

House Calendar

Tuesday, June 9, 2020

155th DAY OF THE ADJOURNED SESSION

House Convenes at 9:00 A.M.

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ACTION CALENDAR

Unfinished Business of Monday, June 1, 2020

Favorable with Amendment

H. 611

An act relating to the Older Vermonters Act

Rep. Wood of Waterbury, for the Committee on Human Services, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Older Vermonters Act * * *

Sec. 1. 33 V.S.A. chapter 62 is added to read:

CHAPTER 62. OLDER VERMONTERS ACT

§ 6201. SHORT TITLE

This chapter may be cited as the “Older Vermonters Act.”

§ 6202. PRINCIPLES OF SYSTEM OF SERVICES, SUPPORTS, AND

PROTECTIONS FOR OLDER VERMONTERS

The State of Vermont adopts the following principles for a comprehensive and coordinated system of services and supports for older Vermonters:

(1) Self-determination. Older Vermonters should be able to direct their own lives as they age so that aging is not something that merely happens to them but a process in which they actively participate. Whatever services, supports, and protections are offered, older Vermonters deserve dignity and respect and must be at the core of all decisions affecting their lives, with the opportunity to accept or refuse any offering.

(2) Safety and protection. Older Vermonters should be able to live in communities, whether urban or rural, that are safe and secure. Older Vermonters have the right to be free from abuse, neglect, and exploitation, including financial exploitation. As older Vermonters age, their civil and legal rights should be protected, even if their capacity is diminished. Safety and stability should be sought, balanced with their right to self-determination.

(3) Coordinated and efficient system of services. Older Vermonters should be able to benefit from a system of services, supports, and protections, including protective services, that is coordinated, equitable, and efficient; includes public and private cross-sector collaboration at the State, regional, and local levels; and avoids duplication while promoting choice, flexibility,

and creativity. The system should be easy for individuals and families to access and navigate, including as it relates to major transitions in care.

(4) Financial security. Older Vermonters should be able to receive an adequate income and have the opportunity to maintain assets for a reasonable quality of life as they age. If older Vermonters want to work, they should be able to seek and maintain employment without fear of discrimination and with any needed accommodations. Older Vermonters should also be able to retire after a lifetime of work, if they so choose, without fear of poverty and isolation.

(5) Optimal health and wellness. Older Vermonters should have the opportunity to receive, without discrimination, optimal physical, dental, mental, emotional, and spiritual health through the end of their lives. Holistic options for health, exercise, counseling, and good nutrition should be both affordable and accessible. Access to coordinated, competent, and high-quality care should be provided at all levels and in all settings.

(6) Social connection and engagement. Older Vermonters should be free from isolation and loneliness, with affordable and accessible opportunities in their communities for social connectedness, including work, volunteering, lifelong learning, civic engagement, arts, culture, and broadband access and other technologies. Older Vermonters are critical to our local economies and their contributions should be valued by all.

(7) Housing, transportation, and community design. Vermont communities should be designed, zoned, and built to support the health, safety, and independence of older Vermonters, with affordable, accessible, appropriate, safe, and service-enriched housing, transportation, and community support options that allow them to age in a variety of settings along the continuum of care and that foster engagement in community life.

(8) Family caregiver support. Family caregivers are fundamental to supporting the health and well-being of older Vermonters, and their hard work and contributions should be respected, valued, and supported. Family caregivers of all ages should have affordable access to education, training, counseling, respite, and support that is both coordinated and efficient.

§ 6203. DEFINITIONS

As used in this chapter:

(1) “Area agency on aging” means an organization designated by the State to develop and implement a comprehensive and coordinated system of services, supports, and protections for older Vermonters, family caregivers, and kinship caregivers within a defined planning and service area of the State.

(2) “Choices for Care program” means the Choices for Care program contained within Vermont’s Global Commitment to Health Section 1115 demonstration or a successor program.

(3) “Department” means the Department of Disabilities, Aging, and Independent Living.

(4) “Family caregiver” means an adult family member or other individual who is an informal provider of in-home and community care to an older Vermonter or to an individual with Alzheimer’s disease or a related disorder.

(5) “Greatest economic need” means the need resulting from an income level that is too low to meet basic needs for housing, food, transportation, and health care.

(6) “Greatest social need” means the need caused by noneconomic factors, including:

(A) physical and mental disabilities;

(B) language barriers; and

(C) cultural, social, or geographic isolation, including isolation caused by racial or ethnic status, sexual orientation, gender identity, or HIV status, that:

(i) restricts an individual’s ability to perform normal daily tasks; or

(ii) threatens the capacity of the individual to live independently.

(7) “Home- and community-based services” means long-term services and supports received in a home or community setting other than a nursing home pursuant to the Choices for Care component of Vermont’s Global Commitment to Health Section 1115 Medicaid demonstration or a successor program and includes home health and hospice services, assistive community care services, and enhanced residential care services.

(8) “Kinship caregiver” means an adult individual who has significant ties to a child or family, or both, and takes permanent or temporary care of a child because the current parent is unwilling or unable to do so.

(9) “Older Americans Act” means the federal law originally enacted in 1965 to facilitate a comprehensive and coordinated system of supports and services for older Americans and their caregivers.

(10) “Older Vermonters” means all individuals residing in this State who

are 60 years of age or older.

(11)(A) “Self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks, including:

(i) obtaining essential food, clothing, shelter, and medical care;

(ii) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(iii) managing one’s own financial affairs.

(B) The term “self-neglect” excludes individuals who make a conscious and voluntary choice not to provide for certain basic needs as a matter of lifestyle, personal preference, or religious belief and who understand the consequences of their decision.

(12) “Senior center” means a community facility that organizes, provides, or arranges for a broad spectrum of services for older Vermonters, including physical and mental health-related, social, nutritional, and educational services, and that provides facilities for use by older Vermonters to engage in recreational activities.

(13) “State Plan on Aging” means the plan required by the Older Americans Act that outlines the roles and responsibilities of the State and the area agencies on aging in administering and carrying out the Older Americans Act.

(14) “State Unit on Aging” means an agency within a state’s government that is directed to administer the Older Americans Act programs and to develop the State Plan on Aging in that state.

§ 6204. DEPARTMENT OF DISABILITIES, AGING, AND

INDEPENDENT LIVING; DUTIES

(a) The Department of Disabilities, Aging, and Independent Living is Vermont’s designated State Unit on Aging.

(1) The Department shall administer all Older Americans Act programs in this State and shall develop and maintain the State Plan on Aging.

(2) The Department shall be the subject matter expert to guide decision making in State government for all programs, services, funding, initiatives, and other activities relating to or affecting older Vermonters, including:

(A) State-funded and federally funded long-term care services and supports;

(B) housing and transportation; and

(C) health care reform activities.

(3) The Department shall administer the Choices for Care program, which the Department shall do in coordination with efforts it undertakes in its role as the State Unit on Aging.

(b)(1) The Department shall coordinate strategies to incorporate the principles established in section 6202 of this chapter into all programs serving older Vermonters.

(2) The Department shall use both qualitative and quantitative data to monitor and evaluate the system's success in targeting services to individuals with the greatest economic and social need.

(c) The Department's Advisory Board established pursuant to section 505 of this title shall monitor the implementation and administration of the Older Vermonters Act established by this chapter.

§ 6205. AREA AGENCIES ON AGING; DUTIES

(a) Consistent with the Older Americans Act and in consultation with local home- and community-based service providers, each area agency on aging shall:

(1) develop and implement a comprehensive and coordinated system of services, supports, and protections for older Vermonters, family caregivers, and kinship caregivers within the agency's designated service area;

(2) target services and supports to older Vermonters with the greatest economic and social need;

(3) perform regional needs assessments to identify existing resources and gaps;

(4) develop an area plan with goals, objectives, and performance measures, and a corresponding budget, and submit them to the State Unit on Aging for approval;

(5) concentrate resources, build community partnerships, and enter into cooperate agreements with agencies and organizations for delivery of services;

(6) designate community focal points for colocation of supports and services for older Vermonters; and

(7) conduct outreach activities to identify individuals eligible for assistance.

(b) In addition to the duties described in subsection (a) of this section, the

area agencies on aging shall:

(1) promote the principles established in section 6202 of this chapter across the agencies' programs and shall collaborate with stakeholders to educate the public about the importance of each principle;

(2) promote collaboration with a network of service providers to provide a holistic approach to improving health outcomes for older Vermonters; and

(3) use their existing area plans to facilitate awareness of aging issues, needs, and services and to promote the system principles expressed in section 6202 of this chapter.

§ 6206. PLAN FOR COMPREHENSIVE AND COORDINATED SYSTEM
OF SERVICES, SUPPORTS, AND PROTECTIONS

(a) At least once every four years, the Department of Disabilities, Aging, and Independent Living shall adopt a State Plan on Aging, as required by the Older Americans Act. The State Plan on Aging shall describe a comprehensive and coordinated system of services, supports, and protections for older Vermonters that is consistent with the principles set forth in section 6202 of this chapter and sets forth the nature, extent, allocation, anticipated funding, and timing of services for older Vermonters. The State Plan on Aging shall also include the following categories:

(1) priorities for continuation of existing programs and development of new programs;

(2) criteria for receiving services or funding;

(3) types of services provided; and

(4) a process for evaluating and assessing each program's success.

(b)(1) The Commissioner shall determine priorities for the State Plan on Aging based on:

(A) information obtained from older Vermonters, their families, and their guardians, if applicable, and from senior centers and service providers;

(B) a comprehensive needs assessment that includes:

(i) demographic information about Vermont residents, including older Vermonters, family caregivers, and kinship caregivers;

(ii) information about existing services used by older Vermonters, family caregivers, and kinship caregivers;

(iii) characteristics of unserved and underserved individuals and populations; and

(iv) the reasons for any gaps in service, including identifying variations in community needs and resources; and

(C) a comprehensive evaluation of the services available to older Vermonters across the State, including home- and community-based services, residential care homes, assisted living residences, nursing facilities, senior centers, and other settings in which care is or may later be provided.

(2) Following the determination of State Plan on Aging priorities, the Commissioner shall consider funds available to the Department in allocating resources.

(c) At least 60 days prior to adopting the proposed plan, the Commissioner shall submit a draft to the Department's Advisory Board established pursuant to section 505 of this title for advice and recommendations. The Advisory Board shall provide the Commissioner with written comments on the proposed plan.

(d) The Commissioner may make annual revisions to the plan as needed. The Commissioner shall submit any proposed revisions to the Department's Advisory Board for comment within the time frames established in subsection (c) of this section.

(e) On or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department shall report to the House Committee on Human Services, the Senate Committee on Health and Welfare, and the Governor regarding:

(1) implementation of the plan;

(2) the extent to which the system principles set forth in section 6202 of this chapter are being achieved;

(3) based on both qualitative and quantitative data, the extent to which the system has been successful in targeting services to individuals with the greatest economic and social need;

(4) the sufficiency of the provider network and any workforce challenges affecting providers of care or services for older Vermonters; and

(5) the availability of affordable and accessible opportunities for older Vermonters to engage with their communities, such as social events, educational classes, civic meetings, health and exercise programs, and volunteer opportunities.

* * * Adult Protective Services Program Reporting * * *

Sec. 2. 33 V.S.A. § 6916 is added to read:

§ 6916. ANNUAL REPORT

On or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare regarding the Department's adult protective services activities during the previous fiscal year, including:

(1) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that the Department's Adult Protective Services program received during the previous fiscal year and comparisons with the two prior fiscal years;

(2) the Adult Protective Services program's timeliness in responding to reports of abuse, neglect, or exploitation of a vulnerable adult during the previous fiscal year, including the median number of days it took the program to make a screening decision;

(3) the number of reports received during the previous fiscal year that required a field screen to determine vulnerability and the percentage of field screens that were completed within 10 calendar days;

(4) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that were received from a facility licensed by the Department's Division of Licensing and Protection during the previous fiscal year;

(5) the numbers and percentages of reports received during the previous fiscal year by each reporting method, including by telephone, e-mail, Internet, facsimile, and other means;

(6) the number of investigations opened during the previous fiscal year and comparisons with the two prior fiscal years;

(7) the number and percentage of investigations during the previous fiscal year in which the alleged victim was a resident of a facility licensed by the Department's Division of Licensing and Protection;

(8) data regarding the types of maltreatment experienced by alleged victims during the previous fiscal year, including:

(A) the percentage of investigations that involved multiple types of allegations of abuse, neglect, or exploitation, or a combination;

(B) the numbers and percentages of unsubstantiated investigations by type of maltreatment; and

(C) the numbers and percentages of recommended substantiations by

type of maltreatment;

(9) the Department's timeliness in completing investigations during the previous fiscal year, including both unsubstantiated and recommended substantiated investigations;

(10) data on Adult Protective Services program investigator caseloads, including:

(A) average daily caseloads during the previous fiscal year and comparisons with the two prior fiscal years;

(B) average daily open investigations statewide during the previous fiscal year and comparisons with the two prior fiscal years;

(C) average numbers of completed investigations per investigator during the previous fiscal year; and

(D) average numbers of completed investigations per week during the previous fiscal year;

(11) the number of reviews of screening decisions not to investigate, including the number and percentage of these decisions that were upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(12) the number of reviews of investigations that resulted in an unsubstantiation, including the number and percentage of these unsubstantiations that were upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(13) the number of appeals of recommendations of substantiation that concluded with the Commissioner, including the number and percentage of these recommendations that the Commissioner upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(14) the number of appeals of recommendations of substantiation that concluded with the Human Services Board, including the numbers and percentages of these recommendations that the Board upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(15) the number of appeals of recommendations of substantiation that concluded with the Vermont Supreme Court, including the numbers and percentages of these recommendations that the Court upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(16) the number of expungement requests received during the previous fiscal year, including the number of requests that resulted in removal of an individual from the Adult Abuse Registry;

(17) the number of individuals placed on the Adult Abuse Registry during the previous fiscal year and comparisons with the two prior fiscal years; and

(18) the number of individuals removed from the Adult Abuse Registry during the previous fiscal year.

* * * Vermont Action Plan for Aging Well; Development Process * * *

Sec. 3. VERMONT ACTION PLAN FOR AGING WELL; DEVELOPMENT PROCESS; REPORT

The Secretary of Administration, in collaboration with the Commissioners of Disabilities, Aging, and Independent Living and of Health, shall propose a process for developing the Vermont Action Plan for Aging Well to be implemented across State government, local government, the private sector, and philanthropies. The Vermont Action Plan for Aging Well shall provide strategies and cultivate partnerships for implementation across sectors to promote aging with health, choice, and dignity in order to establish and maintain an age-friendly State for all Vermonters. In crafting the proposed process, the Secretary shall engage a broad array of Vermonters with an interest in creating an age-friendly Vermont, including older Vermonters and their families, adults with disabilities and their families, local government officials, health care and other service providers, employers, community-based organizations, foundations, academic researchers, and other interested stakeholders. On or before January 15, 2021, the Secretary shall submit to the House Committee on Human Services and the Senate Committee on Health and Welfare the proposed process for developing the Vermont Action Plan for Aging Well, including action steps and an achievable timeline, as well as potential performance measures for use in evaluating the results of implementing the Action Plan and the relevant outcomes set forth in 3 V.S.A. § 2311 and related indicators, to which the Action Plan should relate.

* * * Increasing Medicaid Rates for Home- and Community-Based Service Providers * * *

Sec. 4. 33 V.S.A. § 900 is amended to read:

§ 900. DEFINITIONS

~~Unless otherwise required by the context, the words and phrases in this chapter shall be defined as follows~~ As used in this chapter:

* * *

(7) “Home- and community-based services” means long-term services

and supports received in a home or community setting other than a nursing home pursuant to the Choices for Care component of Vermont's Global Commitment to Health Section 1115 Medicaid demonstration or a successor program and includes home health and hospice services, assistive community care services, and enhanced residential care services.

Sec. 5. 33 V.S.A. § 911 is added to read:

§ 911. INFLATION FACTOR FOR HOME- AND COMMUNITY-BASED SERVICES; PAYMENT RATES

(a) The Director shall establish by rule procedures for determining an annual inflation factor to be applied to the Medicaid rates for providers of home- and community-based services authorized by the Department of Vermont Health Access or the Department of Disabilities, Aging, and Independent Living, or both.

(b) The Division, in collaboration with the Department of Disabilities, Aging, and Independent Living, shall calculate the inflation factor for home- and community-based services annually according to the procedure adopted by rule and shall report it to the Departments of Disabilities, Aging, and Independent Living and of Vermont Health Access for application to home- and community-based provider Medicaid reimbursement rates beginning on July 1.

(c) Determination of Medicaid reimbursement rates for each fiscal year shall be based on application of the inflation factor to the sum of:

(1) the prior fiscal year's payment rates; plus

(2) any additional payment amounts available to providers of home- and community-based services as a result of policies enacted by the General Assembly that apply to the fiscal year for which the rates are being calculated.

Sec. 6. HOME- AND COMMUNITY-BASED SERVICE PROVIDER
RATE STUDY; REPORT

(a) The Departments of Vermont Health Access and of Disabilities, Aging, and Independent Living shall conduct a rate study of the Medicaid reimbursement rates paid to providers of home- and community-based services, their adequacy, and the methodologies underlying those rates. The Departments shall:

(1) establish a predictable schedule for Medicaid rates and rate updates;

(2) identify ways to align the Medicaid reimbursement methodologies and rates for providers of home- and community-based services with those of

other payers, to the extent such other methodologies and rates exist;

(3) limit the number of methodological exceptions; and

(4) communicate the proposed changes to providers of home- and community-based services prior to implementing any proposed changes.

(b) On or before January 15, 2021, the Departments of Vermont Health Access and of Disabilities, Aging, and Independent Living shall report to the House Committees on Human Services and on Appropriations and the Senate Committees on Health and Welfare and on Appropriations with the results of the rate study conducted pursuant to this section.

* * * Self-Neglect Working Group * * *

Sec. 7. SELF-NEGLECT WORKING GROUP; REPORT

(a) Creation. There is created the Self-Neglect Working Group to provide recommendations regarding adults who, due to physical or mental impairment or diminished capacity, are unable to perform essential self-care tasks. For the purposes of the Working Group, “self-neglect” has the same meaning as in 33 V.S.A. § 6203.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(2) the Director of the Adult Services Division in the Department of Disabilities, Aging, and Independent Living or designee;

(3) the Vermont Attorney General or designee;

(4) the State Long-Term Care Ombudsman or designee;

(5) the Executive Director of the Vermont Association of Area Agencies on Aging or designee;

(6) the Executive Director of the Community of Vermont Elders or designee;

(7) the Executive Director of the VNAs of Vermont or designee;

(8) the Executive Director of Disability Rights Vermont or designee;

(9) an elder care clinician selected by Vermont Care Partners; and

(10) the Director of the Center on Aging at the University of Vermont College of Medicine or designee.

(c) Powers and duties. The Working Group shall consider issues and

develop recommendations relating to self-neglect, including determining the following:

(1) how to identify adults residing in Vermont who, because of physical or mental impairment or diminished capacity, are unable to perform essential self-care tasks and are self-neglecting;

(2) how prevalent self-neglect is among adults in Vermont, and any common characteristics that can be identified about the demographics of self-neglecting Vermonters;

(3) what resources and services currently exist to assist Vermonters who are self-neglecting, and where there are opportunities to improve delivery of these services and increase coordination among existing service providers;

(4) what additional resources and services are needed to better assist Vermonters who are self-neglecting; and

(5) how to prevent self-neglect and identify adults at risk for self-neglect.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before December 15, 2020, the Working Group shall report its findings and its recommendations for legislative and nonlegislative action to the House Committee on Human Services and the Senate Committee on Health and Welfare.

(f) Meetings.

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee shall call the first meeting of the Working Group to occur on or before July 1, 2020.

(2) The Working Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Working Group shall cease to exist following submission of its report pursuant to subsection (e) of this section.

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

(a) Secs. 1 (Older Vermonters Act), 2 (Adult Protective Services reporting), 3 (Strategic Action Plan on Aging; development process; report),

6 (home- and community-based service provider rate study; report), and 7 (Self-Neglect Working Group; report) and this section shall take effect on passage, except that in Sec. 1, 33 V.S.A. § 6206 (plan for comprehensive and coordinated system of services, supports, and protections) shall apply to the State Plan on Aging taking effect on October 1, 2022.

