

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.  
3 92 entitled “An act relating to Human Services Board fair hearing  
4 proceedings” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 3 V.S.A. § 3090 is amended to read:

8 § 3090. HUMAN SERVICES BOARD

9 (a) The Human Services Board is created within the Agency of Human  
10 Services ~~as the successor to and the continuation of the present Social Welfare~~  
11 ~~Board~~. It consists of seven members. The Governor, with the advice and  
12 consent of the Senate, shall appoint members for terms of six years so that not  
13 more than three terms expire in the same biennium. The Governor shall  
14 designate the Board’s Chair.

15 (b) The duties of the Board shall be to act as a Fair Hearing Board on  
16 appeals brought pursuant to section 3091 of this title.

17 (c) The Board shall hold meetings at times and places warned by the Chair  
18 ~~on his or her~~ the Chair’s own initiative or upon request of two Board members  
19 or the Governor. Four members shall constitute a quorum, except that three  
20 members shall constitute a quorum at any meeting upon the written  
21 authorization of the Chair issued in connection with that meeting.

1 (d) With the approval of the Governor the Board may appoint one or more  
2 hearing officers, who shall be outside the classified service, and it may employ  
3 such secretarial assistance as it deems necessary in the performance of its  
4 duties.

5 (e) On or before January 15 of each year, the Board shall report to the  
6 House Committees on Human Services and on Health Care and the Senate  
7 Committees on Appropriations and on Health and Welfare regarding the fair  
8 hearings conducted by the Board during the three preceding calendar years,  
9 including:

10 (1) the total number of fair hearings conducted over the three-year  
11 period and per year;

12 (2) the number of hearings per year involving appeals of decisions by  
13 the Agency itself and each department within the Agency, with the appeals and  
14 decisions relating to health insurance through the Vermont Health Benefit  
15 Exchange reported distinctly from other programs;

16 (3) the number of hearings per year based on appeals of decisions  
17 regarding:

18 (A) eligibility;

19 (B) benefits;

20 (C) coverage;

21 (D) financial assistance;

- 1 (E) child support; and  
2 (F) other categories of appeals;  
3 (4) the number of hearings per year based on appeals of decisions  
4 regarding each State program over which the Board has jurisdiction;  
5 (5) the number of decisions per year made in favor of the appellant; and  
6 (6) the number of decisions per year made in favor of the department or  
7 the Agency.

8 Sec. 2. 3 V.S.A. § 3091 is amended to read:

9 § 3091. HEARINGS

10 (a) An applicant for or a recipient of assistance, benefits, or social services  
11 from the Department for Children and Families; of Vermont Health Access;  
12 of Disabilities, Aging, and Independent Living; of Mental Health; or of the  
13 Department of Health's Women, Infant, and Children program, or an applicant  
14 for a license from one of those departments, except for the Department of  
15 Health, or a licensee may file a request for a fair hearing with the Human  
16 Services Board. An opportunity for a fair hearing will be granted to any  
17 individual requesting a hearing because the individual's claim for assistance,  
18 benefits, or services is denied, or is not acted upon with reasonable  
19 promptness; or because the individual is aggrieved by any other Agency or  
20 departmental action affecting the individual's receipt of assistance, benefits, or  
21 services, or license or license application; or because the individual is

1 aggrieved by Agency or departmental policy as it affects the individual's  
2 situation.

3 (b)(1) At least 10 days prior to a scheduled hearing, the Board shall provide  
4 the appellant with a plain language summary of the fair hearing proceedings,  
5 including:

6 (A) a description of the extent to which a hearing resembles a court  
7 proceeding;

8 (B) a glossary of any legal terms used;

9 (C) notice that the department or Agency's counsel will be present at  
10 the hearing to represent the department or Agency; and

11 (D) instructions on how to gather and present evidence at the hearing.

12 (2) The hearing shall be conducted by the Board or by a hearing officer  
13 appointed by the Board. The Chair of the Board may compel, by subpoena, the  
14 attendance and testimony of witnesses and the production of books and  
15 records. All witnesses shall be examined under oath. The Board shall adopt  
16 rules with reference to appeals, which shall not be inconsistent with this  
17 chapter. The rules shall provide for reasonable notice to parties, ~~and~~ including  
18 a requirement to identify the legal issue that the Board or hearing officer is  
19 anticipated to decide at the hearing. The rules shall also provide for an  
20 opportunity to be heard and be represented by counsel.

1 (c) The Board or the hearing officer shall issue written findings of fact. If  
2 the hearing is conducted by a hearing officer, the hearing officer's findings  
3 shall be reported to the Board, and the Board shall approve the findings and  
4 adopt them as the findings of the Board unless good cause is shown for  
5 disapproving them. Whether the findings are made by the Board, or by a  
6 hearing officer and adopted by the Board, the Board shall enter its order based  
7 on the findings.

8 (d) After the fair hearing, the Board may affirm, modify, or reverse  
9 decisions of the Agency or department; it may determine whether an alleged  
10 delay was justified; and it may make orders consistent with this title requiring  
11 the Agency or department to provide appropriate relief including retroactive  
12 and prospective benefits. The Board shall consider, and shall have the  
13 authority to reverse or modify, decisions of the Agency or department based on  
14 rules that the Board determines to be in conflict with State or federal law. The  
15 Board shall not reverse or modify Agency or departmental decisions that are  
16 determined to be in compliance with applicable law, even though the Board  
17 may disagree with the results effected by those decisions.

