

Second: In Sec. 19, page 9, lines 14 and 15, by striking "or the department of disabilities, aging, and independent living"

Third: In Sec. 20, page 10, lines 4 and 5, by striking "or the commissioner of disabilities, aging, and independent living", and lines 15 and 16, by striking "or the department of disabilities, aging, and independent living"

Fourth: In Sec. 21, page 11, lines 4 and 5, by striking "or the commissioner of disabilities, aging, and independent living"

Fifth: By adding a new Sec. 34a to read as follows:

Sec. 34a. 18 V.S.A. § 1 is amended to read:

§ 1. GENERAL POWERS OF DEPARTMENT OF HEALTH

As herein or elsewhere specified, the department of health shall have power to supervise and direct the execution of all laws relating to public health, mental health, and substance abuse.

Sixth: In Sec. 36, by striking subdivision (5)(A) and inserting a new subdivision (5)(A) to read:

(5) As used in this subsection:

(A) "Home care provider" means a person or entity paid by an agency designated by the department of disabilities, aging, and independent living or the department of health to provide developmental disability and mental health services, to provide foster care in his or her home.

(B) "Foster care" means care provided for a child or adult under a homesharing agreement between a home care provider and an agency designated by the department of disabilities, aging, and independent living or of health.

~~(B)~~(C) "Relevant information" means information needed to protect the individual and others from harm, including any relevant history of violent behavior or conduct causing danger of harm to others, as defined in subdivision 7101(17)(A) of this title, any medications presently prescribed to the individual, and any known precursors of dangerous behavior that may cause future harm.

~~(C)~~(D) "Respite provider" means a person, paid by a home care provider, to provide care by the day or overnight in the person's home.

Seventh: In Sec. 38, by striking § 7201 in its entirety and inserting in lieu thereof a new § 7201 to read as follows:

§ 7201. ESTABLISHMENT OF DEPARTMENT MENTAL HEALTH

The department of health, as the successor to the division of mental health services of the former department of developmental and mental health services, ~~is created to~~ shall centralize and more efficiently establish the general policy and execute the programs and services of the state concerning mental health, and to integrate and coordinate those programs and services with the programs and services of other departments of the state, its political subdivisions, and private agencies, so as to provide a flexible comprehensive service to all citizens of the state in mental health and related problems.

Eighth: In Sec. 38, by striking § 7202 in its entirety and inserting in lieu thereof a new § 7202 to read as follows:

§ 7202. COORDINATION

The department of health shall be responsible for coordinating efforts of all agencies and services, government and private, ~~directed towards the control, reduction and prevention of those problems involving mental retardation, mental illness and, in coordination with the departments of social and rehabilitation services and education, severe emotional disturbance on a statewide basis in order to promote and improve the mental health of individuals through outreach, education, and other activities. The department of disabilities, aging, and independent living shall be responsible for coordinating the efforts of all agencies and services, government and private, on a statewide basis in order to promote and improve the lives of individuals with developmental disabilities.~~

Ninth: In Sec. 38, by striking § 7205 in its entirety and inserting in lieu thereof a new § 7205 to read as follows

§ 7205. SUPERVISION OF INSTITUTIONS

The department of health shall operate the Vermont State Hospital ~~and the Training School~~ and shall be responsible for ~~state patients at the Retreat receiving involuntary treatment at a hospital designated by the department of health.~~

Tenth: In Sec. 41, by striking § 7901 in its entirety and inserting in lieu thereof a new § 7901 to read as follows:

§ 7901. INTRASTATE TRANSFERS

The commissioner may authorize the transfer of patients ~~among and between any of the following:~~ the Vermont state hospital, ~~the Brattleboro retreat, and designated hospitals, and the training school if he the commissioner~~ determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice shall be given to ~~his~~ the patient's attorney, ~~his~~ legal guardian, if any, spouse, parent, or

parents, or, if none be known, to any other interested party in that order. In all such transfers, due consideration shall be given to the relationship of the patient to his or her family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Due consideration shall also be given to the separation of functions and to the divergent purposes of the Vermont state hospital, ~~the Brattleboro retreat, and~~ designated hospitals ~~and the training school~~. No patient may be transferred to a correctional institution without the order of a court of competent jurisdiction. No patient may be transferred to a designated hospital unless the head of the hospital or his or her designee first accepts the patient.

Eleventh: By striking Sec. 46 and inserting a new Sec. 46 to read:

Sec. 46. 18 V.S.A. § 8723 is amended to read:

§ 8723. DEPARTMENT OF ~~DEVELOPMENTAL AND MENTAL~~
~~HEALTH SERVICES~~ DISABILITIES, AGING, AND
INDEPENDENT LIVING; DUTIES

The department shall plan, coordinate, administer, monitor, and evaluate state and federally funded services for people with developmental disabilities and their families within Vermont. The department of disabilities, aging, and independent living shall be responsible for coordinating the efforts of all agencies and services, government and private, on a statewide basis in order to promote and improve the lives of individuals with developmental disabilities. Within the limits of available resources, the department shall:

* * *

Twelfth: In Sec. 47, page 31, line 9, after "community mental health", by inserting "agencies"

