

S.297

Introduced by Senators Kitchel, White, Cummings, Lyons, Sears and
Westman

Referred to Committee on

Date:

Subject: Executive; health; human services; Agency of Human Services;
Agency of Health Care Administration

Statement of purpose of bill as introduced: This bill proposes to create an
Agency of Health Care Administration.

An act relating to the Agency of Health Care Administration

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) The Agency of Human Services was established by legislation enacted in 1970. By design, it became an umbrella agency that combined the Departments of Social Welfare, of Mental Health, of Health, and of Corrections as well as several small offices and boards.

(2) In 1970, large institutions dominated the service delivery system. The Brandon Training School, serving Vermonters with developmental disabilities, had a census of over 600. The Vermont State Hospital in

1 Waterbury, serving Vermonters with severe mental illness, had a census of
2 approximately 1,200. The Weeks School in Vergennes served 275 delinquent
3 or unmanageable youth. The State Prison in Windsor was operating and the
4 community correctional system did not exist. Medicaid coverage was limited
5 to beneficiaries of public assistance, nursing home patients with limited
6 income and resources, and medically needy individuals.

7 (3) In 1973, the Department of Social and Rehabilitation Services was
8 created in response to a federal mandate for separate administration of the
9 income maintenance function for social services for welfare-dependent
10 families. A number of employment and social service programs were
11 combined within the Department. Over the years, the jurisdiction of the
12 Department of Social and Rehabilitation Services included alcohol and drug
13 abuse programs, blind and visually impaired individuals, disability
14 determinations, social services and child welfare, the Woodside Juvenile
15 Rehabilitation Center, licensing, and child care. In addition, the Agency of
16 Human Services took over vocational rehabilitation from the Department of
17 Education and established a new Office of Economic Opportunity.

18 (4) In 1975, the Child Support Unit was added to the Department of
19 Social Welfare to establish and enforce child support orders. In 1990, a
20 separate Office of Child Support was created.

1 (5) In 1980, a Fuel Assistance Program was created with the passage of
2 the federal Low Income Home Energy Assistance Program (LIHEAP)
3 legislation. This program has been administered by the Department of Social
4 Welfare and its successor ever since.

5 (6) In 1983, a law requiring mandatory reporting of child abuse and
6 neglect took effect. In 1982, the year before this law went into effect, there
7 were 386 reports of child abuse or neglect. In 1983, the first year of mandatory
8 reporting, the number of reports for investigation increased nearly 500 percent
9 to 1,875.

10 (7) In 1986, the Reach Up program was created to assist welfare parents
11 to become self-sufficient and self-supporting.

12 (8) In 1989, Dr. Dynasaur was established, providing health coverage
13 for pregnant women and for children under seven years of age. VScript was
14 created to provide discounts, and later partial subsidies, to aged Vermonters
15 and Vermonters with disabilities.

16 (9) During 1990 and 1991, the Office of Aging was transformed into the
17 Department of Aging and Independent Living.

18 (10) In 1993, eligibility for Dr. Dynasaur was expanded to provide
19 health care coverage to children through 18 years of age living in households
20 with income up to 300 percent of the federal poverty level (FPL).

1 (11) In 1994, the Welfare Restructuring demonstration project
2 legislation passed. The Reach Up program expanded to support individualized
3 case planning for families and to include work and training requirements.

4 (12) In 1995, legislation passed creating the Vermont Health Access
5 Program pursuant to a Medicaid Section 1115 waiver to extend Medicaid
6 eligibility to adults without children or a disability with income up to
7 150 percent FPL and adults with children up to 175 percent FPL. The waiver
8 and savings projections were built around the introduction of managed care
9 concepts for certain Medicaid beneficiaries.

10 (13) In 2003 and 2004, an Agency of Human Services reorganization
11 effort intended to break down silos across departments resulted in the structure
12 of the Agency today. The Office of Health Access began functioning as an
13 independent entity and was elevated to a department in 2010.

14 (14) In 2004 and 2005, Vermont began operating under the Choices for
15 Care and Global Commitment Medicaid Section 1115 waivers. Choices for
16 Care provides older Vermonters and Vermonters with disabilities a choice
17 between receiving long-term care services in a nursing home or through
18 home- and community-based services. The Global Commitment waiver
19 provides Vermont with flexibility in its Medicaid program. The waiver
20 imposes a cap on the amount of federal Medicaid funding available to Vermont
21 to provide acute care services to its Medicaid population. In exchange for

1 taking on the risk of operating under a capped funding arrangement, the waiver
2 allows Vermont to use federal Medicaid funds to finance a broad array of the
3 State's own non-Medicaid health programs.

