



## **Final VAHHS Legislative Report 2005 Session**

The Vermont General Assembly adjourned on Saturday, June 4, 2005. Because this is the first year of the biennium, any bill that was introduced this session is still in play next January. Next year is an election year and with health care remaining on top of the agenda, we expect to be busy from start to finish. With any luck, it will be a short session!

### **Political Overview**

Defending ideological ground predominated over policy compromise in the 2005 session of the Vermont General Assembly. With the Democrats in control of the Legislative branch and a Republican Executive branch, the partisanship hit an all time high. Democrats control the Senate by a 21 to 9 margin. Democrats also control the House by a large margin holding 83 seats to 60 for the Republicans, 6 Progressives and 1 Independent. With such large Democratic majorities in both chambers, Speaker of the House Gaye Symington of Jericho, and Senate President Pro Tempore Peter Welch of Windsor, were challenged in keeping the caucus together and in line on certain issues.

Overall Speaker Symington receives high marks and can claim a successful year as the 2<sup>nd</sup> female Speaker for the state of Vermont. Symington was viewed by all parties as fair on committee assignments and procedural rulings. She treated all members with respect and did not dictate the work of the committee unlike many of her predecessors.

At least three major issues were compromised due to the divided nature of the legislature. Health care reform, the pension fund bill that was ultimately vetoed and sustained by the Republicans in March, and the labor dispute that will ultimately cause the Governor to veto the budget bill this week. This will bring the legislature back to Montpelier for a special session on Thursday, June 16, 2005.

### **VAHHS Issues**

#### **Medicaid/Budget (H.516)**

The House and Senate conferees approved a \$1.03 billion budget late Friday, June 3. Interestingly enough, negotiators readily settled on the money issues and got mired in policy disputes. One conference committee member, Richard Marron R-Stowe, did not sign the conference committee report due to language that would allow the legislature to step into state college labor disputes. Although the union for the state colleges backed down from its acrimonious fight over the loss of early retirement benefits, the governor stated that only a ratified contract between the professors

and college management would keep him from calling a special session. That likely will not happen soon enough (the Governor has 5 days after receipt of the budget to act on it), so the Governor will **VETO** the bill. We are hopeful that the only change to the budget will be elimination of the language related to the Vermont State College.

The following budget bill provisions (by section number) of interest to VAHHS are as follows:

*Section 54b: Commission on Social Security Number Usage and Other Privacy Issues:* Creates a commission to study the usage of Social Security numbers and other privacy issues in the public and private sectors and develop proposals for reducing such use wherever possible and protecting privacy and security when numbers must be used.

*Sections 77a, b, c, d, e, f, g: Related to Act 53 and Certificate of Need (CON) laws:* These sections of the bill include a variety of technical changes, such as the date change for the community needs assessments to March 1, 2009 and a date change for the hospital community reports to June 1. Beginning on June 1, 2006, hospital community reports will be published only on each hospital's website with paper copies available upon request. The bill includes language that allows a two-year suspension of "gap" CON jurisdiction for hospitals. Hospitals will be required to report "gap" projects to BISHCA and the Health Access Oversight Committee during the annual budget review process.

*Section 104a – Office of Vermont Health Access (OVHA):* This section includes the Medicaid FY 2006 cuts for providers. Hospitals will see a reduction in Medicaid spending of \$16.5 million. VAHHS was able to negotiate language that takes into consideration settlement of outpatient costs for prior years in the amount of no more than \$5 million, including the \$1.9 million already booked by OVHA. Also included is language that allows hospitals to cost-shift Medicaid losses. Other provider reductions include: physicians who use Current Procedural technology (CPT codes) by \$2.3 million, home health by \$500,000, and dentists by \$243,309. Nursing homes were successful in keeping the inflation factor, but are required to raise the minimum occupancy rate to 93 percent.

*Sections 108a. and 263(10): Nursing Faculty Loan Forgiveness:* These sections relate to loan forgiveness for nursing and loan forgiveness for nursing faculty. The budget includes \$50,000 in new funds for nursing faculty loan forgiveness.