18 (e)(1) The Board shall give written notice of its decision to the ~~person~~  
19 ~~applying for fair hearing~~ appellant and to the Agency or department.

20 (2) Unless a continuance is requested or consented to by an ~~aggrieved~~  
21 ~~person~~ appellant, decisions and orders concerning Temporary Assistance to

1 Needy Families (TANF) under 33 V.S.A. chapter 11, TANF-Emergency  
2 Assistance (TANF-EA) under Title IV of the Social Security Act, and medical  
3 assistance (Medicaid) under 33 V.S.A. chapter 19 shall be issued by the Board  
4 within 75 days after the request for hearing.

5 (3) Notwithstanding any provision of subsection (c) or (d) or  
6 subdivision (1) of this subsection (e) to the contrary, in the case of an  
7 expedited Medicaid fair hearing, the Board shall delegate both its fact-finding  
8 and final decision-making authority to a hearing officer, and the hearing  
9 officer's written findings and order shall constitute the Board's decision and  
10 order in accordance with timelines set forth in federal law.

11 (f) The Agency or department, as applicable, or the appellant may appeal  
12 from decisions of the Board to the Supreme Court under V.R.A.P. 13. Pending  
13 the final determination of any appeal, the terms of the order involved shall be  
14 given effect by the Agency or department except insofar as they relate to  
15 retroactive benefits.

16 (g) A party to an order or decree of the Board or the Board itself, or both,  
17 may petition the Supreme Court for relief against any disobedience of or  
18 noncompliance with the order or decree. In the proceedings and upon such  
19 notice thereof to the parties as it shall direct, the Supreme Court shall hear and  
20 consider the petition and make such order and decree in the premises by way

1 of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning  
2 the enforcement of the order and decree of the Board as shall be appropriate.

3 (h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary  
4 shall review all Board decisions and orders concerning TANF, TANF-EA,  
5 Office of Child Support Cases, Medicaid, and the Vermont Health Benefit  
6 Exchange. The Secretary shall:

7 (A) adopt a Board decision or order, except that the Secretary may  
8 reverse or modify a Board decision or order if:

9 (i) the Board's findings of fact lack any support in the record; or  
10 (ii) the decision or order misinterprets or misapplies State or  
11 federal policy or rule; and

12 (B) issue a written decision setting forth the legal, factual, or policy  
13 basis for reversing or modifying a Board decision or order.

14 (2) Notwithstanding subsections (d) and (f) of this section, a Board  
15 decision and order concerning TANF, TANF-EA, Office of Child Support,  
16 Medicaid, and the Vermont Health Benefit Exchange shall become the final  
17 and binding decision of the Agency or department upon its approval by the  
18 Secretary. The Secretary shall either approve, modify, or reverse the Board's  
19 decision and order within 15 days ~~of~~ following the date of the Board decision  
20 and order. If the Secretary fails to issue a written decision within 15 days as

1 required by this subdivision, the Board’s decision and order shall be deemed to  
2 have been approved by the Secretary.

3 (3) Notwithstanding subsection (f) of this section, only the ~~claimant~~  
4 appellant may appeal a decision of the Secretary to the Supreme Court. Such  
5 appeals shall be pursuant to V.R.A.P. 13. The Supreme Court may stay the  
6 Secretary’s decision upon the ~~claimant’s~~ appellant’s showing of a fair ground  
7 for litigation on the merits. The Supreme Court shall not stay the Secretary’s  
8 order insofar as it relates to a denial of retroactive benefits.

9 (i) In the case of an appeal of a Medicaid covered service decision made by  
10 the Department of Vermont Health Access or any entity with which the  
11 Department of Vermont Health Access enters into an agreement to perform  
12 service authorizations that may result in an adverse benefit determination, the  
13 right to a fair hearing granted by subsection (a) of this section shall be  
14 available to an ~~aggrieved beneficiary~~ appellant only after that ~~individual~~  
15 appellant has exhausted, or is deemed to have exhausted, the Department of  
16 Vermont Health Access’s internal appeals process and has received a notice  
17 that the adverse benefit determination was upheld.

18 (j) The Board, the Agency, and any departments and advocates regularly  
19 appearing before the Board shall convene on a quarterly basis to discuss shared  
20 observations, challenges, and trends for the purpose of improving outcomes  
21 and accountability. At least once every three years, participants shall utilize

1 the assistance of the Agency of Administration’s Chief Performance Officer  
2 established by section 2310 of this title, or any other appropriate personnel, to  
3 provide recommendations on strategic performance improvement and  
4 professional development opportunities.

5 (k) Annually, on or before July 1, the Human Services Board shall submit  
6 Agency- and department-specific reports to the Agency and each department  
7 appearing before the Human Services Board to identify and address any  
8 patterns specific to the Agency or a department. Each report shall address:

9 (1) the number and types of cases for which a fair hearing is requested;

10 (2) the number of cases requested and resolved before the hearing;

11 (3) the number of hearings decided in favor of the appellant;

12 (4) the number of hearings decided in favor of the Agency or

13 department; and

14 (5) any other Agency- or department-specific patterns observed by the

15 Board.

16 (l) Annually, each legal counsel representing a department or the Agency  
17 before the Human Services Board shall participate in training on interacting  
18 with pro se appellants.

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2025.

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7 (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE