

Overview

In “normal” years, we publish a mid-session legislative report in March. We wait until two crucial milestones have been passed. First, the policy “crossover” deadline – the date by which policy bills need to be passed by the originating chamber to give time for consideration by the other. Second, usually a week later, the budget crossover when the House passes a budget and sends it to the Senate. Taken together, policy “crossover” and the House budget form the basis of our advocacy and our understanding of the policy and political environment for the remainder of the session.

This year, COVID-19 entirely disrupted the process. As the crossover deadlines loomed, 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.

Today, the 2020 session isn’t over. The legislature recessed on June 26 until August 25. Lawmakers finished up their work on many policy bills, allocated all but \$140 million of federal coronavirus relief funds, and passed a short-term budget to get Vermont through the first quarter of SFY2021 which began on July 1. When they return, they will face the daunting task of passing a budget for the rest of SFY2021 with state revenues in disarray. The shortfall estimates keep changing, but hover around the \$300 million range.

The \$140 million of the federal funds was set aside in the unlikely event that Congress and the president agree to allow federal money to be used to backfill state budgets. The more likely scenario is that Vermont will have to balance the budget through a combination of reserves, cuts and tax increases. It’s going to be a very challenging September.

Budget

State Fiscal Year 2021 (SFY2021) Budget (first quarter) | [H.961](#) (signed)

The bill which funds state government for the first quarter of the fiscal year at 25 percent of the SFY2020 budget across all of state government, with some exceptions. Most notably, the Education Fund was filled at 100 percent after the legislature made a commitment to hold property taxpayers harmless for the COVID-related losses.

The VNAs of Vermont does not anticipate a rate increase between July 1 and September 30 for any Medicaid service, including Choices for Care.

COVID-19

Emergency Response Legislation | [Act 91](#) and [H.960](#) (signed)

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. H.960, 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 | [H.965 Section 7](#) (signed)

The legislature approved \$275 million for a Healthcare Provider Stabilization Fund which the Agency of Human Services will use 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 amount awarded to the stabilization fund is far greater than the \$150 million first proposed by House leadership, but remains well shy of the \$375 million or more the health care provider association coalition believes is needed to sustain the health care system.

Advance Directives | [Act 107](#) (signed)

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, the remote witness be informed about their role 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 | [H.965 Section 6](#) (signed)

The bill appropriates \$28 million for a Front-Line Employees Hazard Pay Grant Program. The program will award grants to certain public safety, public health, 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.

Presumption of Workers’ Compensation Coverage for Front-Line Workers | [S.342](#) (passed; not yet signed)

S.342 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.

The bill passed despite strong objections raised by insurers, business trade associations and the health care industry who argued that state and federal laws and regulations already address the health care costs and wage replacement needs of those who become ill with COVID-19 and cannot work. The bill places health care employers at risk for workers’ compensation premium hikes or even lost coverage. The bill is the only one of this scope in the country. As of this writing, the bill has not been sent to the governor who can consider a veto.

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 of the other 34 Compact states. Participating in the Compact will eliminate one barrier to recruiting nurses in Vermont. The bill was referred to the House Health Care Committee who will likely take it up when the legislature resumes in late August.

Increasing Supply of Nurses and Primary Care Providers in Vermont | [H.607](#) (passed House only)

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

- The bill 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.
- The bill appropriates money to the Department of Health for additional scholarships for nursing students through the Health Care Educational Loan Repayment Fund and sets up priorities for how the funds should be administered.
- Finally, the bill includes a requirement for the director of Health Care Reform to maintain a current health care workforce development strategic plan, with the help of an advisory group. A draft of the plan must be submitted for review and approval to the Green Mountain Care Board by December 1, 2020, and after approval, the plan will be provided to the legislature.

Other Bills

Older Vermonters Act | [H.611](#) (passed House only)

The House has passed H.611, a bill that 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 a Strategic Action Plan on Aging to be developed by the Secretary of Administration, in collaboration with DAAIL and the Vermont Department of Health. The Strategic Plan would provide strategies and cultivate partnerships for implementation across state and local government, philanthropic organizations and the private sector to promote aging with health, choice and dignity and establish and maintain an age-friendly state for all Vermonters.

The bill also requires DAAIL and the Department of Vermont Health Access to develop criteria and a process for calculating an annual inflation factor for potential application to the Medicaid rates for home- and community-based Choices for Care providers in future fiscal years. The departments will

be required to submit a report on the criteria and process by April 15, 2021. The bill is now in the Senate Health and Welfare Committee.

Maternal-Child Health Home Visiting | [H.778](#) (still in 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 before COVID-19 closed the State House and the committee did not consider it as part of their Zoom deliberations.

Prior Authorization Requirements | [H.960](#) (signed)

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