approved  
4 unless they are consistent with the ~~health information technology plan and the~~  
5 ~~health resource allocation plan~~ Health Information Technology Plan and the  
6 Health Resource Allocation Plan. The ~~board's~~ Commissioner's rules may  
7 include a provision requiring that applications be reviewed by the health  
8 information advisory group authorized under section 9352 of this title. The  
9 advisory group shall make written findings and a recommendation to the ~~board~~  
10 Commissioner in favor of or against each application.

11 § 9441. FEES

12 (a) The ~~Board~~ Commissioner shall charge a fee for the filing of certificate  
13 of need applications. The fee shall be calculated at the rate of 0.125 percent of  
14 project costs.

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

18 (c) The ~~Board~~ Commissioner may retain such additional professional or  
19 other staff as needed to assist in particular proceedings under this subchapter  
20 and may assess and collect the reasonable expenses for such additional staff  
21 from the applicant. The ~~Board~~ Commissioner, on petition by the applicant and

1 opportunity for hearing, may reduce such assessment upon a proper showing  
2 by the applicant that such expenses were excessive or unnecessary. The  
3 authority granted to the ~~Board~~ Commissioner under this section is in addition  
4 to any other authority granted to the ~~Board~~ Commissioner under law.

5 § 9442. BONDS

6 In any circumstance in which bonds are to be or may be issued in  
7 connection with a new health care project subject to the provisions of this  
8 subchapter, the certificate of need shall include the requirement that all  
9 information required to be provided to the bonding agency shall be provided  
10 also to the ~~board~~ Commissioner within a reasonable period of time. The ~~board~~  
11 Commissioner shall be authorized to obtain any information from the bonding  
12 agency deemed necessary to carry out the duties of monitoring and oversight  
13 of a certificate of need. The bonding agency shall consider the  
14 recommendations of the ~~board~~ Commissioner in connection with any such  
15 proposed authorization.

16 § 9443. EXPIRATION OF CERTIFICATES OF NEED

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

19 (b) No later than 180 days before the expiration date of a certificate of  
20 need, an applicant that has not yet implemented the project approved in the  
21 certificate of need may petition the ~~board~~ Commissioner for an extension of

1 the implementation period. The ~~board~~ Commissioner may grant an extension  
2 in ~~its~~ his or her discretion.

3 (c) Certificates of need shall expire on the date the ~~board~~ Commissioner  
4 accepts the final implementation report filed in connection with the project  
5 implemented pursuant to the certificate.

6 \* \* \*

7 § 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

8 (a) The ~~board~~ Commissioner may revoke a certificate of need for  
9 substantial noncompliance with the scope of the project as designated in the  
10 application, or for failure to comply with the conditions set forth in the  
11 certificate of need granted by the ~~board~~ Commissioner.

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

15 (2) Applicants shall notify the ~~board~~ Commissioner of a nonmaterial  
16 change to the approved project. If the ~~board~~ Commissioner decides to review a  
17 nonmaterial change, the ~~board~~ Commissioner may provide for any necessary  
18 process, including a public hearing, before approval. Where the ~~board~~  
19 Commissioner decides not to review a change, such change will be deemed to  
20 have been granted a certificate of need.

1 § 9445. ENFORCEMENT

2 (a) Any person who offers or develops any new health care project within  
3 the meaning of this subchapter without first obtaining a certificate of need as  
4 required herein, or who otherwise violates any of the provisions of this  
5 subchapter, may be subject to the following administrative sanctions by the  
6 ~~Board~~ Commissioner, after notice and an opportunity to be heard:

7 (1) The ~~Board~~ Commissioner may order that no license or certificate  
8 permitted to be issued by any State agency may be issued to any health care  
9 facility to operate, offer, or develop any new health care project for a specified  
10 period of time, or that remedial conditions be attached to the issuance of such  
11 licenses or certificates.

12 (2) The ~~Board~~ Commissioner may order that payments or  
13 reimbursements to the entity for claims made under any health insurance  
14 policy, subscriber contract, or health benefit plan offered or administered by  
15 any public or private health insurer, including the Medicaid program and any  
16 other health benefit program administered by the State be denied, reduced, or  
17 limited, and in the case of a hospital that the hospital's annual budget approved  
18 under subchapter 7 of this chapter be adjusted, modified, or reduced.

