

1 S.278

2 Introduced by Senator Ayer

3 Referred to Committee on

4 Date:

5 Subject: Health; Green Mountain Care Board; ambulatory surgical centers

6 Statement of purpose of bill as introduced: This bill proposes to establish a
7 regulatory framework for ambulatory surgical centers.

8 An act relating to regulation of ambulatory surgical centers

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

10 * * * Regulation of Ambulatory Surgical Centers * * *

11 Sec. 1. 18 V.S.A. chapter 49 is added to read:

12 CHAPTER 49. AMBULATORY SURGICAL CENTERS

13 Subchapter 1. General Provisions

14 § 2141. DEFINITIONS

15 As used in this chapter:

16 (1) “Ambulatory surgical center” means any distinct entity that operates
17 exclusively for the purpose of providing outpatient surgical services and other
18 outpatient medical procedures to patients not requiring hospitalization and for
19 which the expected duration of services does not exceed 24 hours following an
20 admission.

1 (2) “Patient” means a person admitted to or receiving health care
2 services from an ambulatory surgical center.

3 (3) “Physician” means a physician licensed pursuant to 26 V.S.A.
4 chapter 23 or 33.

5 Subchapter 2. Licensure of Ambulatory Surgical Centers

6 § 2151. LICENSE

7 No person shall establish, maintain, or operate an ambulatory surgical
8 center in this State without first obtaining a license for the ambulatory surgical
9 center in accordance with this subchapter.

10 § 2152. APPLICATION; FEE

11 (a) An application for licensure of an ambulatory surgical center shall be
12 made to the Department of Health on forms provided by the Department and
13 shall include all information required by the Department. Each application for
14 a license shall be accompanied by a license fee.

15 (b) The annual licensing fee for an ambulatory surgical center shall be
16 \$2,000.00.

17 (c) Fees collected under this section shall be credited to a special fund
18 established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and
19 shall be available to the Department of Health to offset the costs of licensing
20 ambulatory surgical centers.

1 § 2153. LICENSE REQUIREMENTS

2 (a) Upon receipt of an application for a license and the licensing fee, the
3 Department of Health shall issue a license if it determines that the applicant
4 and the ambulatory surgical center facilities meet the following minimum
5 standards:

6 (1) The applicant shall demonstrate the capacity to operate an
7 ambulatory surgical center in accordance with rules adopted by the
8 Department.

9 (2) The applicant shall demonstrate that its facilities comply fully with
10 standards for health, safety, and sanitation as required by State law, including
11 standards set forth by the State Fire Marshal and the State Board of Health, and
12 municipal ordinance.

13 (3) The ambulatory surgical center shall not mix functions or operations
14 in a common space with another entity during concurrent or overlapping hours
15 of operation.

16 (4) The ambulatory surgical center shall enter into an agreement with
17 the federal Centers for Medicare and Medicaid Services to operate as a
18 Medicare-certified ambulatory surgical center.

19 (5) The ambulatory surgical center shall obtain accreditation from the
20 Joint Commission's Ambulatory Health Care Accreditation Program within

1 18 months after commencing operations and shall maintain the accreditation in
2 order to be eligible for license renewal.

3 (6) The ambulatory surgical center shall agree to be an active participant
4 in Vermont's health care reform initiatives.

5 (7) The ambulatory surgical center shall require each physician
6 performing procedures or surgeries, or both, at the ambulatory surgical center
7 to sign an agreement that includes the following principles:

8 (A) timely access to care;

9 (B) appropriate communication;

10 (C) adherence to widely accepted, evidence-based standards of
11 care; and

12 (D) support of the primary care practice as the medical home for
13 most patients.

14 (8)(A) The ambulatory surgical center shall have an effective procedure
15 for the immediate transfer to a hospital of patients requiring emergency
16 medical care beyond the capabilities of the ambulatory surgical center.

17 (B) The ambulatory surgical center shall have a transport agreement
18 with at least one emergency medical services provider for emergency patient
19 transportation.

20 (9) The clinical services provided by the ambulatory surgical center
21 shall be managed by a medical director, who shall be a physician.