4 (15) In 2006, Vermont passed 2006 Acts and Resolves No. 191, entitled
5 An act relating to health care affordability for Vermonters. The act created
6 Catamount Health, which expanded health care assistance through premium
7 subsidies for adults up to 300 percent FPL. The act also established the
8 Blueprint for Health, which is a program for integrating a system of health care
9 for patients, improving the health of the overall population, and improving
10 control over health care costs by promoting health maintenance, prevention,
11 and care coordination and management.

12 (16) In 2010, the U.S. Congress passed the Patient Protection and
13 Affordable Care Act, Pub. L. No. 111-148. This sweeping legislation makes
14 the most significant changes to Medicaid since its creation in 1965. Key
15 provisions include:

16 (A) A new national income standard for Medicaid eligibility for all
17 adults. In fiscal year 2019, more than 37,000 childless adults in Vermont
18 received Medicaid under this new standard.

19 (B) Improved coordination of care and services for individuals who
20 are eligible for both Medicare and Medicaid.

1 (C) Reductions in Medicaid disproportionate share hospital
2 payments.

3 (D) Increased federal funding for the Children's Health Insurance
4 Program, which is one of the funding sources for Dr. Dynasaur, as well an
5 enhanced federal medical assistance percentage for adults newly eligible for
6 Medicaid and time-limited payment increases for primary care providers.

7 (E) A requirement that each state establish a health benefit exchange
8 or allow the federal government to operate an exchange on its behalf.

9 (17) In 2011, Vermont enacted 2011 Acts and Resolves No. 48, which
10 established the Vermont Health Benefit Exchange, created the Green Mountain
11 Care Board, and laid the framework for Green Mountain Care, a publicly
12 financed program of universal and unified health care for all Vermont
13 residents.

14 (18) It is now 2020, and the organizational construct that brought
15 together four departments in 1969 is no longer adequate for today's
16 complexities and demands for accountability. Nowhere has the change been as
17 dramatic as with health care. The role of State government in the financing,
18 oversight, delivery system transformation, and health care marketplace has
19 grown to the point where these functions require dedicated management and
20 administrative leadership. Likewise, social and economic services and child

1 and adult protection responsibilities have been significantly expanded and need
2 the attention of more focused management.

3 (19) The breadth and scope of the programs in the Agency of Human
4 Services, its statutory obligations, its funding streams, and its other
5 responsibilities are beyond the capacity of one individual agency head to
6 oversee and manage effectively. Health care expenditures now constitute over
7 25 percent of total State spending, second only to spending on K–12 education.

8 (20) Creation of an Agency of Health Care Administration would
9 provide the necessary organizational framework, aligned with the Blueprint for
10 Health model, for a unified, systematic approach to the administration of health
11 care policy and financing. It reflects that dramatic changes have occurred
12 since 1970 in how coverage has been expanded to achieve the public policy
13 goal of universal coverage and in how care is delivered and financed. The
14 Secretary of this Agency would be a member of the Governor’s Cabinet,
15 which would provide clear and direct accountability for the administration of
16 programs that constitute some of Vermont’s largest expenditures.

17 * * * Creation of Agency of Health Care Administration * * *

18 Sec. 2. 3 V.S.A. chapter 58 is added to read:

19 CHAPTER 58. AGENCY OF HEALTH CARE ADMINISTRATION

20 Subchapter 1. Generally

21 § 3801. DEFINITIONS

1 As used in this chapter:

2 (1) “Agency” means the Agency of Health Care Administration.

3 (2) “Commissioner” means the head of a department, who is responsible
4 to the Secretary for the administration of the department.

5 (3) “Department” means a major component of the Agency.

6 (4) “Director” means the head of a division of the Agency.

7 (5) “Division” means a major component of a department engaged in
8 furnishing services to the public or to units of government at levels other than
9 the State level.

10 (6) “Secretary” means the head of the Agency, who is a member of the
11 Governor’s cabinet and responsible to the Governor for the administration of
12 the Agency.

13 § 3802. CREATION OF AGENCY

14 The Agency of Health Care Administration is created consisting of the
15 following:

16 (1) the Department of Health Access;

17 (2) the Department of Mental Health and Substance Misuse;

18 (3) the Department of Long Term Care;

19 (4) the Department of Public Health;

20 (5) the Health Care Board; and

21 (6) the Vermont Health Benefit Exchange.

