

Overview

In “normal” years, we publish a final legislative report in late May or early June, after the Legislature has adjourned and bills have been signed or vetoed.

This year, COVID-19 entirely disrupted the process. In March, it became clear that the novel coronavirus had moved from a distant threat to an immediate one. The governor declared a state of emergency. The House Health Care Committee shifted its focus to the passage of an omnibus public health emergency bill (Act 91) to give the health care system the tools and flexibility it would need from state statutes to respond to the crisis. In two days, with the help of health care policy experts from a newly formed coalition of health care provider associations including the VNAs of Vermont, a bill had been written and passed. The House and Senate also passed emergency legislation to provide for a “remote” session to continue their work. And then, suddenly, the State House was closed along with almost everything else that wasn’t essential. Act 91 became law in the first weeks of remote legislating via Zoom.

The legislature worked via Zoom until June 26, finishing up work on some policy bills, allocating all but \$140 million of federal coronavirus relief funds, and passing a short-term budget to get Vermont through the first quarter of SFY2021 which began on July 1.

They reconvened via Zoom again on August 25th to pass a complete SFY2021 budget and return to policy bills still in play. They adjourned for the remainder of the 2020 legislative session on September 25th.

Fiscal Bills

SFY2021 Budget | [H.969](#) (signed by the Governor)

The administration submitted two budget proposals to the legislature this year. The first was proposed in January, as part of the normal “pre-COVID-19” process. In August, the administration proposed what came to be known as the “restated” SFY21 budget. The documentation accompanying the budget highlighted (or “restated”) changes from the January proposal. The restatement proposal applied to the entire fiscal year and incorporated (or adjusted) policy decisions make as part of a first quarter-only budget passed in June ([Act 120](#)) Because H. 969 represents a complete budget, this report omits the first quarter-only budget.

The Legislature accepted most of the Governor’s recommended budget proposals from January, with some changes. The budget includes standard appropriations as well as allocations of COVID Relief Funds and changes to the hazard pay law.

Provisions impacting home health and hospice agencies:

- The budget includes \$2.7M in funding for increased caseload in the Choices for Care home and community-based services (HCBS) program. A caseload increase reflects utilization – not reimbursement rates. The proposal reflects DAIL’s expectation that more individuals will request Choices for Care services and that individuals on the program will need more services. The proposal did not address whether Vermont’s home and community-based workforce can support this utilization increase. The Choices for Care workforce crisis has been substantially exacerbated by COVID-19.

The bill appropriates CRF dollars as follows:

- \$2 million to support adult day providers;
- \$565,000 to support meals on wheels;
- \$600,000 to support recovery centers;
- \$2.2 million to the Vermont Housing & Conservation Board to address homelessness; and
- Reduces the Health Care Provider Stabilization Fund from \$275 million to \$247.5 million based on AHS projections from applications received to date. The bill directs that these funds include the following to the extent allowable under federal rules:
 - Up to \$2 million to support EMS providers;
 - Up to \$3 million for COVID testing in hospitals and long-term care facilities (which will include home health and hospice agency providing care in these facilities);
 - Up to \$3 million to support Designated Mental Health Agencies; and
 - \$750,000 to the Department of Health to address COVID related health disparities.

The budget bill also includes some policy provisions:

- Authorizes the Agency of Human Services (AHS) to seek a no-change 1115 Global Commitment waiver extension from U.S. Department of Health and Human Services (HHS) and authorizes AHS to move forward with seeking a negotiated waiver extension in the event HHS declines a no-change extension; and
- Modifies the hazard pay program enacted in Act 136 to expand covered employers and employees and increases the funding for the program. Of particular interest to home health and hospice agencies:
 - Expands the definition of “covered employer” to include traveling nurse agencies whose employees performed nursing services for another covered employer during the eligible period;
 - Allows “eligible employees” to include those who have received unemployment insurance benefits for not more than one week, limiting the grant to \$1,200 for those individuals; and
 - Appropriates an additional \$20 million to fund the program for a total of \$48 million.

COVID-19

Emergency Response Legislation | [Act 91](#) and [Act 140](#)

Act 91 was Vermont's first major legislative response to COVID-19. It created new flexibilities for telehealth, licensing and regulatory oversight in response to the crisis. As passed, Act 91 is in effect only if Vermont remains in a declared state of emergency. Act 140, a miscellaneous health care bill extends several provisions in Act 91 of 2020 beyond the State of Emergency.

