

1 H.611

2 Introduced by Representatives Wood of Waterbury and Noyes of Wolcott

3 Referred to Committee on

4 Date:

5 Subject: Human services; Department of Disabilities, Aging, and Independent

6 Living; area agencies on aging; older Vermonters

7 Statement of purpose of bill as introduced: This bill proposes to establish an
8 Older Vermonters Act that describes a system of services, supports, and
9 protections for Vermont residents 60 years of age or older. The bill would also
10 establish annual inflationary increases to Medicaid reimbursement rates for
11 home- and community-based service providers.

12 An act relating to the Older Vermonters Act

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

14 * * * Older Vermonters Act * * *

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

16 CHAPTER 62. OLDER VERMONTERS ACT

17 § 6201. SHORT TITLE

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

1 § 6202. PRINCIPLES OF SYSTEM OF SERVICES, SUPPORTS, AND
2 PROTECTIONS FOR OLDER VERMONTERS

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

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

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

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

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

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

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

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

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

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

12 § 6203. DEFINITIONS

13 As used in this chapter:

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

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

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

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

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

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

12 (A) physical and mental disabilities;

13 (B) language barriers; and

14 (C) cultural, social, or geographic isolation, including isolation
15 caused by racial or ethnic status, that:

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

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

20 (7) “Home- and community-based services” means long-term services
21 and supports received in a home or community setting other than a nursing

1 home pursuant to the Choices for Care component of Vermont’s Global
2 Commitment to Health Section 1115 Medicaid demonstration or a successor
3 program and includes enhanced residential care.

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

7 (9) “Older Americans Act” means the federal law originally enacted in
8 1965 to facilitate a comprehensive and coordinated system of supports and
9 services for older Americans and their caregivers.

10 (10) “Older Vermonter” means an individual residing in this State who
11 is 60 years of age or older.

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

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

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

18 (iii) managing one’s own financial affairs.

19 (B) The term “self-neglect” excludes individuals who make a
20 conscious and voluntary choice not to provide for certain basic needs as a

1 matter of lifestyle, personal preference, or religious belief and who understand
2 the consequences of their decision.

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

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

10 § 6204. DEPARTMENT OF DISABILITIES, AGING, AND

11 INDEPENDENT LIVING; DUTIES

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

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

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

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

21 (B) housing and transportation; and

1 (C) health care reform activities.

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

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

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

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

14 § 6205. AREA AGENCIES ON AGING; DUTIES

15 (a) Consistent with the Older Americans Act, each area agency on aging
16 shall:

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

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

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

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

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

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

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

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

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

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

19 (3) use their existing area plans to facilitate awareness of aging issues,
20 needs, and services and to promote the system principles expressed in section
21 6202 of this chapter.

1 § 6206. PLAN FOR COMPREHENSIVE AND COORDINATED SYSTEM
2 OF SERVICES, SUPPORTS, AND PROTECTIONS

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

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

13 (2) criteria for receiving services or funding;

14 (3) types of services provided; and

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

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

18 (A) information obtained from older Vermonters, their families, and
19 their guardians, if applicable, and from providers of care and services to older
20 Vermonters;

21 (B) a comprehensive needs assessment that includes:

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

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

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

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

9 (C) a comprehensive evaluation of the services available to older
10 Vermonters across the State at all levels and in all settings, including home-
11 and community-based services, residential care homes, assisted living
12 residences, nursing facilities, hospitals and health clinics, adult day facilities,
13 senior centers, private medical offices, and other settings in which care is or
14 may later be provided.

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

18 (c)(1) At least 60 days prior to adopting the proposed plan, the
19 Commissioner shall submit a draft to the Department's Advisory Board
20 established pursuant to section 505 of this title for advice and

1 recommendations. The Advisory Board shall provide the Commissioner with
2 written comments on the proposed plan.

3 (2) At least 30 days prior to filing a proposed rule with the Secretary of
4 State pursuant to 3 V.S.A. chapter 25 that contains the categories required
5 pursuant to subsection (a) of this section, the Commissioner shall provide the
6 proposed categories to the Advisory Board for its review. The Advisory Board
7 may submit public comments on the proposed rule in accordance with 3 V.S.A.
8 chapter 25.

9 (d) The Commissioner may make annual revisions to the plan as needed in
10 accordance with the process set forth in this section. The Commissioner shall
11 submit any proposed revisions to the Department's Advisory Board for
12 comment within the time frames established in subdivision (c)(1) of this
13 section.