19 (b) In addition to all other sanctions, if any person offers or develops any  
20 new health care project without first having been issued a certificate of need or  
21 certificate of exemption for the project, or violates any other provision of this

1 subchapter or any lawful rule adopted pursuant to this subchapter, the ~~Board~~  
2 Commissioner, the Office of the Health Care Advocate, the State Long-Term  
3 Care Ombudsman, and health care providers and consumers located in the  
4 State shall have standing to maintain a civil action in the Superior Court of the  
5 county in which such alleged violation has occurred, or in which such person  
6 may be found, to enjoin, restrain, or prevent such violation. Upon written  
7 request by the ~~Board~~ Commissioner, it shall be the duty of the Vermont  
8 Attorney General to furnish appropriate legal services and to prosecute an  
9 action for injunctive relief to an appropriate conclusion, which shall not be  
10 reimbursed under subdivision (a)(2) of this section.

11 (c) After notice and an opportunity for hearing, the ~~Board~~ Commissioner  
12 may impose on a person who knowingly violates a provision of this  
13 subchapter, or a rule or order adopted pursuant to this subchapter or 8 V.S.A.  
14 § 15, a civil administrative penalty of no more than \$40,000.00, or in the case  
15 of a continuing violation, a civil administrative penalty of no more than  
16 \$100,000.00 or one-tenth of one percent of the gross annual revenues of the  
17 health care facility, whichever is greater, which shall not be reimbursed under  
18 subdivision (a)(2) of this section, and the ~~Board~~ Commissioner may order the  
19 entity to cease and desist from further violations, and to take such other actions  
20 necessary to remediate a violation. A person aggrieved by a decision of the

1 ~~Board~~ Commissioner under this subdivision may appeal ~~under section 9381 of~~  
2 ~~this title~~ the Commissioner's decision to the Vermont Supreme Court.

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

9 § 9446. HOME HEALTH AGENCIES; GEOGRAPHIC SERVICE AREAS

10 The terms of a certificate of need relating to the boundaries of the  
11 geographic service area of a home health agency may be modified by the ~~board~~  
12 Commissioner, in consultation with the ~~commissioner of disabilities, aging,~~  
13 ~~and independent living~~ Commissioner of Disabilities, Aging, and Independent  
14 Living, after notice and opportunity for hearing, or upon written application to  
15 the ~~board~~ Commissioner by the affected home health agencies or consumers,  
16 demonstrating a substantial need therefor. Service area boundaries may be  
17 modified by the ~~board~~ Commissioner to take account of natural or physical  
18 barriers that may make the provision of existing services uneconomical or  
19 impractical, to prevent or minimize unnecessary duplication of services or  
20 facilities, or otherwise to promote the public interest. The ~~board~~  
21 Commissioner shall issue an order granting such application only upon a

1 finding that the granting of such application is consistent with the purposes of  
2 33 V.S.A., chapter 63, subchapter 1A and the ~~health resource allocation plan~~  
3 Health Resource Allocation Plan established under section 9405 of this title  
4 and after notice and an opportunity to participate on the record by all interested  
5 persons, including affected local governments, pursuant to rules adopted by the  
6 ~~board~~ Commissioner.

7 Sec. 6. 18 V.S.A. chapter 221, subchapter 7 is amended to read:

8 Subchapter 7. Hospital Budget Review

9 \* \* \*

10 § 9453. POWERS AND DUTIES

11 (a) The ~~board~~ Commissioner shall:

12 (1) adopt uniform formats that hospitals shall use to report financial,  
13 scope-of-services, and utilization data and information;

14 (2) designate a data organization with which hospitals shall file  
15 financial, scope-of-services, and utilization data and information; and

16 (3) designate a data organization or organizations to process, analyze,  
17 store, or retrieve data or information.

18 (b) To effectuate the purposes of this subchapter the ~~board~~ Commissioner  
19 may adopt rules under 3 V.S.A. chapter 25.

1 § 9454. HOSPITALS; DUTIES

2 (a) Hospitals shall file the following information at the time and place and  
3 in the manner established by the ~~Board~~ Commissioner:

4 \* \* \*

5 (7) such other information as the ~~board~~ Commissioner may require.

6 \* \* \*

7 § 9456. BUDGET REVIEW

8 (a) The ~~Board~~ Commissioner shall conduct reviews of each hospital's  
9 proposed budget based on the information provided pursuant to this subchapter  
10 and in accordance with a schedule established by the ~~Board~~ Commissioner.

11 (b) In conjunction with budget reviews, the ~~Board~~ Commissioner shall:

12 \* \* \*

13 (10) require each hospital to provide information on administrative  
14 costs, as defined by the ~~Board~~ Commissioner, including specific information  
15 on the amounts spent on marketing and advertising costs; and

16 (11) require each hospital to create or maintain connectivity to the  
17 State's Health Information Exchange Network in accordance with the criteria  
18 established by the Vermont Information Technology Leaders, Inc., pursuant to  
19 subsection 9352(i) of this title, provided that the ~~Board~~ Commissioner shall not  
20 require a hospital to create a level of connectivity that the State's Exchange is  
21 unable to support.

1 (c) Individual hospital budgets established under this section shall:

2 (1) be consistent with the Health Resource Allocation Plan;

3 (2) take into consideration national, regional, or instate peer group

4 norms, according to indicators, ratios, and statistics established by the ~~Board~~

5 Commissioner;

6 (3) promote efficient and economic operation of the hospital;

7 (4) reflect budget performances for prior years; and

8 (5) include a finding that the analysis provided in subdivision (b)(9) of

9 this section is a reasonable methodology for reflecting a reduction in net

10 revenues for non-Medicaid payers.

11 (d)(1) Annually, the ~~Board~~ Commissioner shall establish a budget for each

12 hospital on or before September 15, followed by a written decision by

13 October 1. Each hospital shall operate within the budget established under this

14 section.

15 (2)(A) It is the General Assembly's intent that hospital cost containment

16 conduct is afforded state action immunity under applicable federal and State

17 antitrust laws, if:

18 (i) the ~~Board~~ Commissioner requires or authorizes the conduct in

19 any hospital budget established by the ~~Board~~ Commissioner under this section;

20 (ii) the conduct is in accordance with standards and procedures

21 prescribed by the ~~Board~~ Commissioner; and

1 (iii) the conduct is actively supervised by the ~~Board~~  
2 Commissioner.

3 (B) A hospital's violation of the ~~Board's~~ Commissioner's standards  
4 and procedures shall be subject to enforcement pursuant to subsection (h) of  
5 this section.

6 (3)(A) The Office of the Health Care Advocate shall have the right to  
7 receive copies of all materials related to the hospital budget review and may:

8 (i) ask questions of employees of the ~~Green Mountain Care Board~~  
9 Department of Financial Regulation related to the ~~Board's~~ Commissioner's  
10 hospital budget review;

11 (ii) submit written questions to the ~~Board~~ Commissioner that the  
12 Board will ask of hospitals in advance of any hearing held in conjunction with  
13 the ~~Board's~~ Commissioner's hospital review;

14 (iii) submit written comments for the ~~Board's~~ Commissioner's  
15 consideration; and

16 (iv) ask questions and provide testimony in any hearing held in  
17 conjunction with the ~~Board's~~ Commissioner's hospital budget review.

18 (B) The Office of the Health Care Advocate shall not further disclose  
19 any confidential or proprietary information provided to the Office pursuant to  
20 this subdivision (3).

1 (e) The ~~Board~~ Commissioner may establish a process to define, on an  
2 annual basis, criteria for hospitals to meet, such as utilization and inflation  
3 benchmarks. The ~~Board~~ Commissioner may waive one or more of the review  
4 processes listed in subsection (b) of this section.

5 (f) The ~~Board~~ Commissioner may, upon application, adjust a budget  
6 established under this section upon a showing of need based upon exceptional  
7 or unforeseen circumstances in accordance with the criteria and processes  
8 established under section 9405 of this title.

