

1 S.277

2 Introduced by Senators Ayer and Ashe

3 Referred to Committee on

4 Date:

5 Subject: Health; Green Mountain Care Board; certificate of need; Health

6 Resource Allocation Plan; critical health needs and resources

7 Statement of purpose of bill as introduced: This bill proposes to revise the  
8 certificate of need process for hospitals and other health care facilities. It  
9 would also replace the requirement that the Green Mountain Care Board  
10 establish a four-year Health Resource Allocation Plan with a requirement that  
11 the Board publish on its website a report containing information regarding  
12 Vermont's critical health needs, goods, services, and resources.

13 An act relating to certificates of need and to replacing the Health Resource  
14 Allocation Plan

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

16 \* \* \* State Health Improvement Plan; Critical Health Needs

17 and Resources \* \* \*

18 Sec. 1. 18 V.S.A. § 9375(b) is amended to read:

19 (b) The Board shall have the following duties:

20 \* \* \*



1 Sec. 3. 18 V.S.A. § 9402 is amended to read:

2 § 9402. DEFINITIONS

3 As used in this chapter, unless otherwise indicated:

4 \* \* \*

5 (10) ~~“Health Resource Allocation Plan” means the plan adopted by the~~  
6 ~~Green Mountain Care Board under section 9405 of this title. [Repealed.]~~

7 \* \* \*

8 (16) “State Health Improvement Plan” means the plan developed under  
9 section 9405 of this title.

10 \* \* \*

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

12 § 9405. STATE HEALTH IMPROVEMENT PLAN; ~~HEALTH RESOURCE~~  
13 ~~ALLOCATION PLAN~~ CRITICAL HEALTH NEEDS AND  
14 RESOURCES

15 (a) ~~No later than January 1, 2005, the~~ The Secretary of Human Services or  
16 designee, in consultation with the Chair of the Green Mountain Care Board and  
17 health care professionals and after receipt of public comment, shall adopt a  
18 State Health Improvement Plan that sets forth the health goals and values for  
19 the State. The Secretary may amend the Plan as the Secretary deems necessary  
20 and appropriate. The Plan shall include health promotion, health protection,  
21 nutrition, and disease prevention priorities for the State; identify available

1 human resources as well as human resources needed for achieving the State's  
2 health goals and the planning required to meet those needs; and identify  
3 geographic parts of the State needing investments of additional resources in  
4 order to improve the health of the population. ~~The Plan shall contain sufficient~~  
5 ~~detail to guide development of the State Health Resource Allocation Plan.~~  
6 Copies of the Plan shall be submitted to members of the Senate ~~and House~~  
7 ~~Committees~~ Committee on Health and Welfare ~~no later than January 15, 2005~~  
8 and the House Committee on Health Care.

9 (b) ~~On or before July 1, 2005, the~~ The Green Mountain Care Board, in  
10 consultation with the Secretary of Human Services or designee, shall ~~submit to~~  
11 ~~the Governor a four-year Health Resource Allocation Plan~~ publish on its  
12 website a report containing information regarding Vermont's critical health  
13 needs, goods, services, and resources, which may be used to inform the  
14 Board's regulatory processes, cost containment and statewide quality of care  
15 efforts, health care payment and delivery system reform initiatives, and any  
16 allocation of health resources within the State. ~~The Plan report~~ shall identify  
17 Vermont residents' needs ~~in~~ for health care services, programs, and facilities;  
18 the resources available and the additional resources that would be required to  
19 meet those needs fully; and the priorities for addressing those needs on a  
20 statewide basis. The Board may expand the report to include resources, needs,

1 and priorities related to the social determinants of health. The report shall be  
2 revised periodically, but not less frequently than once every four years.