Thirteenth: In Sec. 47, page 31, lines 13 and 15, by striking "and" and inserting in lieu thereof "or" in both instances

Fourteenth: In Sec. 48, page 36, line 17, after "~~and mentally retarded~~", by inserting "and developmentally disabled"

Fifteenth: In Sec. 48, page 37, line 5, after "~~and mentally retarded~~", by inserting "and developmentally disabled"

Sixteenth: In Sec. 48, page 37, line 13, after the words "~~or mental retardation~~", by inserting the words "or developmental disability"

Seventeenth: In Sec. 48, page 38, line 3, after "~~or mental retardation~~", by inserting "or developmental disability"

Eighteenth: In Sec. 48, page 38, line 11, after "~~or mentally retarded~~", by inserting "or developmentally disabled"

Nineteenth: In Sec. 48, page 38, lines 18 and 19, after "~~or mental retardation~~", by inserting "or developmental disability"

Twentieth: In Sec. 48, page 39, lines 4 and 12, after "~~or mental retardation~~", by inserting "or developmental disability" in both instances

Twenty-first: In Sec. 50, page 40, line 16, by striking "commissioner" and inserting in lieu thereof "commissioners"

Twenty-second: In Sec. 50, page 40, line 17, after "health services", by inserting "and disabilities, aging, and independent living"

Twenty-third: In Sec. 55, on page 43, line 8, following "commissioner", by striking the word "of"

Twenty-fourth: In Sec. 69, page 50, line 9, by striking the words "councils and committees" and inserting in lieu thereof "divisions and offices"

Twenty-fifth: By adding a new Sec. 79a to read as follows:

Sec. 79a. 33 V.S.A. § 504(c) is amended to read:

(c) In addition to the powers vested in it by law, the department may:

(1) Cooperate with, and contract with, with the approval of the governor, the federal government and appropriate federal agencies which fund programs which the department administers.

* * *

(3) Take and hold in trust for the state any grant or devise of land or donation or bequest of money, or other personal property, to be applied to the maintenance of developmentally disabled persons.

Twenty-sixth: In Sec. 83, page 60, lines 5 and 10, by striking the words "employment and training" and inserting in lieu thereof "labor" in both instances

Twenty-seventh: In Sec. 83, page 60, line 9, by striking the words "aging and disabilities" and inserting in lieu thereof "disabilities, aging, and independent living"

Twenty-eighth: By striking Sec. 92 and inserting a new Sec. 92 to read:

Sec. 92. 33 V.S.A. § 1901 is amended to read:

§ 1901. ADMINISTRATION OF PROGRAM

(a)(1) ~~The commissioner~~ secretary of human services or designee shall take appropriate action, including making of regulations, required to administer a medical assistance program under Title XIX of the Social Security Act. The secretary shall seek approval from the general assembly prior to making changes to eligibility for any Medicaid or Medicaid waiver program and for reductions in or expansions to benefits under the Medicaid or Medicaid waiver program. Prior to filing with the legislative committee on rules the final proposed rules for the Medicaid or Medicaid waiver program, the secretary shall ask for recommendations from the house committee on human services and the senate committee on health and welfare. Outside the legislative session, the secretary shall ask for recommendations from the health access oversight committee prior to filing final proposed rules.

(2) The secretary shall seek approval from the general assembly prior to applying for and implementing a waiver of federal Medicaid law or an amendment to an existing waiver. Approval of a waiver for implementation by the general assembly constitutes approval only of the waiver conditions which are scheduled for implementation. For the purposes of this section, "funding for the Medicaid program" also means federal allocations or other funding for the state children's health insurance program (SCHIP).

(b) ~~The commissioner~~ secretary may charge ~~at the time of each enrollment, a monthly premium, not to exceed \$20.00,~~ to each individual 18 years or older who is eligible for enrollment in the health access program, as authorized by section ~~1972~~ 1973 of this title, and as implemented by rules. The premium amounts shall be set by the general assembly. All premiums collected by the Vermont health access office for enrollment in the health access program shall be deposited in the Vermont health access trust fund, established by section 1972 of this title state health care revenue fund established in section 1901d of this title. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the general assembly.

(c) ~~The commissioner~~ secretary may charge a monthly premium ~~of \$10.00~~ per family for pregnant women and children eligible for medical assistance under sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII) of Title XIX of the Social Security Act, whose family income exceeds 185 percent of the federal poverty level, as permitted under section 1902(r)(2) of that act. The premium amounts shall be established by the general assembly. Fees collected under this subsection shall be credited to a special fund the state health care revenue fund established in section 1901d of this title and shall be available to the department to offset the costs of providing Medicaid services. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the general assembly.

(d)(1) To enable the state to manage public resources effectively while preserving and enhancing access to health care services in the state, the office of Vermont health access is authorized to serve as a publicly operated managed care organization (MCO).

(2) As the publicly operated MCO, the office of Vermont health access shall be responsible for the overall management of the health care delivery system and for reimbursement of all eligible services as may be provided by state or federal law.

