

1 S.133

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Health; health care administration; public oversight commission

6 Statement of purpose: This bill proposes to eliminate the public oversight
7 commission.

8 An act relating to eliminating the public oversight commission

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

10 Sec. 1. 18 V.S.A. § 9402 is amended to read:

11 § 9402. DEFINITIONS

12 As used in this chapter, unless otherwise indicated:

13 * * *

14 (15) ~~“Public oversight commission” means the commission established~~
15 ~~in section 9407 of this title.~~

16 (16) “Unified health care budget” means the budget established in
17 accordance with section 9406 of this title.

18 (17)(16) “State health plan” means the plan developed under section
19 9405 of this title.

1 Sec. 2. 18 V.S.A. § 9405 is amended to read:

2 § 9405. STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION
3 PLAN

4 * * *

5 (b) On or before July 1, 2005, the commissioner, in consultation with the
6 secretary of human services, shall submit to the governor a four-year health
7 resource allocation plan. The plan shall identify Vermont needs in health care
8 services, programs, and facilities; the resources available to meet those needs;
9 and the priorities for addressing those needs on a statewide basis.

10 * * *

11 (2) In the preparation of the plan, the commissioner shall assemble an
12 advisory committee of no fewer than nine nor more than 13 members who
13 shall reflect a broad distribution of diverse perspectives on the health care
14 system, including health care professionals, payers, third-party payers, and
15 consumer representatives, ~~and up to three members of the public oversight~~
16 ~~commission~~. The advisory committee shall review drafts and provide
17 recommendations to the commissioner during the development of the plan.
18 Upon adoption of the plan, the advisory committee shall be dissolved.

19 (3) The commissioner, with the advisory committee, shall conduct at
20 least five public hearings, in different regions of the state, on the plan as
21 proposed and shall give interested persons an opportunity to submit their views

1 orally and in writing. To the extent possible, the commissioner shall arrange
2 for hearings to be broadcast on interactive television. Not less than 30 days
3 prior to any such hearing, the commissioner shall publish in the manner
4 prescribed in section 174 of Title 1 the time and place of the hearing and the
5 place and period during which to direct written comments to the commissioner.
6 In addition, the commissioner may create and maintain a website to allow
7 members of the public to submit comments electronically and review
8 comments submitted by others.

9 (4) The commissioner shall develop a mechanism for receiving ongoing
10 public comment regarding the plan and for revising it every four years or as
11 needed. ~~The public oversight commission shall recommend revisions to the~~
12 ~~plan at least every four years and at any other time it determines revisions are~~
13 ~~warranted.~~

14 * * *

15 Sec. 3. 18 V.S.A. § 9405a is amended to read:

16 § 9405a. PUBLIC PARTICIPATION AND STRATEGIC PLANNING

17 Each hospital shall have a protocol for meaningful public participation in its
18 strategic planning process for identifying and addressing health care needs that
19 the hospital provides or could provide in its service area. Needs identified
20 through the process shall be integrated with the hospital's long-term planning
21 ~~and shall be described as a component of its four-year capital expenditure~~

1 ~~projections provided to the public oversight commission under subdivision~~
2 ~~9407(b)(2) of this title.~~ The process shall be updated as necessary to continue
3 to be consistent with such planning and capital expenditure projections, and
4 identified needs shall be summarized in the hospital's community report.

5 Sec. 4. 18 V.S.A. § 9405b is amended to read:

6 § 9405b. HOSPITAL COMMUNITY REPORTS

7 (a) The commissioner, in consultation with representatives from ~~the public~~
8 ~~oversight commission,~~ hospitals, other groups of health care professionals, and
9 members of the public representing patient interests, shall adopt rules
10 establishing a standard format for community reports, as well as the contents,
11 which shall include:

12 * * *

13 (c) The community reports shall be provided to the ~~public oversight~~
14 ~~commission and the commissioner.~~ The commissioner shall publish the
15 reports on a public website and shall develop and include a format for
16 comparisons of hospitals within the same categories of quality and financial
17 indicators.

18 Sec. 5. 18 V.S.A. § 9433(c) is amended to read:

19 (c) The commissioner shall consult with hospitals, nursing homes and
20 professional associations and societies, ~~the public oversight commission,~~ the

1 secretary of human services, and other interested parties in matters of policy
2 affecting the administration of this subchapter.

3 Sec. 6. 18 V.S.A. § 9440 is amended to read:

4 § 9440. PROCEDURES

5 * * *

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

7 * * *

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

20 * * *

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

2 (1) The ~~public oversight commission~~ commissioner shall review:

3 (A) The application materials provided by the applicant.

4 (B) ~~The assessment of the applicant's materials provided by the~~
5 ~~department.~~

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

8 (2) The ~~public oversight commission~~ department shall hold a public
9 hearing during the course of a review.

