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STATE OF VERMONT  
AGENCY OF HUMAN SERVICES

**MEMORANDUM**

To: Senate Committee on Health and Welfare

From: Dawn O’Toole, AHS Chief Operations Officer

Cc: Paul Dragon, Deputy Secretary  
Kenneth Schatz, Commissioner, Department of Children and Families  
Frank Reed, Commissioner, Department of Mental health  
Allan J. Sullivan, AHS General Counsel

Date: April 5, 2016

Re: H. 74

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Thank you for the opportunity to comment further on H. 74. These comments supplement my testimony and my previously submitted written remarks, and the testimony provided by AHS General Counsel Allan Sullivan and DCF Commissioner Kenneth Schatz on March 30, 2016. In further consultation with my colleagues in the Agency, and with the Department of Labor, the Agency of Human Services proposes changes to the version of H. 74 sent to us this afternoon on behalf of the Committee.

To summarize those changes, we agree that it would be appropriate to:

- (a) a global replacement of the phrase “employees working directly with clients” to “employees delivering social services directly to members of the public;”
- (b) changing the caption of Section 8201 to Safety Policies for Employees Delivering Direct Social Services;

(c) changing the language of Section 8201 from “The Agency of Human Services and each department of the Agency” to “The Agency of Human Services, along with and through each of its Departments, shall establish and maintain...and crisis response policy that meets or exceeds the requirements of this chapter....” (deletes the words “for each of its departments”).

Since the referenced OSHA Guidelines are on their face aspirational, reflecting recommended best practices, and are not legal requirements applicable to all employers, we suggest that the language of Section 8201(c) be modified from the requirement that policies “shall be consistent” with the Guidelines, to a requirement that the promulgating Agency or contractor, when devising the policies, “shall be guided by” the OSHA Workplace Guidelines.

The last suggested change was not explicitly discussed before the Committee, but upon review of and reflection upon the language used in this subsection, we believe it appropriate for the Committee to refrain from effectively giving federal OSHA Guidelines the weight of law.<sup>1</sup> Requiring the safety protocols and policies contemplated by this legislation to embrace each and every recommended practice, without regard to an assessment of specific risk factors, would have a potentially indeterminate and substantial fiscal impact. The Department of Labor, VOSHA, has been apprised of this proposed change and has not stated any objection.

We agree with the deletion of the phrase “or any subsequently adopted federal regulations or State rules governing workplace safety.”

Finally, regarding §8201(a)(2), we had a question concerning intent. The way the bill currently reads (“contracts with providers...that are...designated by a department of the Agency”), the language would arguably include two of DMH’s six designated hospitals, RRMC and the Brattleboro Retreat, as they are contracted level one providers as part of the no-refusal system. The other four hospitals are designated by DMH but are not under contract. We believe that hospital licensure requirements cover worker safety issues and that this statute may have the potential of creating overlapping obligations. We believe clarifying language at Section 8201(a)(2) to the effect that “ensure that its contracts with non-hospital providers . . . ” would clarify the intended scope of the bill.

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<sup>1</sup> See Introduction to the OSHA Guidelines: “This publication updates OSHA’s ... voluntary guidelines for preventing workplace violence for healthcare and social service workers. OSHA’s violence prevention guidelines are based on industry best practices and feedback from stakeholders, and provide recommendations for developing policies and procedures to eliminate or reduce workplace violence in a range of healthcare and social service settings.”)