(b) Secs. 4 and 5 (Medicaid rates for home- and community-based service providers) shall take effect on passage and shall apply to home- and community-based service provider rates beginning on July 1, 2021.

(Committee Vote: 11-0-0)

Rep. Lanpher of Vergennes, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Human Services and when further amended as follows:

First: By striking Secs. 4, 33 V.S.A. § 900, and 5, 33 V.S.A. § 911, in their entireties and inserting in lieu thereof new Secs. 4 and 5 to read as follows:

Sec. 4. [Deleted.]

Sec. 5. [Deleted.]

Second: By striking Sec. 8, effective dates, in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage, except that in Sec. 1, 33 V.S.A. § 6206 (plan for comprehensive and coordinated system of services, supports, and protections) shall apply to the State Plan on Aging taking effect on October 1, 2022.

(Committee Vote: 10-1-0)

Amendment to be offered by Rep. Wood of Waterbury, Noyes of Wolcott, Brumsted of Shelburne, Gregoire of Fairfield, Haas of Rochester, McFaun of Barre Town, Nicoll of Ludlow, Pajala of Londonderry, Pugh of South Burlington, Redmond of Essex, and Rosenquist of Georgia to H. 611

Representatives Wood of Waterbury, Noyes of Wolcott, Brumsted of Shelburne, Gregoire of Fairfield, Haas of Rochester, McFaun of Barre Town, Nicoll of Ludlow, Pajala of Londonderry, Pugh of South Burlington, Redmond of Essex, and Rosenquist of Georgia move that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Older Vermonters Act * * *

Sec. 1. 33 V.S.A. chapter 62 is added to read:

CHAPTER 62. OLDER VERMONTERS ACT

§ 6201. SHORT TITLE

This chapter may be cited as the “Older Vermonters Act.”

§ 6202. PRINCIPLES OF SYSTEM OF SERVICES, SUPPORTS, AND PROTECTIONS FOR OLDER VERMONTERS

The State of Vermont adopts the following principles for a comprehensive and coordinated system of services and supports for older Vermonters:

(1) Self-determination. Older Vermonters should be able to direct their own lives as they age so that aging is not something that merely happens to them but a process in which they actively participate. Whatever services, supports, and protections are offered, older Vermonters deserve dignity and respect and must be at the core of all decisions affecting their lives, with the opportunity to accept or refuse any offering.

(2) Safety and protection. Older Vermonters should be able to live in communities, whether urban or rural, that are safe and secure. Older Vermonters have the right to be free from abuse, neglect, and exploitation, including financial exploitation. As older Vermonters age, their civil and legal rights should be protected, even if their capacity is diminished. Safety and stability should be sought, balanced with their right to self-determination.

(3) Coordinated and efficient system of services. Older Vermonters should be able to benefit from a system of services, supports, and protections, including protective services, that is coordinated, equitable, and efficient; includes public and private cross-sector collaboration at the State, regional, and local levels; and avoids duplication while promoting choice, flexibility, and creativity. The system should be easy for individuals and families to access and navigate, including as it relates to major transitions in care. The system should be designed to address the needs and concerns of Older Vermonters and their families during normal times and in the event of a public health crisis, natural disaster, or other widespread emergency situation in this State.

(4) Financial security. Older Vermonters should be able to receive an adequate income and have the opportunity to maintain assets for a reasonable quality of life as they age. If older Vermonters want to work, they should be able to seek and maintain employment without fear of discrimination and with any needed accommodations. Older Vermonters should also be able to retire after a lifetime of work, if they so choose, without fear of poverty and isolation.

(5) Optimal health and wellness. Older Vermonters should have the opportunity to receive, without discrimination, optimal physical, dental, mental, emotional, and spiritual health through the end of their lives. Holistic options for health, exercise, counseling, and good nutrition should be both

affordable and accessible. Access to coordinated, competent, and high-quality care should be provided at all levels and in all settings.

(6) Social connection and engagement. Older Vermonters should be free from isolation and loneliness, with affordable and accessible opportunities in their communities for social connectedness, including work, volunteering, lifelong learning, civic engagement, arts, culture, and broadband access and other technologies. Older Vermonters are critical to our local economies and their contributions should be valued by all.

(7) Housing, transportation, and community design. Vermont communities should be designed, zoned, and built to support the health, safety, and independence of older Vermonters, with affordable, accessible, appropriate, safe, and service-enriched housing, transportation, and community support options that allow them to age in a variety of settings along the continuum of care and that foster engagement in community life.

(8) Family caregiver support. Family caregivers are fundamental to supporting the health and well-being of older Vermonters, and their hard work and contributions should be respected, valued, and supported. Family caregivers of all ages should have affordable access to education, training, counseling, respite, and support that is both coordinated and efficient.

§ 6203. DEFINITIONS

As used in this chapter:

(1) “Area agency on aging” means an organization designated by the State to develop and implement a comprehensive and coordinated system of services, supports, and protections for older Vermonters, family caregivers, and kinship caregivers within a defined planning and service area of the State.

(2) “Choices for Care program” means the Choices for Care program contained within Vermont’s Global Commitment to Health Section 1115 demonstration or a successor program.

(3) “Department” means the Department of Disabilities, Aging, and Independent Living.

(4) “Family caregiver” means an adult family member or other individual who is an informal provider of in-home and community care to an older Vermonter or to an individual with Alzheimer’s disease or a related disorder.

(5) “Greatest economic need” means the need resulting from an income level that is too low to meet basic needs for housing, food, transportation, and health care.

(6) “Greatest social need” means the need caused by noneconomic factors, including:

(A) physical and mental disabilities;

(B) language barriers; and

(C) cultural, social, or geographic isolation, including isolation caused by racial or ethnic status, sexual orientation, gender identity, or HIV status, that:

(i) restricts an individual's ability to perform normal daily tasks; or

(ii) threatens the capacity of the individual to live independently.

(7) "Home- and community-based services" means long-term services and supports received in a home or community setting other than a nursing home pursuant to the Choices for Care component of Vermont's Global Commitment to Health Section 1115 Medicaid demonstration or a successor program and includes home health and hospice services, assistive community care services, and enhanced residential care services.

(8) "Kinship caregiver" means an adult individual who has significant ties to a child or family, or both, and takes permanent or temporary care of a child because the current parent is unwilling or unable to do so.

(9) "Older Americans Act" means the federal law originally enacted in 1965 to facilitate a comprehensive and coordinated system of supports and services for older Americans and their caregivers.

(10) "Older Vermonters" means all individuals residing in this State who are 60 years of age or older.

(11)(A) "Self-neglect" means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks, including:

(i) obtaining essential food, clothing, shelter, and medical care;

(ii) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(iii) managing one's own financial affairs.

(B) The term "self-neglect" excludes individuals who make a conscious and voluntary choice not to provide for certain basic needs as a matter of lifestyle, personal preference, or religious belief and who understand the consequences of their decision.

(12) "Senior center" means a community facility that organizes, provides, or arranges for a broad spectrum of services for older Vermonters, including physical and mental health-related, social, nutritional, and educational services, and that provides facilities for use by older Vermonters to engage in recreational activities.

(13) "State Plan on Aging" means the plan required by the Older Americans Act that outlines the roles and responsibilities of the State and the area agencies on aging in administering and carrying out the Older Americans Act.

(14) “State Unit on Aging” means an agency within a state’s government that is directed to administer the Older Americans Act programs and to develop the State Plan on Aging in that state.

§ 6204. DEPARTMENT OF DISABILITIES, AGING, AND INDEPENDENT LIVING; DUTIES

(a) The Department of Disabilities, Aging, and Independent Living is Vermont’s designated State Unit on Aging.

(1) The Department shall administer all Older Americans Act programs in this State and shall develop and maintain the State Plan on Aging.

(2) The Department shall be the subject matter expert to guide decision making in State government for all programs, services, funding, initiatives, and other activities relating to or affecting older Vermonters, including:

(A) State-funded and federally funded long-term care services and supports;

(B) housing and transportation;

(C) health care reform activities and;

(D) public health crisis and emergency preparedness planning.

(3) The Department shall administer the Choices for Care program, which the Department shall do in coordination with efforts it undertakes in its role as the State Unit on Aging.

(b)(1) The Department shall coordinate strategies to incorporate the principles established in section 6202 of this chapter into all programs serving older Vermonters.

(2) The Department shall use both qualitative and quantitative data to monitor and evaluate the system’s success in targeting services to individuals with the greatest economic and social need.

(c) The Department’s Advisory Board established pursuant to section 505 of this title shall monitor the implementation and administration of the Older Vermonters Act established by this chapter.

§ 6205. AREA AGENCIES ON AGING; DUTIES

(a) Consistent with the Older Americans Act and in consultation with local home- and community-based service providers, each area agency on aging shall:

(1) develop and implement a comprehensive and coordinated system of services, supports, and protections for older Vermonters, family caregivers, and kinship caregivers within the agency’s designated service area;

(2) target services and supports to older Vermonters with the greatest economic and social need;

(3) perform regional needs assessments to identify existing resources and gaps;

(4) develop an area plan with goals, objectives, and performance

measures, and a corresponding budget, and submit them to the State Unit on Aging for approval;

(5) concentrate resources, build community partnerships, and enter into cooperate agreements with agencies and organizations for delivery of services;

(6) designate community focal points for colocation of supports and services for older Vermonters; and

(7) conduct outreach activities to identify individuals eligible for assistance.

(b) In addition to the duties described in subsection (a) of this section, the area agencies on aging shall:

(1) promote the principles established in section 6202 of this chapter across the agencies' programs and shall collaborate with stakeholders to educate the public about the importance of each principle;

(2) promote collaboration with a network of service providers to provide a holistic approach to improving health outcomes for older Vermonters; and

(3) use their existing area plans to facilitate awareness of aging issues, needs, and services and to promote the system principles expressed in section 6202 of this chapter.

§ 6206. PLAN FOR COMPREHENSIVE AND COORDINATED SYSTEM OF SERVICES, SUPPORTS, AND PROTECTIONS

(a) At least once every four years, the Department of Disabilities, Aging, and Independent Living shall adopt a State Plan on Aging, as required by the Older Americans Act. The State Plan on Aging shall describe a comprehensive and coordinated system of services, supports, and protections for older Vermonters that is consistent with the principles set forth in section 6202 of this chapter and sets forth the nature, extent, allocation, anticipated funding, and timing of services for older Vermonters. The State Plan on Aging shall also include the following categories:

(1) priorities for continuation of existing programs and development of new programs;

(2) criteria for receiving services or funding;

(3) types of services provided; and

(4) a process for evaluating and assessing each program's success.

(b)(1) The Commissioner shall determine priorities for the State Plan on Aging based on:

(A) information obtained from older Vermonters, their families, and their guardians, if applicable, and from senior centers and service providers;

(B) a comprehensive needs assessment that includes:

(i) demographic information about Vermont residents, including older Vermonters, family caregivers, and kinship caregivers;

(ii) information about existing services used by older Vermonters,

family caregivers, and kinship caregivers;

(iii) characteristics of unserved and underserved individuals and populations; and

(iv) the reasons for any gaps in service, including identifying variations in community needs and resources;

(C) a comprehensive evaluation of the services available to older Vermonters across the State, including home- and community-based services, residential care homes, assisted living residences, nursing facilities, senior centers, and other settings in which care is or may later be provided; and

(D) identification of the additional needs and concerns of older Vermonters, their families, and their caregivers in the event of a public health crisis, natural disaster, or other emergency situation.

(2) Following the determination of State Plan on Aging priorities, the Commissioner shall consider funds available to the Department in allocating resources.

(c) At least 60 days prior to adopting the proposed plan, the Commissioner shall submit a draft to the Department's Advisory Board established pursuant to section 505 of this title for advice and recommendations. The Advisory Board shall provide the Commissioner with written comments on the proposed plan.

(d) The Commissioner may make annual revisions to the plan as needed. The Commissioner shall submit any proposed revisions to the Department's Advisory Board for comment within the time frames established in subsection (c) of this section.

(e) On or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department shall report to the House Committee on Human Services, the Senate Committee on Health and Welfare, and the Governor regarding:

(1) implementation of the plan;

(2) the extent to which the system principles set forth in section 6202 of this chapter are being achieved;

(3) based on both qualitative and quantitative data, the extent to which the system has been successful in targeting services to individuals with the greatest economic and social need;

(4) the sufficiency of the provider network and any workforce challenges affecting providers of care or services for older Vermonters; and

(5) the availability of affordable and accessible opportunities for older Vermonters to engage with their communities, such as social events, educational classes, civic meetings, health and exercise programs, and volunteer opportunities.

*** Adult Protective Services Program Reporting ***

Sec. 2. 33 V.S.A. § 6916 is added to read:

§ 6916. ANNUAL REPORT

On or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare regarding the Department's adult protective services activities during the previous fiscal year, including:

(1) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that the Department's Adult Protective Services program received during the previous fiscal year and comparisons with the two prior fiscal years;

(2) the Adult Protective Services program's timeliness in responding to reports of abuse, neglect, or exploitation of a vulnerable adult during the previous fiscal year, including the median number of days it took the program to make a screening decision;

(3) the number of reports received during the previous fiscal year that required a field screen to determine vulnerability and the percentage of field screens that were completed within 10 calendar days;

(4) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that were received from a facility licensed by the Department's Division of Licensing and Protection during the previous fiscal year;

(5) the numbers and percentages of reports received during the previous fiscal year by each reporting method, including by telephone, e-mail, Internet, facsimile, and other means;

(6) the number of investigations opened during the previous fiscal year and comparisons with the two prior fiscal years;

(7) the number and percentage of investigations during the previous fiscal year in which the alleged victim was a resident of a facility licensed by the Department's Division of Licensing and Protection;

(8) data regarding the types of maltreatment experienced by alleged victims during the previous fiscal year, including:

(A) the percentage of investigations that involved multiple types of allegations of abuse, neglect, or exploitation, or a combination;

(B) the numbers and percentages of unsubstantiated investigations by type of maltreatment; and

(C) the numbers and percentages of recommended substantiations by type of maltreatment;

(9) the Department's timeliness in completing investigations during the previous fiscal year, including both unsubstantiated and recommended substantiated investigations;

(10) data on Adult Protective Services program investigator caseloads, including:

(A) average daily caseloads during the previous fiscal year and comparisons with the two prior fiscal years;

(B) average daily open investigations statewide during the previous fiscal year and comparisons with the two prior fiscal years;

(C) average numbers of completed investigations per investigator during the previous fiscal year; and

(D) average numbers of completed investigations per week during the previous fiscal year;

(11) the number of reviews of screening decisions not to investigate, including the number and percentage of these decisions that were upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(12) the number of reviews of investigations that resulted in an unsubstantiation, including the number and percentage of these unsubstantiations that were upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(13) the number of appeals of recommendations of substantiation that concluded with the Commissioner, including the number and percentage of these recommendations that the Commissioner upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(14) the number of appeals of recommendations of substantiation that concluded with the Human Services Board, including the numbers and percentages of these recommendations that the Board upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(15) the number of appeals of recommendations of substantiation that concluded with the Vermont Supreme Court, including the numbers and percentages of these recommendations that the Court upheld during the previous fiscal year and comparisons with the two prior fiscal years;

(16) the number of expungement requests received during the previous fiscal year, including the number of requests that resulted in removal of an individual from the Adult Abuse Registry;

(17) the number of individuals placed on the Adult Abuse Registry during the previous fiscal year and comparisons with the two prior fiscal years; and

(18) the number of individuals removed from the Adult Abuse Registry during the previous fiscal year.

* * * Vermont Action Plan for Aging Well; Development Process * * *

Sec. 3. VERMONT ACTION PLAN FOR AGING WELL; DEVELOPMENT PROCESS; REPORT

(a) The Secretary of Administration, in collaboration with the

Commissioners of Disabilities, Aging, and Independent Living and of Health, shall propose a process for developing the Vermont Action Plan for Aging Well to be implemented across State government, local government, the private sector, and philanthropies.

(b) The Vermont Action Plan for Aging Well shall provide strategies and cultivate partnerships for implementation across sectors to promote aging with health, choice, and dignity in order to establish and maintain an age-friendly State for all Vermonters. The Action Plan shall also address the additional needs and concerns of older Vermonters and their families in the event of a public health crisis, natural disaster, or other widespread emergency situation in this State.

(c) In crafting the proposed process for developing the Action Plan, the Secretary shall engage a broad array of Vermonters with an interest in creating an age-friendly Vermont, including older Vermonters and their families, adults with disabilities and their families, local government officials, health care and other service providers, employers, community-based organizations, foundations, academic researchers, and other interested stakeholders.

(d) On or before May 1, 2021, the Secretary shall submit to the House Committee on Human Services and the Senate Committee on Health and Welfare the proposed process for developing the Vermont Action Plan for Aging Well, including action steps and an achievable timeline, as well as potential performance measures for use in evaluating the results of implementing the Action Plan and the relevant outcomes set forth in 3 V.S.A. § 2311 and related indicators, to which the Action Plan should relate.

* * * Evaluating Medicaid Rates for Home- and Community-Based Service Providers * * *

Sec. 4. [Deleted.]

Sec. 5. [Deleted.]

Sec. 6. HOME- AND COMMUNITY-BASED SERVICE PROVIDER RATE STUDY; INFLATION FACTOR; REPORT

(a) As used in this section, “home- and community-based services” means long-term services and supports received in a home or community setting other than a nursing home pursuant to the Choices for Care component of Vermont’s Global Commitment to Health Section 1115 Medicaid demonstration or a successor program and includes home health and hospice services, assistive community care services, and enhanced residential care services.

(b) The Departments of Vermont Health Access and of Disabilities, Aging, and Independent Living shall conduct a rate study of the Medicaid reimbursement rates paid to providers of home- and community-based services, their adequacy, and the methodologies underlying those rates. The Departments shall:

(1) determine Medicaid reimbursement rates for providers of home- and community-based services that are sufficient to recruit and retain individual service providers and allow consumers to attain and maintain their highest level of functioning in accordance with a care plan, while also creating a fair and equitable balance between cost containment and high-quality care;

(2) establish a predictable schedule for Medicaid rates and rate updates;

(3) identify ways to align the Medicaid reimbursement methodologies and rates for providers of home- and community-based services with those of other payers, to the extent such other methodologies and rates exist;

(4) limit the number of methodological exceptions; and

(5) communicate the proposed changes to providers of home- and community-based services prior to implementing any proposed changes.

(c) The Departments of Vermont Health Access and of Disabilities, Aging, and Independent Living shall develop criteria and a process for calculating an annual inflation factor for potential application to the Medicaid rates for providers of home- and community-based services in future fiscal years. In developing the criteria and process, the Departments shall consider inflation factors applicable to payment rates for providers of home- and community-based services in other Agency of Human Services programs and may include elements of the inflation factors in Agency of Human Services, Methods, Standards and Principles for Establishing Medicaid Payment Rates for Long-Term Care Facilities (CVR 13-010-001).

(d) On or before April 15, 2021, the Departments of Vermont Health Access and of Disabilities, Aging, and Independent Living shall report to the House Committees on Human Services and on Appropriations and the Senate Committees on Health and Welfare and on Appropriations with the results of the rate study conducted pursuant to subsection (b) of this section and the criteria and process for calculating the inflation factor as set forth in subsection (c) of this section.

* * * Self-Neglect Working Group * * *

Sec. 7. SELF-NEGLECT WORKING GROUP; REPORT

(a) Creation. There is created the Self-Neglect Working Group to provide recommendations regarding adults who, due to physical or mental impairment or diminished capacity, are unable to perform essential self-care tasks. For the purposes of the Working Group, “self-neglect” has the same meaning as in 33 V.S.A. § 6203.