1 § 3803. ADVISORY CAPACITY

2 (a) All boards and commissions that are part of or attached to the Agency
3 pursuant to this chapter shall be advisory only except as otherwise provided in
4 this chapter, and the powers and duties of the boards and commissions,
5 including administrative, policymaking, and regulatory functions, shall vest in
6 and be exercised by the Secretary of the Agency.

7 (b) Notwithstanding the provisions of subsection (a) of this section, the
8 Board of Health shall retain and exercise all powers and functions given to the
9 Board by law of a quasi-judicial nature, including the power to conduct
10 hearings, adjudicate controversies, and issue and enforce orders in the manner
11 and to the extent provided by law. Boards of registration, certification, and
12 licensure attached to this Agency shall retain and exercise all existing authority
13 with respect to registration, certification, licensure, and maintenance of the
14 standards of persons registered, certified, and licensed.

15 § 3804. PERSONNEL DESIGNATION

16 The Secretary and Deputy Secretary, and any commissioner, deputy
17 commissioner, director, attorney, and member of a board, committee,
18 commission, or council attached to the Agency are exempt from the classified
19 State service. Except as authorized by section 311 of this title or as otherwise
20 provided by law, all other Agency positions shall be within the classified
21 service.

Subchapter 2. Secretary

§ 3821. APPOINTMENT OF SECRETARY

The Agency shall be under the direction and supervision of a Secretary, who shall be appointed by the Governor with the advice and consent of the Senate and who shall serve at the pleasure of the Governor. The Secretary shall be responsible to the Governor and shall plan, coordinate, and direct the functions vested in the Agency.

§ 3822. DEPUTY SECRETARY

(a) The Secretary, with the approval of the Governor, may appoint a Deputy Secretary to serve at the Secretary's pleasure and to perform such duties as the Secretary prescribes. The appointment shall be in writing and the Secretary shall record the appointment in the Office of the Secretary of State.

(b) The Deputy Secretary shall discharge the duties and responsibilities of the Secretary in the Secretary's absence. In the event of a vacancy in the Office of the Secretary, the Deputy shall assume and discharge the duties of the Office until the vacancy is filled.

§ 3823. ADVISORY COUNCILS OR COMMITTEES

The Secretary, with the approval of the Governor, may create such advisory councils or committees within the Agency as the Secretary deems necessary, and may appoint their members for terms not exceeding the Secretary's.

1 § 3824. TRANSFER OF PERSONNEL AND APPROPRIATIONS

2 (a) The Secretary, with the approval of the Governor, may transfer
3 classified positions between State departments and other components of the
4 Agency, subject only to personnel laws and rules.

5 (b) The Secretary, with the approval of the Governor, may transfer
6 appropriations or portions of appropriations between departments and other
7 components in the Agency, consistent with the purposes for which the
8 appropriation was made.

9 § 3825. HEALTH CARE SYSTEM REFORM; IMPROVING QUALITY

10 AND AFFORDABILITY

11 The Director of Health Care Reform in the Agency of Health Care
12 Administration shall be responsible for the coordination of health care system
13 reform efforts among Executive Branch agencies, departments, and offices,
14 and for coordinating with the Green Mountain Care Board established in
15 18 V.S.A. chapter 220.

16 § 3826. WHOLESALE PRESCRIPTION DRUG IMPORTATION

17 PROGRAM

18 (a) The Agency of Health Care Administration shall be responsible for the
19 development and, upon approval from the Secretary of the U.S. Department of
20 Health and Human Services, the implementation and administration of a
21 wholesale prescription drug importation program that complies with the

1 applicable requirements of 21 U.S.C. § 384, including the requirements
2 regarding safety and cost savings.

3 (b) The Secretary of Health Care Administration may adopt rules pursuant
4 to chapter 25 of this title as needed to develop, implement, and administer the
5 program.

6 Subchapter 3. Commissioners and Directors

7 § 3851. COMMISSIONERS; DEPUTY COMMISSIONERS;
8 APPOINTMENT; TERM

9 (a) The Secretary, with the approval of the Governor, shall appoint a
10 commissioner of each department who shall be the chief executive and
11 administrative officer and who shall service at the pleasure of the Secretary.

12 (b) For the Department of Health Access, the Secretary, with the approval
13 of the Governor, shall appoint deputy commissioners for the following
14 divisions of the Department:

15 (1) Medicaid Health Services and Managed Care; and

16 (2) Medicaid Policy, Fiscal, and Support Services.