*Sections 113a, c, d, e: Forensic Evaluations and the Vermont State Hospital (VSH):* These sections allow designated hospitals to conduct forensic evaluations on certain patients with an established sunset date of July 2006 and authorizes the commissioner of health to convene a work group to address issues relating to forensic mental health patients. It also includes the adoption of the VSH Futures Plan for replacement of VSH and authorizes oversight when the legislature is not in session to the Mental Health Oversight Committee.

*Section 250c – Federal Funds:* This section includes the language that the General Assembly must approve any agreement or waiver with the federal government on the Global Commitment.

*Sections 255, 7 a, b, c – FY 2005 General Funds Appropriations and Transfers:* These sections include the appropriations that were part of the health care reform bill. Included are: \$325,000 to support the activities of the legislative commission on health care reform; \$325,000 for studies \$75,000 for health care reform public information and outreach; \$1,039,000 to the OVHA to fund the Vermont Blueprint for Health (Chronic Care Initiative); \$200,000 to the department of taxes to assist with implementation expenses for the payroll tax included in H.524. The language states that if the

health care reform bill is not enacted, the funds allocated for this will be given to the Vermont Department of Health (VDH) to be used for additional grants.

*Section 263 - FY 2005 Waterfall Funds:* The following funds are allocated:

- \$1,300,000 for the Vermont State Hospital expenditures
- transfer of up to \$17,000,000 to the Vermont health access trust fund to ensure that said amount is available for fiscal year 2006 general fund obligations and additional funds of \$21,096,000 if they are available
- \$14,347,000 to offset postponement of the second disproportionate hospital share payments until fiscal year 2007
- \$6,749,000 to provide additional resources for Medicaid expenditures
- \$200,000 to VDH to fund free clinics
- \$700,000 to the Department of Banking, Insurance, Securities, and Health Care Administration for the work of the Vermont Information Technology Leaders (VITL). Of the appropriated amount, \$500,000 is dollar-for-dollar matching funds to leverage resources necessary to fund the pilot program. The corresponding language is included in Section 277 of the bill (see below).
- \$200,000 to VDH for the purpose of providing grants for federally qualified health center (FQHC) look-alikes. In additional \$50,000 will be given to VDH, of which \$20,000 will be granted to Bi-State Primary Care for activities related to Vermont FQHC's and the remainder \$30,000 will be for the development and implementation of 340B pharmaceutical services.
- It considers the Program for All-Inclusive Care for the Elderly (PACE) as an eligible project as defined under 10 VSA, chapter 12 § 212(6) in order to secure a line of credit with the Vermont Economic Development Authority (VEDA). The extension of loans or mortgage insurance, terms and conditions are determined by VEDA. It requires VEDA to consider such a guarantee prior to July 31, 2005. If the program does not qualify for the guarantee, \$605,000 will be appropriated to the office of Vermont health access to provide capitalization grants for Vermont-based PACE centers.

*Section 277 – Health Information Technology:* This section includes the language for the work of VITL that will facilitate the development of a statewide health information technology plan and initiate a pilot program involving at least two hospitals using existing sources of electronic health information.

*Section 277 c & d – Commission on Health Care Reform:* Creates a commission that will monitor health care reform and make recommendations to the General Assembly. This section includes all the studies included in the health care reform bill and the public engagement process (see health care reform update below).

*Section 278 – Managed Care Organization:* This section converts OVHA to a publicly operated managed care organization.

*Section 283 – Provider Taxes:* These sections are normally addressed in the fee bill.

- **Hospital Provider Tax** – Effective July 1, 2005 the hospital provider tax will be increased from 4.54 percent to 6.0 percent of net patient revenue (less chronic, skilled and swing bed revenues). Mental hospitals and psychiatric facilities will remain taxed at 4.21 percent of net patient revenues.

