

ACLU of Vermont: Recommendations for H. 938

Disability Rights

The individual rights and liberties of people with disabilities – to live in integrated settings and make their own decisions about services and treatment – are fundamental. Our most significant concern with H.938 is that the tiered shelter system will create segregated settings for people with disabilities where they will be required to comply with treatment protocols and submit to mandatory services – or face being unsheltered altogether. A system in which people with disabilities have no choice but to enter segregated programs and services is not lawful pursuant to the Americans with Disabilities Act and Rehabilitation Act of 1973.

Best practices for case management (and what is reflected in the case management practices of OEO's Permanent Supportive Housing Assistance program) is to provide conflict-free, voluntary services. The language as written in H.938 appears to force or coerce individuals into treatment and needs to be refined to promote individualized case management plans and voluntary engagement with services. Research on the topic of forced treatment for substance use disorder has widely shown that the practice is ineffective and harmful, heavily increasing the risk of overdose and death following the end of interventions. And a choice between being unsheltered or forced into SUD or mental health treatment is no choice at all. Services should be evidence-based, readily available, and—importantly—voluntary.

- **Household Responsibilities:**

1. Compliance with “treatment” should not be a required component of case management.

- We recommend removing reference to treatment in § 2210 (a)(3).

2. Language for “suitable placements” states that a household may be terminated from the Program for “repeatedly refusing suitable placements,” but suitable placements are not defined. A “suitable placement” must not include treatment facilities, nursing homes, or other institutional placements, unless the participant both needs and wants an institutional level of care. People with disabilities cannot, pursuant to 28 C.F.R. 35.130(d), be forced into institutional settings when they could be served in the community.

- We recommend striking this section: § 2210 (c).

- **Highly Structured Shelters:** Placement and services appear to be non-voluntary. We recommend:

- Offering residents choice in placement to the extent possible. If “highly structured shelters” include shelters designated as shelters for runaway and homeless youth, for families, or other targeted groups, the bill should

provide greater clarity to identify how those population-specific shelters will be categorized;

- o Removing references to treatment in § 2205 (a)(2); and
 - o Clarifying that all services are voluntary and eligibility is not conditioned on participation in services; and clarifying that engagement in treatment and other services will not be required for a household to remain in the program.
- **Specialized Shelter Services:** Placement and services appear to be non-voluntary. It is not permissible for the only option for people with substance use disorder, mental health disabilities, or physical disabilities to be placed in a “specialized” shelter setting. We recommend:
 - o Offering residents choice in placement to the extent possible, and ensuring that people with disabilities always have the option of receiving services and health care in integrated, non-specialized settings;
 - o Removing section § 2206 (2) and references to required treatment and services related to substance use disorder and mental and physical health conditions throughout the bill; and
 - o Clarifying that “specialized services” be voluntary, including services for substance use disorder and mental and physical health conditions; and clarifying that people with disabilities have a right to receive services for substance use disorder and mental and physical health conditions in non-specialized, integrated settings.
 - **“Levels” of program components in the continuum** is likely to lead to unnecessary segregation of people with disabilities in “specialized shelters” and low-barrier shelters, a violation of the Americans with Disabilities Act and Rehabilitation Act of 1973. Households are not provided choice related to placement and the language as written implies that a service provider or the Office will make these determinations. Benefits are dramatically different between permanent supportive housing, motels, levels of shelter. Motel service is durationally limited and time limits for shelter are to be determined in future rulemaking.
 - o In § 2203(c), provide eligible households with choice in the type of shelter placement to the full extent possible. Similarly, in § 2205(a)(4) (highly structured shelters), § 2205(b)(4) (low-barrier shelters), and § 2206(3) (specialized shelter), households should be provided with choice related to placement, rather than have their needs determined by the Office or a community-based program.
 - o In § 2207, make permanent supportive housing “Level 2,” prioritized over shelter placements, and in § 2207(3), provide that levels 2 or 3 shelter

services should be utilized only if permanent supportive housing is not available..

- **“Population-specific placements in hotels and motels”** is vague and no description of the phrase’s meaning is provided. We recommend either:
 - Removing § 2208 (2)(B) population-specific placements in hotels and motels; or
 - Clarifying in § 2208 (2)(B) that individuals with disabilities will have choice over whether to be offered a population-specific placement and ensuring that people with disabilities without children will not be excluded from hotels and motels because a disproportionate number of hotels and motels are designated as “family only” properties compared to the level of need for placements for people with disabilities.