3 (1) ~~The Plan shall include~~ In developing the report, the Board shall:

4 (A) ~~A statement of principles reflecting the policies~~ consider the  
5 principles in section 9371 of this title, as well as the purposes enumerated in  
6 ~~sections 9401 and 9431 of this chapter to be used in allocating resources and in~~  
7 ~~establishing priorities for health services.~~ title;

8 ~~(B) Identification of the current supply and distribution of hospital,~~  
9 ~~nursing home, and other inpatient services; home health and mental health~~  
10 ~~services; treatment and prevention services for alcohol and other drug abuse;~~  
11 ~~emergency care; ambulatory care services, including primary care resources,~~  
12 ~~federally qualified health centers, and free clinics; major medical equipment;~~  
13 ~~and health screening and early intervention services.~~

14 ~~(C) Consistent with the principles set forth in subdivision (A) of this~~  
15 ~~subdivision (1), recommendations for the appropriate supply and distribution~~  
16 ~~of resources, programs, and services identified in subdivision (B) of this~~  
17 ~~subdivision (1), options for implementing such recommendations and~~  
18 ~~mechanisms which will encourage the appropriate integration of these services~~  
19 ~~on a local or regional basis. To arrive at such recommendations, the Green~~  
20 ~~Mountain Care Board shall consider at least the following factors:~~

21 (i) ~~the values and goals reflected in the State Health Plan;~~

- 1                   ~~(ii) the needs of the population on a statewide basis;~~
- 2                   ~~(iii) the needs of particular geographic areas of the State, as~~  
3 ~~identified in the State Health Plan;~~
- 4                   ~~(iv) the needs of uninsured and underinsured populations;~~
- 5                   ~~(v) the use of Vermont facilities by out-of-state residents;~~
- 6                   ~~(vi) the use of out-of-state facilities by Vermont residents;~~
- 7                   ~~(vii) the needs of populations with special health care needs;~~
- 8                   ~~(viii) the desirability of providing high quality services in an~~  
9 ~~economical and efficient manner, including the appropriate use of midlevel~~  
10 ~~practitioners;~~
- 11                  ~~(ix) the cost impact of these resource requirements on health care~~  
12 ~~expenditures;~~
- 13                  ~~(x) the overall quality and use of health care services as reported~~  
14 ~~by the Vermont Program for Quality in Health Care and the Vermont Ethics~~  
15 ~~Network;~~
- 16                  ~~(xi) the overall quality and cost of services as reported in the~~  
17 ~~annual hospital community reports;~~
- 18                  ~~(xii) individual hospital four-year capital budget projections; and~~
- 19                  ~~(xiii) the four-year projection of health care expenditures prepared~~  
20 ~~by the Board~~
- 21                  (B) identify priorities using information from:

- 1                   (i) the State Health Improvement Plan;  
2                   (ii) the community health needs assessments required by section  
3                   9405a of this title;  
4                   (iii) available health care workforce information;  
5                   (iv) materials provided to the Board through its other regulatory  
6                   processes, including hospital budget review, oversight of accountable care  
7                   organizations, issuance and denial of certificates of need, and health insurance  
8                   rate review; and  
9                   (v) the public input process set forth in this section; and  
10                  (C) use existing data sources to identify and analyze the gaps  
11                  between the supply of health resources and the health needs of Vermont  
12                  residents and to identify utilization trends to determine areas of  
13                  underutilization and overutilization.

14                  (2) ~~In the preparation of the Plan, the~~ The Green Mountain Care Board  
15                  shall convene the Green Mountain Care Board General Advisory Committee  
16                  established pursuant to subdivision 9374(e)(1) of this title. ~~The Green~~  
17                  ~~Mountain Care Board General Advisory Committee shall review drafts and to~~  
18                  provide recommendations to the Board during the Board's development of the  
19                  Plan report.

20                  (3) ~~The Board, with the Green Mountain Care Board General Advisory~~  
21                  ~~Committee, shall conduct at least five public hearings, in different regions of~~

1 ~~the State, on the Plan as proposed shall conduct a public input process~~  
2 ~~consisting of at least one Board meeting and one meeting of the Advisory~~  
3 ~~Committee and shall give interested persons an opportunity to submit their~~  
4 ~~views orally and in writing. To the extent possible, the Board shall arrange for~~  
5 ~~hearings to be broadcast on interactive television. Not less than 30 days prior~~  
6 ~~to any such hearing, the Board shall publish in the manner prescribed in~~  
7 ~~1 V.S.A. § 174 the time and place of the hearing and the place and period~~  
8 ~~during which to direct written comments to the Board. In addition, the Board~~  
9 ~~may create and maintain a website to allow members of the public to submit~~  
10 ~~comments electronically and review comments submitted by others.~~