- **Nursing Home Provider Tax** - Effective July 1, 2005, the bill establishes a \$3,787.79 per bed tax for all nursing homes (up from \$3,676.06).
- **Home Health Assessment** – Effective July 1, 2005 the home health provider tax will increase from 16.0 to 18.45 percent.
- **Pharmacy Assessment** – Effective July 1, 2005, each prescription filled or refilled will be assessed a \$.10 fee. This is a new assessment for pharmacies.

*Section 302: Medicaid-Related Rule Making:* This section allows the rule making authority related to Medicaid. It directs the division of rate setting to amend the rules for nursing home to raise the minimum occupancy rate to 93 percent effective July 1, 2005.

*Section 303: Financial Eligibility for Long Term Care:* This section allows the Agency of Human Services to amend the Medicaid rules and procedures for income, resources and transfer of assets used to determine eligibility for Medicaid.

*Sections 305 – 311:* These sections relate to prescription drugs, including Vermont's participation in the Vermont-Rx program.

To view the entire Appropriations Bill as passed by the House and Senate please view the link below: <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/calendar/sc050604a.htm>

### **Health Care Reform (H. 524)**

The House and Senate conferees came to agreement Thursday, June 2. Of interesting note, the lone Republican of the conference committee, Malcolm Severance R – Colchester, did not sign the report.

The House and Senate passed the health care reform bill on Friday, June 3, the day before the session adjourned. Knowing that the Governor would veto the bill mostly due to the revenue scheme, Democratic leadership in both the House and Senate attempted to tack on many portions of the reform bill on to the budget bill because of the known VETO. One provision of huge concern to VAHHS was the spending caps on hospitals. VAHHS successfully kept this piece out of the bill. Ultimately, any provisions of the health reform bill that did not have an appropriation was not included in the budget bill. Under legislative rules, any member could raise an objection about provisions without an appropriation. This objection could be over-ruled only if 75% of legislators supported including the provision. Although the Governor will veto the bill, this bill will most certainly become a top priority next January. Many of the provisions will remain with changes in implementation dates.

In summary, the bill as agreed to by the House and Senate creates the Green Mountain Health Plan (GMH). The plan would provide primary and preventive health care coverage to all uninsured Vermonters beginning July 2006 with the benefit package recommended by the legislative Commission on Health Care Reform with final approval by the legislature. GMH would offer, upon finding that cost containment and performance benchmarks will be met, primary and preventive health care coverage to all Vermonters in July 2007; hospital coverage to all Vermonters in October 2008; and a common benefit to all Vermonters in July 2009.

The cost containment control initiatives in the bill address financing, delivery, and quality of health services. Cost containment measures include: global budgeting of and payments to hospitals; the

chronic care initiative; consumer access to health care price and quality information; health care information technology; alignment of health care professional reimbursement with best practices and outcomes; integrated systems of health care; health care purchasing pool; prescription drug initiatives, including statewide preferred drug list, pharmacy discount plan, pharmacy benefit manager regulation, and manufacturer price disclosure; options for medical liability self-insurance; safe apology; healthy lifestyles insurance discount; and expansion of health centers and free clinics. Of these cost containment initiatives the following were included in the budget bill: chronic care initiative, health information technology, some prescription drugs provisions, and a piece on federally qualified health centers look-alikes.

The financing mechanism that the Governor opposes is a "Health Effort Tax". The tax provision has a number of pieces. All are covered and all contribute in an effort to reduce the cost shift. Employers who spend at least 3% of payroll on health care will pay nothing; small employers (\$50,000 payroll) who spend at least 1% on health care will pay nothing; employers not making minimum contribution will pay 1% of first \$50,000 and 3% of remaining payroll (minus any health care spending). Individuals with health coverage in 9 months of the reporting year will pay nothing; individuals without health coverage will pay 1% of adjusted gross income.

The Commission on Health Care would direct a program to assist communities, regions, and health care providers in reorganizing health care delivery systems to improve coordination, quality of health care, and make long-term investments in systems, technology, and infrastructure.