1 (10)(A) The ambulatory surgical center shall ensure that all patients
2 admitted to or receiving services from the ambulatory surgical center shall be
3 under the care of a practicing physician. The ambulatory surgical center shall
4 use the uniform credentialing application form described in subsection
5 9408a(b) of this title.

6 (B) All physicians performing procedures or surgeries, or both, at the
7 ambulatory surgical center shall have admitting privileges at one or more
8 hospitals in the geographic region in which the ambulatory surgical center is
9 located.

10 (C) All physicians performing procedures or surgeries, or both, at the
11 ambulatory surgical center shall maintain after-hours on-call policies and 24-
12 hour call coverage to respond to patient inquiries.

13 (11) The ambulatory surgical center's nursing service shall be directed
14 at all times by a registered nurse or advanced practice registered nurse licensed
15 pursuant to 26 V.S.A. chapter 28.

16 (12) A physician shall examine each patient immediately prior to a
17 procedure or surgery to evaluate the risk of anesthesia and of the procedure or
18 surgery to be performed.

19 (13) The ambulatory surgical center shall require each physician
20 performing procedures or surgeries, or both, at the ambulatory surgical center

1 to certify that he or she will accept patients without regard to payer type,
2 insurance status, or ability to pay for services.

3 (14) The ambulatory surgical center shall maintain a policy to provide
4 charity care to patients that is comparable to those of the hospitals in the
5 geographic region in which the ambulatory surgical center is located.

6 (15) The ambulatory surgical center shall have an organized medical
7 staff of not fewer than three members that shall meet as frequently as
8 recommended by the Joint Commission.

9 (16) Professional case records shall be compiled for all patients and
10 signed by the treating physician. These records shall be kept on file for a
11 minimum of 10 years.

12 (17) Accounting records of all operating procedures shall be kept on a
13 monthly basis, and complete operating and financial statements shall be
14 compiled at least once annually and kept on file for 20 years.

15 (18) The ambulatory surgical center shall obtain the Department's
16 approval, in addition to any certificate of need that may be required pursuant to
17 chapter 221, subchapter 5 of this title, prior to beginning any expansion or
18 remodeling of the center.

19 (19) The ambulatory surgical center facilities, including the buildings
20 and grounds, shall be subjected to inspection by the Department, its designees,
21 and other authorized entities at all times.

1 (20) A license is not transferable or assignable and shall be issued only
2 for the premises and persons named in the application.

3 (21) The ambulatory surgical center shall submit to the Department a
4 plan for implementing the provisions of section 1852 of this title to the extent
5 applicable to ambulatory surgical centers and a plan for handling patient
6 complaints, which shall become effective upon approval by the Department.

7 Plans under this subdivision (21) shall include:

8 (A) contact information for the Office of the Health Care Advocate;

9 (B) a method by which each patient shall be made aware of the
10 ambulatory surgical center's complaint procedure;

11 (C) an appeals mechanism within the ambulatory surgical center;

12 (D) a published time frame for processing and resolving complaints
13 and appeals made within the ambulatory surgical center and notification that
14 further appeals of the ambulatory surgical center's resolution of complaints
15 may be made to the Department of Health; and

16 (E) periodic reporting to the Department of the nature of complaints
17 filed and action taken.

18 (22) All ambulatory surgical centers shall accept payment for
19 compensation claims of uninsured crime victims paid for by the Victims
20 Compensation Board established in 13 V.S.A. § 5352 at 70 percent of billed
21 charges and shall not bill any balance to the uninsured crime victim.

1 (23) All ambulatory surgical centers shall comply with the rules adopted
2 by the Commissioner of Health pursuant to section 2176 of this title. License
3 applications shall certify compliance with the rules.

4 (b) In conducting its reviews, the Department shall evaluate the quality and
5 financial indicators published by the Commissioner of Health pursuant to
6 subsection 9405b(c) of this title.