11 (4) ~~The Board shall develop a mechanism for receiving ongoing public~~  
12 ~~comment regarding the Plan and for revising it every four years or as needed~~  
13 For purposes of this section:

14 (A) “Health resources” shall include all of the following:

15 (i) personnel, equipment, and infrastructure necessary to deliver  
16 hospital, nursing home, and other inpatient services;

17 (ii) home health and mental health services;

18 (iii) treatment and prevention services for the abuse of alcohol and  
19 other drugs;

20 (iv) emergency care;

21 (v) ambulatory care services, including primary care services; and



1                    (vi) health screening and early intervention services.

2                    (B) “Health resources” may also include personnel, equipment, and  
3 infrastructure necessary to address the social determinants of health.

4                    ~~(5) The Board in consultation with appropriate health care organizations~~  
5 ~~and State entities shall inventory and assess existing State health care data and~~  
6 ~~expertise, and shall seek grants to assist with the preparation of any revisions~~  
7 ~~to the Health Resource Allocation Plan.~~

8                    ~~(6) The Plan or any revised plan proposed by the Board shall be the~~  
9 ~~Health Resource Allocation Plan for the State after it is approved by the~~  
10 ~~Governor or upon passage of three months from the date the Governor receives~~  
11 ~~the proposed Plan, whichever occurs first, unless the Governor disapproves the~~  
12 ~~proposed Plan, in whole or in part. If the Governor disapproves, he or she~~  
13 ~~shall specify the sections of the proposed Plan which are objectionable and the~~  
14 ~~changes necessary to meet the objections. The sections of the proposed Plan~~  
15 ~~not disapproved shall become part of the Health Resource Allocation Plan.~~

16                    Sec. 5. 18 V.S.A. § 9456 is amended to read:

17                    § 9456. BUDGET REVIEW

18                    \* \* \*

19                    (b) In conjunction with budget reviews, the Board shall:

20                    (1) review utilization information;



1 State require that all new health care projects be offered or developed in a  
2 manner that avoids unnecessary duplication and contains or reduces increases  
3 in the cost of delivering services, while at the same time maintaining and  
4 improving the quality of and access to health care services, and promoting  
5 rational allocation of health care resources in the State; and that the need, cost,  
6 type, level, quality, and feasibility of providing any new health care project be  
7 subject to review and assessment prior to any offering or development.

8 (b) ~~In order to carry out the policy goals of this subchapter, the board shall~~  
9 ~~adopt by rule by January 1, 2013, certificate of need procedural guidelines to~~  
10 ~~assist in its decision making. The guidelines shall be consistent with the state~~  
11 ~~health plan and the health resource allocation plan. [Repealed.]~~

12 \* \* \*

13 § 9433. ADMINISTRATION

14 (a) The Green Mountain Care Board shall exercise such duties and powers  
15 as ~~shall be~~ necessary for the implementation of the certificate of need program  
16 as provided by and consistent with this subchapter. The Board shall issue or  
17 deny certificates of need and administer the program.

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

1 (c) The Board shall consult with hospitals, ~~nursing homes,~~ and other health  
2 care facilities, professional associations and societies, the Secretary of Human  
3 Services, the Office of the Health Care Advocate, and other interested parties  
4 in matters of policy affecting the administration of this subchapter.

5 (d) ~~The board shall administer the certificate of need program.~~ [Repealed.]

6 § 9434. CERTIFICATE OF NEED; GENERAL RULES

7 \* \* \*

8 (b) A hospital shall not develop or have developed on its behalf a new  
9 health care project without issuance of a certificate of need by the Board. For  
10 purposes of this subsection, a “new health care project” includes the following:

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

14 (2) The purchase, lease, or other comparable arrangement of a single  
15 piece of diagnostic and therapeutic equipment for which the cost, or in the case  
16 of a donation the value, is in excess of ~~\$1,000,000.00~~ \$1,500,000.00. For  
17 purposes of this subdivision, the purchase or lease of one or more articles of  
18 diagnostic or therapeutic equipment that are necessarily interdependent in the  
19 performance of their ordinary functions or that would constitute any health  
20 care facility included under subdivision 9432(8)(B) of this title, as determined  
21 by the Board, shall be considered together in calculating the amount of an

1 expenditure. The Board's determination of functional interdependence of  
2 items of equipment under this subdivision shall have the effect of a final  
3 decision and is subject to appeal under section 9381 of this title.