The process for engagement and studies include: Vermonters will have opportunities to provide input through a public engagement process in summer/ fall 2005. Studies during summer 2005 will examine economic impacts, financing options, governance and administrative issues. An independent legislative Commission on Health Care would be created and staffed to provide leadership and follow-through on health care reform.

Again, this bill will resurface in some form next year.

**Bills of interest to VAHHS that were enacted into law (or are awaiting the Governor's signature) in 2005:**

**Clinical Trials for Cancer Patients (H. 6/Act 3)**

This law requires health plans to pay for routine care for member in clinical trials. The legislature acted quickly to respond to a March 1 sunset of the original statute that required payment for trials at Fletcher Allen Health Care and Dartmouth Hitchcock Medical Center. The law permanently extends the mandate and requires payment for out-of-state trials in addition to those at local institutions. The Governor signed this bill into law and became effective February 24, 2005. <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT003.HTM>

**Unlawful Employment Practices (H.72/Act 10)**

This law proposes to protect employees from discharge, discipline, or discrimination for disclosing the amount of his or her wage. The Governor has signed this bill into law and it becomes effective July 1, 2005. <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT010.HTM>

### **Advance Directives (H. 115)**

The law proposes to improve medical care for Vermonters by simplifying the legal requirements for advance directives. It recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of incapacity and at the end of life. It enables adults to retain control over their own health care through the use of advance directives, including appointment of an agent and directions regarding health care and disposition of remains. During periods of incapacity, the decisions by the agent shall be based on the express instructions, wishes, or beliefs of the individual, to the extent those can be determined. The hospital patient bill of rights is amended to state that whenever possible, guardians or parents have the right to stay with their children 24 hours per day. Whenever possible, agents, guardians, reciprocal beneficiaries or immediate family members have the right to stay with terminally ill patients 24 hours a day. It gives patients the right to receive professional assessment of pain and professional pain management. It also states that a patient has the right to be informed in writing of the availability of hospice services and the eligibility criteria for those services. This bill is awaiting action by the Governor and becomes effective September 1, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/H-115.HTM>

### **Vulnerable Adults (H. 163)**

This bill revises and expands existing criminal law regarding abuse, neglect, and exploitation of vulnerable adults. With agreement from the attorney general's office the definition of neglect was narrowed from the existing definition in Title 33. The abuse by restraint language allows for restraints when they are part of a legitimate and lawful medical or therapeutic treatment; or lawful and reasonably necessary to protect the safety of the vulnerable adult or others. The definition of vulnerable adults was broadened such that patients receiving services at home need not be receiving them for one month in order to be defined as vulnerable. It also requires that vulnerable adults must be both receiving care from a nursing home, psychiatric unit, or home health agency or be impaired in their ability to protect themselves from the abuse, neglect or exploitation. The law also creates an adult abuse registry of offenders. The bill is awaiting action by the Governor and becomes effective upon passage.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/senate/H-163.HTM>

### **Regulation of Professions and Occupations (H. 199/Act 27)**

This law makes adjustments to general provisions relating to the regulation of all professions and occupations regulated by the office of professional regulation or by boards attached to that office and makes specific adjustments to the systems for regulating of professions. This bill has been signed by the Governor and becomes effective July 1, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT027.HTM>

### **Prohibition of Smoking in All Public Places (H. 241)**

This law prohibits smoking in all public places, including bars and private clubs. This bill has been signed by the Governor, but has not been given an Act number. It becomes effective July 1, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/H-241.HTM>

### **Carbon Monoxide Detectors (H. 243/Act 19)**

This law requires that carbon monoxide detectors be installed in apartments, public buildings and new homes beginning July 1. This bill has been signed by the Governor and becomes effective July 1, 2005. The compliance sections of the act include an effective date of October 1, 2005 for buildings in which people sleep and November 1, 2006 for public building in which people do not sleep. <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT019.HTM>