7 § 2154. REVOCATION OF LICENSE, HEARING

8 The Department of Health, after notice and opportunity for hearing to the
9 applicant or licensee, is authorized to deny, suspend, or revoke a license in any
10 case in which it finds that there has been a substantial failure to comply with
11 the requirements established under this chapter. Such notice shall be served by
12 registered mail or by personal service, shall set forth the reasons for the
13 proposed action, and shall set a date not less than 60 days from the date of the
14 mailing or service on which the applicant or licensee shall be given
15 opportunity for a hearing. After the hearing, or upon default of the applicant or
16 licensee, the Department shall file its findings of fact and conclusions of law.
17 A copy of the findings and decision shall be sent by registered mail or served
18 personally upon the applicant or licensee. The procedure governing hearings
19 authorized by this section shall be in accordance with the usual and customary
20 rules provided for such hearings.

1 § 2155. APPEAL

2 Any applicant or licensee, or the State acting through the Attorney General,
3 aggrieved by the decision of the Department of Health after a hearing may,
4 within 30 days after entry of the decision as provided in section 2174 of this
5 title, appeal to the Superior Court for the district in which the appellant is
6 located. The court may affirm, modify, or reverse the Department's decision,
7 and either the applicant or licensee or the Department or State may appeal to
8 the Vermont Supreme Court for such further review as is provided by law.
9 Pending final disposition of the matter, the status quo of the applicant or
10 licensee shall be preserved, except as the court otherwise orders in the public
11 interest.

12 § 2156. INSPECTIONS

13 The Department shall make or cause to be made such inspections and
14 investigation as it deems necessary.

15 § 2157. RECORDS

16 Information that identifies or may lead to the identification of one or more
17 individuals is exempt from public inspection and copying under the Public
18 Records Act and shall be kept confidential except as it relates to a proceeding
19 regarding licensure of an ambulatory surgical center.

1 § 2158. RULES

2 The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 as needed
3 to carry out the purposes of this subchapter and subchapter 3 of this chapter.

4 Subchapter 3. Transparency and Reporting Requirements

5 § 2171. INFORMATION FOR PATIENTS AND PROSPECTIVE

6 PATIENTS

7 (a) Each ambulatory surgical center shall maintain information on its
8 website for patients and prospective patients, including all of the following:

9 (1) For each physician performing procedures or surgeries, or both, at
10 the ambulatory surgical center:

11 (A) the physician's name, professional credentials, and area or areas
12 of specialization;

13 (B) the types of procedures and surgeries that the physician offers
14 and performs at the ambulatory surgical center;

15 (C) the name and location of the hospital or hospitals at which the
16 physician has admitting privileges; and

17 (D) the extent of the physician's ownership interest in the ambulatory
18 surgical center, if any.

19 (2) The commercial insurance, self-pay, and Medicare prices for each of
20 the 25 procedures and surgeries most frequently performed at the ambulatory
21 surgical center. The ambulatory surgical center shall update the information at

1 least quarterly, regardless of whether there has been any change in the prices or
2 in the procedures and surgeries most frequently performed.

3 (b) Each physician performing procedures or surgeries, or both, at the
4 ambulatory surgical center shall provide his or her contact and on-call
5 information to patients for use after business hours and on weekends.

6 (c)(1) Each ambulatory surgical center, upon request, shall provide
7 potential patients with written price estimates for their procedures and
8 surgeries.

9 (2) At least seven days prior to the scheduled date of each procedure or
10 surgery, the ambulatory surgical center shall provide the patient with a written
11 disclosure outlining the total price of the scheduled procedure or surgery and
12 the portion of that amount for which the patient is responsible.

13 § 2172. QUALITY AND PAYER MIX REPORTING REQUIREMENTS

14 (a) The ambulatory surgical center shall participate in the Centers for
15 Medicare and Medicaid Services' Ambulatory Surgical Center Quality
16 Reporting Program and shall periodically, but not less often than annually, post
17 its performance on each quality measure on the ambulatory surgical center's
18 website.

19 (b) Within 45 days following the close of each calendar quarter, the
20 ambulatory surgical center shall provide to the Green Mountain Care Board,
21 and post to the ambulatory surgical center's website, the ambulatory surgical

1 center's payer mix for the preceding calendar quarter by number of procedures
2 and surgeries and by revenues.

3 § 2173. HIGH-VOLUME SURGERIES AND PROCEDURES; REPORT

4 Annually on or before January 15, the Green Mountain Care Board shall
5 provide to the House Committee on Health Care and the Senate Committees on
6 Finance and on Health and Welfare a report showing, for each of the surgeries
7 and procedures identified by ambulatory surgical centers pursuant to
8 subdivision 2171(a)(2) of this title, using claims data, the total number of each
9 such surgery or procedure performed in this State during each of the previous
10 five years, based on the ambulatory surgical centers' fiscal year.

