

1 H.487

2 Introduced by Committee on Health Care

3 Date:

4 Subject: Health; health insurance; Vermont Health Benefit Exchange; medical
5 malpractice; Blueprint for Health; Green Mountain Care Board

6 Statement of purpose of bill as introduced: This bill proposes to allow
7 individuals to enroll directly in Exchange plans. It would extend the use of
8 confidential presuit mediation in medical malpractice claims until 2018. It
9 would also require the Blueprint for Health to report on its return on
10 investment and on wellness incentives and direct the Green Mountain Care
11 Board to consider issues pertaining to payment reform for primary care and to
12 differential payments to health care providers.

13 An act relating to direct enrollment in Exchange plans and to presuit
14 mediation in medical malpractice claims

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

16 Sec. 1. 33 V.S.A. § 1811(b) is amended to read:

17 (b)(1) ~~No person may provide a health benefit plan to an individual unless~~
18 ~~the plan is offered through the Vermont Health Benefit Exchange~~ To the extent
19 permitted by the U.S. Department of Health and Human Services, an
20 individual may purchase a health benefit plan through the Exchange website,

1 through navigators, by telephone, or directly from a registered carrier under
2 contract with the Vermont Health Benefit Exchange, if the carrier elects to
3 make direct enrollment available. A registered carrier enrolling individuals
4 directly in Exchange plans shall comply with all open enrollment and special
5 enrollment periods applicable to the Vermont Health Benefit Exchange.

6 (2) To the extent permitted by the U.S. Department of Health and
7 Human Services, a small employer or an employee of a small employer may
8 purchase a health benefit plan through the Exchange website, through
9 navigators, by telephone, or directly from a ~~health insurer~~ registered carrier
10 under contract with the Vermont Health Benefit Exchange.

11 (3) No person may provide a health benefit plan to an individual or
12 small employer unless the plan complies with the provisions of this subchapter.

13 Sec. 2. 12 V.S.A. chapter 215, subchapter 2 is added to read:

14 Subchapter 2. Mediation Prior to Filing a Complaint of Malpractice

15 § 7011. PURPOSE

16 The purpose of mediation prior to filing a medical malpractice case is to
17 identify and resolve meritorious claims and reduce areas of dispute prior to
18 litigation, which will reduce the litigation costs, reduce the time necessary to
19 resolve claims, provide fair compensation for meritorious claims, and reduce
20 malpractice-related costs throughout the system.

1 § 7012. PRESUIT MEDIATION; SERVICE

2 (a) A potential plaintiff may serve upon each known potential defendant a
3 request to participate in presuit mediation prior to filing a civil action in tort or
4 in contract alleging that an injury or death resulted from the negligence of a
5 health care provider and to recover damages resulting from the personal injury
6 or wrongful death.

7 (b) Service of the request required in subsection (a) of this section shall be
8 in letter form and shall be served on all known potential defendants by certified
9 mail. The date of mailing such request shall toll all applicable statutes of
10 limitations.

11 (c) The request to participate in presuit mediation shall name all known
12 potential defendants, contain a brief statement of the facts that the potential
13 plaintiff believes are grounds for relief, and be accompanied by a certificate of
14 merit prepared pursuant to section 1051 of this title, and may include other
15 documents or information supporting the potential plaintiff's claim.

16 (d) Nothing in this chapter precludes potential plaintiffs and defendants
17 from presuit negotiation or other presuit dispute resolution to settle potential
18 claims.

19 § 7013. MEDIATION RESPONSE

20 (a) Within 60 days of service of the request to participate in presuit
21 mediation, each potential defendant shall accept or reject the potential

1 plaintiff's request for presuit mediation by mailing a certified letter to counsel
2 or if the party is unrepresented to the potential plaintiff.

3 (b) If the potential defendant agrees to participate, within 60 days of the
4 service of the request to participate in presuit mediation, each potential
5 defendant shall serve a responsive certificate on the potential plaintiff by
6 mailing a certified letter indicating that he or she, or his or her counsel, has
7 consulted with a qualified expert within the meaning of section 1643 of this
8 title and that expert is of the opinion that there are reasonable grounds to
9 defend the potential plaintiff's claims of medical negligence. Notwithstanding
10 the potential defendant's acceptance of the request to participate, if the
11 potential defendant does not serve such a responsive certificate within the
12 60-day period, then the potential plaintiff need not participate in the presuit
13 mediation under this title and may file suit. If the potential defendant is willing
14 to participate, presuit mediation may take place without a responsive certificate
15 of merit from the potential defendant at the plaintiff's election.

16 § 7014. PROCESS; TIME FRAMES

17 (a) The mediation shall take place within 60 days of the service of all
18 potential defendants' acceptance of the request to participate in presuit
19 mediation. The parties may agree to an extension of time. If in good faith the
20 mediation cannot be scheduled within the 60-day time period, the potential
21 plaintiff need not participate and may proceed to file suit.

1 (b) If presuit mediation is not agreed to, the mediator certifies that
2 mediation is not appropriate, or mediation is unsuccessful, the potential
3 plaintiff may initiate a civil action as provided in the Vermont Rules of Civil
4 Procedure. The action shall be filed upon the later of the following:

5 (1) within 90 days of the potential plaintiff's receipt of the potential
6 defendant's letter refusing mediation, the failure of the potential defendant to
7 file a responsive certificate of merit within the specified time period, or the
8 mediator's signed letter certifying that mediation was not appropriate or that
9 the process was complete; or

10 (2) prior to the expiration of the applicable statute of limitations.

11 (c) If presuit mediation is attempted unsuccessfully, the parties shall not be
12 required to participate in mandatory mediation under Rule 16.3 of the Vermont
13 Rules of Civil Procedure.

14 § 7015. CONFIDENTIALITY

15 All written and oral communications made in connection with or during the
16 mediation process set forth in this chapter shall be confidential. The mediation
17 process shall be treated as a settlement negotiation under Rule 408 of the
18 Vermont Rules of Evidence.

19 **Sec. 3. BLUEPRINT FOR HEALTH; REPORTS**

20 (a) The 2016 annual report of the Blueprint for Health shall present an
21 analysis of the value-added benefits and return on investment to the Medicaid

1 program of the new funds appropriated in the fiscal year 2016 budget,
2 including the identification of any costs avoided that can be directly attributed
3 to those funds, and the means of the analysis that was used to draw any such
4 conclusions.

5 (b) The Blueprint for Health shall explore and report back to the General
6 Assembly on or before January 15, 2016 on potential wellness incentives.

7 Sec. 4. PAYMENT REFORM AND DIFFERENTIAL PAYMENTS TO
8 PROVIDERS

9 In implementing an all-payer model and provider rate-setting, the Green
10 Mountain Care Board shall consider:

11 (1) the benefits of prioritizing and expediting payment reform in
12 primary care that shifts away from fee-for-service models;

13 (2) the impact of hospital acquisitions of independent physician
14 practices on the health care system costs, including any disparities between
15 reimbursements to hospital-owned practices and reimbursements to
16 independent physician practices; and

17 (3) the effects of differential reimbursement for different types of
18 providers when providing the same services billed under the same codes.

19 Sec. 5. REPEAL

20 12 V.S.A. chapter 215, subchapter 2 (presuit mediation) is repealed on
21 July 1, 2018.

1 Sec. 6. EFFECTIVE DATES

2 (a) Sec. 1 (direct enrollment in Exchange plans) shall take effect on July 1,
3 2015 and shall apply beginning with the 2016 open enrollment period.

4 (b) The remainder of this act shall take effect on passage.