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

18 (1) implementation of the plan;

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

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

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

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

10 (6) with respect to the Department's adult protective services activities
11 during the previous fiscal year:

12 (A) the number of unduplicated reports of abuse, neglect, or
13 exploitation of a vulnerable adult received by the Department's Adult
14 Protective Services program and the number of these reports assigned for
15 investigation;

16 (B) the total number of cases currently open and under investigation;

17 (C) the number of reports assigned for investigation that were not
18 substantiated;

19 (D) the number of cases that were not investigated pursuant to
20 section 6906 of this title because:

21 (i) the report was based on self-neglect;

1 (ii) the alleged victim did not meet the statutory definition of a
2 vulnerable adult;

3 (iii) the allegation did not meet the statutory definition of abuse,
4 neglect, or exploitation;

5 (iv) the report was based on “resident on resident” abuse;

6 (v) the alleged victim died; or

7 (vi) for any other reason;

8 (E) for reports not investigated because the alleged victim did not
9 meet the definition of a vulnerable adult, the relationship of the reporter to the
10 alleged victim;

11 (F) regardless of whether a report was investigated, substantiated, or
12 unsubstantiated, the number of reports referred to other agencies for
13 investigation by the Adult Protective Services program, including
14 identification of each agency and the number of referrals it received;

15 (G) the number of reports that the Adult Protective Services program
16 referred for protective services, including a summary of the services provided;

17 (H) the number of reports resulting in a written coordinated treatment
18 plan pursuant to subsection 6907(a) of this title or a plan of care as defined in
19 subdivision 6902(8) of this title;

20 (I) the number of reports for which an individual was placed on the
21 abuse and neglect registry as the result of a substantiation;

1 (J) the number of reports referred to law enforcement agencies;

2 (K) the number of reports for which a penalty was imposed pursuant
3 to section 6913 of this title and the number of reports for which actions for
4 intermediate sanctions were brought pursuant to section 7111 of this title;

5 (L) for reports not investigated pursuant to section 6906 of this title,
6 the services or agencies to which the reporter, alleged victim, or both were
7 referred; and

8 (M) for each of the items reported pursuant to subdivisions (A)–(L)
9 of this subdivision (6), a statistical breakdown of the number of reports
10 according to the type of abuse and to the victim’s:

11 (i) relationship to the reporter;

12 (ii) relationship to the alleged perpetrator;

13 (iii) age;

14 (iv) disability or impairment; and

15 (v) place of residence.

16 § 6207. SERVICE PROVIDERS; REGISTRATION

17 The Department of Disabilities, Aging, and Independent Living shall
18 establish a process for registering all business organizations providing in-home
19 services to older Vermonters that are not Vermont Medicaid-participating
20 providers or family caregivers. The registration process shall include
21 collecting contact information and a general description of the services each

1 provider offers and making the information publicly available on the
2 Department's website.

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

5 Sec. 2. 33 V.S.A. § 900 is amended to read:

6 § 900. DEFINITIONS

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

9 * * *

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

16 Sec. 3. 33 V.S.A. § 904 is amended to read:

17 § 904. RATE SETTING

18 (a)(1) The Director shall establish by rule procedures for determining
19 payment rates for:

20 (A) care of State-assisted persons to nursing homes;

1 (B) inflationary rate increases to providers of home- and community-
2 based services; and to

3 (C) such other providers as the Secretary shall direct.

4 (2) The Secretary shall have the authority to establish rates that the
5 Secretary deems sufficient to ensure that the quality standards prescribed by
6 section 7117 of this title are maintained, subject to the provisions of section
7 906 of this title.

8 (3) Beginning in State fiscal year 2003, the Medicaid budget for care of
9 State-assisted persons in nursing homes shall employ an annual inflation factor
10 ~~which that~~ is reasonable and which that adequately reflects economic
11 conditions, in accordance with the provisions of Section 5.8 of the ~~regulations~~
12 ~~promulgated~~ rules adopted by the Division of Rate Setting (“Methods,
13 Standards, and Principles for Establishing Medicaid Payment Rates for Long-
14 Term Care Facilities”).

15 (b) No payment shall be made to any nursing home, on account of any
16 State-assisted person, unless the nursing home is certified to participate in the
17 State/federal medical assistance program and has in effect a provider
18 agreement.

1 Sec. 4. 33 V.S.A. § 911 is added to read:

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

4 (a) The rates for providers of home- and community-based services
5 authorized by the Department of Vermont Health Access or the Department of
6 Disabilities, Aging, and Independent Living, or both, to provide home-based,
7 community-based, or home- and community-based services to individuals
8 receiving services pursuant to the Choices for Care component of Vermont's
9 Global Commitment to Health Section 1115 Medicaid demonstration shall be
10 increased by an annual inflation factor.

11 (b) The Division shall calculate the inflation factor for home- and
12 community-based services annually according to the procedure adopted by rule
13 and shall report it to the Departments for application to home- and community-
14 based provider Medicaid reimbursement rates beginning on July 1.

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

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

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

1 * * * Self-Neglect Working Group * * *

2 Sec. 5. SELF-NEGLECT WORKING GROUP; REPORT

3 (a) Creation. There is created the Self-Neglect Working Group to provide
4 recommendations regarding adults who, due to physical or mental
5 impairment or diminished capacity, are unable to perform essential self-care
6 tasks.

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

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

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

13 (3) the Vermont Attorney General or designee;

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

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

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

19 (7) the Executive Director of the VNAs of Vermont or designee.

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

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

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

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

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

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

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

1 (b) Secs. 2–4 (Medicaid rates for home- and community-based service
2 providers) shall take effect on passage and shall apply to home- and
3 community-based service provider rates beginning on July 1, 2021.