11 * * * Oversight and Quality Measures * * *

12 Sec. 2. 18 V.S.A. § 9374(h)(1) is amended to read:

13 (h)(1) Except as otherwise provided in subdivision (2) of this subsection,
14 expenses incurred to obtain information, analyze expenditures, review hospital
15 and ambulatory surgical center budgets, and for any other contracts authorized
16 by the Board shall be borne as follows:

17 (A) ~~40~~ 35 percent by the State from State monies;

18 (B) 15 percent by the hospitals;

19 (C) 15 percent by nonprofit hospital and medical service corporations
20 licensed under 8 V.S.A. chapter 123 or 125;

1 (D) 15 percent by health insurance companies licensed under
2 8 V.S.A. chapter 101; ~~and~~

3 (E) 15 percent by health maintenance organizations licensed under
4 8 V.S.A. chapter 139; and

5 (F) five percent by ambulatory surgical centers.

6 Sec. 3. 18 V.S.A. § 9375(b) is amended to read:

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

8 * * *

9 (7) Review and establish hospital budgets pursuant to chapter 221,
10 subchapter 7 of this title, ~~beginning July 1, 2012~~ and ambulatory surgical
11 center budgets pursuant to chapter 49, subchapter 4 of this title.

12 Sec. 4. 18 V.S.A. § 9402 is amended to read:

13 § 9402. DEFINITIONS

14 As used in this chapter, unless otherwise indicated:

15 * * *

16 (18) “Ambulatory surgical center” shall have the same meaning as in
17 section 2141 of this title.

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

19 § 9405. STATE HEALTH PLAN; HEALTH RESOURCE ALLOCATION

20 PLAN

21 * * *

1 (b) On or before July 1, 2005, the Green Mountain Care Board, in
2 consultation with the Secretary of Human Services, shall submit to the
3 Governor a four-year Health Resource Allocation Plan. The Plan shall identify
4 Vermont needs in health care services, programs, and facilities; the resources
5 available to meet those needs; and the priorities for addressing those needs on a
6 statewide basis.

7 (1) The Plan shall include:

8 (A) A statement of principles reflecting the policies enumerated in
9 sections 9401 and 9431 of this chapter to be used in allocating resources and in
10 establishing priorities for health services.

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

17 (C) Consistent with the principles set forth in subdivision (A) of this
18 subdivision (1), recommendations for the appropriate supply and distribution
19 of resources, programs, and services identified in subdivision (B) of this
20 subdivision (1), options for implementing such recommendations and
21 mechanisms ~~which~~ that will encourage the appropriate integration of these

1 services on a local or regional basis. To arrive at such recommendations, the
2 Green Mountain Care Board shall consider at least the following factors:

3 * * *

4 (xi) the overall quality and cost of services as reported in the
5 annual hospital community reports and ambulatory surgical center community
6 reports;

7 (xii) individual hospital and ambulatory surgical center four-year
8 capital budget projections; and

9 (xiii) the four-year projection of health care expenditures prepared
10 by the Board.

11 * * *

12 Sec. 6. 18 V.S.A. § 9405a is amended to read:

13 § 9405a. PUBLIC PARTICIPATION AND STRATEGIC PLANNING

14 (a) Each hospital and ambulatory surgical center shall have a protocol for
15 meaningful public participation in its strategic planning process for identifying
16 and addressing health care needs that the hospital or ambulatory surgical center
17 provides or could provide in its service area. Needs identified through the
18 process shall be integrated with the hospital's or ambulatory surgical center's
19 long-term planning. Each hospital and ambulatory surgical center shall post on
20 its website a description of its identified needs, strategic initiatives developed
21 to address the identified needs, annual progress on implementation of the

1 proposed initiatives, and opportunities for public participation. Hospitals may
2 meet the community health needs assessment and implementation plan
3 requirement through compliance with the relevant Internal Revenue Service
4 community health needs assessment requirements for nonprofit hospitals.