4 (3) The offering of a health care service or technology having an annual  
5 operating expense that exceeds ~~\$500,000.00~~ \$1,000,000.00 for either of the  
6 next two budgeted fiscal years, if the service or technology was not offered or  
7 employed, either on a fixed or a mobile basis, by the hospital within the  
8 previous three fiscal years.

9 \* \* \*

10 (e) ~~Beginning January 1, 2013, and biannually thereafter, the~~ The Board  
11 ~~may by rule periodically~~ adjust the monetary jurisdictional thresholds  
12 contained in this section. In doing so, the Board shall reflect the same  
13 categories of health care facilities, services, and programs recognized in this  
14 section. Any adjustment by the Board shall not exceed an amount calculated  
15 using the cumulative Consumer Price Index rate of medical inflation.

16 § 9435. EXCLUSIONS

17 \* \* \*

18 (f) Excluded from this subchapter are routine replacements of nonmedical  
19 equipment and fixtures, including furnaces, boilers, refrigeration units, kitchen  
20 equipment, heating and cooling units, and similar items. These replacements

1 purchased by a hospital shall be included in the hospital's budget and may be  
2 reviewed in the budget process set forth in subchapter 7 of this chapter.

3 § 9437. CRITERIA

4 A certificate of need shall be granted if the applicant demonstrates that the  
5 project serves the public good and the Board finds ~~that~~:

6 (1) ~~the application is consistent with the Health Resource Allocation~~  
7 Plan The proposed project aligns with statewide health care reform goals and  
8 principles because the project:

9 (A) takes into consideration health care payment and delivery system  
10 reform initiatives;

11 (B) addresses current and future community needs; and

12 (C) is consistent with appropriate allocation of health care resources,  
13 including appropriate utilization of services.

14 (2) ~~the~~ The cost of the project is reasonable, because each of the  
15 following conditions is met:

16 (A) ~~the~~ The applicant's financial condition will sustain any financial  
17 burden likely to result from completion of the project;

18 (B) ~~the~~ The project will not result in an undue increase in the costs of  
19 medical care. In making a finding under this subdivision, the Board shall  
20 consider and weigh relevant factors, including:

1 (i) the financial implications of the project on hospitals and other  
2 clinical settings, including the impact on their services, expenditures, and  
3 charges; and

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

6 (C) ~~less~~ Less expensive alternatives do not exist, would be  
7 unsatisfactory, or are not feasible or appropriate; and.

8 (3) ~~there~~ There is an identifiable, existing, or reasonably anticipated  
9 need for the proposed project ~~which~~ that is appropriate for the applicant to  
10 provide; and.

11 (4) ~~the~~ The project will improve the quality of health care in the State or  
12 provide greater access to health care for Vermont's residents, or both; and.

13 (5) ~~the~~ The project will not have an undue adverse impact on any other  
14 existing services provided by the applicant; and.

15 (6) ~~the project will serve the public good;~~ [Repealed.]

16 (7) ~~the~~ The applicant has adequately considered the availability of  
17 affordable, accessible ~~patient~~ transportation services to the facility; ~~and, if~~  
18 applicable.

19 (8) ~~if~~ If the application is for the purchase or lease of new Health Care  
20 Information Technology, it conforms with the ~~health information technology~~

1 ~~plan~~ Health Information Technology Plan established under section 9351 of  
2 this title.