(3) To the extent permitted under federal law and until such time as the office manages the health care, the office of Vermont health access shall be exempt from any health maintenance organization (HMO) or MCO statutes in Vermont law and shall not be considered to be an HMO or MCO for purposes of state regulatory and reporting requirements. The MCO shall comply with the federal rules governing managed care organizations in Part 438 of Chapter IV of Title 42 of the United States Code. The Vermont rules on the primary care case management in the Medicaid program shall be amended to apply to the MCO except to the extent that the rules conflict with the federal rules.

(4) The agency of human services and office of Vermont health access shall report to the health access oversight committee about implementation of Global Commitment in a manner and at a frequency to be determined by the committee. Reporting shall, at a minimum, enable the tracking of expenditures by eligibility category, the type of care received, and to the extent possible allow historical comparison with expenditures under the previous Medicaid appropriation model (by department and program) and, if appropriate, with the amounts transferred by the department to the office of Vermont health access. Reporting shall include spending in comparison to any applicable budget neutrality standards.

(e)(1) The department for children and families and the office of Vermont health access shall monitor and evaluate and report quarterly beginning July 1, 2005 on the disenrollment in each of the Medicaid or Medicaid waiver programs subject to premiums, including:

(A) The number of beneficiaries receiving termination notices for failure to pay premiums;

(B) The number of beneficiaries terminated from coverage as a result of failure to pay premiums as of the second business day of the month following the termination notice. The number of beneficiaries terminated from coverage for nonpayment of premiums shall be reported by program and income level within each program; and

(C) The number of beneficiaries terminated from coverage as a result of failure to pay premiums whose coverage is not restored three months after the termination notice.

(2) The department and the office shall submit reports at the end of each quarter required by subdivision (1) of this subsection to the house and senate committees on appropriations, the senate committee on health and welfare, the house committee on human services, the health access oversight committee, and the Medicaid advisory board.

Twenty-ninth: By striking Sec. 94 in its entirety and inserting a new Sec. 94 to read:

Sec. 94. 33 V.S.A. § 1901b is amended to read:

§ 1901b. PHARMACY PROGRAM ENROLLMENT

(a) ~~The department of prevention, assistance, transition, and office of Vermont health access and the department for children and families~~ shall monitor actual caseloads, revenue and expenditures, anticipated caseloads, revenue and expenditures, and actual and anticipated savings from implementation of the preferred drug list, supplemental rebates, and other cost containment activities in each state pharmaceutical assistance program, including ~~the VScript Expanded program, the VScript program, and the VHAP Rx program~~ VPharm and VermontRx. The department ~~and the office~~ shall allocate supplemental rebate savings to each program proportionate to expenditures in each program. During the second week of each month, the ~~department office~~ shall report such actual and anticipated caseload, revenue, expenditure and savings information to the joint fiscal committee and to the health access oversight committee.

(b)(1) If at any time expenditures for ~~the VScript Expanded program, the VScript program, and the VHAP Rx program~~ VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the ~~department office~~ shall recommend to the joint fiscal committee and notify the health access oversight committee of a plan to cease new enrollments in ~~the Vscript Expanded program~~ VermontRx for individuals with incomes over 225 percent of the federal poverty level.

(2) If at any time expenditures for ~~the VScript Expanded program, the VScript program, and the VHAP Rx program~~ VPharm and VermontRx are anticipated to exceed the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, even with the cessation of new enrollments ~~in the VScript~~

~~Expanded program as provided for in subdivision (b)(1), the department office shall recommend to the joint fiscal committee and notify the health access oversight committee of a plan to cease new enrollments in the VScript program VermontRx for individuals with incomes more than 175 percent and less than 225 percent of the federal poverty level.~~

(3) The ~~department's office's~~ determinations under subdivisions (1) and (2) shall be based on the information and projections reported monthly under subsection (a) of this section, and on the official revenue estimates for the Vermont health access trust fund under section 305a of Title 32. An enrollment cessation plan shall be deemed approved unless the joint fiscal committee disapproves the plan after 21 days notice of the ~~department's office's~~ recommendation and financial analysis.

(4) Upon the approval of, or failure to disapprove an enrollment cessation plan by the joint fiscal committee, the ~~department office~~ shall cease new enrollment ~~in the VScript Expanded program, and the VScript program if applicable, in VermontRx for the individuals with incomes at the appropriate level~~ in accordance with the plan.

(c)(1) If at any time after enrollment ceases under subsection (b) of this section expenditures for ~~the VScript Expanded program, the VScript program, and the VHAP Rx program~~ VermontRx, including expenditures attributable to renewed enrollment, are anticipated, by reason of increased federal financial participation or any other reason, to be equal to or less than the aggregate amount of state funds expressly appropriated for such state pharmaceutical assistance programs during any fiscal year, the ~~department office~~ shall recommend to the joint fiscal committee and notify the health access oversight committee of a plan to renew enrollment in ~~the VScript program first, and the VScript Expanded program second~~ VermontRx, with priority given to individuals with incomes more than 175 percent and less than 225 percent, if adequate funds are anticipated to be available for each program for the remainder of the fiscal year.

(2) The ~~department's office's~~ determination under subdivision (1) of this subsection shall be based on the information and projections reported monthly under subsection (a), and on the official revenue estimates for the Vermont health access trust fund under section 305a of Title 32. An enrollment renewal plan shall be deemed approved unless the joint fiscal committee disapproves the plan after 21 days notice of the ~~department's office's~~ recommendation and financial analysis.

(3) Upon the approval of, or failure to disapprove an enrollment renewal plan by the joint fiscal committee, the ~~department office~~ shall renew

enrollment in the ~~VScript Expanded program, and the VScript program if applicable,~~ VermontRx in accordance with the plan.

(d) As used in this section:

(1) "State pharmaceutical assistance program" means any health assistance programs administered by the ~~department~~ agency of human services providing prescription drug coverage, including but not limited to, the Medicaid program, the Vermont health access plan, ~~the Vermont health access plan pharmacy program, the VScript program, the VScript Expanded program~~ VPharm, VermontRx, the state children's health insurance program, the state of Vermont AIDS medication assistance program, the General Assistance program, the pharmacy discount plan program, and any other health assistance programs administered by the ~~department~~ agency providing prescription drug coverage.

* * *

Thirtieth: By striking Sec. 95 in its entirety and inserting a new Sec. 95 to read:

Sec. 95. 33 V.S.A. § 1901c is amended to read:

§ 1901c. MEDICAL CARE ADVISORY COMMITTEE

(a) The ~~commissioner~~ director of the office of Vermont health access shall appoint a medical care advisory committee to advise the ~~department~~ office about health care and medical services, consistent with the requirements of federal law.

(b) The medical care advisory committee shall be given an opportunity to participate in policy development and program administration for Medicaid ~~and for the VHAP and VScript programs, as they are defined in section 1901b of this subchapter,~~ the Vermont health access plan, VPharm, and VermontRx. It shall have an opportunity to review and comment upon agency policy initiatives pertaining to health care benefits and beneficiary eligibility. It also shall have the opportunity to comment on proposed rules prior to commencement of the rulemaking process and on waiver or waiver amendment applications prior to submission to the Centers for Medicare and Medicaid Services. Prior to the annual budget development process, the ~~department~~ office shall engage the medical care advisory committee in priority setting, including consideration of scope of benefits, beneficiary eligibility, funding outlook, financing options, and possible budget recommendations.

(c) The medical care advisory committee shall make policy recommendations on ~~department~~ office of Vermont health access proposals to the ~~department~~ office, the health access oversight committee, and the standing

committees on health and welfare. When the general assembly is not in session, the ~~commissioner~~ director shall respond in writing to these recommendations, a copy of which shall be provided to each of the legislative committees.

(d) During the legislative session, the ~~commissioner~~ director shall provide the committee at regularly scheduled meetings updates on the status of policy and budget proposals.

(e) The ~~commissioner~~ director shall convene the medical care advisory committee at least six times each year.

(f) At least one-third of the members of the medical care advisory committee shall be recipients of Medicaid, VHAP, or ~~V-Script~~ VermontRx. Such members shall receive per diem compensation and reimbursement of expenses pursuant to section 1010 of Title 32, including costs of travel, child care, personal assistance services, and any other service necessary for participation on the committee approved by the ~~commissioner~~ director.

(g) The ~~commissioner~~ director shall appoint members of the medical care advisory committee for staggered, nonrecurring three-year terms. The ~~commissioner~~ director may remove members of the committee who fail to attend three consecutive meetings and appoint replacements.

* * *

Thirty-first: By striking Sec. 97 in its entirety and inserting a new Sec. 97 to read:

Sec. 97. 33 V.S.A. § 1904(2) and (3) are amended to read, a new subdivision (4) is added to read, and the old subdivision (4) and remaining subdivisions are renumbered accordingly:

(2) "Commissioner" means the commissioner ~~of prevention, assistance, transition, and health access~~ for children and families.

(3) "Department" means the department ~~of prevention, assistance, transition, and health access~~ for children and families.

(4) "Director" means the director of the office of Vermont health access.

* * *

Thirty-second: By inserting a new Sec. 98a to read:

Sec. 98a. 33 V.S.A. § 1971(3) is amended to read:

(3) "Office of Vermont health access" means the office ~~of administering the Medicaid within program for~~ the agency of human services and includes the managed care organization established in section 1901 of this title.

Thirty-third: By striking Sec. 100 in its entirety and inserting in lieu thereof a new Sec. 100 to read:

Sec. 100. 33 V.S.A. § 1997 is amended to read:

§ 1997. DEFINITIONS

As used in this subchapter:

(1) "Board" or "drug utilization review board" means the drug utilization review board established ~~by the commissioner~~ in connection with the Medicaid program.

(2) ~~"Commissioner"~~ "Director" means the ~~commissioner of prevention, assistance, transition, and health access~~ director of the office of Vermont health access.

~~(3) "Department" means the department of prevention, assistance, transition, and health access.~~

~~(4)~~(3) "Health benefit plan" means a health benefit plan with prescription drug coverage offered or administered by a health insurer, as defined by subdivision 9402(7) of Title 18, and the out-of-state counterparts to such plans. The term includes, but is not limited to:

(A) any state public assistance program with a health benefit plan that provides coverage of prescription drugs;

(B) any health benefit plan offered by or on behalf of the state of Vermont or any instrumentality of the state providing coverage for government employees and their dependents that agrees to participate in the program; and

(C) any insured or self-insured health benefit plan that agrees to participate in the program.