The bill extends the following provisions to March 31, 2021:

- Grants employee protections for those individuals who are not licensed health care professionals from the risks associated with COVID-19, including protective equipment;
- Allows the Secretary of Human Services to waive or permit variances from specified rules and standards governing providers of health care services;
- Permits a pharmacist to, with the informed consent of the patient, substitute an available drug or insulin product for an unavailable one;
- Allows a health care professional authorized to prescribe buprenorphine for treatment of substance use disorder to authorize renewal of a patient's existing buprenorphine prescription without requiring an in-person visit;
- Deems out-of-state licensed health care professionals licensed in Vermont;
- Waives certain telehealth requirements during the state of emergency;
- Allows AHS to reimburse Medicaid-funded long-term care facilities and other programs providing 24-hour per day services for their bed hold days;
- Allows recently retired health care professionals to practice under certain requirements;
- Allows the Director of Professional Regulation the power to act on behalf of a regulatory body attached to the Office of Professional Regulation if necessary;
- Grants the Director of Professional Regulation and the Commissioner of Health power to give orders governing regulated professional activities and practices as may be necessary to protect the public health, safety and welfare;
- Waives telemedicine and store-and-forward requirements; Gives OPR the power to issue a temporary license to an individual who is a graduate of an approved education program if the required licensing examination is not reasonably available; and
- Allows the Board of Medical Practice or its Executive Director to issue a temporary license to an individual who is licensed to practice as a health care provider in another jurisdiction.

The bill extends the following provisions to June 30, 2021:

- Permits early refills and extensions of prescription maintenance medications.
- Permits Department of Financial Regulation emergency rules, rulemaking and extensions.

Federal CARES Act Funding for Health and Human Services | [Act 136](#)

The legislature approved \$275 million for a Healthcare Provider Stabilization Fund which the Agency of Human Services is using to provide grants to health care service providers. Factors considered in determining awards include:

- The impact of the grant amount on the applicant's sustainability;
- The degree to which the grant will provide or support services that would otherwise likely become limited or unavailable because of business disruptions caused by the pandemic; and
- The degree to which the applicant would use the grant funds to support existing patient financial assistance programs or would enable the applicant to continue providing services to Medicaid beneficiaries, or both.

The final SFY2021 budget reduced the allocation from \$275 million to \$247.5 million, as recommended by the administration, based on applications to date.

Advance Directives | [Act 107](#)

Act 107 allows for the remote witnessing of advance directives during the COVID-19 pandemic. Under the law, any advance directives created between Feb. 15, 2020 and the effective date of the bill are deemed valid until June 30, 2021 unless it is amended, revoked, or suspended by the principal. Before Act 107 an individual or principal was required to sign and date the advance directive in the presence of two or more witnesses to execute an advance directive. The Vermont Ethics Network and Vermont Legal Aid raised concerns that the new social distancing orders have made it unsafe to fulfill that witness requirement, especially for at-risk individuals. The legislation requires that the principal and the remote witness know each other, that the remote witness is informed about their role as a witness to the execution of the advance directive and that the advance directive must include the contact information for the remote witness. Finally, the witness must attest that the principal seemed to understand the nature of the document and was free from duress or undue influence at the time the advance directive was signed.

Workforce

Front-Line Employees Hazard Pay Grant Program | [Act 136](#) Section 6

The bill appropriates \$28 million for a Front-Line Employees Hazard Pay Grant Program. The program is awarding grants on a first-come-first-served basis to health care and human services employers whose employees were substantially dedicated to mitigating or responding during the initial months of the pandemic.

The optional program provides grants to employers to provide eligible employees a one-time payment for working in a role with an elevated risk of exposure to COVID-19 between March 13, 2020 and May 15, 2020. To be eligible to receive an award of \$1,200 an employee must have worked

at least 68 in-person hours during the grant period. Employees who have worked 216 or more in-person hours during the grant period are eligible to receive \$2,000.

There are some notable provisions that are relevant to home health and hospice agencies:

- Employees who received unemployment during the grant period are not eligible.
- Visits provided via telehealth cannot count toward the minimum hours worked.
- For most employers, only employees earning less than \$25 an hour are eligible for the program. Home health and hospice agencies and long-term care facilities are exempt from the cap – meaning that all direct care employees who otherwise meet the requirements are eligible.

The bill was modified by the FY'21 budget bill (H.969). Most notably, additional funds were allocated to the program to ensure that all health and human services employers who applied to the program could receive an award. The program was passed on a first-come-first-served basis and AHS received about \$2M more in applications than was originally allocated.