3 § 9439. COMPETING APPLICATIONS

4 \* \* \*

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

11 \* \* \*

12 ~~(d) The Board may, by rule, establish regular review cycles for the addition~~  
13 ~~of beds for skilled nursing or intermediate care. [Repealed.]~~

14 ~~(e) In the case of proposals for the addition of beds for skilled nursing or~~  
15 ~~intermediate care, the Board shall identify in advance of the review the number~~  
16 ~~of additional beds to be considered in that cycle or the maximum additional~~  
17 ~~financial obligation to be incurred by the agencies of the State responsible for~~  
18 ~~financing long term care. The number of beds shall be consistent with the~~  
19 ~~number of beds determined to be necessary by the Health Resource~~  
20 ~~Management Plan or State Health Plan, whichever applies, and shall take into~~



1 ~~account the number of beds needed to develop a new, efficient facility.~~

2 [Repealed.]

3 (f) Unless an application meets the requirements of subsection 9440(e) of  
4 this title, the Board shall consider disapproving a certificate of need application  
5 for a hospital if a project was not identified prospectively as needed at least  
6 two years prior to the time of filing in the hospital's four-year capital plan  
7 required under subdivision 9454(a)(6) of this title. The Board shall review all  
8 hospital four-year capital plans as part of the review under subdivision  
9 9437(2)(B) of this title.

10 § 9440. PROCEDURES

11 \* \* \*

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

13 (1) ~~Applications shall be accepted only at such times as the Board shall~~  
14 ~~establish by rule. [Repealed.]~~

15 (2)(A) Prior to filing an application for a certificate of need, an applicant  
16 shall file an adequate letter of intent with the Board no less than 30 days ~~or, in~~  
17 ~~the case of review cycle applications under section 9439 of this title, no less~~  
18 ~~than 45 days~~ prior to the date on which the application is to be filed. The letter  
19 of intent shall form the basis for determining the applicability of this  
20 subchapter to the proposed expenditure or action. A letter of intent shall  
21 become invalid if an application is not filed within six months ~~of~~ after the date

1 that the letter of intent is received ~~or, in the case of review cycle applications~~  
2 ~~under section 9439 of this title, within such time limits as the Board shall~~  
3 ~~establish by rule.~~ The Board shall post public notice of such letters of intent on  
4 its website electronically within five business days of receipt. The public  
5 notice shall identify the applicant, the proposed new health care project, and  
6 the date by which a competing application or petition to intervene must be  
7 filed.

8 \* \* \*

9 (5)(A) An applicant seeking expedited review of a certificate of need  
10 application may simultaneously file with the Board a request for expedited  
11 review and an application. After receiving the request and an application, the  
12 Board shall issue public notice of the request and application in the manner set  
13 forth in subdivision (2) of this subsection.

14 (B) At least 20 days after the public notice was issued, if no  
15 competing application has been filed and no party has sought and been granted,  
16 nor is likely to be granted, interested party status, the Board, ~~upon making a~~  
17 ~~determination that~~ may issue a certificate of need without further process, or  
18 with such abbreviated process as the Board deems appropriate, if the Board  
19 determines that:

1           (i) the proposed project ~~may~~ appears likely to be uncontested and  
2 does not substantially alter services, ~~as defined by rule, or upon making a~~  
3 ~~determination that; or~~

4           (ii) the application relates to a health care facility affected by  
5 bankruptcy proceedings, ~~may formally declare the application uncontested and~~  
6 ~~may issue a certificate of need without further process, or with such~~  
7 ~~abbreviated process as the Board deems appropriate.~~

8           (C) If a competing application is filed or a person opposing the  
9 application is granted interested party status, the applicant shall follow the  
10 certificate of need standards and procedures in this section, except that:

11           (i) a competing applicant or interested party may waive, in  
12 writing, the requirement for a public hearing; and

13           (ii) in the case of a health care facility affected by bankruptcy  
14 proceedings, the Board may, after notice and an opportunity to be heard ~~may~~,  
15 issue a certificate of need with such abbreviated process as the Board deems  
16 appropriate, notwithstanding the contested nature of the application.

17           (D) The Board shall review applications for the following projects on  
18 an expedited basis, unless a request for intervention as a competing applicant  
19 or interested party is granted:

20           (i) the repair, renovation, or replacement of facility infrastructure,  
21 or a combination thereof; and

1                   (ii) the routine replacement of medical equipment if the  
2 technology and capability of the new equipment is comparable to that of the  
3 replaced equipment.