(b) Membership. The Working Group shall be composed of the following members:

(1) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(2) the Director of the Adult Services Division in the Department of

Disabilities, Aging, and Independent Living or designee;

(3) the Director of the Developmental Disabilities Services Division in the Department of Disabilities, Aging, and Independent Living or designee;

(4) the Director of the Adult Services Division in the Department of Mental Health or designee;

(5) the Vermont Attorney General or designee;

(6) the State Long-Term Care Ombudsman or designee;

(7) the Executive Director of the Vermont Association of Area Agencies on Aging or designee;

(8) the Executive Director of the Community of Vermont Elders or designee;

(9) the Executive Director of the VNAs of Vermont or designee;

(10) the Executive Director of Disability Rights Vermont or designee;

(11) the Executive Director of the Vermont Center for Independent Living or designee;

(12) an older Vermonter or individual with a disability, selected by the Advisory Board to the Department of Disabilities, Aging, and Independent Living, who may be a member of that Board;

(13) a disclosed consumer, appointed by the Adult Program Standing Committee for the Department of Mental Health, who may be a member of that Committee;

(14) a disclosed consumer, appointed by the State Program Standing Committee for the Developmental Disabilities Services Division in the Department of Disabilities, Aging, and Independent Living, who may be a member of that Committee;

(15) an elder care clinician, selected by Vermont Care Partners; and

(16) the Director of the Center on Aging at the University of Vermont College of Medicine or designee.

(c) Powers and duties. The Working Group shall consider issues and develop recommendations relating to self-neglect, including determining the following:

(1) how to identify adults residing in Vermont who, because of physical or mental impairment or diminished capacity, are unable to perform essential self-care tasks and are self-neglecting;

(2) how prevalent self-neglect is among adults in Vermont, and any common characteristics that can be identified about the demographics of self-neglecting Vermonters;

(3) what resources and services currently exist to assist Vermonters who are self-neglecting, and where there are opportunities to improve delivery of these services and increase coordination among existing service providers;

(4) what additional resources and services are needed to better assist

Vermonters who are self-neglecting;

(5) how to prevent self-neglect and identify adults at risk for self-neglect; and

(6) whether the definition of “self-neglect” in 33 V.S.A. § 6203 is consistent with the principles of self-determination in 33 V.S.A. § 6202 and with other principles of self-determination set forth in Vermont’s statutes and rules.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before July 1, 2022, the Working Group shall report its findings and its recommendations for legislative and nonlegislative action to the House Committee on Human Services and the Senate Committee on Health and Welfare.

(f) Meetings.

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee shall call the first meeting of the Working Group to occur on or before July 1, 2021.

(2) The Working Group shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Working Group shall cease to exist following submission of its report pursuant to subsection (e) of this section.

* * * Effective Date * * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on passage, except that in Sec. 1, 33 V.S.A. § 6206 (plan for comprehensive and coordinated system of services, supports, and protections) shall apply to the State Plan on Aging taking effect on October 1, 2022.

Amendment to be offered by Rep. Noyes of Wolcott to H. 611

Representative Noyes of Wolcott moves that the report of the Committee on Human Services, as amended, be further amended in Sec. 7, Self-Neglect Working Group; report, by adding a subsection (g) to read as follows:

(g) Compensation and reimbursement.

(1) The consumer members of the Working Group appointed pursuant to subdivisions (b)(12)–(14) of this section shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010. Other members of the Working Group shall not be entitled to per diem compensation or reimbursement of expenses.

(2) The payments to the consumer members appointed pursuant to subdivisions (b)(12) and (14) of this section shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living. The payments to the consumer member appointed pursuant to subdivision (b)(13) of this section shall be made from monies appropriated to the Department of Mental Health.

H. 943

An act relating to approval of amendments to the charter of the City of St. Albans

Rep. Brownell of Pownal, for the Committee on Government Operations, recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Rep. Brennan of Colchester, for the Committee on Ways and Means, recommends the bill be amended as follows:

In Sec. 2, 24 App. V.S.A. chapter 11, § 23, in subsection (d), immediately following the period, by inserting “Any tax imposed under the authority of this subsection shall be collected and administered pursuant to 24 V.S.A. § 138.”

(Committee Vote: 10-1-0)

H. 946

An act relating to approval of the adoption of the charter of the Town of Elmore

Rep. Mrowicki of Putney, for the Committee on Government Operations, recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Rep. Donovan of Burlington, for the Committee on Ways and Means, recommends the bill be amended as follows:

In Sec. 2, 24 App. V.S.A. chapter 114G, in section 1, in subsection (c), by striking out the word “Revenues” and inserting in lieu thereof “The Town’s share of the revenues”

(Committee Vote: 10-1-0)

Unfinished Business of Wednesday, June 3, 2020

Favorable with Amendment

S. 128

An act relating to physician assistant licensure

Rep. Cordes of Lincoln, for the Committee on Health Care, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 31 is amended to read:

CHAPTER 31. PHYSICIAN ASSISTANTS

§ 1731. POLICY AND PURPOSE

The General Assembly recognizes the need to provide means by which ~~physicians in this State may increase the scope and~~ physician assistants may practice medicine in collaboration with physicians and other health care professionals to provide increased efficiency of their practice in order and to ensure that quality high-quality medical services are available to all Vermonters at reasonable cost. The General Assembly recognizes that physician assistants, with their education, training, and experience in the field of medicine, are well suited to provide these services to Vermonters.

§ 1732. DEFINITIONS

As used in this chapter:

(1) “Accredited physician assistant program” means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) “Board” means the State Board of Medical Practice established by chapter 23 of this title.

(3) ~~“Delegation agreement” means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians.~~ “Collaboration” means a physician assistant’s consultation with or referral to an appropriate physician or other health care professional as indicated based on the patient’s condition; the physician assistant’s education, training, and experience; and the applicable standards of care.

(4) “Disciplinary action” means any action taken by the Board against a physician assistant or an applicant, or an appeal of that action, when the action suspends, revokes, limits, or conditions licensure in any way. The term includes reprimands and administrative penalties.

(5) “Health care facility” has the same meaning as in 18 V.S.A. § 9402.

(6) “Participating physician” means a physician practicing as a sole practitioner, a physician designated by a group of physicians to represent their physician group, or a physician designated by a health care facility to represent that facility, who enters into a practice agreement with a physician assistant in accordance with this chapter.

(7) “Physician” means an individual licensed to practice medicine pursuant to chapter 23 or 33 of this title.

~~(5)~~(8) “Physician assistant” or “PA” means an individual licensed by the State of Vermont who is qualified by education, training, experience, and personal character to provide medical care with the direction and supervision of a Vermont licensed physician to practice medicine in collaboration with one or more physicians pursuant to this chapter.

(9) “Physician group” means a medical practice involving two or more physicians.

~~(6)~~(10) “Supervising physician” means an M.D. or D.O. licensed by the state of Vermont who oversees and accepts responsibility for the medical care provided by a physician assistant. “Practice agreement” means an agreement that meets the requirements of section 1735a of this chapter.

~~(7)~~(11) “Supervision” means the direction and review by the supervising physician of the medical care provided by the physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication. “Practice as a physician assistant” means the practice of medicine by a PA pursuant to a practice agreement signed by a participating physician.

~~(8)~~ “Disciplinary action” means any action taken against a physician assistant or an applicant by the Board or on appeal therefrom, when that action suspends, revokes, limits, or conditions licensure in any way, and includes reprimands and administrative penalties.

§ 1733. LICENSURE

(a) The State Board of Medical Practice is responsible for the licensure of physician assistants, and the Commissioner of Health shall adopt, amend, or repeal rules regarding the training, practice, qualification, and discipline of physician assistants.

~~(b)~~ In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the Board

~~and copies shall be kept on file at each of the physician assistant's practice sites. All applicants and licensees shall demonstrate that the requirements for licensure are met.~~

~~(c),(d) [Repealed.]~~

§ 1734. ELIGIBILITY

(a) The Board may grant a license to practice as a physician assistant to an applicant who meets all of the following requirements:

(1) ~~submits~~ Submits a completed application form provided by the ~~board;~~ Board.

(2) ~~pays~~ Pays the required application fee;.

(3) ~~has~~ Has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988;.

(4) ~~has~~ Has passed the ~~certification examination given~~ Physician Assistant National Certifying Examination administered by the NCCPA;.

(5) ~~is~~ Is mentally and physically able to engage safely in practice as a physician assistant;.

(6) ~~does~~ Does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction that is under current disciplinary action, or has been revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the Board has considered the applicant's circumstances and determines that licensure is appropriate;.

(7) ~~is~~ Is of good moral character;.

(8) ~~submits~~ Submits to the Board any other information that the Board deems necessary to evaluate the applicant's qualifications; ~~and.~~

(9) ~~has~~ Has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by Board rules. This requirement shall not apply to applicants who have graduated from an accredited physician assistant program within the last three years.

~~(b), (c) [Repealed.]~~

(d) When the Board intends to deny an application for licensure, it shall send the applicant written notice of its decision by certified mail. The notice

shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the Board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that licensure should be granted. After the hearing, the Board shall affirm or reverse its preliminary denial.

(e) Failure to maintain competence in the knowledge and skills of a physician assistant, as determined by the Board, shall be cause for revocation of licensure.

§ 1734b. RENEWAL OF LICENSE

(a) Licenses shall be renewed every two years on payment of the required fee. At least one month prior to the date on which renewal is required, the Board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The Board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the Board shall pay the license renewal fees into the Medical Practice Board Special Fund. Any physician assistant while on extended active duty ~~in the uniformed services of the United States or member of the National Guard, State Guard, or reserve component~~ as a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, the National Guard, or the State Guard who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the Board of ~~his or her~~ the activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by Board rules.

(d) A licensee shall promptly provide the Board with new or changed information pertinent to the information in ~~his or her~~ the physician assistant's license and license renewal applications at the time ~~he or she~~ the licensee becomes aware of the new or changed information.

(e) A license that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if a license remains lapsed for a period of three years, the Board may require the licensee to update ~~his or her~~ the licensee's knowledge and skills as defined by Board rules.

§ 1734c. EXEMPTIONS

(a) Nothing in this chapter shall be construed to require licensure under this chapter of any of the following:

(1) ~~a physician~~ Physician assistant ~~student~~ students enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) ~~a physician assistant~~ Physician assistants employed in the service of the U.S. Armed Forces or National Guard, including National Guard in state status, while performing duties incident to that employment;

(3) ~~a technician~~ Technicians or other ~~assistant or employee~~ assistants or employees of a physician who ~~performs~~ perform physician-delegated tasks but who ~~is~~ are not rendering services as a physician assistant assistants or identifying ~~himself or herself~~ themselves as a physician assistant; ~~or~~ assistants.

(4) ~~a physician assistant~~ Physician assistants who ~~is~~ are duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician ~~assistant is~~ assistants are employed as or formally designated as the team physician ~~assistant~~ assistants by an athletic team visiting Vermont for a specific sporting event and the physician ~~assistant~~ assistants ~~limits his or her~~ limit their practice in this State to the treatment of the members, coaches, and staff of the sports team employing or designating the physician ~~assistant~~ assistants.

(b) Physician assistants licensed in this State or credentialed as physician assistants by a federal employer shall not be required to have a practice agreement when responding to a need for medical care created by a disaster or emergency, as that term is defined in 20 V.S.A. § 102(c).

§ 1735a. SUPERVISION PRACTICE AGREEMENT AND SCOPE OF PRACTICE

(a) ~~It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the~~

physician assistant's performance is established Except as provided in subsection 1734c(b) of this chapter and subsection (e) of this section, a physician assistant shall engage in practice as a physician assistant in this State only if the physician assistant has entered into a written practice agreement as set forth in subsection (b) of this section.

(1) A physician assistant shall enter into a practice agreement with a physician who practices as a sole practitioner only if the participating physician's area of specialty is similar to or related to the physician assistant's area of specialty.

(2) A physician assistant shall enter into a practice agreement with a participating physician who represents a physician group or health care facility only if one or more of the physicians practicing in the physician group or at the health care facility has an area of specialty similar to or related to the physician assistant's area of specialty.

~~(b) The information required in subsection (a) of this section shall be included in a delegation agreement as required by the Commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the Board~~ A practice agreement shall include all of the following:

(1) Processes for physician communication, availability, decision-making, and periodic joint evaluation of services delivered when providing medical care to a patient.

(2) An agreement that the physician assistant's scope of practice shall be limited to medical care that is within the physician assistant's education, training, and experience. Specific restrictions, if any, on the physician assistant's practice shall be listed.

(3) A plan to have a physician available for consultation at all times when the physician assistant is practicing medicine.

(4) The signatures of the physician assistant and the participating physician; no other signatures shall be required.

~~(c) The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide~~ A practice agreement may specify the extent of the collaboration required

between the PA and physicians and other health care professionals; provided, however, that a physician shall be accessible for consultation by telephone or electronic means at all times when a PA is practicing.

(d) The practice agreement shall be reviewed by the physician assistant and either the participating physician or a representative of the practice, physician group, or health care facility, at a minimum, at the time of the physician assistant's license renewal.

(d)(e) In the event of the unanticipated unavailability of a participating physician practicing as a sole practitioner due to serious illness or death, a physician assistant may continue to practice for not more than a 30-day period without entering into a new practice agreement with another participating physician.

(f) The practice agreement shall be filed with the Board. The Board shall not request or require any modifications to the practice agreement. The practice agreement may be filed with the Board electronically at the option of the physician assistant; no original documents shall be required.

(g) Nothing in this section shall be construed to require the physical presence of a physician at the time and place at which a physician assistant renders a medical service.

(h) A physician assistant may prescribe, dispense, and administer, and procure drugs and medical devices to the extent delegated by a supervising physician to the same extent as may a physician. A physician assistant who is authorized by a supervising physician to prescribe prescribes controlled substances must register shall be registered with the federal Drug Enforcement Administration.

(e) A supervising physician and physician assistant shall report to the Board immediately upon an alteration or the termination of the delegation agreement.

§ 1735b. PHYSICIAN ASSISTANT AS PRIMARY CARE PROVIDER

Notwithstanding any provision of law to the contrary, a physician assistant shall be considered a primary care provider when the physician assistant practices in one or more of the medical specialties for which a physician would be considered to be a primary care provider.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a licensed physician assistant shall constitute unprofessional conduct. ~~When;~~ when that conduct is by an applicant or person who later

becomes an applicant, it may constitute grounds for denial of licensure:

(1) fraud or misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;

(2) occupational advertising that is intended or has a tendency to deceive the public;

(3) exercising undue influence on or taking improper advantage of a person using the individual's services, or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the practitioner or of a third party;

(4) failing to comply with provisions of federal or state statutes or rules governing the profession;

(5) conviction of a crime related to the profession; and

(6) conduct that evidences unfitness to practice in the profession.

(b) Unprofessional conduct includes the following actions by a licensed physician assistant:

(1) Making or filing false professional reports or records, impeding or obstructing the proper making or filing of professional reports or records, or failing to file ~~the~~ a proper professional report or record.

(2) Practicing the profession when mentally or physically unfit to do so.

(3) ~~Practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the Board~~ Practicing as a physician assistant without a practice agreement meeting the requirements of section 1735a of this chapter, except under the circumstances described in subsections 1734c(b) and 1735a(e) of this chapter. The Board's receipt of a practice agreement filed in accordance with subsection 1735a(f) of this chapter shall not be construed to constitute Board approval of the practice agreement or of its contents.

(4) Accepting and performing responsibilities that the individual knows or has reason to know ~~that he or she~~ the individual is not competent to perform.

(5) Making any material misrepresentation in the practice of the profession, whether by commission or omission.

(6) The act of holding ~~one's self~~ oneself out as, or permitting ~~one's self~~ oneself to be represented as, a licensed physician.

(7) ~~Performing otherwise than at the direction and under the supervision~~

~~of a physician licensed by the Board or an osteopath licensed by the Vermont Board of Osteopathic Physicians and Surgeons; [Repealed.]~~

(8) Performing or offering to perform a task or tasks beyond the individual's ~~delegated~~ scope of practice.

(9) Administering, dispensing, procuring, or prescribing any controlled substance otherwise than as authorized by law.

(10) Habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services.

(11) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes, as determined by the Board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

(c) A person aggrieved by a determination of the Board may, within 30 days of the order, appeal that order to the Vermont Supreme Court on the basis of the record created before the Board.

* * *

§ 1738. USE OF TITLE

Any person who is licensed to practice as a physician assistant in this State shall have the right to use the title "physician assistant" and the ~~abbreviation "P.A."~~ abbreviations "PA" and "PA-C." No other person ~~may~~ shall assume that title, ~~or use that abbreviation those abbreviations,~~ or use any other words, letters, signs, or devices to indicate that the person using them is a physician assistant.

§ 1739. LEGAL LIABILITY

~~(a) The supervising physician delegating activities to a physician assistant shall be legally liable for such activities of the physician assistant, and the physician assistant shall in this relationship be the physician's agent.~~

~~(b) Nothing in this chapter shall be construed as prohibiting a physician from delegating to the physician's employees certain activities relating to medical care and treatment now being carried out by custom and usage when such activities are under the control of the physician. The physician delegating activities to his or her employees shall be legally liable for such activities of such persons, and such person shall in this relationship be the physician's agent. Nothing contained in this chapter shall be construed to apply to nurses~~

~~acting pursuant to chapter 28 of this title. Physician assistants are responsible for their own medical decision making. A participating physician in a practice agreement with a physician assistant shall not, by the existence of the practice agreement alone, be legally liable for the actions or inactions of the physician assistant; provided, however, that this does not otherwise limit the liability of the participating physician.~~

§ 1739a. ~~INAPPROPRIATE USE OF SERVICES BY PHYSICIAN;~~

~~UNPROFESSIONAL CONDUCT~~

~~Use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the Board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate. [Repealed.]~~

§ 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for licensure, \$225.00; the Board shall use at least \$10.00 of this fee to support the cost of maintaining the Vermont Practitioner Recovery Network, which, for the protection of the public, monitors and evaluates, coordinates services for, and promotes rehabilitation of licensees who have or potentially have an impaired ability to practice medicine with reasonable skill and safety.

(2) Biennial renewal, \$215.00; the Board shall use at least \$10.00 of this fee to support the cost of maintaining the Vermont Practitioner Recovery Network, ~~which, for the protection of the public, monitors and evaluates, coordinates services for, and promotes rehabilitation of licensees who have or potentially have an impaired ability to practice medicine with reasonable skill and safety described in subdivision (1) of this section.~~

§ 1741. ~~NOTICE OF USE OF PHYSICIAN ASSISTANT TO BE POSTED~~

~~A physician, clinic, or hospital that utilizes the services of a physician assistant shall post a notice to that effect in a prominent place. [Repealed.]~~

* * *

§ 1743. MEDICAID REIMBURSEMENT

The Secretary of Human Services shall, ~~pursuant to 3 V.S.A. chapter 25, adopt rules providing for a fee schedule for~~ provide reimbursement under Title XIX (Medicaid) of the Social Security Act and 33 V.S.A. chapter 19, ~~relating~~

~~to medical assistance~~ that recognizes reasonable cost differences between services provided by physicians and those provided by physician assistants under this chapter.

§ 1743a. PAYMENT FOR MEDICAL SERVICES

(a) As used in this section:

(1) “Health insurer” has the same meaning as in 18 V.S.A. § 9402.

(2) “Participating provider” has the same meaning as in 18 V.S.A. § 9418 and includes providers participating in the Vermont Medicaid program.

(b) Health insurers and, to the extent permitted under federal law, Medicaid shall reimburse a participating provider who is a physician assistant for any medical service delivered by the physician assistant if the same service would be covered if delivered by a physician. Physician assistants are authorized to bill for and receive direct payment for the medically necessary services they deliver.

(c) To provide accountability and transparency for patients, payers, and the health care system, the physician assistant shall be identified as the treating provider in the billing and claims processes when the physician assistant delivered the medical services to the patient.

(d) A health insurer shall not impose any practice, education, or collaboration requirement for a physician assistant that is inconsistent with or more restrictive than the provisions of this chapter.

§ 1744. CERTIFIED PHYSICIAN ASSISTANTS

~~Any person who is certified by the Board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734b of this title. [Repealed.]~~

Sec. 2. 26 V.S.A. § 1354 is amended to read:

§ 1354. UNPROFESSIONAL CONDUCT

(a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct:

* * *

(38) signing a blank or undated prescription form; or

(39) use of the services of a physician assistant by a physician in a

~~manner that is inconsistent with the provisions of chapter 31 of this title; or [Repealed.]~~

* * *

Sec. 3. 26 V.S.A. § 1444 is added to read:

§ 1444. LIABILITY FOR ACTIONS OF AGENT

(a) A physician may delegate to a medical technician or other assistant or employee certain activities related to medical care and treatment that the individual is qualified to perform by training, education, experience, or a combination of these when the activities are under the control of the physician. The physician delegating the activities to the individual shall be legally liable for the individual's performance of those activities, and in this relationship, the individual shall be the physician's agent.