(4) "Office" means the office of Vermont health access.

* * *

(7) "State public assistance program", includes, but is not limited to, the Medicaid program, the Vermont health access plan, ~~the Vermont health access plan pharmacy, VScript and VScript Expanded,~~ VPharm, VermontRx, the state children's health insurance program, the state of Vermont AIDS medication assistance program, the General Assistance program, the pharmacy discount plan program, and the out-of-state counterparts to such programs.

Thirty-fourth: In Sec. 101, on page 79, line 16, by striking the word "Northeast" and inserting in lieu thereof the word "National" and on line 16, by striking the word "Pricing" and inserting in lieu thereof the word "Prices"

Thirty-fifth: In Sec. 118, page 97, line 12, by striking "16" and inserting in lieu thereof "18"

Thirty-sixth: In Sec. 121, page 101, line 1, after "health ~~services~~", by inserting "or of disabilities, aging, and independent living" and by striking "or the commissioner's designee" and inserting in lieu thereof "or the commissioners' designees"

Thirty-seventh: In Sec. 122, on page 101, line 11, by striking the words "of employment and training" and inserting in lieu thereof "of labor"

Thirty-eighth: In Sec. 140, on page 111, line 14, by striking "1701" and inserting in lieu thereof "1701(b)"

Thirty-ninth: In Sec. 140(4), on page 111, lines 8 and 9, by deleting "§ 7201 (establishment of the department of developmental and mental health services);"

Fortieth: In Sec. 140(4), on page 111, line 11, before "7904", by inserting "7403 (superintendent of state hospital records);"

Forty-first: In Sec. 141, on page 112, line 3, by striking the word "supersede" and inserting in lieu thereof "supersede"

Forty-second: By adding new Secs. 142, 143, and 144 to read:

Sec. 142. GLOBAL COMMITMENT APPROVAL

The Global Commitment for Health Medicaid waiver approval constituted approval for the funding mechanism specified in the federal Terms and Conditions, the managed care organization structure, and the limitations on eligibility and benefits. The general assembly did not grant approval for the implementation of any changes in the eligibility or benefits in this approval, including any waiver of amount, duration, and scope requirements or the provision of early periodic screening, diagnosis, and treatment services for children.

Sec. 143. SUNSET

Upon the expiration of the Global Commitment for Health Medicaid waiver approved under Section 1115 of the Social Security Act or any extensions of this waiver, subsection 1901(d) of Title 33 shall be repealed.

Sec. 144. STATUTORY REVISION

The legislative council is directed to reassign the codified sections of this act is within its statutory revision oversight powers.

Rep. Donovan of Burlington, for the committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Human Services.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the bill be amended as recommended by the Committee on Human Services? **Reps. Frank of Underhill, Donahue of Northfield, Fisher of Lincoln, Haas of Rochester, Koch of Barre Town, McAllister of Highgate, Niquette of Colchester and Pugh of South Burlington** moved to amend the recommendation of amendment offered by the committee on Human Services as follows:

First, by striking the Sixth Proposal of Amendment and inserting in lieu thereof the following:

Sixth: In Sec. 36, by striking subdivision (5)(A) and inserting a new subdivision (5)(A) to read:

(5) As used in this subsection:

(A) "Home care provider" means a person or entity paid by an agency designated by the department of disabilities, aging, and independent living or the department of health to provide developmental disability and mental health services, to provide care in his or her home.

Second, in the Twenty-eighth Proposal of Amendment in 33 V.S.A. § 1901 by striking subsections (a), (b) and (c) and inserting in lieu thereof new subsections (a), (b) and (c) to read:

(a)(1) The ~~commissioner~~ secretary of human services or designee shall take appropriate action, including making of ~~regulations~~ rules, required to administer a medical assistance program under Title XIX of the Social Security Act. The secretary shall seek approval from the general assembly prior to making changes, either through a state Medicaid plan amendment or a waiver of federal Medicaid law, to eligibility for any Medicaid or Medicaid waiver program and for reductions in or expansions to benefits under the Medicaid or Medicaid waiver program. Prior to filing with the legislative committee on rules the final proposed rules for the Medicaid or Medicaid waiver program, the secretary shall ask for recommendations from the house committee on human services and the senate committee on health and welfare. Outside the legislative session, the secretary shall ask for recommendations from the health access oversight committee prior to filing final proposed rules.

(2) The secretary shall seek approval from the general assembly prior to applying for and implementing a waiver of federal Medicaid law, an amendment to an existing waiver, or an amendment to the state Medicaid plan. Approval for implementation of a waiver or state Medicaid plan amendment by the general assembly constitutes approval only of the waiver conditions or plan amendments which are scheduled for implementation. For the purposes of this section, "funding for the Medicaid program" also means federal allocations or other funding for the state children's health insurance program (CHIP).

(b) ~~The commissioner~~ secretary may charge ~~at the time of each enrollment, a monthly premium, not to exceed \$20.00, in amounts set by the general assembly,~~ to each individual 18 years or older who is eligible for enrollment in the health access program, as authorized by section ~~1972~~ 1973 of this title; and as implemented by rules. All premiums collected by the Vermont health access office for enrollment in the health access program shall be deposited in the ~~Vermont health access trust fund, established by section 1972 of this title~~ state health care revenue fund established in section 1901d of this title. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the general assembly.