4                   (6) If an applicant fails to respond to an information request under  
5 subdivision (4) of this subsection within ~~six months or, in the case of review~~  
6 ~~cycle applications under section 9439 of this title, within such time limits as~~  
7 ~~the Board shall establish by rule 90 days~~, the application ~~will~~ shall be deemed  
8 inactive unless the applicant, within six months from the expiration of  
9 the 90-day period, requests in writing and shows good cause that the  
10 application should be reactivated and the Board grants the request. If an  
11 applicant fails to respond to an information request within ~~12 months or, in the~~  
12 ~~case of review cycle applications under section 9439 of this title, within such~~  
13 ~~time limits as the Board shall establish by rule six months~~, the application ~~will~~  
14 shall become invalid unless the applicant requests, and the Board grants, an  
15 extension.

16                   (7) For purposes of this section, “interested party” status shall be  
17 granted to persons or organizations representing the interests of persons who  
18 demonstrate that they will be substantially and directly affected by the new  
19 health care project under review. Persons able to render material assistance to  
20 the Board by providing nonduplicative evidence relevant to the determination  
21 may be admitted in an amicus curiae capacity but shall not be considered

1 parties. A petition seeking party or amicus curiae status ~~must~~ shall be filed  
2 within 20 days following public notice of the letter of intent; or, if no letter of  
3 intent is required pursuant to subdivision (c)(5)(B) of this section, within 20  
4 days following public notice that the ~~petition is complete~~ application has been  
5 filed with the Board. The Board shall grant or deny a petition to intervene  
6 under this subdivision within 15 days after the petition is filed. The Board  
7 shall grant or deny the petition within an additional 30 days upon finding that  
8 good cause exists for the extension. Once interested party status is granted, the  
9 Board shall provide the information necessary to enable the party to participate  
10 in the review process, including information about procedures, copies of all  
11 written correspondence, and copies of all entries in the application record.

12 (8) Once an application has been deemed to be complete, public notice  
13 of the application shall be provided ~~in newspapers having general circulation in~~  
14 ~~the region of the State affected by the application~~ electronically on the Board's  
15 website. The notice shall identify the applicant, the proposed new health care  
16 project, and the date ~~by which a competing application under section 9439 of~~  
17 ~~this title or a petition to intervene must be filed,~~ time, and location of any  
18 public hearing.

19 (9) The Office of the Health Care Advocate established under chapter  
20 229 of this title or, in the case of nursing homes, the Long-Term Care  
21 Ombudsman's Office established under 33 V.S.A. § 7502, is authorized but

1 not required to participate in any administrative or judicial review of an  
2 application under this subchapter and shall be considered an interested party in  
3 such proceedings upon filing a notice of intervention with the Board.

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

5 (1) The Board shall review:

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

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

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

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

18 \* \* \*

19 (h) As used in this section, an application or proposed project is a  
20 “contested application” if one or more interested parties have intervened in the  
21 proceeding. If an interested party withdraws from the application or signifies

1 its support of the application in writing before the Board renders a final  
2 decision, the application shall not be considered contested and the Board shall  
3 not be required to hold a public hearing on the application pursuant to  
4 subdivision (d)(2) of this section or issue a proposed decision pursuant to  
5 subdivision (d)(5) of this section.

6 \* \* \*

7 § 9440b. INFORMATION TECHNOLOGY; REVIEW PROCEDURES

8 Notwithstanding the procedures in section 9440 of this title, ~~upon approval~~  
9 ~~by the General Assembly of the Health Information Technology Plan~~  
10 ~~developed under section 9351 of this title,~~ the Board shall establish by rule  
11 standards and expedited procedures for reviewing applications for the purchase  
12 or lease of health care information technology that otherwise would be subject  
13 to review under this subchapter. Such applications ~~may~~ shall not be granted or  
14 approved unless they are consistent with the Health Information Technology  
15 Plan ~~and the Health Resource Allocation Plan. The Board's rules may include~~  
16 ~~a provision requiring that applications be reviewed by the health information~~  
17 ~~advisory group authorized under section 9352 of this title. The advisory group~~  
18 ~~shall make written findings and a recommendation to the board in favor of or~~  
19 ~~against each application~~ developed under section 9351 of this title.

