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H.398

Introduced by Representative Pugh of South Burlington

Referred to Committee on

Date:

Subject: Human Services; Human Services Board

Statement of purpose of bill as introduced: This bill proposes to make various changes to the Human Services Board statutes.

An act relating to the Human Services Board

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

Sec. 1. 3 V.S.A. § 3091 is amended to read:

§ 3091. HEARINGS

\* \* \*

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning TANF, TANF-EA, office of child support cases, ~~and Medicaid,~~ and substantiations made pursuant to 33 V.S.A. § 4916b. The ~~secretary~~ Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

(i) the Board's findings of fact lack any support in the record; or

1           (ii) the decision or order implicates the validity or applicability of  
2 any Agency policy or rule.

3           (B) issue a written decision setting forth the legal, factual or policy  
4 basis for reversing or modifying a Board decision or order.

5           (2) Notwithstanding subsections (d) and (f) of this section, a Board  
6 decision and order concerning TANF, TANF-EA, Office of Child Support, or  
7 Medicaid, or substantiations made pursuant to 33V.S.A. § 4916b shall become  
8 the final and binding decision of the Agency upon its approval by the  
9 Secretary. The Secretary shall either approve, modify or reverse the Board's  
10 decision and order within 15 days of the date of the Board's decision and  
11 order. If the Secretary fails to issue a written decision within 15 days as  
12 required by this subdivision, the Board's decision and order shall be deemed to  
13 have been approved by the Secretary.

14   \* \* \*

15           Sec. 2. 33 V.S.A. § 4915 is amended to read:

16           § 4915. ASSESSMENT AND INVESTIGATION

17   \* \* \*

18           (g) Decisions about whether or not a report of suspected child abuse or  
19 neglect will be assessed or investigated by the Department shall not be  
20 reviewed by the Human Services Board under 3 V.S.A. § 3091.

1 Sec. 3. 33 V.S.A. § 4916 is amended to read:

2 § 4916. CHILD PROTECTION REGISTRY

3 \* \* \*

4 (g) The Department's assignment of a child protection level shall not be  
5 reviewed by the Human Services Board under 3 V.S.A. § 3091.

6 Sec. 4. 33 V.S.A. § 4916b is amended to read:

7 § 4916b. HUMAN SERVICES BOARD HEARING

8 (a) Within 30 days of the date on which the administrative reviewer mailed  
9 notice of placement of a report on the Registry, the person who is the subject  
10 of the substantiation may apply in writing to the Human Services Board for  
11 relief. The Board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When  
12 the Department receives notice of the appeal, it shall make note in the Registry  
13 record that the substantiation has been appealed to the Board.

14 (b)(1) The Board shall hold a hearing within 60 days of the receipt of the  
15 request for a hearing and shall issue a decision within 30 days of the hearing.

16 (2) Priority shall be given to appeals in which there are immediate  
17 employment consequences for the person appealing the decision.

18 (3) ~~Rule 804a of the Vermont Rules of Evidence (V.R.E.) shall apply to~~  
19 ~~hearings held under this subsection only as follows:~~

20 (A) ~~V.R.E. 804a(a)(1) and (4) shall apply.~~

1           ~~(B) V.R.E. 804a(a)(2) shall apply, except that any deposition or~~  
2 ~~testimony given under oath at another proceeding shall be admissible evidence~~  
3 ~~in a hearing held under this subsection.~~

4           ~~(C) V.R.E. 804a(a)(3) shall apply to hearings under this subsection~~  
5 ~~unless the hearing officer determines, based on a preponderance of the~~  
6 ~~evidence, that requiring the child to testify will present a substantial risk of~~  
7 ~~trauma to the child.~~

8           ~~(D) V.R.E. 804a(b) shall not apply.~~

9           At a hearing held under this subsection, evidence is admissible if it is of  
10 a type commonly relied upon by reasonably prudent persons in the conduct of  
11 their affairs, and, notwithstanding any administrative rule to the contrary, the  
12 Vermont Rules of Evidence (V.R.E.) shall not apply except for the rules  
13 respecting privilege.

14           (A) An individual under 18 years of age who is alleged to have been  
15 abused or neglected shall not be required to testify or give evidence at any  
16 hearing held under this subsection.

17           (B) V.R.E. 804a shall not apply to hearings held under this  
18 subsection.

19           (4) Convictions and adjudications which arose out of the same incident  
20 of abuse or neglect for which the person was substantiated, whether by verdict,  
21 by judgment, or by a plea of any type, including a plea resulting in a deferred

1 sentence which has otherwise expired, shall be competent evidence in a  
2 hearing held under this subchapter.

3 (c) A hearing may be stayed upon request of the petitioner if there is a  
4 related case pending in the Criminal or Family Division of the Superior Court  
5 which arose out of the same incident of abuse or neglect for which the person  
6 was substantiated. No hearing shall be held and the Department's decision  
7 shall become final unless, within 30 days of the conclusion of the related Court  
8 case, the petitioner contacts the Board and asks that the administrative matter  
9 be reactivated.

10 \* \* \*

11 Sec. 5. EFFECTIVE DATE

12 This act shall take effect on passage.