(c) ~~The commissioner~~ secretary may charge a ~~monthly premium of \$10.00, in amounts set by the general assembly,~~ per family for pregnant women and children eligible for medical assistance under sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII) of Title XIX of the Social Security Act, whose family income exceeds 185 percent of the federal poverty level, as permitted under section 1902(r)(2) of that act. Fees collected under this subsection shall be credited to ~~a special fund~~ the state health care revenue fund established in section 1901d of this title and shall be available to the department to offset the costs of providing Medicaid services. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the general assembly.

Which was agreed to.

Thereupon, the report of the committee on Human Services, as amended, was agreed to and third reading ordered.

On motion of **Rep. Flory of Pittsford**, the rules were suspended and the bill placed on all remaining stages of passage.

Thereupon, the bill was read the third time and passed.

Bill Amended; Third Reading Ordered

Rep. Valliere of Barre City spoke for the committee on General, Housing and Military Affairs.

Rep. Smith of Morristown, for the committee on Ways and Means, to which had been referred House bill, entitled

An act relating to the tax credit for affordable housing;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 5930u(c), (d) and (g) are amended to read:

(c) Amount of credit. A taxpayer who makes an eligible cash contribution shall be entitled to claim against the taxpayer's individual income, corporate, franchise, or insurance premium tax liability a credit in an amount specified on the taxpayer's credit certificate. The first-year allocation of a credit amount to a taxpayer shall also be deemed an allocation of the same amount in each of the following four years.

(d) Availability of credit. ~~Affordable~~ The amount of affordable housing tax credits credit allocated with respect to a project shall be available to the taxpayer in each of every year for five consecutive tax years, beginning with the tax year in which the eligible cash contribution is made. Total tax credits available to the taxpayer shall be the amount of the first-year allocation plus the succeeding four years' deemed allocations.

(g) In any ~~calendar~~ fiscal year, the allocating agency ~~shall not award a total amount of tax credits~~ may award up to \$400,000.00 in total first-year credit allocations to all applicants under this subchapter in excess of \$150,000.00. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed \$2,000,000.00.

Sec. 2. ADMINISTRATION REPORT ON NEW AFFORDABLE HOUSING TAX CREDIT

The Agency of Commerce and Community Development and the Department of Taxes, in consultation with the Vermont Housing Finance Agency and the Affordable Housing Coalition, are requested to study whether an additional tax credit, or other alternative form of incentive, would enable more low- and moderate-income individuals to become first-time homebuyers in Vermont. The study should include: (a) a description of possible recipients of the credit, for example, whether the credit would be available to employers who provide home buying assistance to employees, to income-eligible homebuyers, or others; (b) any limits on the credit; (c) a description of those who would be eligible for home buying assistance under the proposal; (d) a

description of the goals of the credit, including the home buying assistance which would be provided, how and by whom, and the costs of the assistance provided; (e) an analysis of the annual cost of the proposal to the revenues of the state beginning in fiscal year 2008; (f) an analysis of the effectiveness of existing tax credits in other states for employer assistance to low- and moderate-income employees on first-home purchases; and (g) detailed information on the number of first-time homebuyers currently aided by VHFA, including income levels, the form of aid received, the price of homes purchased, whether this initial aid is sufficient to allow continued ownership, and if not, what additional issues need to be addressed. The Agency of Commerce and Community Development and the Department of Taxes shall report their findings to the standing committees of jurisdiction of the House and Senate by December 1, 2006.

Sec. 3. 32 V.S.A. §312 is amended to read:

§ 312. TAX EXPENDITURE REPORT

(a) For purposes of this section, "tax expenditure" shall mean the actual or estimated loss in tax revenue resulting from any exemption, exclusion, deduction, or credit applicable to the tax.

(b) Tax expenditure reports. Biennially, as part of the budget process, beginning January 15, 2009, the department of taxes shall file with the house committees on ways and means and appropriations and the senate committees on finance and appropriations a report on tax expenditures in the personal and corporate income, sales and use, and meals and rooms tax returns, insurance premium tax and bank franchise tax returns, and education property tax grand lists and such other tax expenditures for which the joint fiscal office and the tax department jointly have produced revenue estimates. The report shall include, for each tax expenditure, the following information:

- (1) A description of the tax expenditure.
- (2) The most recent fiscal information available on the direct cost of the tax expenditure in the past two years.
- (3) The date of enactment of the expenditure.
- (4) A description of and estimate of the number of taxpayers directly benefiting from the expenditure provision. (Added 2005, No. 75, § 26.)

Sec. 4. EFFECTIVE DATE AND TRANSITION RULE

This act shall take effect upon passage except that Sec. 1 (increase in amount available for affordable housing investment tax credits) shall take effect July 1, 2006, and the total amount of first-year tax credits which may be

allocated in fiscal year 2007 under 32 V.S.A. § 5930u(g) shall be limited to \$300,000.00, and the total amount of first-year tax credits which may be allocated in fiscal years 2008 and after shall be \$400,000.00.