5 (b) When a hospital or ambulatory surgical center is working on a new
6 community health needs assessment, the hospital or ambulatory surgical center
7 shall post on its website information about the process for developing the
8 community needs assessment and opportunities for public participation in the
9 process.

10 Sec. 7. 18 V.S.A. § 9405b is amended to read:

11 § 9405b. HOSPITAL AND AMBULATORY SURGICAL CENTER

12 COMMUNITY REPORTS

13 (a) The Commissioner of Health, in consultation with representatives from
14 hospitals, ambulatory surgical centers, other groups of health care
15 professionals, and members of the public representing patient interests, shall
16 adopt rules establishing a statewide comparative hospital quality report and a
17 statewide comparative ambulatory surgical center quality report. Hospitals and
18 ambulatory surgical centers located outside this State ~~which~~ that serve a
19 significant number of Vermont residents, as determined by the Commissioner
20 of Health, shall be invited to participate in the community report process
21 established by this section. The ~~report~~ reports shall include:

1 (1) Measures of quality, including process and performance measures,
2 that are valid, reliable, and useful, including comparisons to appropriate
3 national benchmarks for high quality and successful results.

4 (2) Measures of patient safety that are valid, reliable, and useful,
5 including comparisons to appropriate industry benchmarks for safety.

6 (3) Measures of ~~hospital-acquired~~ health care-associated infections that
7 are valid, reliable, and useful, including comparisons to appropriate industry
8 benchmarks.

9 (4) Valid, reliable, and useful information on nurse staffing, including
10 comparisons to appropriate industry benchmarks for safety. This information
11 may include system-centered measures such as skill mix, nursing care hours
12 per patient day, and other system-centered measures for which reliable industry
13 benchmarks become available.

14 (5) Measures of the hospital's or ambulatory surgical center's financial
15 health, including comparisons to appropriate national benchmarks for efficient
16 operation and fiscal health.

17 (6) A summary of the hospital's or ambulatory surgical center's budget,
18 including revenue by source, the one-year and four-year capital expenditure
19 plans, the depreciation schedule for existing facilities, and quantification of
20 cost shifting to private payers.

1 (7) Data that provides valid, reliable, useful, and efficient information
2 for payers and the public for the comparison of charges for higher volume
3 health care services.

4 (b) Each hospital and ambulatory surgical center shall publish on its
5 website:

6 (1) the hospital's or ambulatory surgical center's process for achieving
7 openness, inclusiveness, and meaningful public participation in its strategic
8 planning and decision making;

9 (2) the hospital's or ambulatory surgical center's consumer complaint
10 resolution process, including identification of the ~~hospital~~ officer or employee
11 responsible for its implementation;

12 (3) information on membership and governing body qualifications; a
13 listing of the current governing body members, including each member's
14 name, town of residence, occupation, employer, and job title, and the amount
15 of compensation, if any, for serving on the governing body; and means of
16 obtaining a schedule of meetings of the hospital's or ambulatory surgical
17 center's governing body, including times scheduled for public
18 participation; and

19 (4) a link to the comparative statewide hospital quality report or
20 statewide comparative ambulatory surgical center quality report, as applicable.

1 (c) The Commissioner of Health shall publish the statewide comparative
2 hospital quality report and the statewide comparative ambulatory surgical
3 center quality report on a public website and shall update the ~~report~~ reports at
4 least annually beginning on June 1, 2017.

5 Sec. 8. 18 V.S.A. § 9408a is amended to read:

6 § 9408a. UNIFORM PROVIDER CREDENTIALING

7 (a) Definitions. As used in this section:

8 (1) “Credentialing” means a process through which an insurer,
9 ambulatory surgical center, or hospital makes a determination, based on
10 criteria established by the insurer, ambulatory surgical center, or hospital,
11 concerning whether a provider is eligible to:

12 (A) provide health care services to an insured or to hospital or
13 ambulatory surgical center patients; and

14 (B) receive reimbursement for the health care services.

15 * * *

16 (b) The Department shall prescribe the credentialing application form used
17 by the Council for Affordable Quality Healthcare (CAQH), or a similar,
18 nationally recognized form prescribed by the Commissioner, in electronic or
19 paper format, which must be used beginning January 1, 2007 by an insurer,
20 ambulatory surgical center, or a hospital that performs credentialing. The

1 Commissioner may grant a hospital an extension to the implementation date
2 for up to one year.

3 (c) An insurer, ambulatory surgical center, or a hospital shall notify a
4 provider concerning a deficiency on a completed credentialing application
5 form submitted by the provider not later than 30 business days after the
6 insurer, ambulatory surgical center, or hospital receives the completed
7 credentialing application form.

8 (d) A hospital or ambulatory surgical center shall notify a provider
9 concerning the status of the provider's completed credentialing application not
10 later than:

11 (1) ~~sixty~~ 60 days after the hospital or ambulatory surgical center
12 receives the completed credentialing application form; and

13 (2) every 30 days after the notice is provided under subdivision (1) of
14 this subsection, until the hospital or ambulatory surgical center makes a final
15 credentialing determination concerning the provider.

16 * * *

17 Sec. 9. 18 V.S.A. § 9416(c) is amended to read:

18 (c)(1) Expenses incurred under this section by the Vermont Program for
19 Quality in Health Care, Inc. shall be borne as follows:

20 (A) 35 percent by the hospitals;

21 (B) five percent by ambulatory surgical centers;

1 (C) 15 percent by nonprofit hospital and medical service corporations
2 licensed under 8 V.S.A. chapter 123 or 125; and

3 (D) ~~50~~ 45 percent by health insurance companies licensed under
4 8 V.S.A. chapter 101; and health maintenance organizations licensed under
5 8 V.S.A. chapter 139.

6 (2) Expenses allocated under this section to persons licensed under
7 8 V.S.A. chapters 101 and 139 shall be billed based on premiums paid for
8 health insurance coverage as defined in subsection 9415(b) of this title.

9 (3) Expenses allocated under this section shall not exceed 75 percent of
10 the operating budget of the Vermont Program for Quality in Health Care, Inc.
11 Sec. 10. 18 V.S.A. § 9607(b)(1) is amended to read:

12 (b)(1) Expenses incurred by the Office of the Health Care Advocate for
13 services related to the Green Mountain Care Board's and Department of
14 Financial Regulation's regulatory and supervisory duties shall be borne as
15 follows:

16 (A) ~~27.5~~ 20 percent by the State from State monies;

17 (B) 24.2 percent by the hospitals;

18 (C) 7.5 percent by ambulatory surgical centers licensed under chapter
19 49 of this title;

20 (D) 24.2 percent by nonprofit hospital and medical service
21 corporations licensed under 8 V.S.A. chapter 123 or 125; and

1 (1) adopt uniform formats that hospitals and ambulatory surgical centers
2 shall use to report financial, scope-of-services, and utilization data and
3 information;

4 (2) designate a data organization with which hospitals and ambulatory
5 surgical centers shall file financial, scope-of-services, and utilization data and
6 information; and

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

9 (b) To effectuate the purposes of this subchapter, the ~~board~~ Board may
10 adopt rules under 3 V.S.A. chapter 25.

11 § 9454. HOSPITALS AND AMBULATORY SURGICAL CENTERS;

12 DUTIES

13 (a) Hospitals and ambulatory surgical centers shall file the following
14 information at the time and place and in the manner established by the Board:

15 (1) a budget for the forthcoming fiscal year;

16 (2) financial information, including costs of operation, revenues, assets,
17 liabilities, fund balances, other income, rates, charges, units of services, and
18 wage and salary data;

19 (3) scope-of-service and volume-of-service information, including
20 inpatient services, outpatient services, and ancillary services by type of service
21 provided;

1 (4) utilization information;

2 (5) new hospital or ambulatory surgical center services and programs
3 proposed for the forthcoming fiscal year;

4 (6) known depreciation schedules on existing buildings, a four-year
5 capital expenditure projection, and a one-year capital expenditure plan; and

6 (7) such other information as the ~~board~~ Board may require.

7 (b) Hospitals and ambulatory surgical centers shall adopt a fiscal year
8 ~~which~~ that shall begin on October 1.

9 § 9456. BUDGET REVIEW

10 (a) The Board shall conduct reviews of each hospital's and ambulatory
11 surgical center's proposed budget based on the information provided pursuant
12 to this subchapter and in accordance with a schedule established by the Board.