1 § 9441. FEES

2 \* \* \*

3 (d) All fees collected pursuant to this section shall be deposited into the  
4 Green Mountain Care Board Regulatory and Administrative Fund established  
5 by subsection 9404(d) of this title and may be used by the Board to administer  
6 its obligations, responsibilities, and duties as required by law.

7 \* \* \*

8 § 9445. ENFORCEMENT

9 (a) Any person who offers or develops any new health care project within  
10 the meaning of this subchapter without first obtaining a certificate of need as  
11 required ~~herein~~ by this subchapter, or who otherwise violates any of the  
12 provisions of this subchapter or any rule adopted or order issued pursuant to  
13 this subchapter, may be subject to one or both of the following administrative  
14 sanctions by the Board, after notice and an opportunity to be heard:

15 \* \* \*

16 (b) In addition to all other sanctions, if any person offers or develops any  
17 new health care project without first having been issued a certificate of need or  
18 certificate of exemption for the project, or violates any other provision of this  
19 subchapter or any ~~lawful~~ rule adopted or order issued pursuant to this  
20 subchapter, the Board, the Office of the Health Care Advocate, the State Long-  
21 Term Care Ombudsman, and health care providers and consumers located in



1 the State shall have standing to maintain a civil action in the Superior Court of  
2 the county in which such alleged violation has occurred, or in which such  
3 person may be found, to enjoin, restrain, or prevent such violation. Upon  
4 written request by the Board, it shall be the duty of the Vermont Attorney  
5 General to furnish appropriate legal services and to prosecute an action for  
6 injunctive relief to an appropriate conclusion, which shall not be reimbursed  
7 under subdivision (a)(2) of this section.

8 (c)(1) After notice and an opportunity for hearing, the Board may impose  
9 on a person who ~~knowingly~~ violates a provision of this subchapter, or a rule  
10 adopted or order ~~adopted~~ issued pursuant to this subchapter ~~or 8 V.S.A. § 15,~~  
11 one or more of the following:

12 (A) a civil administrative penalty of ~~no not~~ more than ~~\$40,000.00~~  
13 \$75,000.00, or in the case of a continuing violation, a civil administrative  
14 penalty of ~~no not~~ more than ~~\$100,000.00~~ \$200,000.00 or one-tenth of one  
15 percent of the gross annual revenues of the health care facility, whichever is  
16 greater, which shall not be reimbursed under subdivision (a)(2) of this section;  
17 ~~and the Board may;~~

18 (B) an order that the entity to person cease and desist from further  
19 violations;; and ~~to take~~

20 (C) any such other actions necessary to remediate a violation.

1           (2) A person aggrieved by a decision of the Board under this ~~subsection~~  
2           subchapter may appeal under section 9381 of this title.

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

8           § 9446. HOME HEALTH AGENCIES; GEOGRAPHIC SERVICE AREAS

9           The terms of a certificate of need relating to the boundaries of the  
10          geographic service area of a home health agency may be modified by the  
11          Board, in consultation with the Commissioner of Disabilities, Aging, and  
12          Independent Living, after notice and opportunity for hearing, or upon written  
13          application to the Board by the affected home health agencies or consumers,  
14          demonstrating a substantial need ~~therefor~~ for the modification. Service area  
15          boundaries may be modified by the Board to take account of natural or  
16          physical barriers that may make the provision of existing services  
17          uneconomical or impractical, to prevent or minimize unnecessary duplication  
18          of services or facilities, or otherwise to promote the public interest. The Board  
19          shall issue an order granting such application only upon a finding that the  
20          granting of such application is consistent with the purposes of 33 V.S.A.  
21          chapter 63, subchapter 1A and ~~the Health Resource Allocation Plan established~~

1 ~~under section 9405 of this title and~~ after notice and an opportunity to  
2 participate on the record by all interested persons, including affected local  
3 governments, ~~pursuant to rules adopted by the Board.~~

4 \* \* \* Effective Date \* \* \*

5 Sec. 8. EFFECTIVE DATE

6 This act shall take effect on July 1, 2018, provided that for applications  
7 already in process on that date, the rules and procedures in place at the time the  
8 application was filed shall continue to apply until a final decision is made on  
9 the application.