Rep. Monti of Barre City, for the committee on Appropriations, recommends the bill ought to pass when amended as recommended by the committee on Ways and Means.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Ways and Means and Appropriations agreed to and third reading ordered.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 262

Rep. Grad of Moretown, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to expanding employer access to applicants' criminal history records;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2056b(a) is amended to read:

(a) The Vermont criminal information center may provide Vermont criminal history records as defined in section 2056a of this title to bona fide persons conducting research related to the administration of criminal justice, subject to conditions approved by the commissioner of public safety to assure the confidentiality of the information and the privacy of individuals to whom the information relates.

Sec. 2. 20 V.S.A. § 2056c is amended to read:

§ 2056c. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO EMPLOYERS

(a) As used in this section:

(1) "Applicant" means an individual seeking or being sought for employment ~~or~~ a volunteer position with an employer, or admission to a course of instruction offered by the Vermont criminal justice training council.

(2) "Criminal conviction record" means the record of convictions in Vermont ~~and convictions in other jurisdictions.~~

(3) "Employer" means any individual, organization, or governmental body, including partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air, or express company ~~doing business in or operating within this state, which has one or more individuals performing services for it within this state; and~~

~~(A) the employer is a qualified entity that provides care or services to vulnerable classes as provided in 42 U.S.C. §§ 5119a and 5119e; or~~

~~(B) the employer is a postsecondary school with student residential facilities or an authorized agent.~~

(4) "The center" means the Vermont ~~crime~~ criminal information center.

~~(5) "Vulnerable classes" means children, the elderly, and persons with disabilities as defined in 42 U.S.C. § 5119e.~~

(b)(1) An employer may obtain from the center a ~~Vermont~~ criminal conviction record ~~and an out of state criminal record~~ for any applicant who has given written authorization on a release form provided by the center, provided that the employer has filed a user's agreement with the center. The user's agreement shall require the employer to comply with all statutes, rules, and policies regulating the release of criminal conviction records and the protection of individual privacy. The user's agreement shall be signed and kept current by the employer.

(2) An individual, organization, or governmental body doing business in Vermont which has one or more individuals performing services for it within this state and which is a qualified entity that provides care or services to children, the elderly, or persons with disabilities as defined in 42 U.S.C. § 5119c may obtain from the center an out-of-state criminal conviction record for any applicant who has given written authorization on a release form provided by the center, provided that the employer has filed a user's agreement with the center and complies with all other provisions of this section.

(c)(1) The employer may obtain ~~the~~ a criminal conviction record only;

(A) after the applicant has been given an offer of employment conditioned on the record check ~~or~~;

(B) after a volunteer has been offered a position conditioned on the record check.

(2) The Vermont criminal justice training council may obtain a criminal conviction record only after an applicant has been accepted into a course of

instruction offered by the Vermont criminal justice training council conditioned on the record check.

(3) An organization that receives a criminal conviction record pursuant to this section shall provide a free copy of such record to the record subject within ten days of receipt of the record.

(4) An organization entitled to receive a criminal conviction record pursuant to this section shall not require an applicant to obtain or submit personally a copy of his or her criminal conviction record for purposes of employment or acceptance into a course offered by the Vermont criminal justice training council.

(d)(1) ~~Postsecondary school employers may obtain criminal records only for applicants who apply for employment or volunteer positions that provide access to student residential facilities.~~ Employers shall be provided with informational material by the center prior to authorization to request criminal conviction records. The materials shall address the following topics:

(A) Requirements of the user agreement.

(B) How to obtain criminal conviction records from the center.

(C) How to interpret criminal conviction records.

(D) How to obtain source documents summarized in the criminal conviction records.

(E) Misuse of criminal conviction records.

(2) Employers shall certify on the user agreement that they have read and understood the materials prior to receiving authorization to request records from the center.

(e) The release form shall contain the applicant's name, signature, date of birth, place of birth, and the signature as attested to by a notary public. The release form shall state that the applicant has the right to appeal the findings to the center, pursuant to rules adopted by the commissioner of public safety.

(f) ~~No (1) Except as otherwise authorized by this chapter, no person shall confirm the existence or nonexistence of criminal conviction record information to any person who would not be eligible to receive the information pursuant to this subchapter or disclose the contents of a criminal conviction record without the record subject's permission to any person other than the applicant and properly designated employees of the employer who have a documented need to know the contents of the record.~~

(2) An employer who receives criminal conviction records pursuant to this section shall maintain a confidential log of all record requests as specified by the center. The employer shall confidentially retain records relating to requests for criminal conviction records for a period of three years. At the end of the retention period, if logs and records are to be destroyed, they shall be shredded.

(g) A person who violates ~~the provisions of this section with respect to unauthorized disclosure of confidential criminal history record information obtained from the center under the authority subsection (f) of this section~~ shall be assessed a civil penalty of not more than \$5,000.00. Each unauthorized disclosure shall constitute a separate civil violation. The office of the attorney general shall have authority to enforce this section.