(b)(1) Nothing in this section shall be construed to apply to a nurse acting pursuant to chapter 28 of this title.

(2) Nothing in this section shall be construed to apply to a physician assistant acting pursuant to chapter 31 of this title. Liability for the actions or inactions of a physician assistant shall be governed by the provisions of section 1739 of this title.

Sec. 4. DEPARTMENT OF HEALTH; RULEMAKING

The Department of Health shall amend the Board of Medical Practice rules pursuant to 3 V.S.A. chapter 25 to conform the provisions regarding physician assistant licensure to the provisions of this act. The Department shall complete its rulemaking process on or before July 1, 2021.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2020 and shall apply to all physician assistant licenses issued or renewed on and after that date, except that in Sec. 1, 26 V.S.A. § 1743a (payment for medical services) shall apply to Medicaid beginning on January 1, 2021, to the extent permitted under federal law.

(Committee vote: 10-1-0)

(For text see Senate Journal February 12, 2020, page 162)

Amendment to be offered by Representative Cordes of Lincoln to the report of the Committee on Health Care to S. 128

Representative Cordes of Lincoln moves that the report of the Committee on Health Care be amended in Sec. 1, 26 V.S.A. chapter 31, by striking § 1734b in its entirety and inserting in lieu thereof the following:

§ 1734b. RENEWAL OF LICENSE

(a) Licenses shall be renewed every two years on payment of the required fee. At least one month prior to the date on which renewal is required, the Board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The Board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the Board shall pay the license renewal fees into the Medical Practice Board Special Fund. Any physician assistant while on extended active duty ~~in the uniformed services of the United States or member of the National Guard, State Guard, or reserve component~~ as a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, the National Guard, or the State Guard who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the Board of ~~his or her~~ the activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

* * *

(d) A licensee shall promptly provide the Board with new or changed information pertinent to the information in ~~his or her~~ the physician assistant's license and license renewal applications at the time ~~he or she~~ the licensee becomes aware of the new or changed information.

(e) A license that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if a license remains lapsed for a period of three years, the Board may require the licensee to update ~~his or her~~ the licensee's knowledge and skills as defined by Board rules.

S. 301

An act relating to miscellaneous telecommunications changes

Rep. Chesnut-Tangerman of Middletown Springs, for the Committee on Energy and Technology, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

FACILITIES

* * *

(i) Sunset of Commission authority. Effective on July 1, ~~2020~~ 2023, no new applications for certificates of public good under this section may be considered by the Commission.

* * *

(q)(1) Emergency waiver. Notwithstanding any other provisions of this section, when the Governor has declared a state of emergency pursuant to 20 V.S.A. § 9 and for 180 days after the declared state of emergency ends, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of a temporary telecommunications facility necessary for maintaining or improving access to telecommunications services. Waivers issued under this subsection shall be valid for a period not to exceed the duration of the declared emergency plus 180 days.

(2) A person seeking a waiver under this subsection shall file a petition with the Commission and shall provide copies to the Department of Public Service and the Agency of Natural Resources. The Commission shall require that additional notice be provided to those listed in subsection (e) of this section and any affected communications union districts. Upon receipt of the petition, the Commission shall conduct an expedited preliminary hearing.

(3) An order granting a waiver may include terms, conditions, and safeguards to mitigate significant adverse impacts, including the posting of a bond or other security, as the Commission deems proper, based on the scope and duration of the requested waiver.

(4) A waiver shall be granted only when the Commission finds that:

(A) good cause exists due to an emergency situation;

(B) the waiver is necessary to maintain or provide access to wireless telecommunications services;

(C) procedures will be followed to minimize significant adverse impacts under the criteria specified in subdivision (c)(1) of this section; and

(D) taking into account any terms, conditions, and safeguards that the Commission may require, the waiver will promote the general good of the State.

(5) Upon the expiration of a waiver, if a certificate of public good has not been issued under this section, the Commission shall require the removal,

relocation, or alteration of the facilities subject to the waiver, as it finds will best promote the general good of the State.

Sec. 2. REPORT ON CRITERIA

On or before February 1, 2021, the Public Utility Commission shall review the criteria used in awarding a certificate of public good under 30 V.S.A. § 248a and report to the Senate Committee on Finance and the House Committee on Energy and Technology any changes that should be made in light of the recent developments in telecommunications technology.

Sec. 3. EXTENSION OF SECTION 248a NOTICE PERIOD DURING COVID-19 STATE OF EMERGENCY

Notwithstanding any contrary provision of law, during the declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, when an applicant provides notice that it will be filing an application for a certificate of public good under 30 V.S.A. § 248a, a municipal legislative body or a planning commission may request, and the Public Utility Commission shall grant, a 30 day extension to the original notice period for a total 90 day notice period. This extended notice period shall be available on any notice of application for a certificate of public good pursuant to 30 V.S.A. § 248a filed during the declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, except those for de minimis modifications.

Sec. 4. 2019 Acts and Resolves No. 79, Sec. 25 is amended to read:

Sec. 25. OUTAGES AFFECTING E-911 SERVICE; REPORTING; RULE; E-911 BOARD

The E-911 Board shall adopt a rule establishing protocols for the E-911 Board to obtain or be apprised of, in a timely manner, system outages applicable to wireless service providers, providers of facilities-based, fixed voice service that is not line-powered and to electric companies for the purpose of enabling the E-911 Board to assess 911 service availability during such outages. An outage for purposes of this section includes any loss of E-911 calling capacity, ~~whether caused by lack of function of the telecommunications subscriber's backup power equipment, lack of function within a telecommunications provider's system network failure,~~ or an outage in the electric power system. The rule shall incorporate threshold criteria for outage reporting that reflect the sparsely populated rural nature of Vermont. The E-911 Board shall file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before ~~February 1, 2020~~ September 30, 2020.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 9-0-0)

ACTION CALENDAR

Third Reading

H. 960

An act relating to miscellaneous health care provisions

H. 961

An act relating to making first quarter fiscal year 2021 appropriations for the support of State government, federal Coronavirus Relief Fund (CRF) appropriations, pay act appropriations, and other fiscal requirements for the first part of the fiscal year

Amendment to be offered by Webb of Shelburne, Austin of Colchester, Batchelor of Derby, Conlon of Cornwall, Cupoli of Rutland City, Giambatista of Essex, Hooper of Randolph, James of Manchester, Mattos of Milton, and Toof of St. Albans Town to H. 961

Representatives Webb of Shelburne, Austin of Colchester, Batchelor of Derby, Conlon of Cornwall, Cupoli of Rutland City, Giambatista of Essex, Hooper of Randolph, James of Manchester, Mattos of Milton, and Toof of St. Albans Town move that the bill be amended as follows:

First: by striking Sec. A.9, [RESERVED], in its entirety and inserting in lieu thereof the following:

Sec. A.9. SELECT COMMITTEE ON THE FUTURE OF PUBLIC HIGHER EDUCATION IN VERMONT; REPORTS

(a) Creation. There is created the Select Committee on the Future of Public Higher Education in Vermont (Committee) to assist the State of Vermont in developing a vision and plan for a high-quality, affordable, and workforce-connected future for public higher education in the State.

(b) Membership.

(1) The Committee shall be composed of up to the following 22 members:

(A) one current member of the House of Representatives, who shall be appointed by the Speaker of the House;

(B) one current member of the Senate, who shall be appointed by the Committee on Committees;

(C) the Interim Chancellor of the Vermont State Colleges (VSC) or designee, and a representative of each of the VSC Board of Trustees, VSC campus administration, VSC faculty, and VSC students, each appointed by the Interim Chancellor;

(D) the President of the University of Vermont or designee and a representative of the UVM Board of Trustees, appointed by the President;

(E) the Secretary of Commerce and Community Development or designee;

(F) the Secretary of Education or designee;

(G) the Commissioner of Labor or designee;

(H) three representatives of the business community, appointed by the Steering Group created under subsection (c) of this section;

(I) two community members representing regions of the State that are not otherwise represented, appointed by the Steering Group created under subsection (c) of this section;

(J) the President of the Vermont Student Assistance Corporation or designee;

(K) two representatives from Vermont organizations dedicated to higher education or workforce development, such as Advance Vermont, VSC Forward, or the Vermont Talent Management Pipeline, appointed by the Steering Group created under subsection (c) of this section;

(L) up to two members appointed at the discretion of the Steering Group created under subsection (c) of this section.

(2) A Committee member may be appointed to fill more than one role as identified in subdivision (1) of this subsection.

(c) Steering Group. On or before June 29, 2020, the Speaker of the House and the President Pro Tempore shall jointly appoint three members of the Committee, and the Governor shall appoint two members of the Committee, to serve as members of a Steering Group. The Steering Group shall provide leadership to the Committee and shall work with a consulting firm to analyze the issues, challenges, and opportunities facing Vermont's postsecondary institutions, as well as create a formal action plan to drive change and innovation in the State's postsecondary institutions. The Steering Group may

form one or more subcommittees of the Committee to address key topic areas in greater depth.

(d) Collaboration. The Committee shall seek input from and collaborate with key stakeholders, as directed by the Steering Group.

(e) Powers and duties. The Committee shall study the structure of public higher education in Vermont, build on previous studies in this area, and offer recommendations on how to increase affordability, access, retention, attainment, relevance, and fiscal sustainability, including the following issues:

(1) the financial sustainability of the public higher education structure and its impact on institutional capacity to innovate and meet State goals and learners' needs, including a comparison of higher education programs, delivery models, and structures in other states;

(2) the current organizational structure of public higher education in Vermont and its ability to promote student success; and

(3) the alignment of higher education and workforce development goals, policy frameworks, and partnerships between businesses and institutions of higher education that are designed to meet the needs of employers and promote the public value of education.

(f) Consultant. The Vermont Legislative Joint Fiscal Office, in collaboration with the New England Board of Higher Education (NEBHE), shall issue a request for proposal to hire a consultant to assist the Committee with responses due from interested parties on or before July 17, 2020. On or before July 31, 2020, the Steering Group shall select the consultant.

(g) Assistance. The Committee shall have the administrative and technical assistance of the Vermont Legislative Joint Fiscal Office. NEBHE shall provide project management support to the Committee.

(h) Reports. Recognizing the need for near-term action on system structure, governance, funding, and sustainability, the Committee, through its Steering Group, shall use a phased approach to reporting. The first interim report shall be due on or before December 20, 2020 and shall focus on the topics described in subdivision (e)(1) of this section; the second interim report shall be due on or before June 15, 2021 and shall focus on the topics described in subdivisions (e)(2) and (3) of this section; and the final report, which shall collate findings relative to subsection (e) of this section and include the action plan, shall be due on or before December 15, 2021. All reports shall be in writing and be delivered to the General Assembly and the Governor.

(i) Meetings.

(1) The Secretary of Education or designee shall call the first meeting of the Committee to occur on or before August 28, 2020.

(2) The Speaker of the House and the President Pro Tempore shall jointly select the Committee chair.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on January 31, 2022.

(j) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(2) Other members of the Committee, who are not employees of the State of Vermont, shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010.

(3) Compensation and reimbursement under this subsection shall be, in each fiscal year 2021 and 2022, for a maximum of:

(A) six in-person meetings of the Committee;

(B) eight in-person meetings of the Steering Group; and

(C) four remote meetings of up to four subcommittees, assuming compensation and reimbursement for up to five members of each subcommittee.

(4) Payments authorized under this subsection shall be made from monies appropriated to the Vermont Legislative Joint Fiscal Office.

(k) Appropriations.

(1) The sum of \$40,250.00 is appropriated from the General Fund to the Secretary of Education in fiscal year 2021 for per diem compensation and reimbursement of expenses for members of the Committee, Steering Group, and subcommittees.

(2) The Vermont Legislative Joint Fiscal Office is authorized to transfer funds identified in Sec. A.3(b) of this act to carry out the actions required under this section.

Second: in Sec. A.40, effective dates, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) This section and Secs. A.7 (pilot position sunset extension), A.8 (sunset extension), A.9 (Select Committee on the Future of Public Higher Education

in Vermont), A.18 (military reclassification), A.20 (repurposing one-time appropriation), A.22 (education fund appropriation technical correction), and A.26 (Bennington waterline loan subsidy increase) shall take effect upon passage.

Favorable with Amendment

H. 607

An act relating to increasing the supply of primary care providers in Vermont

Rep. Christensen of Weathersfield, for the Committee on Health Care, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 9491 is amended to read:

§ 9491. HEALTH CARE WORKFORCE; STRATEGIC PLAN

(a) ~~The Director of Health Care Reform in the Agency of Human Services shall oversee the development of~~ maintain a current health care workforce development strategic plan that continues efforts to ensure that Vermont has the health care workforce necessary to provide care to all Vermont residents. ~~The Director of Health Care Reform may designate an entity responsible for convening meetings and for preparing the draft strategic plan. The Green Mountain Care Board established in chapter 220 of this title shall review the draft strategic plan and shall approve the final plan and any subsequent modifications.~~

(b)(1) ~~The~~ In maintaining the strategic plan, the Director or designee shall collaborate with the area health education centers, the State Workforce Development Board established in 10 V.S.A. § 541a, the Prekindergarten-16 Council established in 16 V.S.A. § 2905, the Department of Labor, the Department of Health, the Department of Vermont Health Access, and other interested parties to develop and maintain the plan consult with an advisory group composed of the following seven members, at least one of whom shall be a nurse, to develop and maintain the strategic plan:

(A) one representative of the Green Mountain Care Board's primary care advisory group;

(B) one representative of the Vermont State Colleges;

(C) one representative of the Area Health Education Centers' workforce initiative;

(D) one representative of federally qualified health centers;

(E) one representative of Vermont hospitals;

(F) one representative of physicians; and

(G) one representative of long-term care facilities.

(2) The Director or designee shall serve as the chair of the advisory group.

(c) The Director of Health Care Reform shall ensure that the strategic plan includes recommendations on how to develop Vermont's health care workforce, including:

(1) the current capacity and capacity issues of the health care workforce and delivery system in Vermont, including the shortages of health care professionals, specialty practice areas that regularly face shortages of qualified health care professionals, issues with geographic access to services, and unmet health care needs of Vermonters;

(2) the resources needed to ensure that:

(A) the health care workforce and the delivery system are able to provide sufficient access to services given demographic factors in the population and in the workforce, as well as other factors;

(B) the health care workforce and the delivery system are able to participate fully in health care reform initiatives, including establishing a medical home for all Vermont residents through the Blueprint for Health pursuant to chapter 13 of this title and transitioning to electronic medical records; and

(C) all Vermont residents have access to appropriate mental health care that meets standards of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care;

(3) how State government, universities and colleges, the State's educational system, entities providing education and training programs related to the health care workforce, and others may develop the resources in the health care workforce and delivery system to educate, recruit, and retain health care professionals to achieve Vermont's health care reform principles and purposes; and

(4) reviewing data on the extent to which individual health care professionals begin and cease to practice in their applicable fields in Vermont;

(5) identifying factors which either hinder or assist in recruitment or retention of health care professionals, including an examination of the

~~processes for prior authorizations, and making recommendations for further improving recruitment and retention efforts;~~

~~(6)(3) assessing the availability of State and federal funds for health care workforce development.~~

~~(c) Beginning January 15, 2013, the Director or designee shall provide the strategic plan approved by the Green Mountain Care Board to the General Assembly and shall provide periodic updates on modifications as necessary. [Repealed.]~~

Sec. 2. HEALTH CARE WORKFORCE STRATEGIC PLAN; REPORT

(a) The Director of Health Care Reform, in connection with the advisory group established pursuant to 18 V.S.A. § 9491(b) in Sec. 1 of this act, shall update the health care workforce strategic plan as set forth in 18 V.S.A. § 9491 and shall submit a draft of the plan to the Green Mountain Care Board for its review and approval on or before December 1, 2020. The Board shall review and approve the plan within 30 days following receipt.

(b) On or before January 15, 2021, the Director shall provide the updated health care workforce strategic plan to the House Committees on Health Care and on Commerce and Economic Development and the Senate Committees on Health and Welfare and on Economic Development, Housing and General Affairs.

Sec. 3. 18 V.S.A. § 33 is added to read:

§ 33. MEDICAL STUDENTS; PRIMARY CARE

(a) The Department of Health, in collaboration with the Office of Primary Care and Area Health Education Centers Program at the University of Vermont College of Medicine (AHEC), shall establish a rural primary care physician scholarship program. The scholarships shall cover the medical school tuition for up to five third-year and up to five fourth-year medical students annually who commit to practicing primary care in a rural, health professional shortage or medically underserved area of this State. For each academic year of tuition covered by the scholarship, the recipient shall incur an obligation of two years of full-time service or four years of half-time service. Students receiving a scholarship for their third year of medical school shall be eligible to receive another scholarship for their fourth year of medical school. The amount of each scholarship shall be set at the in-state tuition rate less any other State or federal educational grant assistance the student receives for the same academic year.

(b) Approved specialties shall be all of the specialties recognized by the National Health Service Corps at the time of the scholarship award, which may

include family medicine, internal medicine, pediatrics, obstetrics-gynecology, and psychiatry.

(c) A scholarship recipient who does not fulfill the commitment to practice primary care in accordance with the terms of the award shall be liable for repayment of the full amount of the scholarship, plus interest calculated in accordance with the formula determined by the National Health Service Corps for failure to complete a service obligation under that program.

Sec. 4. RURAL PRIMARY CARE PHYSICIAN SCHOLARSHIP PROGRAM; APPROPRIATION

(a) The sum of \$811,226.00 in Global Commitment investment funds is appropriated to the Department of Health in fiscal year 2021 for scholarships for medical students who commit to practicing in a rural, health professional shortage or medically underserved area of this State in accordance with 18 V.S.A. § 33.

(b) It is the intent of the General Assembly that scholarship funds to expand Vermont's primary care physician workforce should continue to be appropriated in future years to ensure that Vermonters have access to necessary health care services, preferably in their own communities.

Sec. 5. EDUCATIONAL ASSISTANCE; NURSING STUDENTS; APPROPRIATION

(a) The sum of \$1,381,276.00 in Global Commitment investment funds is appropriated to the Department of Health for additional scholarships for nursing students pursuant to the program established in 18 V.S.A. § 31, as redesignated by Sec. 7 of this act, and administered by the Vermont Student Assistance Corporation.

(b)(1) First priority for the scholarship funds shall be given to students pursuing a practical nursing certificate who will be eligible to sit for the NCLEX-PN examination upon completion of the certificate.

(2) Second priority for the scholarship funds shall be given to students pursuing an associate's degree in nursing who will be eligible to sit for the NCLEX-RN examination upon graduation.

(3) Third priority for the scholarship funds shall be given to students pursuing a bachelor of science degree in nursing.

(c) To be eligible for a scholarship under this section, applicants shall:

(1) demonstrate financial need;

(2) demonstrate academic capacity by carrying at least a 2.5 grade point average in their course of study prior to receiving the fund award; and

(3) agree to work as a nurse in Vermont for a minimum of one year following licensure for each year of scholarship awarded.

(d) Students attending an accredited postsecondary educational institution in Vermont shall receive first preference for scholarships.

(e) There shall be no deadline to apply for a scholarship under this section. Scholarships shall be awarded on a rolling basis as long as funds are available, and any funds remaining at the end of fiscal year 2021 shall roll over and shall be available to the Department of Health in fiscal year 2022 for additional scholarships as described in this section.

(f) It is the intent of the General Assembly that scholarship funds to expand Vermont's nursing workforce should continue to be appropriated in future years to ensure that Vermonters have access to necessary health care services, preferably in their own communities.

Sec. 6. 18 V.S.A. chapter 1 is amended to read:

CHAPTER 1. DEPARTMENT OF HEALTH; GENERAL PROVISIONS

Subchapter 1. General Provisions

§ 1. GENERAL POWERS OF DEPARTMENT OF HEALTH

* * *

Subchapter 2. Health Care Professions; Educational Assistance

* * *

Sec. 7. REDESIGNATIONS

(a) 18 V.S.A. § 10 (educational assistance; incentives; nurses) is redesignated to be 18 V.S.A. § 31 in 18 V.S.A. chapter 1, subchapter 2.

