

Journal of the Senate

THURSDAY, MARCH 24, 2016

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 38

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 130. An act relating to the Agency of Public Safety.

H. 743. An act relating to fair and impartial policing.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 48. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 130.

An act relating to the Agency of Public Safety.

To the Committee on Government Operations.

H. 743.

An act relating to fair and impartial policing.

To the Committee on Judiciary.

Bill Amended; Bill Passed**S. 245.**

Senate bill entitled:

An act relating to disclosure of health care provider affiliations.

Was taken up.

Thereupon, pending third reading of the bill, Senators Ayer, Ashe, Collamore, Lyons, Pollina and Sirotkin moved to amend the bill by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 18 V.S.A. § 9405c is added to read:

§ 9405c. NOTICE OF AFFILIATION

(a) Each hospital shall provide notice to the Office of the Attorney General at least 90 days or as soon as practicable prior to the effective date of a transaction that will result in a new affiliation between the hospital and one or more health care providers or between the hospital and a group medical practice. The notice shall include at least the following information:

(1) the name and address of the hospital acquiring the provider, providers, or group medical practice and contact information for a representative of the hospital;

(2) the name and address of the provider, providers, or group medical practice being acquired and contact information for a representative of the provider, providers, or practice.

(b) Information provided to the Office of the Attorney General pursuant to this section is exempt from public inspection and copying under the Public Records Act and shall be kept confidential except to the extent necessary to allow the Office to perform an inquiry into potentially anticompetitive practices.

And by renumbering the existing Sec. 2, effective date, to be Sec. 3.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Ashe, Sirotkin, and Zuckerman moved to amend the bill by striking out Sec. 3, effective date, in its entirety and inserting in lieu thereof the following:

Sec. 3. 33 V.S.A. § 1905a is added to read:

§ 1905a. MEDICAID REIMBURSEMENTS TO CERTAIN OUTPATIENT PROVIDERS

(a) The Department of Vermont Health Access shall not increase a provider's Medicaid reimbursement rates for outpatient medical services provided at an off-campus outpatient department of a hospital as a result of the provider's transfer to or acquisition by the hospital.

(b) As used in this section, "off-campus" means a facility located more than 250 yards from the main hospital campus.

Sec. 4. PROVIDER REIMBURSEMENT; REPORT

The Green Mountain Care Board shall consider the advisability and feasibility of expanding to commercial health insurers the prohibition on increased reimbursement rates for health care providers newly transferred to or acquired by a hospital as described in Sec. 2 of this act. On or before December 1, 2016, the Green Mountain Care Board shall report its findings and recommendations to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance, including its recommendations for the process and timing of implementation of the reimbursement restrictions.

Sec. 5. REDUCING PAYMENT DIFFERENTIALS; GUIDANCE AND IMPLEMENTATION; REPORT

(a) On or before July 15, 2016, the Green Mountain Care Board shall provide to the Health Reform Oversight Committee, the House Committee on Health Care, and the Senate Committees on Health and Welfare and on Finance a copy of each implementation plan for providing fair and equitable reimbursement amounts for professional services provided by academic medical centers and by other professionals, as required to be developed by health insurers pursuant to 2015 Acts and Resolves No. 54, Sec. 23(b), as amended by this act.

(b) No later than 30 days following the Board's review of each implementation plan pursuant to 2015 Acts and Resolves No. 54, Sec. 23(b) but in no event later than December 1, 2016, the Board shall report to the Health Reform Oversight Committee, the House Committee on Health Care, and the Senate Committees on Health and Welfare and on Finance on its progress toward achieving fair and equitable reimbursement amounts for professional services provided by academic medical centers and by other professionals, without increasing health insurance premiums or public funding of health care, as required by 2015 Acts and Resolves No. 54, Sec. 23(b), as amended by this act.

Sec. 6. EFFECTIVE DATES

(a) Sec. 1 and Sec. 2 (notice to patients of new affiliation) shall take effect on July 1, 2016.

(b) Sec. 3 (33 V.S.A. § 1905a) shall take effect on July 1, 2016 and shall apply to all providers transferred to or acquired by a hospital on or after the date of passage of this act.

(c) Secs. 4 and 5 (Green Mountain Care Board reports) and this section shall take effect on passage.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Passed**S. 107.**

Senate a bill of the following title:

An act relating to the Agency of Health Care Administration.

Was taken up.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 21, Nays 6.

Senator Degree having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Benning, Bray, Campion, Collamore, Cummings, Degree, Doyle, Flory, Kitchel, MacDonald, Mazza, Mullin, Nitka, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: Ayer, Baruth, Lyons, McCormack, Pollina, Zuckerman.

Those Senators absent or not voting were: Campbell (presiding), McAllister (Suspended), Snelling.

Bill Passed in Concurrence**H. 565.**

House bill of the following title was read the third time and passed in concurrence:

An act relating to United Methodist Church property.