17 (c) For the Department of Mental Health and Substance Misuse, the
18 Secretary, with the approval of the Governor, shall appoint deputy
19 commissioners for the following divisions of the Department:

20 (1) Mental Health; and

21 (2) Substance Misuse.

1 (d) Deputy commissioners shall be exempt from classified service. Their
2 appointments shall be in writing and shall be filed in the Office of the
3 Secretary of State.

4 § 3852. MANDATORY DUTIES

5 (a) The commissioner shall determine the policies of the department, and
6 may exercise the powers and shall perform the duties required for its effective
7 administration.

8 (b) In addition to other duties imposed by law, the commissioner shall:

9 (1) administer the laws assigned to the department;

10 (2) coordinate and integrate the work of the divisions; and

11 (3) supervise and control all staff functions.

12 § 3853. PERMISSIVE DUTIES; APPROVAL OF SECRETARY

13 The commissioner may, with the approval of the Secretary:

14 (1) Transfer appropriations or parts thereof within or between divisions,
15 consistent with the purposes for which the appropriation was made.

16 (2) Transfer classified positions within or between divisions subject only
17 to State personnel laws and regulations.

18 (3) Cooperate with the appropriate federal agencies and administer
19 federal funds in support of programs within the department.

20 (4) Submit plans and reports, and in other respects comply with federal
21 law and regulations which pertain to programs administered by the department.

1 (5) Make rules consistent with law for the internal administration of the
2 department and its programs.

3 (6) Appoint a deputy commissioner.

4 (7) Create within the department such advisory councils or committees
5 as he or she deems necessary, and appoint their members for a term not
6 exceeding that of the commissioner.

7 (8) Provide training and instructions for any employees of the
8 department, at the expense of the department, in educational institutions or
9 other places.

10 (9) Organize, reorganize, transfer, or abolish divisions, staff functions or
11 sections within the department. This authority shall not extend to divisions or
12 other bodies created by law.

13 § 3854. DIRECTORS

14 (a) A director shall administer each division within the Agency. The
15 commissioners, with the approval of the Secretary, shall appoint the directors
16 for divisions that are part of a department, and the Secretary shall appoint any
17 other directors.

18 (b) Each division and its officers shall be under the direction and control of
19 the appointing authority except with regard to judicial or quasi-judicial acts or
20 duties vested in them by law.

1 (c) No rule or regulation may be issued by a director of a division without
2 the approval of the appointing authority.

3 Subchapter 4. Departments, Divisions, and Boards

4 § 3871. DEPARTMENT OF HEALTH ACCESS

5 The Department of Health Access is created within the Agency of Health
6 Care Administration as the successor to and continuation of the Department of
7 Vermont Health Access.

8 § 3872. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE

9 ABUSE

10 The Department of Mental Health and Substance Misuse is created within
11 the Agency of Health Care Administration as the successor to and continuation
12 of the Department of Mental Health and the Division of Alcohol and Drug
13 Abuse Programs in the Department of Health. The Department shall be
14 responsible for individuals committed to the care and custody of the
15 Commissioner and for the operation of the Vermont Psychiatric Care Hospital
16 and secure residential recovery facility.

17 § 3873. DEPARTMENT OF LONG-TERM CARE

18 The Department of Long-Term Care is created within the Agency of Health
19 Care Administration as the successor to and continuation of the programs
20 within the Department of Disabilities, Aging, and Independent Living related
21 to long-term care, home- and community-based services, the Choices for Care

1 program, and certification of long-term care facilities on behalf of the Centers
2 for Medicare and Medicaid Services.

3 § 3874. DEPARTMENT OF PUBLIC HEALTH

4 The Department of Public Health is created within the Agency of Health
5 Care Administration as the successor to and continuation of the Department of
6 Health.

7 § 3875. OPERATIONS DIVISION

8 (a) The Operations Division of the Agency is created and shall be
9 administered by a Director of Administration.

10 (b) The Operations Division shall provide the following services to the
11 Agency and all its components, including components assigned to it for
12 administration:

13 (1) personnel administration;

14 (2) financing and accounting activities;

15 (3) coordination of filing and records maintenance activities;

16 (4) provision of facilities, office space, and equipment and the care
17 thereof;

18 (5) requisitioning of supplies, equipment, and other requirements from
19 the Department of Buildings and General Services in the Agency of
20 Administration;

21 (6) management improvement services;

1 (7) training;

2 (8) information systems and technology; and

3 (9) other administrative functions assigned to it by the Secretary.