- **Due Process**, including notice and a right to a hearing, is critical to a benefit program as important as shelter. Rules should be clear enough to provide people with notice of possible bases for termination. The definitions for criminal activity and misconduct are both too broad and too vague. Does this pertain to alleged criminal activity, and if so, based on what evidentiary standard? Is smoking considered misconduct that endangers the health and safety of others? Absent a conviction, households should have an opportunity to defend themselves prior to termination. To ensure that all residents are safe, this may necessitate transfer to an alternative sheltering space for the alleged perpetrator or victim.

We recommend:

- limiting the definition of criminal activity to “violent criminal activity at the property” and/or “criminal activity that poses a health or safety risk to other residents at the property.”
- We recommend affording alleged perpetrators with appropriate due process protections while ensuring any persons allegedly harmed are protected in the interim.

Title 33 already includes language providing civil and criminal remedies related to fraud in all benefits programs. The language added here is duplicative and unnecessary.

- We recommend removing § 2210(b)(3) and (4).

- **Time Limits and Capacity in Motels and Hotels** Time limits and capacity in motels and hotels are a major concern with the bill. There are over 4,000 people experiencing homelessness and community shelter capacity hovers at 680 spaces. Until Vermont invests adequately in affordable housing and rental assistance and supports, more people will continue to need shelter in motels and hotels. Further, limiting the duration of stays to only 70 days – an arbitrary threshold unrelated to how long it takes to find affordable housing – will leave some people unsheltered and at imminent risk of harm. Any “savings” in the

motel program would be rapidly eliminated in the higher health care costs generated when people experiencing homelessness experience frost bite, amputations, and other avoidable adverse health outcomes.

- As in all prior years, capacity limits during cold weather periods should be eliminated to prevent risk of death in frigid Vermont winters.
- **Prioritization** appears to be applied to community-based shelters. How will this impact shelters that do not and will not prioritize certain populations over others? How will prioritization be managed and implemented? How will this affect people currently in shelters who do not meet the prioritization criteria?
 - We recommend that prioritization only apply to hotel and motel usage.

H. 938 Opportunity: Implement the Medicaid Waiver Amendment

Vermont's Global Commitment Medicaid funding can be used to pay for rental assistance, respite shelter for people exiting institutional settings, and supportive services. Vermont sought this funding, recognizing that rental assistance and respite shelter have been shown to improve health of people experiencing homelessness and lower health care costs. The waiver authority expires on December 31, 2027, but Vermont can act now to improve the health outcomes of people with disabilities experiencing homelessness.

On January 2, 2025, the [Center for Medicare and Medicaid Services \(CMS\)](#) approved [Vermont's application](#) to use Medicaid Global Commitment funds to pay for "health related social needs" (HRSN). HRSN are unmet needs that contribute to poor health outcomes. CMS found that for people experiencing homelessness, rental assistance, supportive services, and clinical respite shelter are evidence-based practices that are cost-effective and improve health.

Vermont accepted the waiver authority on January 30, 2025. The waiver allows AHS to bill the following services to Medicaid for people experiencing homelessness:

- Six months of rental assistance for participants in the permanent supportive housing assistance program;
- Services through the permanent supportive housing assistance program, including security deposits and other move-in expenses;
- Up to six months of medical respite in non-congregate settings for people exiting institutional levels of care who still need clinical services.

Vermont's HRSN expenditure authority is \$34,250,425 in 2026, and \$35,033,376 in 2027. Of that, the federal government would pay 58.81% in 2026 and 58.07% in 2027.

As stated [VT Digger](#), "the state is leaving around \$20 million in federal funds on the table each year, in addition to nearly \$11 million in permitted funds to help build the programs."

We propose expanding the PSHA program to all eligible households experiencing homelessness and providing six months of rental assistance through Global Commitment to each participant. An additional six months of rental assistance could be provided with unexpended General Assistance funding from FY2026 and general fund savings from case management and motel cost savings.

We also recommend fast-tracking development of respite shelter programs in partnership with hospital systems.