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

14 (1) review utilization information;

15 (2) consider the goals and recommendations of the ~~health resource~~
16 ~~allocation plan~~ Health Resource Allocation Plan;

17 (3) consider the expenditure analysis for the previous year and the
18 proposed expenditure analysis for the year under review;

19 (4) consider any reports from professional review organizations;

1 (5) solicit public comment on all aspects of hospital or ambulatory
2 surgical center costs and use, as applicable, and on the budgets proposed by
3 individual hospitals and ambulatory surgical centers;

4 (6) meet with hospitals and ambulatory surgical centers to review and
5 discuss ~~hospital~~ their budgets for the forthcoming fiscal year;

6 (7) give public notice of the meetings with hospitals and ambulatory
7 surgical centers, and invite the public to attend and to comment on the
8 proposed budgets;

9 (8) consider the extent to which costs incurred by the hospital or
10 ambulatory surgical center in connection with services provided to Medicaid
11 beneficiaries are being charged to non-Medicaid health benefit plans and other
12 non-Medicaid payers;

13 (9) require each hospital and ambulatory surgical center to file an
14 analysis that reflects a reduction in net revenue needs from non-Medicaid
15 payers equal to any anticipated increase in Medicaid, Medicare, or another
16 public health care program reimbursements, and to any reduction in bad debt
17 or charity care due to an increase in the number of insured individuals;

18 (10) require each hospital and ambulatory surgical center to provide
19 information on administrative costs, as defined by the Board, including
20 specific information on the amounts spent on marketing and advertising
21 costs; and

1 (11) require each hospital and ambulatory surgical center to create or
2 maintain connectivity to the State's Health Information Exchange Network in
3 accordance with the criteria established by the Vermont Information
4 Technology Leaders, Inc., pursuant to subsection 9352(i) of this title, provided
5 that the Board shall not require a hospital or ambulatory surgical center to
6 create a level of connectivity that the State's Exchange is unable to support.

7 (c) Individual hospital and ambulatory surgical center budgets established
8 under this section shall:

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

10 (2) take into consideration national, regional, or ~~instate~~ in-state peer
11 group norms, according to indicators, ratios, and statistics established by the
12 Board;

13 (3) promote efficient and economic operation of the hospital or
14 ambulatory surgical center;

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

16 (5) include a finding that the analysis provided in subdivision (b)(9) of
17 this section is a reasonable methodology for reflecting a reduction in net
18 revenues for non-Medicaid payers.

19 (d)(1) Annually, the Board shall establish a budget for each hospital and
20 ambulatory surgical center on or before September 15, followed by a written

1 decision by October 1. Each hospital and ambulatory surgical center shall
2 operate within the budget established under this section.

3 (2)(A) It is the General Assembly's intent that hospital cost containment
4 conduct ~~is~~ and ambulatory surgical center cost containment conduct be
5 afforded ~~state~~ State action immunity under applicable federal and State
6 antitrust laws, if:

7 (i) the Board requires or authorizes the conduct in any hospital or
8 ambulatory surgical center budget established by the Board under this section;

9 (ii) the conduct is in accordance with standards and procedures
10 prescribed by the Board; and

11 (iii) the conduct is actively supervised by the Board.

12 (B) A hospital's or ambulatory surgical center's violation of the
13 Board's standards and procedures shall be subject to enforcement pursuant to
14 subsection (h) of this section.

15 (3)(A) The Office of the Health Care Advocate shall have the right to
16 receive copies of all materials related to ~~the~~ hospital and ambulatory surgical
17 center budget review and may:

18 (i) ask questions of employees of the Green Mountain Care Board
19 related to the Board's hospital and ambulatory surgical center budget review;

20 (ii) submit written questions to the Board that the Board will ask
21 of hospitals and ambulatory surgical centers in advance of any hearing held in

1 conjunction with the Board's hospital and ambulatory surgical center budget
2 review;

3 (iii) submit written comments for the Board's consideration; and

4 (iv) ask questions and provide testimony in any hearing held in
5 conjunction with the Board's hospital and ambulatory surgical center budget
6 review.