4 (c) Notwithstanding any provision of law to the contrary, all administrative
5 service functions delegated to other components of the Agency shall be
6 performed within the Agency by the Operations Division.

7 § 3876. PLANNING DIVISION

8 (a) The Planning Division of the Agency is created and shall be
9 administered by a Director of Planning appointed by the Secretary.

10 (b) The Planning Division shall be responsible for:

11 (1) centralized strategic planning for all components of the Agency;

12 (2) coordination of professional and technical planning of the line
13 components of the Agency, aiming toward maximum service to the public;

14 (3) coordinating activities and plans of the Agency with other State
15 agencies and the Governor's office;

16 (4) preparing multi-year plans and long-range plans and programs to
17 meet problems and opportunities for service to the public; and

18 (5) other planning functions assigned to it by the Secretary.

Subchapter 5. Health Care Board

§ 3891. HEALTH CARE BOARD

(a) The Health Care Board is created within the Agency of Health Care Administration. It consists of seven members. The Governor, with the advice and consent of the Senate, shall appoint members for terms of six years so that not more than three terms expire in the same biennium. The Governor shall designate the Board's Chair.

(b) The duties of the Board shall be to act as a Fair Hearing Board on appeals brought pursuant to section 3892 of this title.

(c) The Board shall hold meetings at times and places warned by the Chair on his or her own initiative or upon request of two Board members or the Governor. Four members shall constitute a quorum, except that three members shall constitute a quorum at any meeting upon the written authorization of the Chair issued in connection with that meeting.

(d) With the approval of the Governor the Board may appoint one or more hearing officers, who shall be outside the classified service, and it may employ such secretarial assistance as it deems necessary in the performance of its duties.

(e) On or before January 15 of each year, the Board shall report to the House Committees on Appropriations, on Human Services, and on Health Care and the Senate Committees on Appropriations, on Health and Welfare, and on

1 Finance regarding the fair hearings conducted by the Board during the three
2 preceding calendar years, including:

3 (1) the total number of fair hearings conducted over the three-year
4 period and per year;

5 (2) the number of hearings per year involving appeals of decisions by
6 the Agency itself and each department within the Agency, with the appeals and
7 decisions relating to health insurance through the Vermont Health Benefit
8 Exchange reported distinctly from other programs;

9 (3) the number of hearings per year based on appeals of decisions
10 regarding:

11 (A) eligibility;

12 (B) benefits;

13 (C) coverage;

14 (D) financial assistance; and

15 (E) other categories of appeals;

16 (4) the number of hearings per year based on appeals of decisions
17 regarding each State program over which the Board has jurisdiction;

18 (5) the number of decisions per year made in favor of the appellant; and

19 (6) the number of decisions per year made in favor of the department or
20 the Agency.

1 § 3892. HEARINGS

2 (a) An applicant for or a recipient of assistance, benefits, or services from
3 the Department of Health Access, of Long-Term Care, or of Mental Health and
4 Substance Misuse, or an applicant for a license from one of those departments,
5 or a licensee may file a request for a fair hearing with the Health Care Board.
6 An opportunity for a fair hearing will be granted to any individual requesting a
7 hearing because his or her claim for assistance, benefits, or services is denied
8 or is not acted upon with reasonable promptness; because the individual is
9 aggrieved by any other Agency action affecting his or her receipt of assistance,
10 benefits, or services, or license or license application; or because the individual
11 is aggrieved by Agency policy as it affects his or her situation.

12 (b) The hearing shall be conducted by the Board or by a hearing officer
13 appointed by the Board. The Chair of the Board may compel, by subpoena, the
14 attendance and testimony of witnesses and the production of books and
15 records. All witnesses shall be examined under oath. The Board shall adopt
16 rules with reference to appeals, which shall not be inconsistent with this
17 chapter. The rules shall provide for reasonable notice to parties, and an
18 opportunity to be heard and be represented by counsel.

19 (c) The Board or the hearing officer shall issue written findings of fact. If
20 the hearing is conducted by a hearing officer, the hearing officer's findings
21 shall be reported to the Board, and the Board shall approve the findings and

1 adopt them as the findings of the Board unless good cause is shown for
2 disapproving them. Whether the findings are made by the Board, or by a
3 hearing officer and adopted by the Board, the Board shall enter its order based
4 on the findings.