10 (3) ~~The public oversight commission shall make a written findings and a~~
11 ~~recommendation to the commissioner in favor of or against each application.~~
12 ~~A record shall be maintained of all information reviewed in connection with~~
13 ~~each application.~~

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

1 ~~(5)~~(4) After reviewing each application ~~and after considering the~~
2 ~~recommendations of the public oversight commission~~, the commissioner shall
3 make a decision either to issue or to deny the application for a certificate of
4 need. The decision shall be in the form of an approval in whole or in part, or
5 an approval subject to such conditions as the commissioner may impose in
6 furtherance of the purposes of this subchapter, or a denial. In granting a partial
7 approval or a conditional approval the commissioner shall not mandate a new
8 health care project not proposed by the applicant or mandate the deletion of
9 any existing service. Any partial approval or conditional approval must be
10 directly within the scope of the project proposed by the applicant and the
11 criteria used in reviewing the application.

12 ~~(6)(A)~~(5) If the commissioner proposes to render a final decision
13 denying an application in whole or in part, or approving a contested
14 application, the commissioner shall serve the parties with notice of a proposed
15 decision containing proposed findings of fact and conclusions of law, and shall
16 provide the parties an opportunity to file exceptions and present briefs and oral
17 argument to the commissioner. The commissioner may also permit the parties
18 to present additional evidence.

19 ~~(B) If the commissioner's proposed decision is contrary to the~~
20 ~~recommendation of the public oversight commission:~~

1 ~~(i) the notice of proposed decision shall contain findings of fact~~
2 ~~and conclusions of law demonstrating that the commissioner fully considered~~
3 ~~all the findings and conclusions of the public oversight commission and~~
4 ~~explaining why his or her proposed decision is contrary to the recommendation~~
5 ~~of the public oversight commission and necessary to further the policies and~~
6 ~~purposes of this subchapter; and~~

7 ~~(ii) the commissioner shall permit the parties to present additional~~
8 ~~evidence.~~

9 ~~(7)~~(6) Notice of the final decision shall be sent to the applicant,
10 competing applicants, and interested parties. The final decision shall include
11 written findings and conclusions stating the basis of the decision.

12 ~~(8)~~(7) The commissioner shall establish rules governing the compilation
13 of the record used by the ~~public oversight commission and the commissioner~~ in
14 connection with decisions made on applications filed and certificates issued
15 under this subchapter.

16 (e) The commissioner shall adopt rules governing procedures for the
17 expeditious processing of applications for replacement, repair, rebuilding, or
18 reequipping of any part of a health care facility or health maintenance
19 organization destroyed or damaged as the result of fire, storm, flood, act of
20 God, or civil disturbance, or any other circumstances beyond the control of the
21 applicant where the commissioner finds that the circumstances require action

1 in less time than normally required for review. If the nature of the emergency
2 requires it, an application under this subsection may be reviewed by the
3 commissioner only, without notice and opportunity for public hearing or
4 intervention by any party.

5 (f) Any applicant, competing applicant, or interested party aggrieved by a
6 final decision of the commissioner under this section may appeal the decision
7 to the supreme court. ~~If the commissioner's decision is contrary to the~~
8 ~~recommendation of the public oversight commission, the standard of review on~~
9 ~~appeal shall require that the commissioner's decision be supported by a~~
10 ~~preponderance of the evidence in the record.~~

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

1 Sec. 7. 18 V.S.A. § 9440a is amended to read:

2 § 9440a. APPLICATIONS, INFORMATION, AND TESTIMONY; OATH
3 REQUIRED

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

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

17 (c) A person who knowingly makes a false statement under oath or who
18 knowingly submits false information under oath to the commissioner ~~or the~~
19 ~~public oversight commission~~ or a hearing officer appointed by the
20 commissioner or who knowingly testifies falsely in any proceeding before the
21 commissioner ~~or the public oversight commission~~ or a hearing officer

1 appointed by the commissioner shall be guilty of perjury and punished as
2 provided in section 2901 of Title 13.

3 Sec. 8. 18 V.S.A. § 9456(h) is amended to read:

4 (h)(1) If a hospital violates a provision of this section, the commissioner
5 may maintain an action in the superior court of the county in which the
6 hospital is located to enjoin, restrain or prevent such violation.

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

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

1 (B) A person who knowingly makes a false statement under oath or
2 who knowingly submits false information under oath to the commissioner ~~or to~~
3 ~~the public oversight commission~~ or to a hearing officer appointed by the
4 commissioner or who knowingly testifies falsely in any proceeding before the
5 commissioner ~~or the public oversight commission~~ or a hearing officer
6 appointed by the commissioner shall be guilty of perjury and punished as
7 provided in section 2901 of Title 13.

8 Sec. 9. REPEAL

9 Section 9407 of Title 18 (public oversight commission) is repealed.