7 (B) The Office of the Health Care Advocate shall not ~~further~~ disclose
8 further any confidential or proprietary information provided to the Office
9 pursuant to this subdivision (3).

10 (e) The Board may establish a process to define, on an annual basis, criteria
11 for hospitals and ambulatory surgical centers to meet, such as utilization and
12 inflation benchmarks. The Board may waive one or more of the review
13 processes listed in subsection (b) of this section.

14 (f) The Board may, upon application, adjust a budget established under this
15 section upon a showing of need based upon exceptional or unforeseen
16 circumstances in accordance with the criteria and processes established under
17 section 9405 of this title.

18 (g) The Board may request, and a hospital or ambulatory surgical center
19 shall provide, information determined by the Board to be necessary to
20 determine whether the hospital or ambulatory surgical center is operating
21 within a budget established under this section. For purposes of this subsection,

1 subsection (h) of this section, and subdivision 9454(a)(7) of this title, the
2 Board's authority shall extend to an affiliated corporation or other person in
3 the control of or controlled by the hospital or ambulatory surgical center to the
4 extent that such authority is necessary to carry out the purposes of this
5 subsection, subsection (h) of this section, or subdivision 9454(a)(7) of this title.

6 As used in this subsection, a rebuttable presumption of "control" is created if
7 the entity, hospital, ambulatory surgical center, or other person, directly or
8 indirectly, owns, controls, holds with the power to vote, or holds proxies
9 representing 20 percent or more of the voting securities or membership interest
10 or other governing interest of the hospital, ambulatory surgical center, or other
11 controlled entity.

12 (h)(1) If a hospital or ambulatory surgical center violates a provision of this
13 section, the Board may maintain an action in the Superior Court of the county
14 in which the hospital or ambulatory surgical center is located to enjoin,
15 restrain, or prevent such violation.

16 (2)(A) After notice and an opportunity for hearing, the Board may
17 impose on a person who knowingly violates a provision of this subchapter, or a
18 rule adopted pursuant to this subchapter, a civil administrative penalty of no
19 more than \$40,000.00, or in the case of a continuing violation, a civil
20 administrative penalty of no more than \$100,000.00 or one-tenth of one
21 percent of the gross annual revenues of the hospital or ambulatory surgical

1 center, whichever is greater. This subdivision shall not apply to violations of
2 subsection (d) of this section caused by exceptional or unforeseen
3 circumstances.

4 (B)(i) The Board may order a hospital or ambulatory surgical
5 center to:

6 (I)(aa) cease material violations of this subchapter or of a
7 ~~regulation~~ rule or order issued pursuant to this subchapter; or

8 (bb) cease operating contrary to the budget established for
9 the hospital or ambulatory surgical center under this section, provided such a
10 deviation from the budget is material; and

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

13 (ii) Orders issued under this subdivision (2)(B) shall be issued
14 after notice and an opportunity to be heard, except where the Board finds that a
15 hospital's or ambulatory surgical center's financial or other emergency
16 circumstances pose an immediate threat of harm to the public or to the
17 financial condition of the hospital or ambulatory surgical center. Where there
18 is an immediate threat, the Board may issue orders under this subdivision
19 (2)(B) without written or oral notice to the hospital or ambulatory surgical
20 center. Where an order is issued without notice, the hospital or ambulatory
21 surgical center shall be notified of the right to a hearing at the time the order is

1 issued. The hearing shall be held within 30 days of receipt of the hospital's or
2 ambulatory surgical center's request for a hearing, and a decision shall be
3 issued within 30 days after conclusion of the hearing. The Board may increase
4 the time to hold the hearing or to render the decision for good cause shown.
5 Hospitals and ambulatory surgical centers may appeal any decision in this
6 subsection to Superior Court. Appeal shall be on the record as developed by
7 the Board in the administrative proceeding_s, and the standard of review shall be
8 as provided in 8 V.S.A. § 16.

9 (3)(A) The Board shall require the officers and directors of a hospital or
10 ambulatory surgical center to file under oath, on a form and in a manner
11 prescribed by the Board, any information designated by the Board and required
12 pursuant to this subchapter. The authority granted to the Board under this
13 subsection is in addition to any other authority granted to the Board under law.

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