(b) 18 V.S.A. § 10a (loan repayment for health care providers and Health Care Educational Loan Repayment Fund) is redesignated to be 18 V.S.A. § 32 in 18 V.S.A. chapter 1, subchapter 2.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2020.

and that after passage the title of the bill be amended to read: "An act relating to increasing the supply of nurses and primary care providers in Vermont"

(Committee Vote: 10-0-1)

Rep. Fagan of Rutland City, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Health Care and when further amended by adding a new section to be Sec. 5a to read as follows:

Sec. 5a. 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. C.106.1 is amended to read:

Sec. C.106.1 EXPANDING THE VERMONT WORKFORCE FOR
SUBSTANCE USE DISORDER TREATMENT AND
MENTAL HEALTH PROFESSIONALS

(a) The sum of \$5,000,000 is appropriated from the Tobacco Litigation Settlement Fund to the Agency of Human Services in fiscal year 2018 and shall carry forward for the uses and based on the allocations set forth in subsections (b) and (c) of this section. The purpose of the funds is to make strategic investments in order to expand the supply of high-quality substance use disorder treatment and mental health professionals available to Vermont residents in need of their services.

(b) The sum appropriated to the Agency of Human Services in subsection (a) of this section shall be allocated to the Agency as follows:

(1) \$1,500,000 for fiscal year 2019, which shall not be distributed until the Agency provides proposed expenditures as part of its fiscal year 2019 budget adjustment request;

(2) \$1,500,000 for fiscal year 2020, for which the Agency shall provide proposed expenditures as part of its fiscal year 2020 budget request or budget adjustment request, or both;

(3) \$1,500,000 for fiscal year 2021;

(A) of which \$1,000,000 is allocated as the State match to fund scholarships for nursing students and medical students in accordance with 18 V.S.A. §§ 31 and 33; and

(B) the remaining \$500,000 for which the Agency shall provide proposed expenditures as part of its fiscal year 2021 budget request or budget adjustment request, or both; and

(4) \$500,000 which may be provided in fiscal year 2022 or after as needed to ensure successful and sustainable implementation of the workforce expansion initiatives developed pursuant to this section.

* * *

(Committee Vote: 11-0-0)

Senate Proposal of Amendment

H. 438

An act relating to the Board of Medical Practice and the licensure of physicians and podiatrists

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Board of Medical Practice and Physician Licensure * * *

Sec. 1. 26 V.S.A. chapter 23 is amended to read:

CHAPTER 23. MEDICINE

Subchapter 1. General Provisions

§ 1311. DEFINITIONS

For the purposes of As used in this chapter:

(1) "Practice of medicine" means:

(A) using the designation "Doctor," "Doctor of Medicine," "Physician," "Dr.," "M.D.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Vermont;

(B) advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in the jurisdiction;

(C) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(D) offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of all aspects of pregnancy, labor and delivery, and ~~parturition~~ postpartum care;

(E) offering or undertaking to perform any surgical operation upon any person;

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the State by a physician located outside the State

as a result of the transmission of individual patient data by electronic or other means from within the State to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

(2) “Board” means the ~~State~~ Board of Medical Practice established under section 1351 of this title.

(3) “License” means license to practice medicine and surgery in the State as defined in subchapter 3 of this chapter. “Licensee” includes any individual licensed or certified by the Board.

(4) “Medical director” means, for purposes of this chapter, a physician who is Board-certified or Board-eligible in his or her field of specialty, as determined by the American Board of Medical Specialties (ABMS), and who is charged by a health maintenance organization with responsibility for overseeing all clinical activities of the plan in this State, or his or her designee.

(5) “Health maintenance organization,” as used in this section, shall have has the same meaning as defined in 18 V.S.A. § 9402(9).

(6) “Members” means members of the Board.

(7) “Secretary” means the ~~Secretary~~ secretary of the Board.

* * *

§ 1313. EXEMPTIONS

(a) The provisions of this chapter shall not apply to the following:

(1) a A health care professional licensed or certified by the Office of Professional Regulation when that person is practicing within the scope of his or her profession;

(2) a A member of the U.S. Armed Forces or National Guard carrying out official military duties, including a National Guard member in state active duty status, or to any person giving aid, assistance, or relief in emergency or accident cases, pending the arrival of a regularly licensed physician;

(3) a A nonresident physician coming into this State to consult or using telecommunications to consult with a duly licensed practitioner herein;

(4) a A duly licensed physician in another state, in Canada, or in another nation as approved by the Board, who is visiting a medical school or a teaching hospital in this State to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that

instruction and is under the supervision of a physician licensed by the Board;
~~or.~~

(5) ~~a~~ A physician who is duly licensed and in good standing in another state, territory, or jurisdiction of the United States or in Canada if the physician is employed as or formally designated as the team physician by an athletic team visiting Vermont for a specific sporting event and the physician limits the practice of medicine in this State to medical treatment of the members, coaches, and staff of the sports team employing or designating the physician.

(6) A student who is enrolled in an accredited educational program that leads to the issuance of a degree that would satisfy the educational requirement for a profession licensed or certified by the Board, who is engaged in an organized clinical training program, and who engages in acts constituting the practice of medicine while under the supervision of a Vermont-licensed or Vermont-certified health care professional who is qualified to supervise any acts by the student that constitute the practice of medicine. This exemption does not apply to postgraduate trainees who are required to obtain a training license.

* * *

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Required reporters. Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the Board, along with supporting information and evidence, any reportable disciplinary action taken by it or its staff that ~~significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The Commissioner of Health shall forward any such information or evidence he or she receives immediately to the Board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the Commissioner of Mental Health and the Commissioner of Disabilities, Aging, and Independent Living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.~~

~~(b) Within 30 days of any judgment or settlements involving a claim of professional negligence by a licensee, any insurer of the licensee shall report the information to the Commissioner of Health and, to the extent the claim~~

~~relates to the provision of mental health services, to the Commissioner of Mental Health.~~

Definition of reportable disciplinary action. A reportable disciplinary action is an action based on one or more of the following:

(1) Acts or omissions of a licensee that relate to the licensee's fitness or competence to practice medicine under the license held.

(2) Acts or omissions of the licensee that constitute a violation of a law or rule that relates in any way to the practice of medicine.

(3) Acts or omissions of the licensee that occur in the course of practice and result in one or more of the following:

(A) Resignation, leave of absence, termination, or nonrenewal of an employment relationship or contract. This includes a licensee's own initiation of such action following notification to the licensee by the reporter that the reporter or an affiliated entity is conducting an investigation or inquiry regarding an event that, assuming the accuracy of the information or allegation, is likely to result in reportable disciplinary action. The reporter or affiliated entity shall complete the investigation or inquiry even if the licensee initiates a resignation, leave of absence, termination, or nonrenewal, and shall make a report to the Board if the investigation results in a finding of a reportable disciplinary action. Resignations and leaves of absence that are entirely voluntary by the licensee, and terminations and nonrenewals of employment or contract by a required reporter that are not related to acts or omissions of the licensee, are not reportable disciplinary actions.

(B) Revocation, suspension, restriction, relinquishment, or nonrenewal of a right or privilege. This includes a licensee's own initiation of such action following notification to the licensee by the reporter that the reporter or an affiliated entity is conducting an investigation or inquiry regarding an event that, assuming the accuracy of the information or allegation, is likely to result in reportable disciplinary action. The reporter or affiliated entity shall complete the investigation or inquiry even if the licensee initiates a resignation, leave of absence, termination, or nonrenewal, and shall make a report to the Board if the investigation results in a finding of a reportable disciplinary action. Relinquishments of privileges that are entirely voluntary by the licensee, and revocations, nonrenewals, or other limitations on privileges by a required reporter that are not related to acts or omissions of the licensee, are not reportable disciplinary actions.

(C) Written discipline that constitutes a censure, reprimand, or admonition, if it is the second or subsequent censure, reprimand, or

admonition within a 12-month period for the same or related acts or omissions that previously resulted in written censure, reprimand, or admonition. The same or related acts or omissions includes similar behavior or behavior involving the same parties, or both. Oral censure, oral reprimand, and oral admonition are not considered reportable disciplinary actions, and notation of an oral censure, oral reprimand, or oral admonition in a personnel or supervisor's file does not transform the action from oral to written.

(D) Fine or any other form of monetary penalty imposed as a form of discipline.

(E) Required education, remedial counseling, or monitoring that is imposed as a result of a completed, contested disciplinary process. This includes recommendation or referral for services from the Vermont Practitioner Recovery Network established pursuant to section 1401a of this chapter, or from an employer wellness program or similar program, as a result of a completed, contested disciplinary process.

(c) Timing of reports. A required report of reportable disciplinary action under subsection (b) of this section shall be made within 30 days following the date on which the disciplinary action was taken or upon completion of an investigation or inquiry pursuant to subdivision (b)(3)(A) or (B) of this section.

(d) Mental health services. If reportable disciplinary action is reported to the Board based on a licensee's provision of mental health services, the Commissioner of Health shall forward the report to the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living. Except as provided in section 1368 of this title, information provided to the Department of Health, the Department of Mental Health, or the Department of Disabilities, Aging, and Independent Living under this section shall be confidential unless the Department of Health decides to treat the report as a complaint; in which case, the provisions of section 1318 of this title shall apply.

(d)(e) Limitation on liability. A person who acts in good faith in accordance with the provisions of this section shall not be liable for damages in any civil action based on the fact that a report was made.

(e)(f) Violations. A person reporter who violates this section shall be subject to a civil penalty of not more than \$5,000.00, provided that a reporter who employs or grants privileges to five or more Board licensees and who violates this section shall be subject to a civil penalty of not more than \$10,000.00.

* * *

Subchapter 2. Board of Medical Practice

§ 1351. BOARD OF MEDICAL PRACTICE

(a) ~~A State~~ The Board of Medical Practice is created. The Board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a physician assistant licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The Governor, with the advice and consent of the Senate, shall appoint the members of the Board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the Governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term, (originally or to fill a vacancy),₂ may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the Board may be removed by the Governor at any time. The Board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The Board shall meet upon the call of the Chair or the Commissioner of Health, or at such other times and places as the Board may determine. Except as otherwise provided in ~~section 1360~~ sections 1372, 1373, and 1374 of this title, nine members of the Board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present and voting shall be required to carry any motion or resolution, to adopt any rule, to pass any measure, or to authorize any decision or order of the Board.

* * *

§ 1353. POWERS AND DUTIES OF THE BOARD

The Board shall have the following powers and duties to:

- (1) License and certify health professionals pursuant to this title.
- (2) Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner practicing pursuant to section 1313 of this title, and to hold hearings to determine whether such charges are substantiated or unsubstantiated. The Board may employ or contract with one or more hearing officers to schedule, oversee prehearing processes, preside over hearings, and assist with the preparation of reports and decisions.
- (3) Issue subpoenas and administer oaths in connection with any investigations, hearings, or disciplinary proceedings held under this chapter.

Any individual or entity served with a subpoena issued by the Board shall comply notwithstanding the patient's privilege established in 12 V.S.A. § 1612.

(4) Take or cause depositions to be taken as needed in any investigation, hearing, or proceeding.

* * *

~~(8) Obtain, at the Board's discretion, from the Vermont Crime Information Center a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation, for any applicant, licensee, or holder of certification. The Board may also inquire of Interpol for any information on criminal history records of an applicant, licensee, or holder of certification. Each applicant, licensee, or holder of certification shall consent to the release of criminal history records to the Board on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c. When the Board obtains a criminal history record, it shall promptly provide a copy of the record to the applicant, licensee, or holder of certification and inform him or her of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont Crime Information Center. When fingerprinting is required pursuant to this subdivision, the applicant, licensee, or holder of certification shall bear all costs associated with fingerprinting. The Board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy.~~

(A) Inquire into the criminal history backgrounds of applicants for licensure and for biennial license renewal for all professionals licensed or certified by the Board. In obtaining these background checks, the Board may inquire directly of the Vermont Crime Information Center, the Federal Bureau of Investigation, the National Crime Information Center, or other holders of official criminal record information, and may arrange for these inquiries to be made by a commercial service.

(B) Prior to acting on an initial or renewal application, the Board may obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Federal Bureau of Investigation background checks shall be fingerprint-supported, and fingerprints so obtained may be retained on file and used to notify the Board of future triggering events. Each applicant shall consent to the release of criminal history records to the Board on forms developed by the Vermont Crime Information Center.

(C) An applicant or licensee shall bear any cost of obtaining a required criminal history background check.

(D) The Board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy.

(E) No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter. As used in this subdivision, "criminal history record" is as defined has the same meaning as in 20 V.S.A. § 2056a.

* * *

§ 1354. UNPROFESSIONAL CONDUCT

(a) The Board shall find that any one of the following, or any combination of the following, whether the conduct at issue was committed within or outside the State, constitutes unprofessional conduct:

* * *

(23) revocation of a license to practice medicine or surgery in, or other disciplinary sanction, by another jurisdiction on one or more of the grounds specified in this section;

* * *

(27) failure to comply with provisions of federal or State statutes or regulations, or the statutes or rules of this or any other state, governing the practice of medicine or surgery;

* * *

§ 1355. ~~COMPLAINTS; HEARING COMMITTEE~~

~~(a) Any person, firm, corporation, or public officer may submit a written complaint to the Board alleging any person practicing medicine in the State committed unprofessional conduct, specifying the grounds therefor. The Board shall initiate an investigation of the physician when a complaint is received or may act on its own initiative without having received a complaint. The Chair shall designate four members, including one public member, to serve as a committee to hear or investigate and report upon such charges.~~

~~(b) The Chair may designate a hearing committee constituting less than a quorum of the Board, to conduct hearings that would otherwise be heard by the Board. A hearing committee shall consist of at least one physician member of the Board and one public member of the Board. No member of the hearing committee shall have been a member of the investigative committee that reviewed the matter at the investigative stage. When the Board is unable to~~

~~assign one or more members to investigate a complaint or serve on a hearing committee by reason of disqualification, resignation, vacancy, or necessary absence, the Commissioner may, at the request of the Board, appoint ad hoc members to serve on the investigation or the hearing for that matter only. When a hearing is conducted by a hearing committee, the committee shall report its findings and conclusions to the Board, within 60 days of the conclusion of the hearing unless the Board grants an extension. The Board may take additional evidence and may accept, reject, or modify the findings and conclusions of the Committee. Judgment on the findings shall be rendered by the Board. Nothing herein is intended to limit the discretion of the Board to determine whether a matter will proceed to hearing before a hearing committee under this subsection or by a quorum of the Board.~~

~~(c) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.~~

~~(d) The hearing committee may close portions of hearings to the public if the hearing committee deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by State or federal law.~~

~~(e) In any proceeding under this section that addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the Board deems it appropriate in order to protect the identity of the victim and the confidentiality of his or her medical records. [Repealed.]~~

~~§ 1356. SPECIFICATION OF CHARGES~~

~~If the Board or committee determines that a hearing is warranted, the Secretary shall prepare a specification of the charge or charges of unprofessional conduct made against a medical practitioner, a copy of which shall be served upon the person complained against, together with a notice of the hearing, as provided in section 1357 of this title. [Repealed.]~~

~~§ 1357. TIME AND NOTICE OF HEARING~~

~~The time of hearing shall be fixed by the Secretary as soon as convenient, but not earlier than 30 days after service of the charge upon the person complained against. The Secretary shall issue a notice of hearing of the~~

~~charges, which notice shall specify the time and place of hearing and shall notify the person complained against that he or she may file with the Secretary a written response within 20 days of the date of service. The notice shall also notify the person complained against that a stenographic record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her and to examine such documentary evidence as may be produced against him or her. [Repealed.]~~

§ 1358. SUBPOENAS; CONTEMPT

~~Subpoenas may be issued by the Board to compel the attendance of witnesses at any investigation or hearing. The Board shall issue subpoenas at the request and on the behalf of the person complained against. [Repealed.]~~

§ 1359. REPORT OF HEARING

~~Within 30 days after holding a hearing under the provisions of section 1357 of this title, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the Secretary, with a transcript of the evidence. [Repealed.]~~

§ 1360. HEARING BEFORE BOARD

~~(a) If the Board deems it necessary, the Board may, after further notice to the person complained against, take testimony at a hearing before the Board, conducted as provided for hearings before the hearing committee. In any event, whether the Board makes its determination on the findings of the hearing committee, on the findings of the committee as supplemented by a second hearing before the Board, or on its own findings, the Board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it. Five members of the Board, including at least one public member, shall constitute a quorum for purposes of this section.~~

~~(b) Members of the committee designated under section 1355 of this title to investigate the complaint shall not sit with the Board when it conducts hearings under this section.~~

~~(c) In any proceeding under this section that addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence of nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the Board deems it appropriate to close portions of the hearing in~~

order to protect the identity of the victim and the confidentiality of his or her medical records.

~~(d) The Board may close portions of hearings to the public if the Board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by State or federal law. [Repealed.]~~

§ 1361. ~~DECISION AND ORDER~~

~~(a) If a majority of the members of the Board vote in favor of finding the person complained against guilty of unprofessional conduct as specified in the charges, or any of them, the Board shall prepare written findings of fact, conclusions, and order, a copy of which shall be served upon the person complained against.~~

~~(b) In such order, the Board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend, or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the Board determines is proper, including imposing an administrative penalty not to exceed \$1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the Board of Medical Practice Regulatory Fee Fund for the purpose of providing education and training for Board members and licensees. The Commissioner shall detail in the annual report receipts and expenses from money received under this subsection.~~

~~(c) If the person complained against is found not guilty, or the proceedings against him or her are dismissed, the Board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.~~

~~(d) Any order issued under this section shall be in full force and effect until further order of the Board or a court of competent jurisdiction. [Repealed.]~~

* * *

§ 1365. NOTICE OF CONVICTION OF CRIME; INTERIM SUSPENSION OF LICENSE

(a) The Board shall treat a certified copy of the judgment notice of conviction of a crime for which a licensee may be disciplined under section 1354 of this title as an unprofessional conduct complaint. The record A certified copy of the judgment of conviction shall be conclusive evidence of the fact that the conviction occurred. If a person licensed under this chapter is convicted of a crime by a court in this State, the clerk of the court shall within

~~10 days of such conviction transmit a certified copy of the judgment of conviction to the Board.~~

* * *

§ 1366. OUT-OF-STATE DISCIPLINE; INTERIM SUSPENSION OF LICENSE

(a) The Board shall treat a certified copy of an order revoking or suspending the license of a person licensed to practice medicine or surgery in another jurisdiction on grounds for which a licensee may be disciplined under subdivision 1354(a)(23) of this title as an unprofessional conduct complaint. The A certified copy of the order of revocation or suspension shall be conclusive evidence of the fact that the revocation or suspension occurred.

(b) The Board shall treat ~~a certified copy as an unprofessional conduct complaint~~ any notice of a statement of a licensing entity in another jurisdiction that verifies that a person licensed to practice medicine or surgery in that jurisdiction failed to renew, surrendered, or otherwise terminated his or her license during, or prior to initiation of, proceedings to revoke or suspend his or her license as an unprofessional conduct complaint. The A certified copy of the statement shall be conclusive evidence of the fact that such termination occurred.

(c) Upon receipt of the certified copy of an order or statement referred to in ~~subsections~~ subsection (a) or (b) of this section, the Board shall follow the procedures for interim suspension set forth in subsection 1365(b) of this ~~title~~ chapter.

(d) The sole issue to be determined at the disciplinary hearing on a complaint filed under subsection (a) of this section shall be the nature of the disciplinary action to be taken by the Board.

* * *

§ 1370. COMPLAINTS; INVESTIGATIVE COMMITTEE

(a)(1) Any individual, organization, or public officer may submit a written complaint to the Board alleging that any individual practicing medicine in the State committed unprofessional conduct or that an individual practiced without being licensed in violation of section 1314 of this chapter. The complaint shall specify the grounds on which the allegations of unprofessional conduct are based.

(2) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.

(b)(1) The Board shall initiate an investigation of the individual complained against whenever a complaint is received. The Board may also act on its own initiative without having received a complaint.

(2) The Executive Director shall designate three or more members, including at least one public member, to serve as an investigative committee to investigate and report to the Board its findings regarding the complaint and whether an evidentiary hearing is warranted. If there is an insufficient number of members to investigate a complaint by reason of disqualification, resignation, vacancy, or necessary absence, the Commissioner of Health may, at the request of the Board, appoint ad hoc members to serve on the investigative committee for that matter only.

(3) If the investigative committee determines that an evidentiary hearing is warranted, the Executive Director shall prepare a specification of the charge or charges of unprofessional conduct made against the individual licensed by the Board, a copy of which shall be served upon the subject of the charge or charges, together with the notice of hearing set forth in subsection 1372(b) of this chapter.

§ 1371. ACCESS TO DOCUMENTS; DISCOVERY

(a)(1) A licensee who is notified that a specification of one or more charges of unprofessional conduct have been made against the individual in accordance with subdivision 1370(b)(3) of this chapter shall be entitled to inspect and copy all information in the possession of the Department of Health pertaining to the licensee, except:

(A) investigatory files that have not resulted in charges of unprofessional conduct;

(B) materials that constitute attorney work product; and

(C) any other document or information that the Board has an obligation to protect from disclosure.

(2) The Executive Director shall notify the licensee of the right to inspect and copy information as provided in subsection 1372(b) of this chapter.

(b) A licensee who is notified that a specification of one or more charges of unprofessional conduct have been made against the individual in accordance with subdivision 1370(b)(3) of this chapter shall be entitled to produce fact witnesses, expert witnesses, and evidence on the licensee's own behalf, to cross-examine witnesses testifying against the licensee, and to engage in other methods of discovery as set forth by order of the Board or its hearing officer.

(c) A licensee who is notified that a specification of one or more charges of unprofessional conduct have been made against the individual in accordance with subdivision 1370(b)(3) of this chapter shall be entitled to request to depose witnesses by motion to the Board or its hearing officer. Any deposition so ordered shall be subject to:

(1) the provisions of section 1376 of this chapter, relating to confidentiality and the inadmissibility of certain evidence;

(2) limitations or conditions necessary to protect witnesses who are minors or who are adults subject to a guardianship or conservatorship; and

(3) such other reasonable limitations as the Board or its hearing officer may provide in the interests of justice and consistent with the provisions of 3 V.S.A. § 810, relating to rules of evidence and official notice in contested cases.

§ 1372. HEARING PANEL

(a) Composition of hearing panel.

(1) The Executive Director may designate a hearing panel constituting less than a quorum of the Board to conduct hearings that would otherwise be heard by the full Board. A hearing panel shall consist of at least three members, including at least one physician member of the Board and at least one public member of the Board. No member of the hearing panel shall have been a member of the investigative committee that reviewed the matter at the investigative stage. A party may move to disqualify a member of a hearing panel due to a conflict of interest.

(2) If there is an insufficient number of members to serve on a hearing panel by reason of disqualification, resignation, vacancy, or necessary absence, the Commissioner of Health may, at the request of the Board, appoint ad hoc members to serve on the hearing panel for that matter only.

(b) Time and notice of hearing.

(1) The Executive Director or a hearing officer shall set a time for the evidentiary hearing as soon as convenient following the determination by the investigative committee that an evidentiary hearing is warranted, subject to the discovery needs of the parties as established in any prehearing or discovery conference or in any orders regulating discovery and depositions, or both, but no earlier than 30 days after service of the charge upon the individual complained against. A party may file motions to extend the time of the hearing for good cause.

(2) The Executive Director shall issue a notice of the evidentiary hearing on the charges, which notice shall specify the time and place of the hearing and shall notify the individual complained against that he or she may file with the Executive Director a written response within 20 days of the date of service. The notice shall also notify the individual complained against that a record of the proceeding will be kept, that he or she will have the right to inspect and copy information as set forth in section 1371 of this chapter, and that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence on his or her own behalf, to cross-examine witnesses testifying against him or her, and to examine such documentary evidence as may be produced against him or her.

(c) Hearing panel report. Within 60 days after holding an evidentiary hearing under this section, unless the Board grants an extension, the hearing panel shall provide a written report of its findings of fact and its recommendations to the full Board, with a transcript of the evidence.

§ 1373. HEARING BEFORE THE BOARD

(a) If the Board deems it necessary, following receipt of the report of the hearing panel pursuant to section 1372 of this chapter and after further notice to the individual complained against, the Board may take additional evidence at a hearing before the Board, which shall be conducted according to the same process as provided for the hearing panel.

(b)(1) Five members of the Board, including at least one physician member and at least one public member, shall constitute a quorum for purposes of this section.

(2) Members of the investigative committee designated pursuant to section 1370 of this chapter shall not sit with the Board when it conducts hearings under this section.

§ 1374. DECISION AND ORDER

(a) Regardless of whether the Board makes its determination on the findings of the hearing panel pursuant to section 1372 of this chapter alone, on the findings of the hearing panel as supplemented by a hearing before the Board pursuant to section 1373 of this chapter, or on its own findings, the Board shall render its decision on the merits of the charge or charges on the basis of the evidence in the record before it.

(b)(1) If a majority of the members of the Board present and voting find that the individual complained against committed unprofessional conduct as specified in one or more of the charges, the Board shall prepare written

findings of fact, conclusions, and an order, copies of which shall be served upon the individual complained against.

(2)(A) In its order, the Board may do one or more of the following:

(i) reprimand the individual complained against;

(ii) condition, limit, suspend, or revoke the license, certificate, or practice of the individual complained against; or

(iii) take such other action relating to discipline or practice as the Board determines appropriate, including imposing an administrative penalty of not more than \$1,000.00 for each act that constitutes an unprofessional conduct violation.

(B) Any monies received from the imposition of an administrative penalty imposed pursuant to this subdivision (2) shall be deposited into the Board of Medical Practice Regulatory Fee Fund for the purpose of providing education and training for Board members and licensees. The Commissioner of Health's accounting under section 1351 of this chapter shall detail the receipts of administrative penalties and the purposes for which such monies were used.

(c) If the Board finds the individual complained against not guilty of the charge or charges, or the charges against the individual are dismissed, the Board shall promptly order a dismissal of the charges and issue a statement that the charges were not proved.

(d) Any order issued by the Board under this section shall be in full force and effect until further order of the Board or of a court of competent jurisdiction.

§ 1375. SUBPOENAS; CONTEMPT

(a) The Board may issue subpoenas to compel the attendance of witnesses at any investigation or hearing.

(b) The Board shall issue subpoenas on behalf of the individual complained against at the request of such person.

§ 1376. CONFIDENTIALITY; INADMISSIBILITY OF CERTAIN EVIDENCE

(a) A hearing panel or the Board, or both, may close portions of a hearing or hearings to the public if the panel or Board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential under State or federal law.

(b) In any proceeding under section 1372 or 1373 of this chapter that addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of a victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of a victim's sexual conduct shall be admitted. At the request of a victim, a hearing panel or the Board may close portions of hearings to the public if the panel or Board deems it appropriate in order to protect the identity of a victim and the confidentiality of his or her medical records.

§ 1377. NONDISCIPLINARY FINANCIAL PENALTY

(a) For violations of statutes and Board rules of an administrative nature, the Board may, in its sole discretion, elect to offer a licensee the opportunity to pay a nondisciplinary financial penalty of not more than \$250.00 for each instance of noncompliance. If the licensee accepts the offer and submits the required payment, the matter shall be considered to be closed in lieu of investigating the failure to comply with the rule or statute as unprofessional conduct.

(b) A matter closed by payment of a nondisciplinary financial penalty shall not be considered to be a disciplinary action, and the matter shall remain confidential in the manner of dismissed charges in accordance with section 1318 of this chapter.

(c) The Board shall not be required to offer the option of a nondisciplinary financial penalty in any particular case and may elect to process any matter as a disciplinary action.

(d) Any monies received from nondisciplinary financial penalties imposed pursuant to this section shall be deposited into the Board of Medical Practice Regulatory Fee Fund for the purpose of providing education and training for Board members and licensees.

Subchapter 3. Licenses

§ 1391. QUALIFICATIONS FOR MEDICAL LICENSURE

(a) Upon payment of an examination fee, a person who has attained the age of majority, and is of good moral character, who is a graduate of a legally chartered college or university authorized to confer degrees in medicine and surgery, which is recognized by the Board, shall be entitled to examination. Evidence of good moral character and competence in being able to communicate in reading, writing, and speaking the English language, shall be presented from the chief of service and two other active physician staff

~~members at the hospital where the person was last affiliated. In the discretion of the Board, evidence from different sources may be presented~~

Basic requirements.

(1) An applicant for physician licensure as a medical doctor shall meet each of the requirements set forth in subdivisions (2)(A) through (D) of this subsection. A requirement may be met either by satisfying the requirement on its own terms or by qualifying for an exception established in this chapter or by the Board by rule.

(2) An applicant shall submit evidence of identity acceptable to the Board as set forth by rule and shall establish that the applicant:

(A) is at least 18 years of age;

(B) has completed high school, or the equivalent, and at least two years of undergraduate postsecondary school;

(C) has graduated from a medical school accredited by an organization that is acceptable to the Board, or from a medical school that has been approved by the Board by rule, with a degree of doctor of medicine or an equivalent as may be determined by the Board; and

(D) is of sound moral character and professional competence as evidenced by:

(i) references submitted in accordance with rules adopted by the Board;

(ii) a personal interview, as may be required in the discretion of the Board; and

(iii) the applicant's entire personal history, as established by information about the applicant's academic, licensing examination, employment, professional credentialing, professional certification, professional regulation, civil litigation, and criminal records submitted by the applicant or otherwise obtained by the Board in the application process.

~~(b) If a person successfully completes the examination, he or she may then apply for licensure to practice medicine in the State of Vermont. In addition, each applicant may be interviewed by a Board member~~

Postgraduate training requirements.

(1) A graduate of a U.S. or Canadian medical school accredited by a body that is acceptable to the Board shall submit evidence of the successful completion of at least two years of postgraduate training in a U.S. or Canadian

program accredited by an organization that is acceptable to the Board and that meets such other requirements as the Board may establish by rule.

(2) A graduate of a Board-approved medical school outside the United States or Canada shall submit evidence of success of completing at least three years of postgraduate training in a U.S. or Canadian program accredited by an organization that is acceptable to the Board and that meets such other requirements as the Board may establish by rule.

~~(c) Students who have completed the studies of anatomy, physiology, chemistry, and histology may be examined after presenting a certificate from the secretary of the college or university in which they are pursuing their studies that they have completed the work of the second year. The fee that shall accompany such certificate shall be half of that for the final examination and shall be credited to the student as a part of the whole fee when he or she takes his or her final examination, which examination shall not include the subjects in which such student was found qualified by such previous examination~~

Examination. An applicant shall satisfy the Board's requirements for medical licensing examination as established by the Board by rule. The Board may identify which examinations are accepted, set passing standards, and set limits on time and numbers of attempts for exams. The Board may establish by rule exceptions or alternative means to meet examination requirements.

~~(d) In its discretion, the Board may refuse applicants who are graduates of foreign universities or medical schools unless their credentials have first been passed upon and approved by the educational council for foreign medical graduates~~

ECFMG certificate. A graduate of a medical school outside the United States or Canada shall also submit evidence of certification by the Educational Commission for Foreign Medical Graduates unless the individual qualifies for licensure as a Fifth Pathway applicant, as established by the Board by rule.

~~(e) An applicant for limited temporary license, who shall furnish the Board with satisfactory proof that he or she has attained the age of majority, is of good moral character, is a graduate of a legally chartered medical school of this country or of a foreign country that is recognized by the Board and which has power to grant degrees in medicine, that all other eligibility requirements for house officer status have been met, and that he or she has been appointed an intern, resident, fellow, or medical officer in a licensed hospital or in a clinic that is affiliated with a licensed hospital, or in any hospital or institution maintained by the State, or in any clinic or outpatient clinic affiliated with or maintained by the State, may upon the payment of the required fee, be granted~~

~~a limited temporary license by the Board as a hospital medical officer for a period of up to 54 weeks and such license may be renewed or reissued, upon payment of the fee, for the period of the applicant's postgraduate training, internship, or fellowship program. Such limited temporary license shall entitle the said applicant to practice medicine only in the hospital or other institution designated on his or her certificate of limited temporary license and in clinics or outpatient clinics operated by or affiliated with such designated hospital or institution and only if such applicant is under the direct supervision and control of a licensed physician. Such licensed physician shall be legally responsible and liable for all negligent or wrongful acts or omissions of the limited temporary licensee and shall file with the Board the name and address both of himself or herself and the limited temporary licensee and the name of such hospital or other institution. Such limited temporary license shall be revoked upon the death or legal incompetency of the licensed physician or, upon ten days written notice, by withdrawal of his or her filing by such licensed physician. The limited temporary licensee shall at all times exercise the same standard of care and skill as a licensed physician, practicing in the same specialty, in the State of Vermont. Termination of appointment as intern, resident, fellow, or medical officer of such designated hospital or institution shall operate as a revocation of such limited temporary license. An application for limited temporary license shall not be subject to subsection 1391(d) of this title.~~

Current medical practice. An applicant for licensure shall have actively engaged in the practice of medicine, as defined by section 1311 of this chapter, within three years prior to the date on which the application for licensure becomes complete. In its discretion, the Board may license an applicant who does not meet this practice requirement but who agrees to such conditions as the Board may reasonably require to verify or confirm the applicant's readiness to reenter the practice of medicine.

(f) License by faculty appointment.

(1) The Board may issue a license without examination to a reputable physician who is a resident of a foreign country and who furnishes to the Board satisfactory proof of appointment to the faculty of a medical college in Vermont that is accredited by the Liaison Committee on Medical Education (LCME). The Board may establish additional conditions and requirements by rule for this type of license.

(2) An applicant for a license pursuant to this subsection shall furnish to the Board satisfactory proof that the applicant is at least 18 years of age, has good moral character, is licensed to practice medicine in the applicant's country of residence, and has been appointed to the faculty of an LCME-

accredited medical college located in Vermont. The application shall include detailed information concerning the nature and term of the appointment, the method by which the applicant's performance will be monitored and evaluated, and any other information the Board may require by rule.

(3) A license issued pursuant to this subsection shall be for a period not to exceed the term of the faculty appointment and may, in the Board's discretion, be for a shorter period.

(4) A license issued pursuant to this subsection shall expire automatically upon termination for any reason of the licensee's faculty appointment.

§ 1392. LIMITED TEMPORARY LICENSE FOR POSTGRADUATE TRAINING

(a) Qualifications for limited training license.

(1) An applicant for a limited training license to practice medicine in a postgraduate training program shall meet each of requirements set forth in subdivisions (2)(A) through (E) of this subsection. A requirement may be met either by satisfying the requirement on its own terms or by qualifying for an exception established in this chapter or by the Board by rule.

(2) An applicant shall submit evidence of identity acceptable to the Board and shall establish that the applicant:

(A) is at least 18 years of age;

(B) has graduated from a medical school accredited by an organization that is acceptable to the Board, or from a medical school that has been approved by the Board by rule;

(C) has been accepted to participate in a postgraduate medical training program accredited by a body approved by the Board by rule;

(D) is of sound moral character and professional competence as evidenced by the applicant's entire personal history, as established by information about the applicant's academic, licensing examination, employment, professional credentialing, professional certification, professional regulation, civil litigation, and criminal records submitted by the applicant or otherwise obtained by the Board in the application process; and

(E) will be practicing in a program under the supervision of a Vermont-licensed physician who has acknowledged in writing:

(i) the responsibility to ensure that the program operates in accordance with the requirements of the accrediting body; and

(ii) the responsibility to ensure that physicians in training practice only under the close supervision and control of Vermont-licensed physicians.

(b) Terms of limited training license.

(1) A limited training license shall be issued for the period of a “training year,” which shall run from July 1 through June 30. All limited training licenses shall expire at 12:00 midnight on July 1, regardless of when issued, unless the holder leaves the program before that date, in which case the license expires upon the holder leaving the program. The Board may issue a limited training license up to 90 days prior to the beginning of a training year.

(2) A limited training license shall be renewed annually for each licensee who intends to continue to practice in a training program, in accordance with such requirements as the Board may provide by rule.

(3) A limited training license authorizes the holder to practice only within the approved training program and only at sites that are part of the hospital or other facility hosting the training program, along with such other locations as may be formally designated as a training site of the program.

(4) A limited training license shall become invalid 14 days after the supervising physician described in subdivision (a)(2)(E) of this subsection stops supervising the program for any reason, unless documentation of a new supervising physician is filed with the Board prior to the expiration of the 14-day period.

(5) A physician practicing under a limited training license is subject to the provisions of section 1354 of this chapter.

§ 1393. EXAMINATIONS

~~The examinations shall be wholly or partly in writing, in the English language, and shall be of a practical character, sufficiently strict to test the qualifications of the applicant. In its discretion the Board may use multiple choice style examinations provided by the National Board of Medical Examiners or by the Federation of State Medical Boards, or as determined by rule. The examination shall embrace the general subjects of anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutics, and legal medicine. The subjects covered by the National Board of Medical Examiners examination shall be considered to have met the requirements of this section. If the applicant passes the examination approved by the Board and meets the other standards for licensure, he or she will qualify for licensure. [Repealed.]~~

§ 1394. REEXAMINATIONS

~~A person failing an examination may be reexamined. The limitation on the number of reexaminations shall be determined by the Board, by rule. The fee for reexamination shall be as required by subsection 1391(a) of this title. [Repealed.]~~

~~* * *~~

~~§ 1396. REQUIREMENTS FOR ADMISSION TO PRACTICE~~

~~(a) The standard of requirements for admission to practice in this State, under section 1395 of this title, shall be as follows:~~

~~(1) Academic: Preliminary requirements to be a high school education or its equivalent, such as would admit the student to a recognized university, and a two years' course of study in a college of arts and sciences.~~

~~(2) Medical: Be a graduate of a medical college approved by the Board or approved by an accrediting body satisfactory to the Board.~~

~~(3) Postgraduate training: Have completed at least a one-year hospital program of postgraduate training approved by the Board or approved by an accrediting body satisfactory to the Board.~~

~~(4) Moral: Shall present letters of reference as to moral character and professional competence from the chief of service and two other active physician staff members at the hospital where he or she was last affiliated. In the discretion of the Board, letters from different sources may be presented.~~

~~(5) Language: Shall demonstrate competence in reading, writing, and speaking the English language.~~

~~(6) Examination: The examination in writing shall have embraced 13 subjects of 90 questions, viz.: anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutic, and legal medicine. The grade achieved in each subject must have been at least 75 percent, and a license shall not be recognized when a lower rating was obtained.~~

~~(7) Practice: Shall have practiced medicine within the last three years as defined in section 1311 of this title or shall comply with the requirements for updating knowledge and skills as defined by Board rules.~~

~~(b) In cases it deems appropriate, the Board may waive the requirements of subdivisions (a)(1) and (2) of this section for an applicant who is a graduate of a medical college that is neither approved by the Board nor by an accrediting body satisfactory to the Board. As a condition of granting a waiver, the Board may require that the applicant complete up to three years of postgraduate training satisfactory to the Board. A waiver granted under this section shall be~~

~~in writing and shall include a statement of the Board reasons for granting the waiver. [Repealed.]~~

* * *

§ 1398. REFUSAL OR REVOCATION OF LICENSES

~~(a) The Board may refuse to issue the licenses provided for in section 1391 of this title to persons a license or certificate to an applicant who applies to be licensed or certified under this chapter and who, by false or fraudulent representations, ~~have~~ has obtained or sought to obtain practice in ~~their~~ the profession, or by false or fraudulent representations ~~of their profession in practice,~~ have has obtained or sought to obtain money or any other thing of value, or who assume ~~names~~ a name other than ~~their~~ the applicant's own for the purpose of misleading others, or for any other immoral, unprofessional, or dishonorable conduct. ~~However, a~~~~

~~(b) A license or certificate shall not be suspended, except as provided in section 1365 or 1366 of this chapter; revoked; or refused until the holder or applicant:~~

~~(1) is given a hearing before the Board using the same procedures as a hearing on disciplinary matters as set forth in sections 1372 through 1376 of this chapter;~~

~~(2) is offered and declines or fails to attend a hearing; or~~

~~(3) agrees to the action.~~

~~(c) In the event of a revocation, the holder of any license or certificate so revoked shall ~~forthwith~~ promptly relinquish the ~~same~~ license or certificate to the Secretary of the Board.~~

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine by the Board shall apply biennially for the renewal of his or her license. At least one month prior to the date on which renewal is required, the Board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The Board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the Board shall pay the license renewal fees into the ~~Medical Practice Board Special~~ Board of Medical Practice Regulatory Fee Fund.