### **Long Term Care Insurance (H.287/Act 20)**

This law requires that insurers provide information to an applicant on premium rate or rate schedule increases at the time of the application or enrollment, unless the method of application does not allow for delivery at that time. In those cases an insurer will provide all of the information to the applicant no later than at the time of delivery of the policy or certificate. This bill has been signed by the Governor and becomes effective upon passage. The Act applies to any long-term care policy or certificate issued in this state on or after January 1, 2006. For certificates issued on or after the effective date of this act under a group long-term care insurance policy as defined in 8 V.S.A. § 8082(4)(A), which policy was in force at the time this act became effective, the provisions of this act shall apply on the policy anniversary following January 1, 2006.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT020.HTM>

### **Certificate of Need (CON - H. 450)**

The two-year suspension of CON “gap” jurisdiction for hospitals is included in Section 77 of the budget bill (see above). The other sections of this bill did not progress this session.

### **Statewide Hospital Performance Reports (H. 512)**

Language is included in Section 77 of the budget bill on community report cards and needs assessments (see above).

### **Capital Construction and State Bonding (H. 518)**

The Capital Construction Bill funds capital projects for state government. The \$45 million capital budget contains a few items of interest to hospitals. It specifies that the Department of Buildings and General Services will receive \$250,000 for preliminary planning and design of a new facility to replace the current Vermont State Hospital. The remaining \$375,000 will be released when plans are approved by the Joint Legislative Mental Health Oversight Committee. An additional \$300,000 is allocated for maintenance work at the Vermont State Hospital. There is an appropriation of \$1.8 million for planning and design of health and safety laboratories. This bill has been signed by the Governor, but has not been given an Act number. It became effective upon passage.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/H-518.HTM>

### **Reorganizing the Agency of Human Services (H. 531)**

This bill conforms the Vermont Statutes Annotated to the reorganization of the Agency of Human Services. It creates the of disabilities, aging, and independent living as the successor to and continuation of the department of aging and disabilities, the developmental services division of the department of developmental and mental health services, and the personal care and hi-tech programs in the department of prevention, assistance, transition, and health access. This bill has been signed by the Governor, but has not been given an Act number. It becomes effective on July 1, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/H-531.HTM>

### **Long Term Care Waiver (H. 543)**

This bill proposes to direct the department of aging and independent living to implement a Medicaid 1115 waiver to allow home and community-based long-term care services to be offered in the same manner as nursing home services and address issues relating to the waiver. The bill is awaiting action by the Governor and becomes effective upon passage.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/H-543.HTM>

### **Reducing Fires Resulting from the Careless Use of Cigarettes (S.40)**

This law requires that all cigarettes sold in Vermont be fire-safe. It tracks New York and Canada's regulations by referencing the ASTM E2187-04 test standard, using 10 sheets of filter paper for testing and setting a failure rate of no more than 25% full length burns in a single test trial of 40 cigarettes. New York State's package markings would be accepted in Vermont, making it easier for manufacturers to meet the needs of the relatively small Vermont market. This bill is awaiting action by the Governor and becomes effective May 1, 2006.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/senate/S-040.HTM>

### **I-SAVEX Prescription Drug Program (S. 49/Act 2)**

This law authorizes Vermont's participation in an Illinois-based plan to allow Vermonters to purchase lower cost prescription drugs from Canada, Ireland and the United Kingdom. This bill has been signed by the Governor and became effective on February 17, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT002.HTM>

### **Comprehensive Management of Exposure to Mercury (S. 84./Act 13)**

This law establishes a comprehensive approach to reducing the exposure of citizens to mercury released in the environment through mercury-added product use and disposal. It bans the distribution or offering for sale of mercury-added novelties, fever thermometers, thermostats, and dairy manometers after a certain date and to restrict the use of elemental mercury. It modifies the existing labeling requirements for mercury-added products and packaging by expanding the types of products subject to labeling, including formulated mercury-added chemical products. It requires dental offices to follow mercury waste management practices as established by the agency and to install dental amalgam separators on the wastewater discharge by a certain date if mercury-added dental amalgam is used in or removed from patients. It requires hospitals to submit a mercury reduction plan to the agency every three years and to exempt hospitals that achieve 95 percent reduction in mercury-added product use. It continues a mercury public education and outreach program in the agency of natural resources and the department of health. It continues an advisory committee on mercury pollution to report annually to the legislature with recommendations on reducing mercury contamination and risk. A hospital representative will be added to the committee. This bill has been signed by the Governor and becomes effective on July 1, 2005.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT013.HTM>