(h) The center shall provide notice of the penalty for unauthorized disclosure on a form accompanying any report of a criminal conviction record to an employer. The notice shall include, in boldface print, the following statements: **THE REQUESTOR AGREES TO USE CRIMINAL CONVICTION RECORD INFORMATION RECEIVED FROM THE VERMONT ~~CRIME~~ CRIMINAL INFORMATION CENTER FOR THE PURPOSES INTENDED BY LAW. THE REQUESTOR AGREES NOT TO DISCLOSE THE CONTENTS OF ANY CRIMINAL CONVICTION RECORD ~~INFORMATION~~ WITHOUT THE APPLICANT'S PERMISSION TO ANY PERSON OTHER THAN THE APPLICANT AND PROPERLY DESIGNATED EMPLOYEES WHO HAVE A DOCUMENTED NEED TO KNOW THE CONTENTS OF THE RECORD. A VIOLATION MAY RESULT IN A ~~FINE~~ CIVIL PENALTY OF UP TO \$5,000.00. EACH UNAUTHORIZED DISCLOSURE SHALL CONSTITUTE A SEPARATE CIVIL VIOLATION.**

(i) Nothing in this section shall create a statutory duty for an employer to perform a criminal conviction record check on every job applicant hired by the employer. An employer's failure to obtain a criminal conviction record on an employee who subsequently commits a criminal offense shall not be the sole factor in determining civil or criminal liability unless otherwise authorized by law.

Sec. 3. 20 V.S.A. § 2056d(a) is amended to read:

(a) Statewide criminal history records shall be released only by the Vermont criminal information center.

Sec. 4. 20 V.S.A. § 2056f is added to read:

§ 2056f. DISSEMINATION OF CRIMINAL HISTORY RECORDS AND CRIMINAL CONVICTIONS RECORDS TO AN INDIVIDUAL

A person may obtain a copy of his or her own criminal history record as defined in section 2056a of this title or criminal conviction record as defined in section 2056c of this title or a statement that no record exists from the Vermont criminal information center. Copies of a person's criminal history record and criminal conviction record may be obtained by making a personal appearance at the center during regular business hours or by written request. Written requests shall be on a form specified by the center and shall contain the person's name, date of birth, place of birth, and signature as attested to by a notary public. A raised seal must be affixed to the form.

Sec. 5. 20 V.S.A. § 2063 is amended to read:

§ 2063. CRIMINAL HISTORY RECORD FEES; CRIMINAL HISTORY RECORD CHECK FUND

(a) Except as otherwise provided for in this section, the cost of each check for a criminal history ~~check~~ record as defined in section 2056a of this title or a criminal conviction record as defined in section 2056c of this title based on name and date of birth shall be \$10.00. Out-of-state criminal history record checks shall include any additional fees charged by the state from which the record is requested.

(b) Requests made by criminal justice agencies for criminal justice purposes or other purposes authorized by state or federal law shall be exempt from all record check fees. The following types of requests shall be exempt from the Vermont criminal record check fee:

(1) ~~Requests made by governmental agencies or entities regulated by governmental agencies in accordance with local, state or federal law or regulation which requires a criminal record check for employment or licensing~~ any individual, organization, or governmental body doing business in Vermont which has one or more individuals performing services for it within this state and which is a qualified entity that provides care or services to children, the elderly, or persons with disabilities as defined in 42 U.S.C. § 5119c.

(2) Requests made by researchers approved by the Vermont criminal information center to conduct research related to the administration of criminal justice. A fee, however, may be charged by the center which shall reflect the cost of generating the requested information.

(3) Requests made by individuals to review their own record at the Vermont criminal information center; however, copies of the individual's record are not exempt from the record check fee.

(c) The criminal history record check fund is established and shall be managed by the commissioner of public safety in accordance with the

provisions of ~~Title 32, chapter 7~~, subchapter 5 of chapter 7 of Title 32. All fees paid under this section shall be placed in the fund and used for personnel and equipment related to the processing, maintenance, and dissemination of criminal history records. The commissioner of finance and management may draw warrants for disbursements from this fund in anticipation of receipts.

(d) The department of public safety shall have the authority, with the approval of the secretary of administration, to establish limited service positions as are necessary to provide criminal record checks in a timely manner, provided that there are sufficient funds in the criminal history record check fund to pay for the costs of these positions.

Sec. 6. DATA COLLECTION

The Vermont criminal information center shall report to the house and senate committees on judiciary on or before January 15, 2007 on the following:

(1) All individuals, organizations, or governmental bodies entitled to obtain criminal record information from the center and the legal authority for such access.

(2) The record information that is released to those identified by subdivision (1) of this section.

(3) The number of record requests by a group of requestors.

(4) The number of record requests without release forms.

(5) An assessment of the cost of the criminal record check program compared to the revenues generated from record requests.

(6) Any additional data that will assist the committees in engaging in a comprehensive review of access to statewide criminal record information.

Sec. 7. REPORT

(a) There is established an access to criminal history record information committee for the purpose of making findings and recommendations regarding public access to statewide criminal history records from the Vermont crime information center and the dissemination of electronic criminal case record information by the court. The committee shall consider what information should be released, by what method and to whom, in a manner that is consistent, reliable, and sensitive to privacy issues.

(b) The committee shall consist of the following members:

(1) A judge or justice appointed by the chief justice of the Vermont supreme court.

(2) The director of the Vermont crime information center.