Presumption of Workers' Compensation Coverage for Front-Line Workers | [Act 150](#)

Act 150 creates a presumption of workers' compensation coverage for "front-line workers" who become infected with COVID-19. Front-line workers include home health and hospice agency professional and personal care employees. If a front-line worker becomes infected with COVID-19, an employer can overcome the claim by showing that it is more likely than not that the employee contracted the virus outside of the workplace.

Paid Family Leave | [H.107](#) (vetoed)

The 2019 session ended with two Democratic priority bills - paid family leave and minimum wage – each deadlocked in conference committee despite the same party holding a majority in both bodies. This was an embarrassment for both chambers and when the legislature reconvened in January, compromise bills were passed quickly. The paid family leave bill was vetoed by the governor on January 31 and House leaders were unable to garner enough support to override the veto.

Minimum Wage | [Act 86](#)

As with paid family leave, the 2019 session ended with a minimum wage bill held up in a conference committee. In January, the conferees came to a quick agreement and S.23 (now Act 86) was on the House floor. The bill raises the minimum wage from \$10.96 to \$12.55 by 2022. As with paid family leave, the Governor vetoed the bill. However, in the case of minimum wage, several Democrats who had initially opposed the bill changed their votes to support House leadership, and the veto was overridden.

Interstate Nurse Licensure Compact | [S.125](#) (passed Senate only)

At the end of May, the Senate advanced legislation to adopt the Interstate Nurse Licensure Compact. The VNAs of Vermont supports Vermont's participation in the Compact which enables a licensed practical nurse or a registered nurse who obtains a license in any Compact state to practice

in any other Compact state. Thirty-four states are signatories to the Compact. Participating in the Compact will eliminate one barrier to recruiting nurses in Vermont. The House did not pass the bill before adjournment.

Increasing Supply of Nurses and Primary Care Providers in Vermont | [H.607](#) (signed by Governor)

H. 607 aims to support the primary care and nursing workforce through scholarship programs and a workforce development strategic plan. The bill:

- Directs the Director of Health Care Reform in the Agency of Human Services to maintain a strategic workforce plan. The bill also establishes an advisory group of stakeholders, including representatives from home health agencies, to advise the Director of Health Care Reform on the state's strategic workforce plan. **A plan draft is required to be submitted to the Green Mountain Care Board by July 1, 2021** for approval;
- Establishes a rural primary care physician scholarship program through the Department of Health in collaboration with the Office of Primary Care and the Area Health Education Centers at the University of Vermont College of Medicine;
- Appropriates roughly \$1 million in nursing scholarships. Students pursuing a practical nursing, associate's, or bachelor's degree in nursing that commit to working in Vermont for at least one year after licensure are eligible for the scholarship. The Vermont Student Assistance Corporation (VSAC) will administer the scholarship;
- Requires the Director of Health Care Reform to identify the primary causes of the nursing workforce shortage and proposed solutions and to submit a report to the Legislature by March 1, 2021.

Uniform licensing standards | [S.233](#)

The bill creates uniform standards for licensure processes in the areas of military credential verification, continuing education and endorsements from other states. The law also includes a provision that would allow military medics to become eligible for practical nurse licensure.

Other Bills

Older Vermonters Act | [H.611](#) (signed by Governor)

H.611 aims to help aging Vermonters live independently and describes the principals for a comprehensive and coordinated system of services and supports for older Vermonters.

The bill requires annual reports to the legislature by the Department of Disabilities, Aging and Independent Living regarding the Adult Protective Services Program. It establishes an Action Plan on Aging to be developed by the Secretary of Administration, in collaboration with DAAIL and the Vermont Department of Health. It shall also include a review of the Medicaid reimbursement rates paid to home and community-based service providers.

At the request of the VNAs of Vermont, the legislation also repeals a provision in current law that requires a home health and hospice agency to conduct an annual needs assessment. Instead, agencies will be required to participate in other existing planning activities, including the Health Resources Allocation Plan prepared by the GMCB and the community needs assessments prepared by hospitals.

Maternal-Child Health Home Visiting | [H.778](#) (did not come out of committee)

At the request of the administration, the House Human Services Committee considered a proposal to embed enabling language in statute for state-funded maternal child health home visiting services. The language would not guarantee an appropriation, but it would allow an appropriation to be considered as part of the budget process. The original SFY2021 budget proposal appropriated \$1 million to home visit expansion. The bill was not voted out of committee.

Prior Authorization Requirements | [Act 140](#)

The miscellaneous health care bill includes several provisions aimed at reducing prior authorization requirements imposed by commercial health plans and DVHA.