Joint Resolution Adopted in Concurrence**J.R.H. 24.**

Joint House resolution of the following title was read and adopted in concurrence:

Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

Senate Resolution Adopted**S.R. 11.**

Senate resolution entitled:

Senate resolution relating to amending the permanent rules of the Senate.

Having been placed on the Calendar for action, was taken up and adopted.

Sexual Harassment Policy Journalized

On motion of Senator Baruth, the policy on sexual harassment covering the conduct of the members of the Senate, and its officers and employees, as adopted by the Committee on Rules pursuant to the provisions of Rule 101, was ordered entered in the Journal, and is as follows:

Vermont Senate Policy for the Prevention of Sexual Harassment

It is the policy of the Vermont Senate to provide a professional working environment free from harassment. Therefore, the Senate is opposed to, and prohibits without qualification, sexual harassment.

This policy covers the conduct of Senators and persons employed by the President Pro Tempore and the Senate Secretary's office. This policy is intended not only to protect Senators and employees of these offices, but others, including members of the public, lobbyists, advocates, and members of the press who suffer harassment attributable to a Senator or employee of these offices. The conduct of others interacting with Senators and persons employed by the Senate may be covered by other policies referenced herein.

Sexual harassment undermines the integrity of the State House environment, demonstrates a lack of respect for the rights of others, lowers morale, interferes with work effectiveness, and violates a person's sense of well-being. Not only sexual harassment but also retaliation for reporting harassment or cooperating in an investigation of harassment are prohibited by this policy, and all complaints will be handled in a speedy and impartial manner.

Definition and Examples of Sexual Harassment

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of employment;
2. submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting the individual; or
3. the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive working environment.

Examples of sexual harassment include the following when the acts or behavior come within one of the above definitions:

- either explicitly or implicitly conditioning any term of employment (e.g., continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- touching or grabbing a sexual part of a person's body;
- touching or grabbing any part of a person's body after that person has indicated that such physical contact is unwelcome;
- continuing to ask a person to socialize on or off duty when that person has indicated a lack of interest;
- displaying or transmitting sexually suggestive pictures, objects, cartoons, posters, or other visual matter if it is known or should be known that the behavior is unwelcome;
- continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;

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- retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g., ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering that person's duties or work environment);
 - derogatory or provocative remarks about or relating to a person's sex or sexual orientation;
 - harassing acts or behavior directed against a person on the basis of the person's sex or sexual orientation; and
 - off-duty conduct which falls within the above definitions and affects the work environment.

Procedures and Confidentiality

A person may make a complaint to a member of the Senate Sexual Harassment Panel who will thoroughly explain the complaint process and other options for resolution.

1. Any person who believes that a member or an employee of the Senate has sexually harassed him or her has a number of avenues of resolution. The person is encouraged, but not required, to identify objectionable actions to those responsible, and to try to resolve issues informally. This policy provides for a procedure if this approach is ineffective, or if the person chooses not to attempt such an informal resolution.
2. If the person decides to pursue a formal process, complaints must be in writing and signed by the Complainant. A complaint may be made by any person, but it must be in regard to alleged misconduct committed by a member during the current biennium, or during the period between when the Senate adjourned during the last year of the prior biennium and the end of the current biennium. Complaints may be given to any member of the Panel. If a Panel member other than the Chair receives a complaint, he or she shall immediately notify the Chair and give the written complaint to the Chair.
3. The Panel shall provide the Respondent a copy of the complaint. The Respondent may file a response with the Panel, a copy of which the Panel shall provide to the Complainant. The Panel may then begin an investigation. No Panel member shall participate as a Panel member for a report for which the Panel member is the Complainant or Respondent.
4. Investigations. An investigation includes interviewing witnesses and collecting any available documents.

- A. Confidentiality. The investigation shall be confidential.
 - B. Outcome of investigation.
 - i. If the Panel determines there is not enough evidence to support a charge of a violation, the complaint shall be closed and remain confidential.
 - I. Notice of the Panel's decision shall be sent to the Complainant and to the Respondent.
 - II. The Panel may reopen a closed complaint in the future in the case of a subsequent complaint.
 - ii. If the Panel determines there are reasonable grounds to believe the Respondent committed a violation and the complaint is not closed as provided in i above:
 - I. The Panel may enter into a mutually agreed to resolution with the Respondent and the Complainant.
 - II. The Panel may enter into a confidential stipulation with the Respondent that may include a warning or discipline, such as a reprimand. The Panel shall advise the Complainant of the remedial action taken.
 - III. If the Respondent chooses not to enter into a stipulation, the Panel shall draft charges and set the matter for a hearing. The Complainant and the Respondent shall receive a copy of the charges and the details regarding the time, date, and location of the hearing. The Respondent may file an answer to the charges, a copy of which the Panel shall provide to the Complainant.
5. Hearings.
- A. General. The Panel shall conduct a hearing in which the Respondent may present his or her position, present evidence, call witnesses, and question witnesses called by the Panel. The Chair of the Panel shall preside and if necessary the Panel may hire independent counsel to serve as a nonvoting hearing officer. The Senate Secretary shall provide legal advice and administrative support to the Panel. The Respondent may hire his or her own counsel at the Respondent's expense.

