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Testimony to the House Committee on Commerce and Economic Development for H.773,
H.378, H.331, and H.216
February 11, 2016

Vermont Care Partners represents 16 designated and specialized service agencies who provide supports for people with developmental disabilities, mental health and substance abuse needs across the State of Vermont.

Our member agencies, in part, utilize foster care to administer high quality and cost effective supports for both children and adults who require specialized supports due to developmental disabilities and/or mental health needs. Adult foster care is defined in Vermont law as “the provision of 24-hour home care services for one or two adult persons with a disability in the residence of the person providing the home care services.” 33 V.S.A. §502. Vermont law also defines foster care as “care of a child, for a valuable consideration in a child-care institution or in a family other than that of the child's parent, guardian or relative.” 33 V.S.A §4902.

The Internal Revenue Code specifically excludes foster care payments from gross income under Section 131 of Title 26; thus under federal law, foster care payments are not considered wages.

Foster care is a critical service provided for people with developmental and/or mental health needs, and the lack of clarity in Vermont’s workers compensation statute as to whether individuals who receive foster care payments are employees jeopardizes the State’s programs for supporting its vulnerable citizens.

Therefore an amendment is necessary in Vermont’s worker’s compensation law to clarify that individuals receiving foster care payments are exempted from the definition of “worker” or “employee” in 21 V.S.A. §601. The amendment we request is identical to language the Committee has previously approved. We request that, in any bills addressing Worker’s Compensation this year, a new subsection be added to 21 VSA §601(14), the definition of “worker” and “employee”, specifying that the term “worker” or “employee” does not include:

“An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.”

In the absence of this language, foster care services remain vulnerable to inclusion as employees under the workers compensation statute. This could be devastating to citizens who benefit from foster care without a significant infusion of State funds. Transitioning from foster care to supports provided by employees would be very costly and also would likely diminish the individualized supports currently provided in foster care.