

VERMONT LEGAL AID, INC.

VERMONT OMBUDSMAN PROJECT

264 NORTH WINOOSKI AVE.
BURLINGTON, VERMONT 05401
(802) 863-5620 (VOICE AND TTY)
FAX (802) 863-7152
(800) 747-5022

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

February 5, 2020

Representative Ann Pugh, Chair
House Committee on Human Services

RE: Testimony on H. 611 (Older Vermonters Act/ Annual Inflationary Increases HCBS)

Representative Pugh:

Thank you, and the full committee, for the opportunity to provide testimony on H. 611.

The Vermont Long-Term Ombudsman Project (VOP) supports H. 611.

What follows below are the VOP's comments concerning the proposed legislation.

1. Older Vermonters Act

§ 6202 – (Principles)

NO COMMENT

§ 6203 – (Definitions)

Comments:

- **§ 6203(7):** The definition here does not match the definition of “home-and community based services” in §900(7) of the proposed legislation.
- **§ 6203(8):** “Kinship caregiver” seems misplaced since it is defined as an individual taking permanent or temporary care of a child.
- **§ 6203(11)(A):** “Self-neglect” if the definition being used is not a standard or uniform definition, subsection (B) could be revised to read as follows:
 - (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 **potential** consequences of their decision.*

§ 6204 (DAIL duties)

NO COMMENT

The Vermont Ombudsman Project advocates for residents of long-term care facilities, including nursing and residential care homes. The Vermont Ombudsman Project is a division of Vermont Legal Aid, Inc.

§ 6205 (Area Agencies on Aging duties)

NO COMMENT

§ 6206 (PLAN) (State Plan on Aging)

NO COMMENT

§ 6207 (Service Providers; Registration)

Comments:

- The VOP notes that in the proposed bill, kinship provider is always used with family caregiver. **Possible revision to the legislation:**
 - *The Department of Disabilities, Aging, and Independent Living shall establish a process for registering all business organizations providing in-home services to older Vermonters that are not Vermont Medicaid-participating providers or family caregivers or **kinship caregivers**.*
- The VOP suggests that the proposed legislation clarify who is responsible for providing the contact information and description of the “general services” provided. We believe that for information to be useful to the public, it must be accurate and reliable.
 - **Possible revision to the legislation:** *The registration process shall include that each business organization provide the Department with contact information and an accurate description of the services each provider offers, which shall be publicly available on the Department’s website.*

2. Increasing Medicaid Rates for Home-and Community-Based Service Providers

§ 900 (Definitions)

Comments:

- **§ 900(7):** The VOP believes that the definition of “Home and community-based services” should include Adult Family Care Homes. **Possible revision to the legislation:**
 - *(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, enhanced residential care services, and **adult family care homes**.*

§ 904 (Rate Setting)

Comments:

- **§ 904 (a)(1)(B)**: Currently, the section addresses “payment rates” for care of State-assisted persons to nursing homes and “such other providers” as the Secretary shall direct. In the VOP’s opinion, the proposed legislation is **mixing payment rates for nursing homes and other such providers, with inflationary rate increases for providers of home and community based services** (it is also inserting language about inflationary rate increases within text that applies only to nursing homes).
- **§ 904 (a)(1)(B)**: For clarity, the VOP believes that it is worth considering keeping payment rates and inflationary rate increases separate. Also, it may be better to keep separate the different terms, if the goal is to ensure an annual inflationary increase (i.e., it will be clear that the section’s requirements, limitations and caveats **pertaining to nursing home payment rates** do not apply to the proposed inflationary rate increases). **Possible revision to the legislation:**

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

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

(B) such other providers as the Secretary shall direct.

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

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

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

(c) The Director shall establish by rule procedures for inflationary rate increases to providers of home- and community based services.

§ 911 (Inflation factor for Home-and Community-based services; payment rates)

NO COMMENTS

3. Self-Neglect Working Group

§ 5 (Self-Neglect Working Group; Report)

Comments:

- **§ 5(b) Membership.** The VOP notes that the Vulnerable Adult Fatality Team (VAFT) has discussed the issue of self-neglect, while at the same time, we acknowledge that there is overlap between the proposed membership (for the legislation) and the current membership of VAFT.

4. Effective Dates

§ 6 (Effective dates)

NO COMMENTS

Thank you again for the opportunity to provide testimony on H. 611.

Sincerely,

/S/ Sean Londergan

Sean Londergan
State Long-Term Care Ombudsman