* * *

(f) A person who practices medicine and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine in the State until reinstated by the Board, ~~but nevertheless~~ except that a physician while on extended active duty in the uniformed services of the United States or as a member of the National Guard, State Guard, or reserve component as a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, the National Guard, or the State Guard who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the Board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

* * *

Sec. 2. INVESTIGATIVE PROCEDURES

On or before July 1, 2020, the Board of Medical Practice shall post on its website an operations manual, covering topics including procedures for initiating investigations, procedures for notifying licensees of investigations, and standards for investigators' visiting practices. The Board shall inform licensees that the operations manual has been posted and is available for review and comment.

* * * Licensure of Podiatrists * * *

Sec. 3. 26 V.S.A. § 371 is amended to read:

§ 371. ELIGIBILITY

To be eligible for licensure as a podiatrist, an applicant must:

* * *

(4) successfully complete all required steps of the examinations given by the National Board of Podiatry Podiatric Medical Examiners, as set forth by the Board by rule; and

* * *

Sec. 4. 26 V.S.A. § 373 is amended to read:

§ 373. RENEWAL OF LICENSURE

(a) A person licensed by the Board to practice podiatry shall apply biennially for the renewal of his or her license. At least one month prior to the

date on which renewal is required, the Board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee; however, any podiatrist while on extended active duty ~~in the uniformed services of the United States or as a member of the National Guard, State Guard, or reserve component~~ as a member of the U.S. Armed Forces, a reserve component of the U.S. Armed Forces, the National Guard, or the State Guard who is licensed as a podiatrist at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the podiatrist's return from activation or deployment, provided the podiatrist notifies the Board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license. The Board shall register the applicant and issue the renewal license. Within one month following the date by which renewal is required, the Board shall pay the license renewal fees into the ~~Medical Practice Board Special~~ Board of Medical Practice Regulatory Fee Fund.

(b) A license that has lapsed for up to 364 days may be reinstated on payment of a renewal fee and a late renewal penalty. A license that has lapsed for one year or longer may be reinstated upon payment of the reinstatement fee and completion of the reinstatement application as set forth by the Board by rule. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years or longer, the Board may, after notice and an opportunity for hearing, require reexamination ~~as a condition~~ or other conditions of renewal.

* * *

Sec. 5. 26 V.S.A. § 373(b) is amended to read:

(b) A license that has lapsed for up to 364 days may be reinstated on payment of a renewal fee and a late renewal penalty. A license that has lapsed for one year or longer may be reinstated upon payment of the reinstatement fee and completion of the reinstatement application as set forth by the Board by rule. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years or longer, the Board may, ~~after notice and an opportunity for hearing, require reexamination or other conditions of renewal~~ require the licensee to update his or her knowledge and skills as defined by Board rules.

* * * Addition of Board of Medical Practice to Description of Professional Licensing Boards Entitled to Inspect Prescription Records * * *

Sec. 6. 18 V.S.A. § 4211 is amended to read:

§ 4211. RECORDS CONFIDENTIAL

Prescriptions, orders, and records required by this chapter, and stocks of regulated drugs, shall be open for inspection only to federal or state officers or their specifically authorized agent whose duty it is to enforce the federal drug laws or this chapter, ~~or to~~ authorized agents of professional licensing boards, as that term is defined under 3 V.S.A. chapter 5, or authorized agents of the Board of Medical Practice. No person having knowledge by virtue of his or her office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution, or proceeding before the Board of Health, Board of Pharmacy, Board of Medical Practice, or another licensing or registration board, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

* * * Revisions to Maintenance of Licensure Rulemaking Requirement * * *

Sec. 7. 2011 Acts and Resolves No. 61, Sec. 10 is amended to read:

Sec. 10. ADOPTION OF RULES

The state board of medical practice ~~shall~~ may adopt maintenance of licensure rules for podiatrists, physicians, and physician assistants ~~by September 1, 2012~~.

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

(a) Sec. 1 (26 V.S.A. chapter 23) shall take effect on July 1, 2020, except that 26 V.S.A. § 1377 (nondisciplinary financial penalty) shall take effect upon the Board's adoption of a rule setting forth the schedule of statutory and rule violations and penalties.

(b) Secs. 2 (investigative procedures), 3 (26 V.S.A. § 371), 4 (26 V.S.A. § 373), 6 (18 V.S.A. § 4211), 7 (adoption of rules), and this section shall take effect on July 1, 2020.

(c) Sec. 5 (26 V.S.A. § 373(b)) shall take effect 60 days after the Board's adoption of a maintenance of licensure rule for podiatrists in accordance with 2011 Acts and Resolves No. 61, Sec. 10.

(For text see House Journal March 10, 2020, page 579)

Senate Proposal of Amendment

H. 788

An act relating to technical corrections for the 2020 legislative session

The Senate proposes to the House to amend the bill as follows:

First: By striking out Sec. 272, 26 V.S.A. § 373(a), in its entirety and inserting in lieu thereof the following:

Sec. 272. [Deleted.]

Second: By striking out Sec. 275, 26 V.S.A. § 1400(f), in its entirety and inserting in lieu thereof the following:

Sec. 275. [Deleted.]

Third: By striking out Sec. 277, 26 V.S.A. § 1734b(a), in its entirety and inserting in lieu thereof the following:

Sec. 277. [Deleted.]

Fourth: In Sec. 304, effective dates, preceding “(amending 2014 Acts and Resolves No. 131, Sec. 135, as amended)” by striking out “Sec. 300” and inserting in lieu thereof Sec. 299

(For text see House Journal March 12, 2020, page 683)

NOTICE CALENDAR

Favorable with Amendment

S. 338

An act relating to justice reinvestment

Rep. Shaw of Pittsford, for the Committee on Corrections and Institutions, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Findings and Purpose * * *

Sec. 1. FINDINGS AND PURPOSE

(a) The General Assembly finds:

(1) Almost 80 percent of sentenced Department of Corrections admissions are for people returned or revoked from furlough, parole, and probation, primarily driven by furlough violators.

(2) Nearly one-half of Vermont’s sentenced prison population at the end of FY 2019 consisted of people who were returned from community supervision, primarily furlough.

(3) Nearly 80 percent of furlough returns to incarceration are due to technical violations rather than new crime offenses.

(4) A decrease of 106–135 people would represent an 8–10 percent drop in the sentenced incarceration population and could mean a 40–50 percent reduction in the out-of-state contract population.

(5) Revocations and returns from supervision are driving a large share of prison admissions, and limited funding leaves large numbers of high-risk people without the programs and services they need to succeed in the community.

(6) Over the past three years, the average annual proportion of admissions to sentenced incarceration that were persons returning or being revoked from furlough, parole, and probation was 78 percent.

(7) Vermont incarcerates more persons than current facilities can accommodate, and the incarceration population is growing.

(b) The purpose of this act is to:

(1) Improve public safety in Vermont, while creating immediate opportunities to reduce recidivism and achieve long-term savings by reducing contract bed needs significantly.

(2) Make evidence-based programming available to individuals transitioning back into the community in order to support their transition and reduce violations, revocations, and reincarceration.

(3) Streamline the furlough system to eliminate multiple furlough statuses without limiting the availability of supervision within the community for inmates.

* * * Parole * * *

Sec. 2. 28 V.S.A. § 402 is amended to read:

§ 402. DEFINITIONS

~~Whenever~~ As used in this chapter:

(1) “Parole” means the release of an inmate to the community by the Parole Board before the end of the inmate’s sentence subject to conditions imposed by the Board and subject to the supervision and control of the Commissioner. If a court or other authority files a warrant or detainer against

an inmate, the Board may release him or her on parole to answer the warrant and serve any subsequent sentences.

(2) "Interview" means an appearance by the inmate at a meeting of the Parole Board.

(3) "Review" means an evaluation of an inmate's records without an appearance by the inmate before the Parole Board.

Sec. 3. 28 V.S.A. § 501 is amended to read:

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION

An inmate who is serving a sentence of imprisonment who is not eligible for presumptive parole pursuant to section 501a of this title shall be eligible for parole consideration as follows:

(1) If the inmate's sentence has no minimum term or a zero minimum term, the inmate shall be eligible for parole consideration within 12 months after commitment to a correctional facility.

(2) If the inmate's sentence has a minimum term, the inmate shall be eligible for parole consideration after the inmate has served the minimum term of the sentence.

Sec. 4. 28 V.S.A. § 501a is added to read:

§ 501a. PRESUMPTIVE PAROLE

An inmate who is serving a sentence of imprisonment shall be eligible for presumptive release in accordance with subsection 502a(e) of this title at the expiration of the inmate's minimum or aggregate minimum term of imprisonment if the inmate:

(1) has acquired no new criminal conviction while incarcerated or on supervision for the current offense;

(2) has no outstanding warrants, detainers, commitments, or pending charges;

(3) is compliant with the required services and programming portion of the inmate's case plan during the period of incarceration if the inmate is incarcerated for less than 90 days or is compliant for the 90 days preceding the completion of the inmate's minimum term if the inmate is incarcerated for 90 days or more;

(4) is compliant with the conditions of supervision if the offender is supervised in the community on furlough during;

(A) the entire period of supervision if the term of supervision is less than 90 days; or

(B) the 90 days prior to the consideration of parole eligibility if the term of supervision is 90 days or more;

(5) has no major disciplinary rule violation or pending infractions during the period of incarceration if the inmate is incarcerated for less than 12 months or has no major disciplinary rule violations or pending infractions during the preceding 12 months if the inmate is incarcerated for 12 months or more;

(6) has not had parole revoked on the inmate's current sentence; and

(7) is not serving a sentence for committing a crime specified in 13 V.S.A. § 5301.

Sec. 5. 28 V.S.A. § 501a is amended to read:

§ 501a. PRESUMPTIVE PAROLE

An inmate who is serving a sentence of imprisonment shall be eligible for presumptive release in accordance with subsection 502a(e) of this title at the expiration of the inmate's minimum or aggregate minimum term of imprisonment if the inmate:

(1) has acquired no new criminal conviction while incarcerated or on supervision for the current offense;

(2) has no outstanding warrants, detainers, commitments, or pending charges;

(3) is compliant with the required services and programming portion of the inmate's case plan during the period of incarceration if the inmate is incarcerated for less than 90 days or is compliant for the 90 days preceding the completion of the inmate's minimum term if the inmate is incarcerated for 90 days or more;

(4) is compliant with the conditions of the offender's supervision if the offender is supervised in the community on furlough during:

(A) the entire period of supervision if the term of supervision is less than 90 days; or

(B) the 90 days prior to the consideration of parole eligibility if the term of supervision is 90 days or more;

(5) has no major disciplinary rule violation or pending infractions during the period of incarceration if the inmate is incarcerated for less than 12

months, or has no major disciplinary rule violations or pending infractions during the preceding 12 months if the inmate is incarcerated for 12 months or more;

(6) has not had parole revoked on the inmate's current sentence; and

(7) is not serving a sentence for committing a crime specified in ~~13 V.S.A. § 5301~~ 33 V.S.A. § 5204(a).

Sec. 6. 28 V.S.A. § 502 is amended to read:

§ 502. PAROLE INTERVIEWS AND REVIEWS

(a) The Board shall interview each inmate eligible for parole consideration under section 501 of this title before ordering the inmate released on parole. The Board shall consider all pertinent information regarding an inmate in order to determine the inmate's eligibility for parole. The Board may grant parole only after an inmate is interviewed in accordance with this section. The Parole Board may conduct the interview in person, by telephone or videoconference, or by any other method it deems appropriate.

(b) An initial interview of the inmate shall occur at least 30 days prior to the date when the inmate becomes eligible for parole consideration under section 501 of this title.

(c) An inmate eligible for parole consideration shall, subsequent to the initial interview provided for above, be reviewed and interviewed thereafter, as follows:

(1) ~~If the inmate is serving a maximum sentence of less than 15 years:~~

(A) the Board shall review the inmate's record once every 12 months;

~~(B)~~(2) the Board shall conduct an interview of the inmate at the request of the Department; and

~~(C)~~(3) upon written request of the inmate, the Board shall conduct an interview, ~~but not more than once in any two-year period~~ annually.

(2) ~~If the inmate is serving a sentence with a maximum of 15 years up to a maximum of life:~~

~~(A) the Board shall review the inmate's record once every two years;~~

~~(B) the Board shall conduct an interview of the inmate at the request of the Department; and~~

~~(C) upon written request of the inmate, the Board may conduct an interview, but not more than once in any two-year period.~~

(d) The Board in its discretion may hear from attorneys or other persons with an interest in the case before the Board. A person presenting statements to the Board may be required to submit the statement in writing.

(e) Interviews and reviews shall be conducted in accordance with the rules and regulations established by the Board, which shall be consistent with this section.

(f) The Board ~~may~~, when formulating the conditions of a parole, shall take into consideration the emotional needs of the victim of an offender's crime plus the needs of the victim's family.

Sec. 7. 28 V.S.A. § 502a is amended to read:

§ 502a. RELEASE ON PAROLE

(a) ~~No~~ Except as otherwise provided in subsection (d) of this section and section 501 of this title, no inmate serving a sentence with a minimum term shall be released on parole until the inmate has served the minimum term of the sentence, less any reductions for good behavior.

(b) An inmate who is not eligible for presumptive parole pursuant to section 501a of this title shall be released on parole by the written order of the Parole Board if the Board determines:

(1) the inmate is eligible for parole;

(2) there is a reasonable probability that the inmate can be released without detriment to the community or to the inmate; and

(3) the inmate is willing and capable of fulfilling the obligations of a law-abiding citizen.

(c) A parole under subsection (b) or (e) of this section shall be ordered only for the best interests of the community and of the inmate, and shall not be regarded as an award of clemency, a reduction of sentence, or a conditional pardon.

(d) Notwithstanding subsection (a) or (e) of this section, or any other provision of law to the contrary, any inmate who is serving a sentence, including an inmate who has not yet served the minimum term of the sentence, who is diagnosed as having a terminal or serious medical condition so as to render the inmate unlikely to be physically capable of presenting a danger to society, may be released on medical parole to a hospital, hospice, other licensed inpatient facility, or suitable housing accommodation as specified by the Parole Board. Provided the inmate has authorized the release of his or her personal health information, the Department shall promptly notify the Parole Board upon receipt of medical information of an inmate's diagnosis of a

terminal or serious medical condition. As used in this subsection, a “serious medical condition” does not mean a condition caused by noncompliance with a medical treatment plan.

(e)(1) The Department shall identify each inmate meeting the presumptive parole eligibility criteria in section 501a of this title and refer each eligible inmate who does not meet the risk criteria set forth in subdivision (2) of this subsection to the Parole Board for an administrative review at least 60 days prior to the inmate’s eligibility date.

(2) The Department shall screen each inmate it identifies as eligible for presumptive parole for the risk criteria set forth in this subdivision. If the Department determines that, based on clear and convincing evidence, there is a reasonable probability that the inmate’s release would result in a detriment to the community, or that the inmate is not willing and capable of fulfilling the obligations of parole, the Department shall, at least 60 days prior to the inmate’s eligibility date, refer the inmate to the Parole Board for a parole hearing.

(3)(A) Within 30 days of the inmate’s eligibility date, the Parole Board shall conduct an administrative review of each inmate the Department identifies as eligible for presumptive release who does not meet the risk criteria set forth in subdivision (2) of this subsection. The Board may deny presumptive release and set a hearing if it determines, through its administrative review, that a victim or victims should have the opportunity to participate in a parole hearing. If the Board determines there is a victim or victims who should be notified, the Department shall notify the victim or victims, and the Board shall provide them with the opportunity to participate in a parole hearing.

(B) The Parole Board shall conduct a parole hearing pursuant to section 502 of this title for each eligible inmate that the Department determines meets the risk criteria in subdivision (2) of this subsection.

* * * Furlough * * *

Sec. 8. 28 V.S.A. § 808 is amended to read:

§ 808. TEMPORARY FURLOUGHS GRANTED TO OFFENDERS

(a) The Department may extend the limits of the place of confinement of an offender at any correctional facility if the offender agrees to comply with such conditions of supervision the Department, in its sole discretion, deems appropriate for that offender’s furlough. The Department may authorize a temporary furlough for a defined period for any of the following reasons:

(1) ~~To~~ to visit a critically ill relative;

- (2) ~~To~~ to attend the funeral of a relative_;
- (3) ~~To~~ to obtain medical services_;
- (4) ~~To~~ to contact prospective employers_;
- (5) ~~To~~ to secure a suitable residence for use upon discharge.

~~(6) To continue the process of reintegration initiated in a correctional facility. The offender may be placed in a program of conditional reentry status by the Department upon the offender's completion of the minimum term of sentence. While on conditional reentry status, the offender shall be required to participate in programs and activities that hold the offender accountable to victims and the community pursuant to section 2a of this title.~~

(b) An offender granted a temporary furlough pursuant to this section may be accompanied by an employee of the Department, in the discretion of the Commissioner, during the period of the offender's furlough. The Department may use electronic monitoring equipment such as global position monitoring, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment to enable more effective or efficient supervision of individuals placed on furlough.

(c) The extension of the limits of the place of confinement authorized by this section shall in no way be interpreted as a probation or parole of the offender, but shall constitute solely a permitted extension of the limits of the place of confinement for offenders committed to the custody of the Commissioner.

(d) When any enforcement officer, as defined in 23 V.S.A. § 4₃₂; employee of the Department_; or correctional officer responsible for supervising an offender believes the offender is in violation of any verbal or written condition of the temporary furlough, the officer or employee may immediately lodge the offender at a correctional facility or orally or in writing deputize any law enforcement officer or agency to arrest and lodge the offender at such a facility. The officer or employee shall subsequently document the reason for taking such action.

(e) The Commissioner may place on medical furlough any offender who is serving a sentence, including an offender who has not yet served the minimum term of the sentence, who is diagnosed with a terminal or serious medical condition so as to render the offender unlikely to be physically capable of presenting a danger to society. The Commissioner shall develop a policy regarding the application for, standards for eligibility of, and supervision of persons on medical furlough. The offender may be released to a hospital, hospice, other licensed inpatient facility, or other housing accommodation

deemed suitable by the Commissioner. As used in this subsection, a “serious medical condition” does not mean a condition caused by noncompliance with a medical treatment plan.

~~(f) While appropriate community housing is an important consideration in release of offenders, the Department shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the offender will be served by reentering the community on furlough. The Department shall adopt rules to implement this subsection. [Repealed.]~~

(g) ~~Subsections (b)-(f)~~ Subsection (b) of this section shall also apply to sections 808a and 808c of this title.

Sec. 9. 28 V.S.A. § 808a is amended to read:

§ 808a. TREATMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough to participate in such programs administered by the Department in the community that reduce the offender’s risk to reoffend or that provide reparation to the community in the form of supervised work activities.

(b) Provided the approval of the sentencing judge, if available, otherwise a Superior Court judge, is first obtained, the Department may place on treatment furlough an offender who has not yet served the minimum term of the sentence, who, in the Department’s determination, needs residential treatment services not available in a correctional facility. The services may include treatment for substance abuse or personal violence or any other condition that the Department has determined should be addressed in order to reduce the offender’s risk to reoffend or cause harm to himself or herself or to others in the facility. The offender shall be released only to a hospital or residential treatment facility that provides services to the general population. The State’s share of the cost of placement in such a facility, net of any private or federal participation, shall be paid pursuant to memoranda of agreement between and within State agencies reflective of their shared responsibilities to maximize the efficient and effective use of State resources. In the event that a memorandum of agreement cannot be reached, the Secretary of Administration shall make a final determination as to the manner in which costs will be allocated.