5 (d) After the fair hearing, the Board may affirm, modify, or reverse
6 decisions of the Agency; it may determine whether an alleged delay was
7 justified; and it may make orders consistent with this title requiring the Agency
8 to provide appropriate relief including retroactive and prospective benefits.
9 The Board shall consider, and shall have the authority to reverse or modify,
10 decisions of the Agency based on rules that the Board determines to be in
11 conflict with State or federal law. The Board shall not reverse or modify
12 Agency decisions that are determined to be in compliance with applicable law,
13 even though the Board may disagree with the results effected by those
14 decisions.

15 (e)(1) The Board shall give written notice of its decision to the person
16 applying for fair hearing and to the Agency.

17 (2) Unless a continuance is requested or consented to by an aggrieved
18 person, decisions and orders concerning medical assistance (Medicaid) under
19 33 V.S.A. chapter 19 shall be issued by the Board within 75 days following the
20 request for hearing.

1 (3) Notwithstanding any provision of subsection (c) or (d) or
2 subdivision (1) of this subsection (e) to the contrary, in the case of an
3 expedited Medicaid fair hearing, the Board shall delegate both its fact-finding
4 and final decision-making authority to a hearing officer, and the hearing
5 officer's written findings and order shall constitute the Board's decision and
6 order in accordance with timelines set forth in federal law.

7 (f) The Agency or the appellant may appeal from decisions of the Board to
8 the Supreme Court under V.R.A.P. 13. Pending the final determination of any
9 appeal, the terms of the order involved shall be given effect by the Agency
10 except insofar as they relate to retroactive benefits.

11 (g) A party to an order or decree of the Board or the Board itself, or both,
12 may petition the Supreme Court for relief against any disobedience of, or
13 noncompliance with, the order or decree. In the proceedings and upon such
14 notice thereof to the parties as it shall direct, the Supreme Court shall hear and
15 consider the petition and make such order and decree in the premises by way
16 of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning
17 the enforcement of the order and decree of the Board as shall be appropriate.

18 (h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary
19 shall review all Board decisions and orders concerning Medicaid and the
20 Vermont Health Benefit Exchange. The Secretary shall:

1 (A) adopt a Board decision or order, except that the Secretary may
2 reverse or modify a Board decision or order if:

3 (i) the Board's findings of fact lack any support in the record; or
4 (ii) the decision or order misinterprets or misapplies State or
5 federal policy or rule; and

6 (B) issue a written decision setting forth the legal, factual or policy
7 basis for reversing or modifying a Board decision or order.

8 (2) Notwithstanding subsections (d) and (f) of this section, a Board
9 decision and order concerning Medicaid and the Vermont Health Benefit
10 Exchange shall become the final and binding decision of the Agency upon its
11 approval by the Secretary. The Secretary shall either approve, modify, or
12 reverse the Board's decision and order within 15 days of the date of the
13 Board's decision and order. If the Secretary fails to issue a written decision
14 within 15 days as required by this subdivision, the Board's decision and order
15 shall be deemed to have been approved by the Secretary.

16 (3) Notwithstanding subsection (f) of this section, only the claimant may
17 appeal a decision of the Secretary to the Supreme Court. Such appeals shall be
18 pursuant to V.R.A.P. 13. The Supreme Court may stay the Secretary's
19 decision upon the claimant's showing of a fair ground for litigation on the
20 merits. The Supreme Court shall not stay the Secretary's order insofar as it
21 relates to a denial of retroactive benefits.

1 (i) In the case of an appeal of a Medicaid covered service decision made by
2 the Department of Health Access or any entity with which the Department of
3 Health Access enters into an agreement to perform service authorizations that
4 may result in an adverse benefit determination, the right to a fair hearing
5 granted by subsection (a) of this section shall be available to an aggrieved
6 beneficiary only after that individual has exhausted, or is deemed to have
7 exhausted, the Department of Health Access's internal appeals process and has
8 received a notice that the adverse benefit determination was upheld.

9 * * * Conforming Revisions to Agency of Human Services * * *

10 Sec. 3. 3 V.S.A. § 3002(a) is amended to read:

11 (a) An Agency of Human Services is created consisting of the following:

12 (1) The Department of Corrections.

13 (2) The Department for Children and Families.

14 (3) ~~The Department of Health.~~ [Repealed.]

15 (4) The Department of ~~Disabilities, Aging, and~~ Independent Living.

16 (5) The Human Services Board.

17 (6) ~~The Department of Vermont Health Access.~~ [Repealed.]

18 (7) ~~The Department of Mental Health.~~ [Repealed.]