9 (g) The ~~Board~~ Commissioner may request, and a hospital shall provide,  
10 information determined by the ~~Board~~ Commissioner to be necessary to  
11 determine whether the hospital is operating within a budget established under  
12 this section. For purposes of this subsection, subsection (h) of this section, and  
13 subdivision 9454(a)(7) of this title, the ~~Board's~~ Commissioner's authority shall  
14 extend to an affiliated corporation or other person in the control of or  
15 controlled by the hospital to the extent that such authority is necessary to carry  
16 out the purposes of this subsection, subsection (h) of this section, or  
17 subdivision 9454(a)(7) of this title. As used in this subsection, a rebuttable  
18 presumption of "control" is created if the entity, hospital, or other person,  
19 directly or indirectly, owns, controls, holds with the power to vote, or holds  
20 proxies representing 20 percent or more of the voting securities or membership  
21 interest or other governing interest of the hospital or other controlled entity.

1 (h)(1) If a hospital violates a provision of this section, the ~~Board~~  
2 Commissioner may maintain an action in the Superior Court of the county in  
3 which the hospital is located to enjoin, restrain, or prevent such violation.

4 (2)(A) After notice and an opportunity for hearing, the ~~Board~~  
5 Commissioner may impose on a person ~~who~~ that knowingly violates a  
6 provision of this subchapter, or a rule adopted pursuant to this subchapter, a  
7 civil administrative penalty of no more than \$40,000.00, or in the case of a  
8 continuing violation, a civil administrative penalty of no more than  
9 \$100,000.00 or one-tenth of one percent of the gross annual revenues of the  
10 hospital, whichever is greater. This subdivision shall not apply to violations of  
11 subsection (d) of this section caused by exceptional or unforeseen  
12 circumstances.

13 (B)(i) The ~~Board~~ Commissioner may order a hospital to:

14 (I)(aa) cease material violations of this subchapter or of a  
15 regulation or order issued pursuant to this subchapter; or

16 (bb) cease operating contrary to the budget established for the  
17 hospital under this section, provided such a deviation from the budget  
18 is material; and

19 (II) take such corrective measures as are necessary to remediate  
20 the violation or deviation and to carry out the purposes of this subchapter.

1                   (ii) Orders issued under this subdivision (2)(B) shall be issued  
2 after notice and an opportunity to be heard, except where the ~~Board~~  
3 Commissioner finds that a hospital's financial or other emergency  
4 circumstances pose an immediate threat of harm to the public or to the  
5 financial condition of the hospital. Where there is an immediate threat, the  
6 ~~Board~~ Commissioner may issue orders under this subdivision (2)(B) without  
7 written or oral notice to the hospital. Where an order is issued without notice,  
8 the hospital shall be notified of the right to a hearing at the time the order is  
9 issued. The hearing shall be held within 30 days of receipt of the hospital's  
10 request for a hearing, and a decision shall be issued within 30 days after  
11 conclusion of the hearing. The ~~Board~~ Commissioner may increase the time to  
12 hold the hearing or to render the decision for good cause shown. Hospitals  
13 may appeal any decision in this subsection to Superior Court. Appeal shall be  
14 on the record as developed by the ~~Board~~ Commissioner in the administrative  
15 proceeding and the standard of review shall be as provided in 8 V.S.A. § 16.

16                   (3)(A) The ~~Board~~ Commissioner shall require the officers and directors  
17 of a hospital to file under oath, on a form and in a manner prescribed by the  
18 ~~Board~~ Commissioner, any information designated by the ~~Board~~ Commissioner  
19 and required pursuant to this subchapter. The authority granted to the ~~Board~~  
20 Commissioner under this subsection is in addition to any other authority  
21 granted to the ~~Board~~ Commissioner under law.



1       Sec. 9. CONFORMING REVISIONS; BILL DRAFT

2           On or before December 1, 2017, the Office of Legislative Council shall  
3       prepare a draft bill reflecting all conforming revisions necessary to carry out  
4       the purposes of this act.

5       Sec. 10. REPEAL

6           18 V.S.A. chapter 220 (Green Mountain Care Board) is repealed.

7       Sec. 11. REVERSION

8           Notwithstanding any provision of law to the contrary, any funds remaining  
9       in the Green Mountain Care Board accounts on July 1, 2017 shall revert to the  
10       General Fund.

11       Sec. 12. EFFECTIVE DATE

12           This act shall take effect on July 1, 2017.