~~(c)(1) Except as provided in subdivision (2) of this subsection, the Department, in its own discretion, may place on treatment furlough an offender who has not yet served the minimum term of his or her sentence for~~

~~an eligible misdemeanor as defined in section 808d of this title if the Department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.~~

~~(2) Driving under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. §§ 1201 and 1210(c) and boating under the influence of alcohol or drugs, second offense, as defined in 23 V.S.A. § 3323 shall be considered eligible misdemeanors for the sole purpose of subdivision (1) of this subsection. [Repealed.]~~

Sec. 10. 28 V.S.A. § 723 is amended to read:

§ 723. CONDITIONAL REENTRY COMMUNITY SUPERVISION
FURLOUGH

~~(a) When a sentenced offender has served the minimum term of the total effective sentence, the~~ The Department may release the offender from a correctional facility under section 808 of this title for the offender to participate in a reentry program while serving the remaining sentence in the community a person who:

(1) has served the minimum term of the person's total effective sentence;

(2) is ineligible for or refuses presumptive parole pursuant to section 501a of this title or has been returned or revoked to prison for a violation of conditions of parole, furlough, or probation; and

(3) agrees to comply with such conditions of supervision the Department, in its sole discretion, deems appropriate for that person's furlough.

(b) The offender's continued supervision in the community is conditioned on the offender's commitment to and satisfactory progress in his or her reentry program and on the offender's compliance with any terms and conditions identified by the Department.

(c) Prior to release under this section, the Department shall screen and, if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The Department shall attempt to identify all necessary services in the reentry plan and work with the offender to make

connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

Sec. 11. 28 V.S.A. § 724 is amended to read:

§ 724. ~~TERMS AND CONDITIONS OF CONDITIONAL REENTRY~~
COMMUNITY SUPERVISION FURLOUGH

The Department shall identify in the terms and conditions of ~~conditional reentry~~ community supervision furlough those programs necessary to reduce the offender's risk of reoffense and to promote the offender's accountability for progress in the reintegration process. The Department shall make all determinations of violations of conditions of community supervision furlough pursuant to this subchapter and any resulting change in status or termination of community supervision furlough status.

Sec. 12. 28 V.S.A. § 724 is amended to read:

§ 724. ~~TERMS AND CONDITIONS OF COMMUNITY SUPERVISION~~
FURLOUGH

(a) Authority of the Department. The Department shall identify in the terms and conditions of community supervision furlough those programs necessary to reduce the offender's risk of reoffense and to promote the offender's accountability for progress in the reintegration process. The Department shall make all determinations of violations of conditions of community supervision furlough pursuant to this subchapter and any resulting change in status or termination of community supervision furlough status.

(b) 30-day interrupt or revocation. Any interruption of an offender's community supervision furlough after the Department has found a technical violation of furlough conditions shall trigger a Department Central Office case staffing review and Department notification to the Office of the Defender General if duration of the interruption will be thirty days or longer.

(c) Appeal. An offender whose furlough status is revoked or interrupted for 30 days or longer shall have the right to appeal the Department's determination to the Civil Division of the Superior Court in accordance with Rule 74 of the Vermont Rules of Civil Procedure. The appeal shall be based on a de novo review of the record. The appellant may offer testimony, and, in its discretion for good cause shown, the court may accept additional evidence to supplement the record. The appellant shall have the burden of proving by a preponderance of the evidence that the Department abused its discretion in imposing a furlough revocation or interrupt for 30 days or longer pursuant to subsection (d) of this section.

(d) Technical violations.

(1) As used in this section, “technical violation” means a violation of conditions of furlough that does not constitute a new crime.

(2) It shall be abuse of the Department’s discretion to revoke furlough or interrupt furlough status for 30 days or longer for a technical violation, unless:

(A) the offender’s risk to reoffend can no longer be adequately controlled in the community, and no other method to control noncompliance is suitable; or

(B) the violation or pattern of violations indicates the offender poses a danger to others or to the community or poses a threat to abscond or escape from furlough.

Sec. 13. 28 V.S.A. § 725 is amended to read:

§ 725. PAROLE HEARING FOR OFFENDERS ON ~~CONDITIONAL~~
REENTRY COMMUNITY SUPERVISION FURLOUGH

(a) The Department shall submit to the Parole Board a recommendation relative to whether the offender should be released to parole pursuant to section 502a 501 of this title when:

(1) an offender sentenced solely for the commission of one or more unlisted crimes has, in the sole discretion of the Department, successfully completed 90 days of community supervision in a conditional reentry program furlough; or

(2) an offender sentenced for the commission of at least one or more listed crimes has, in the sole discretion of the Department, successfully completed 180 days of community supervision in a conditional reentry program furlough.

Sec. 14. 28 V.S.A. § 818 is amended to read:

§ 818. EARNED GOOD TIME; REDUCTION OF TERM

(a) On or before ~~July 1, 2020~~ September 1, 2020, the Department of Corrections shall file a proposed rule pursuant to 3 V.S.A. chapter 25 implementing an earned good time program to become effective on January 1, 2021. The Commissioner shall adopt rules to carry out the provisions of this section as an emergency rule and concurrently propose them as a permanent rule. The emergency rule shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a).

(b) The earned good time program implemented pursuant to this section shall comply with the following standards:

(1) The program shall be available for all sentenced offenders, including furloughed offenders, provided that the program shall not be available to offenders on probation or parole, to offenders eligible for a reduction of term pursuant to section 811 of this title, or to offenders sentenced to life without parole. Offenders currently serving a sentence shall be eligible to begin earning a reduction in term when the earned good time program becomes effective.

(2) Offenders shall earn a reduction of ~~five~~ seven days in the minimum and maximum sentence for each month during which the offender:

(A) is not adjudicated of a major disciplinary rule violation; and

(B) is not reincarcerated from the community for a violation of release conditions, provided that an offender who loses a residence for a reason other than fault on the part of the offender shall not be deemed reincarcerated under this subdivision; and.

~~(C) complies with a merit-based system designed to incentivize offenders to meet milestones identified by the Department that prepare offenders for reentry, if the offender has received a sentence of greater than one year.~~

(3) An offender who receives post-adjudication treatment in a residential setting for a substance use disorder shall earn a reduction of one day in the minimum and maximum sentence for each day that the offender receives the inpatient treatment. While a person is in residential substance abuse treatment, he or she shall not be eligible for good time except as provided in this subsection.

(4) The Department shall:

(A) ensure that all victims of record are notified of the earned good time program at its outset and made aware of the option to receive notifications from the Department pursuant to this subdivision;

(B) provide timely notice ~~no~~ not less frequently than every 90 days to the offender ~~and to any victim of record~~ any time the offender receives a reduction in his or her term of supervision pursuant to this section, ~~and the Department shall;~~

(C) maintain a system that documents and records all such reductions in each offender's permanent record; and

(D) record any reduction in an offender's term of supervision pursuant to this section on a monthly basis and ensure that victims who want information regarding changes in scheduled release dates have access to such information.

~~(5) The program shall become effective upon the Department's adoption of final proposed rules pursuant to 3 V.S.A. § 843.~~

Sec. 15. 13 V.S.A. § 5305 is amended to read:

§ 5305. INFORMATION CONCERNING RELEASE FROM CUSTODY

(a) Victims, other than victims of acts of delinquency, and affected persons shall have the right to request notification by the agency having custody of the defendant before the defendant is released, including a release on bail or conditions of release, furlough, or other community program, upon termination or discharge from probation, or whenever the defendant escapes, is recaptured, dies, or receives a pardon or commutation of sentence. Notice shall be given to the victim or affected person as expeditiously as possible at the address or telephone number provided to the agency having custody of the defendant by the person requesting notice. Any address or telephone number so provided shall be kept confidential. The prosecutor's office shall ensure that victims are made aware of their right to notification of an offender's scheduled release date pursuant to this section.

(b) If the defendant is released on conditions at arraignment, the prosecutor's office shall inform the victim of a listed crime of the conditions of release.

(c) If requested by a victim of a listed crime, the Department of Corrections shall:

(1) at least 30 days before a parole board hearing concerning the defendant, inform the victim of the hearing and of the victim's right to testify before the parole board or to submit a written statement for the parole board to consider; and

(2) promptly inform the victim of the decision of the parole board, including providing to the victim any conditions attached to the defendant's release on parole.

Sec. 16. 28 V.S.A. § 808d is amended to read:

§ 808d. DEFINITION; ELIGIBLE MISDEMEANOR; ~~FURLOUGH AT THE DISCRETION OF THE DEPARTMENT~~

~~For purposes of sections 808a-808c~~ As used in section 808c of this title, “eligible misdemeanor” means a misdemeanor crime that is not one of the following crimes:

* * *

* * * Absconding and Escape * * *

Sec. 17. 28 V.S.A. § 808e is amended to read:

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

(a) The Commissioner of Corrections may issue a warrant for the arrest of a person who has absconded from furlough status in violation of ~~subdivision subsection~~ 808(a)(6), ~~subsection 808(e) or 808(f)~~, or section 808a, 808b, or 808c of this title, requiring the person to be returned to a correctional facility. A law enforcement officer who is provided with a warrant issued pursuant to this section shall execute the warrant and return the person who has absconded from furlough to the Department of Corrections.

(b) A person for whom an arrest warrant is issued pursuant to this section shall not earn credit toward service of his or her sentence for any days that the warrant is outstanding.

Sec. 18. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

(a) A person who, while in lawful custody:

(1) escapes or attempts to escape from any correctional facility or a local lockup shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or

(2) escapes or attempts to escape from an officer, if the person was in custody as a result of a felony, shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or if the person was in custody as a result of a misdemeanor, shall be imprisoned for not more than two years, or fined not more than \$1,000.00, or both.

(b)(1) A person shall not, while in lawful custody:

(A) fail to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

(B) fail to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 808(a)(1)–(5) or § 723;

(C) escape or attempt to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

(D) elope or attempt to elope from the Vermont Psychiatric Care Hospital or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence.

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

(3) ~~It shall not be a violation of subdivision (1)(A), (1)(B), or (1)(C) of this subsection (b) if~~ If the person is on furlough status pursuant to 28 V.S.A. § 808(a)(6)723, 808(e), 808(f), or 808a, 808b, or 808e a violation of this subdivision (1) of this subsection requires a showing that the person intended to escape from furlough.

(c) All sentences imposed under subsection (a) of this section shall be consecutive to any term or sentence being served at the time of the offense.

(d) As used in this section:

(1) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(2) “Participating hospital” means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(3) [Repealed.]

* * * Reports to General Assembly * * *

Sec. 19. RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

STUDY AND RECOMMENDATIONS; VERMONT

SENTENCING COMMISSION

(a) During the 2020 legislative interim, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, the Executive Director of Racial Equity, the Chief Superior Judge, the Attorney General, the Defender General, the Department of Corrections, and the Executive Director of the Department of State’s Attorneys and Sheriffs shall work with Crime Research Group to identify existing data that explores the relationships between demographic factors and sentencing outcomes and determine whether and

where current data systems and collections are insufficient for additional analyses and what staffing or resources are needed to support more robust reporting. Relevant data shall include plea agreements, sentence types and length, criminal history, offense severity, and any other metric that may further identify differences in how people are charged and sentenced by county, race, and gender. The stakeholders identified in this subsection shall also:

(1) Perform an initial analysis of sentencing patterns across the State to identify where the use and length of incarceration may result in or exacerbate racial disparities and make any related proposals for legislative action, including recommendations for further study.

(2) Jointly report their findings pursuant to this subsection and any associated recommendations pursuant to subdivisions (1) and (2) of this subsection to the Joint Legislative Justice Oversight Committee and the Vermont Sentencing Commission on or before December 1, 2020. The report shall include any dissenting opinions among the stakeholders.

(b)(1) The Vermont Sentencing Commission shall consider relevant findings and recommendations developed by the stakeholder group pursuant to subsection (a) of this section and:

(A) consider whether changes to Vermont's sentencing structure are necessary to address the findings and implement the recommendations developed by the stakeholder group; and

(B) if it deems appropriate, issue nonbinding guidance for offenses for which there are racial and geographic disparities in sentencing.

(2) On or before February 26, 2021, the Vermont Sentencing Commission shall report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions on its determinations pursuant to subdivision (1) of this subsection.

Sec. 20. PAROLE REPORT; JUDICIARY; PAROLE BOARD

On or before January 15, 2022, the Chair of the Vermont Parole Board shall report to the Senate Committee on Judiciary and the House Committee on Corrections and Institutions on the implementation of presumptive parole as established by 28 V.S.A. §§ 501a and 502a. The report shall include an analysis of the current administrative burden of presumptive parole and the anticipated administrative burden of expanding presumptive parole eligibility to offenders who have committed a listed crime as defined in 13 V.S.A. § 5201.

Sec. 21. JUSTICE REINVESTMENT II WORKING GROUP; OVERSIGHT
AND IMPLEMENTATION OF JUSTICE REINVESTMENT II

(a) Justice Reinvestment II Working Group. The Justice Reinvestment II Working Group, established by the Governor in Executive Order 03-19, shall oversee the implementation of Justice Reinvestment II as provided in this section. A representative of the Vermont Parole Board shall join the Justice Reinvestment II Working Group to carry out the duties set forth in this section.

(b) Duties. The Working Group shall provide oversight over the rollout of Justice Reinvestment II, including the implementation of case reviews and releases for individuals newly eligible for presumptive parole, calculations of earned good time for eligible individuals within Department of Corrections facilities, and the Department's efforts to assess how its graduated sanctions are implemented in local field offices in compliance with Sec. 23 of this act. The Working Group shall also work with the Council on State Governments to:

(1) based on the information provided by the Agency of Human Services pursuant to Sec. 22 of this act, identify current screening, assessment, and case planning gaps for incarcerated individuals and propose system improvements for minimizing gaps in screening and assessment and ensuring case plans reflect both the individual's identified criminogenic and behavioral health needs;

(2) identify tools to assist in identifying specific offender risk factors that can be targeted with services and treatment programs based on evidence-based practices shown to be effective in reducing recidivism;

(3) determine how to share information about risk assessments and available Department and community-based programming among each other to inform plea agreement, sentencing, and probation revocation decisions;

(4) study the efficacy of using probation as a presumptive sentencing structure for certain types of offenses for which connections to community-based programming leads to better outcomes;

(5) evaluate the policy of probationers earning one day of credit towards their suspended sentence for each day served on probation without violation, including:

(A) how best to implement such a policy without impacting the length of probation terms or suspended sentences imposed;

(B) whether the credit accrued should apply to both the minimum and maximum suspended sentences;

(C) whether accrual of credit equal to the imposed maximum term of imprisonment or statutory maximum term of imprisonment for the offense should result in the termination and discharge of probation; and

(D) whether terms of probation for misdemeanors should be for a specific duration, not to exceed two years, or if the court should have discretion to impose a longer term in the interests of justice;

(6) explore additional options, including an option modeled after probation midpoint reviews provided for in 28 V.S.A. § 252(d), for allowing release from probation prior to the end of the imposed probation term, either in addition to or instead of a policy for providing one day of credit towards a suspended sentence for each day served on probation without violation as detailed in subdivision (5) of this subsection;

(7) evaluate the appeal process set forth in Sec. 12 of this Act for offenders on community supervision furlough who are returned to a correctional facility for 30 days or longer for a technical violation as an appropriate due process mechanism for offenders returned from furlough;

(8) develop funding and appropriation recommendations for future justice reinvestments; and

(9) recommend any necessary legislative action based on information gathered during the implementation of this act.

(c) Reports.

(1) On or before January 15, 2021, the Working Group shall report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions on the results of its work pursuant to subdivisions (2)–(7) of subsection (b) of this section and suggested legislative action regarding probation and earned credit on probation, a process by which offenders may appeal certain furlough revocations or interrupts by the Department, and how to ensure sentencing, revocation, and plea agreement decisions are informed by available programming, including community treatment programs and individual risk assessment information.

(2) On or before January 15, 2022, the Working Group shall report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions with its findings pursuant to subsection (b) of this section and any recommendations for legislative action.

Sec. 22. AGENCY OF HUMAN SERVICES; REPORT TO JUSTICE

REINVESTMENT II WORKING GROUP

On or before December 1, 2020, the Agency of Human Services, with assistance from the Council of State Governments Justice Center, shall coordinate the provision of the following information to the Justice Reinvestment II Working Group:

(1) the nature and scope of available screening and assessment of mental health and substance use needs among incarcerated populations, and how screening and assessment results inform case plans for sentenced individuals while they are incarcerated and prior to their release into community supervision, including individuals on probation; and

(2) the existing behavioral health collaborative care coordination and case management protocols that serve people in Department of Corrections custody or supervision and any existing challenges to information sharing between service providers and the Department.

Sec. 23. 2020 Acts and Resolves No. 88, Sec. 70a is amended to read:

Sec. 70a. DEPARTMENT OF CORRECTIONS; GRADUATED
SANCTIONS; REENTRY HOUSING; REPORT

(a) On or before ~~April 1, 2020~~ January 15, 2021, the Department of Corrections shall report to the Senate Committee on Judiciary, the House Committee on Corrections and Institutions, and the House and Senate Committees on Appropriations on how to strengthen existing graduated sanctions and incentives policies to ensure they reflect current research on best practices for responses to violation behavior that most effectively achieve behavior change and uphold public safety. The Department shall also identify reentry housing needs for corrections populations. As a part of this work, the Department shall submit its recommendations including initial cost estimates regarding:

(1) formalizing the use of incentives and sanctions positive to negative reinforcements in supervision practices at a 4:1 ratio and require incentives reinforcements to be entered and tracked in the community supervision case management system;

* * *

* * * Appropriation and Repeals * * *

Sec. 24. JUSTICE REINVESTMENT II APPROPRIATION

(a) In FY21, \$2,000,000.00 is appropriated from the General Fund to the Agency of Human Services to fund Justice Reinvestment II investments as follows:

(1) \$400,000.00 is reserved for risk-based domestic violence intervention programming available in communities that are certified by the Vermont Council on Domestic Violence, and statewide coordination of those efforts through the Vermont Council on Domestic Violence. On or before January 15, 2021, the Vermont Network against Domestic and Sexual Violence will provide an interim report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions on progress related to outcome indicators for domestic violence accountability programming. On or before January 15, 2022, the Network shall provide a final report to the same committees.

(2) \$1,000,000.00 is reserved for additional evidence-based transitional housing programming.

(3) The remainder is reserved for evidence-based programming for offenders transitioning back into the community, including workforce development and other community reentry supports.

(b) The General Assembly intends that this appropriation of onetime funds is to immediately invest funds to reduce recidivism and increase public safety, and for savings achieved in and FY21 as a result of the legislative action taken in this act to be used to fund these investments in FY22 and in the future.

Sec. 25. REPEALS

28 V.S.A. § 808b (home confinement furlough) and 28 V.S.A. § 808c (reintegration furlough) are repealed on January 1, 2021.

* * * Effective Dates * * *

Sec. 26. EFFECTIVE DATES

(a) This section and Secs. 14 (earned good time; reduction of term) and 25 (repeals) shall take effect on passage.

(b) Sec. 12 (terms and conditions of community supervision furlough) shall take effect on July 1, 2021.

(c) Sec. 5 (presumptive parole) shall take effect on January 1, 2023.

(d) All other sections shall take effect on January 1, 2021.

(Committee vote: 10-0-1)

(For text see Senate Journal February 20, 2020, page 223)

Rep. Hooper of Montpelier, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Corrections and Institutions and when further amended by

striking Sec. 24 (Justice Reinvestment II appropriation) in its entirety and by renumbering the remaining sections to be numerically correct.

(Committee Vote: 11-0-0)

Favorable

S. 348

An act relating to temporary elections procedures in the year 2020

Rep. Copeland Hanzas of Bradford, for the Committee on Government Operations, recommends that the bill ought to pass in concurrence.

(Committee Vote: 10-1-0)

(For text see Senate Journal June 2, 2020, page 650)

Action Postponed Until Wednesday, June 10, 2020

Third Reading

H. 833

An act relating to the interbasin transfer of surface waters

Favorable with Amendment

H. 99

An act relating to trade in covered animal parts or products

H. 581

An act relating to the funding of the Department of Fish and Wildlife

H. 783

An act relating to recovery residences

Action Postponed until Friday, June 12, 2020

Favorable with Amendment

H. 880

An act relating to Abenaki place names on State park signs

H. 923

An act relating to entering a vehicle without legal authority or consent

Committee Bill For Second Reading

H. 940

An Act relating to animal cruelty investigation response and training

Ordered to Lie

H. 162

An act relating to removal of buprenorphine from the misdemeanor crime of possession of a narcotic.

Pending Action: Second reading

H. 492

An act relating to establishing a homeless bill of rights and prohibiting discrimination against people without homes.

Pending Action: Second reading

H. 535

An act relating to approval of amendments to the charter of the Town of Brattleboro.

Pending Action: Second reading