19 Sec. 4. 3 V.S.A. § 3003(b) is amended to read:

20 (b) ~~Notwithstanding subsection (a) of this section, the Board of Health shall~~
21 ~~retain and exercise all powers and functions given to the Board by law of~~

1 ~~quasi-judicial nature, including the power to conduct hearings, to adjudicate~~
2 ~~controversies, and to issue and enforce orders, in the manner and to the extent~~
3 ~~provided by law.~~ Boards of registration attached to this Agency shall retain
4 and exercise all existing authority with respect to licensing and maintenance of
5 the standards of the persons registered.

6 Sec. 5. 3 V.S.A. § 3004 is amended to read:

7 § 3004. PERSONNEL DESIGNATION

8 The Secretary, Deputy Secretary, commissioners, deputy commissioners,
9 attorneys, Directors of the Offices of State Economic Opportunity, ~~of Alcohol~~
10 ~~and Drug Abuse Programs,~~ and of Child Support, and all members of boards,
11 committees, commissions, or councils attached to the Agency for support are
12 exempt from the classified State service. Except as authorized by section 311
13 of this title or otherwise by law, all other positions shall be within the classified
14 service.

15 Sec. 6. 3 V.S.A. § 3027 is amended to read:

16 § 3027. ~~HEALTH CARE SYSTEM REFORM; IMPROVING QUALITY~~
17 ~~AND AFFORDABILITY~~

18 ~~The Director of Health Care Reform in the Agency of Human Services shall~~
19 ~~be responsible for the coordination of health care system reform efforts among~~
20 ~~Executive Branch agencies, departments, and offices, and for coordinating~~

1 ~~with the Green Mountain Care Board established in 18 V.S.A. chapter 220.~~

2 [Repealed.]

3 Sec. 7. 3 V.S.A. § 3028 is amended to read:

4 § 3028. ~~WHOLESALE PRESCRIPTION DRUG IMPORTATION~~
5 ~~PROGRAM~~

6 ~~(a) The Agency of Human Services shall be responsible for the~~
7 ~~development and, upon approval from the Secretary of the U.S. Department of~~
8 ~~Health and Human Services, the implementation and administration of a~~
9 ~~wholesale prescription drug importation program that complies with the~~
10 ~~applicable requirements of 21 U.S.C. § 384, including the requirements~~
11 ~~regarding safety and cost savings.~~

12 ~~(b) The Secretary of Human Services may adopt rules pursuant to chapter 25~~
13 ~~of this title as needed to develop, implement, and administer the program.~~

14 [Repealed.]

15 Sec. 8. 3 V.S.A. § 3051 is amended to read:

16 § 3051. COMMISSIONERS; DEPUTY COMMISSIONERS;
17 APPOINTMENT; TERM

18 (a) The Secretary, with the approval of the Governor, shall appoint a
19 commissioner of each department, who shall be the chief executive and
20 administrative officer and shall serve at the pleasure of the Secretary.

1 (b) ~~For the Department of Health, the Secretary, with the approval of the~~
2 ~~Governor, shall appoint deputy commissioners for the following divisions of~~
3 ~~the Department:~~

4 ~~(1) Public Health;~~

5 ~~(2) Substance Abuse. [Repealed.]~~

6 (c) For the Department for Children and Families, the Secretary, with the
7 approval of the Governor, shall appoint deputy commissioners for the
8 following divisions of the Department:

9 (1) Economic Services;

10 (2) Child Development;

11 (3) Family Services.

12 (d) ~~For the Department of Vermont Health Access, the Secretary, with the~~
13 ~~approval of the Governor, shall appoint deputy commissioners for the~~
14 ~~following divisions of the Department:~~

15 ~~(1) Medicaid Health Services and Managed Care;~~

16 ~~(2) Medicaid Policy, Fiscal, and Support Services;~~

17 ~~(3) Health Care Reform;~~

18 ~~(4) Vermont Health Benefit Exchange. [Repealed.]~~

19 (e) Deputy commissioners shall be exempt from the classified service.
20 Their appointments shall be in writing and shall be filed in the Office of the
21 Secretary of State.

1 Sec. 9. 3 V.S.A. § 3085a is amended to read:

2 § 3085a. DEPARTMENT OF ~~DISABILITIES, AGING, AND~~
3 INDEPENDENT LIVING

4 The Department of ~~Disabilities, Aging, and~~ Independent Living is created
5 within the Agency of Human Services as the successor to and continuation of
6 the Department of Aging and Disabilities, the Developmental Services
7 Division of the Department of Developmental and Mental Health Services, and
8 the personal care and hi-tech programs in the former Department of
9 Prevention, Assistance, Transition, and Health Access to manage programs and
10 to protect the interests of older Vermonters and Vermonters with disabilities.