### **Authorizing Nonprofit Hospitals to Convert Charitable Assets (S. 113/Act 28)**

This bill gives the state responsibility to assure that the assets of nonprofit entities, which are impressed with a charitable trust, are managed prudently and are preserved for their proper charitable purposes. It codifies the standards and a procedure when a nonprofit hospital service corporation seeks to convert to a for-profit entity or to sell, transfer, lease, exchange, option, commit, convey, or otherwise dispose of charitable assets of the nonprofit hospital service corporation. Any conversion of a qualifying amount of such assets must be approved by the attorney general and the commissioner of banking, insurance, securities, and health care administration as a transaction that will promote the public good of the state. This bill has been signed by the Governor and became effective upon passage.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT028.HTM>

### **Home Health Agencies (S. 174)**

The bill ensures that all Vermont residents in every town within the state have access to comprehensive, medically necessary home health services without regard to their ability to pay for those services and to ensure that such services are delivered in an efficient and cost-effective manner, under a regulatory framework designed to control costs and ensure access to high quality

home health services based on a model that promotes cooperation and nonduplication of services, rather than unregulated competition. It also requires additional oversight from Department of Aging and Independent Living. This bill is awaiting action by the Governor and becomes effective upon passage.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/S-174.HTM>

**Bills of interest to VAHHS that will carry over to 2006:**

This being the first year in a two-year biennium, all bills that were not enacted into law this year remain “on the wall” and carry over until next January when they can be taken up again. Some of the key bills of interest to VAHHS in this category include:

**H. 168** – Death With Dignity: The House Human Services committee has committed to taking this bill up in January.

**H.227, H. 465, S.95, S. 148** - Nurse Staffing Ratios: The House General, Housing & Military Affairs Committee passed this bill out of committee on a 6-0-2 vote at the end of the session. This bill will be on the notice calendar in January, unless the Speaker refers this bill to the House Human Services committee.

**H. 258** – Disclosure of Rates of Hospital-Acquired Infections: The House Human Services committee took testimony on this bill and there is strong support for public reporting. The committee will move in some direction on this bill in January.

**H. 281, H. 329, S.149** – Medical Malpractice

**H. 404** – Access to Mental Health and Substance Abuse Providers: This bill passed by the House and is currently in Senate Finance.

**H. 446, S. 96** – Prohibiting Mandatory Overtime

**S. 27** – Safe Haven Defense to the Crime of Abandoning a Baby: This bill passed the Senate and is in House Judiciary.

**Addendum to Final VAHHS Legislative Report  
2005 Session**

The Vermont Legislature convened on June 16, 2005 at the call of the Governor for a special session in order to address the language in the budget bill that places lawmakers in the middle of labor disputes at the state colleges. The leadership of the House and Senate also took the opportunity of the special session to offer a resolution on conducting a summer study on the state colleges. The legislature also passed a bill that will continue a tax credit for the Ethan Allen furniture plant in Orleans that was due to expire this year.

H. 1, An Act Relating to the Vermont State Colleges Collective Bargaining Agreement, passed both chambers. The amendment removes the provision in H. 516, An Act Making

Appropriations for the Support of Government, which would allow the legislature to step into state college labor disputes. Both Chambers also passed a resolution (JRH 1) calling for an extensive investigation into the management of the state colleges, including concerns raised by the faculty and their vote of no confidence in the chancellor. Both the bill and the Joint Resolution will be sent to the Governor for his signature. With passage of H. 1, the Governor has stated that he will sign the budget bill.