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- B. Confidentiality. The hearing shall be closed to the public, unless the Respondent and Complainant agree that it be open to the public.
 - C. Rules of procedure and evidence. The Panel shall not be bound by technical rules of evidence and may admit evidence that the Panel considers to be reliable, material, and relevant. The Chair shall make evidentiary rulings, which may be overruled by a majority of the Panel present at the hearing. The decision of the Panel cannot be based solely on hearsay evidence.
 - D. Burden of proof. Burden of proof that a violation occurred is clear and convincing evidence. This standard indicates that the alleged violation is highly probable or reasonably certain. Evidence is “clear” if it is certain, unambiguous, and plain to the understanding; and it is “convincing” if it is reasonable and persuasive enough to cause the Panel to believe it.
6. Findings.
- A. If the Panel finds that a violation did not occur, it shall dismiss the complaint. This dismissal shall be confidential. Notice of dismissal shall be sent to the Complainant and the Respondent.
 - B. If the Panel finds that a violation occurred, a meeting shall be held with the Senate Rules Committee, or Joint Rules Committee where appropriate, to determine the appropriate course of action.
7. Time periods.
- A. When the General Assembly is in session: The Panel shall determine whether there are reasonable grounds to believe that a violation of this policy has occurred within 48 hours of receiving a written complaint, and shall conclude any investigation and issue findings within two weeks.
 - B. When the General Assembly is not in session: The Panel shall determine whether there are reasonable grounds to believe that a violation of this policy has occurred, and shall conclude any investigation and issue findings as soon as reasonably possible.
8. Confidentiality and maintenance of records.
- A. Confidentiality.
 - i. Members of the Panel and the Secretary’s Office shall keep confidential any information received and any

records produced or acquired in accordance with this Procedure.

- ii. All records produced or acquired in accordance with this Procedure are not subject to the Public Records Act.

B. Maintenance of records. The Secretary's office shall maintain any records produced or acquired in accordance with this Procedure.

Other State House Policies and Panels

As noted above, this policy covers the conduct of Senators and persons employed by the President Pro Tempore and the Secretary's office. In addition to this policy, the House of Representatives has a policy that covers the conduct of Representatives and persons employed by the Speaker and the Clerk's office. Any complaints concerning the conduct of employees of the Joint Fiscal Office, the Office of Legislative Council, and the Sergeant at Arms that would not be within the jurisdiction of the House or Senate Panels shall be adjudicated by a Joint Panel composed of the House and Senate Panels. If the Joint Panel meets in 2016, the Chair of the Senate Panel shall serve as the Chair of the Joint Panel, and the Joint Panel shall follow the Senate Policy. If the Joint Panel meets in 2017 or 2018, the Chair of the House Panel shall serve as the Chair of the Joint Panel, and the Joint Panel shall follow the House Policy. Thereafter, the Chair of the Joint Panel and the Policy that shall be followed shall rotate biennially between the Senate and the House Panels. It is the intent of the General Assembly that all policies will be applied in a consistent manner. The following chart indicates what panel will adjudicate different complaints.

Adjudication of Complaints		
Accused	Complainant	Panel
Representative, staff of Speaker's office or Clerk's office	Representative, staff from any office, member of public	House
Senator, staff of President Pro Tempore's office or Secretary's office	Senator, staff from any office, member of public	Senate
Representative	Senator	House
Senator	Representative	Senate

The Sergeant at Arms and any person employed by the Joint Fiscal Office, the Office of Legislative Council, and the Sergeant at Arms	Representative, Senator, staff from any office, member of public	Joint
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Although persons subject to this policy are encouraged to use this policy, a complaint may also be made to court through a private attorney or to any of the following:

- Equal Employment Opportunity Commission (EEOC), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, tel. (800) 669-4000
- Vermont Human Rights Commission, 14-16 Baldwin St., Montpelier, VT 05633, tel. (800) 416-2010
- Vermont Attorney General, Civil Rights Unit, 109 State St., Montpelier, VT 05609, tel. (802) 828-3657

Appointments Confirmed

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

Kainen, Michael R. of White River Junction - Judge, Superior Judge - January 12, 2016, to March 31, 2017.

Valentine, Brian of Huntington - Magistrate – September 10, 2015, to March 31, 2021.

Morrissey, Mary of Jericho - Judge, Superior Judge - February 5, 2016, to March 31, 2017.

Schoonover, Kirstin of Huntington - Judge, Superior Judge – September 10, 2015, to March 31, 2017.

Adjournment

On motion of Senator Baruth, the Senate adjourned until eleven o'clock and thirty minutes in the morning.