11 It shall serve as the State unit on aging, as provided by the Older Americans
12 Act of 1965, as amended, and it shall serve as the administrative home within
13 the Agency of Human Services for the designated State agencies for federal
14 Vocational Rehabilitation and Independent Living Programs, as provided by
15 the Rehabilitation Act of 1973, as amended.

16 Sec. 10. 3 V.S.A. § 3090(e) is amended to read:

17 (e) On or before January 15 of each year, the Board shall report to the
18 House Committees on Human Services and on Health Care and the Senate
19 Committees on Appropriations and on Health and Welfare regarding the fair
20 hearings conducted by the Board during the three preceding calendar years,
21 including:

(2) the number of hearings per year involving appeals of decisions by the Agency itself and each department within the Agency, with the appeals and decisions relating to health insurance through the Vermont Health Benefit Exchange reported distinctly from other programs;

Sec. 11. 3 V.S.A. § 3091 is amended to read:

(a) An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and Families, ~~of Vermont Health Access, or of Disabilities, Aging, and Independent Living, or of Mental Health,~~ or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.

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~~(3) Notwithstanding any provision of subsection (c) or (d) or subdivision (1) of this subsection (e) to the contrary, in the case of an expedited Medicaid fair hearing, the Board shall delegate both its fact finding and final decision-making authority to a hearing officer, and the hearing officer's written findings and order shall constitute the Board's decision and order in accordance with timelines set forth in federal law. [Repealed.]~~

* * *

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning TANF, TANF-EA, and Office of Child Support Cases, ~~Medicaid, and the Vermont Health Benefit Exchange~~. The Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

- 1 (i) the Board's findings of fact lack any support in the record; or
2 (ii) the decision or order misinterprets or misapplies State or
3 federal policy or rule; and

4 (B) issue a written decision setting forth the legal, factual, or policy
5 basis for reversing or modifying a Board decision or order.

6 (2) Notwithstanding subsections (d) and (f) of this section, a Board
7 decision and order concerning TANF, TANF-EA, and Office of Child Support,
8 ~~Medicaid, and the Vermont Health Benefit Exchange~~ shall become the final
9 and binding decision of the Agency upon its approval by the Secretary. The
10 Secretary shall either approve, modify, or reverse the Board's decision and
11 order within 15 days of the date of the Board decision and order. If the
12 Secretary fails to issue a written decision within 15 days as required by this
13 subdivision, the Board's decision and order shall be deemed to have been
14 approved by the Secretary.

15 (3) Notwithstanding subsection (f) of this section, only the claimant may
16 appeal a decision of the Secretary to the Supreme Court. Such appeals shall be
17 pursuant to ~~Rule 13 of the Vermont Rules of Appellate Procedure~~ V.R.A.P. 13.
18 The Supreme Court may stay the Secretary's decision upon the claimant's
19 showing of a fair ground for litigation on the merits. The Supreme Court shall
20 not stay the Secretary's order insofar as it relates to a denial of retroactive
21 benefits.

1 ~~(i) In the case of an appeal of a Medicaid covered service decision made by~~
2 ~~the Department of Vermont Health Access or any entity with which the~~
3 ~~Department of Vermont Health Access enters into an agreement to perform~~
4 ~~service authorizations that may result in an adverse benefit determination, the~~
5 ~~right to a fair hearing granted by subsection (a) of this section shall be~~
6 ~~available to an aggrieved beneficiary only after that individual has exhausted,~~
7 ~~or is deemed to have exhausted, the Department of Vermont Health Access's~~
8 ~~internal appeals process and has received a notice that the adverse benefit~~
9 ~~determination was upheld. [Repealed.]~~

10 * * * Transitional Provisions * * *

11 Sec. 12. TRANSFER OF POSITIONS; ADMINISTRATION

12 (a) Prior to October 1, 2021, the Secretary of Administration shall create
13 the position of the Secretary of Health Care Administration.

14 (b) Effective October 1, 2021, the Secretary of Administration shall place
15 under the supervision of the Secretary of Health Care Administration:

16 (1) all employees, professional and support staff, consultants, and
17 positions contained in the departments, divisions, and offices described in
18 Sec. 15 of this act to which the Agency is the successor in interest;

19 (2) all balances of all appropriation amounts for personal services and
20 operating expenses for the departments, divisions, units, and offices described
21 in Sec. 15 of this act; and

1 (3) up to 20 positions from the Agency of Human Services to staff the
2 office of the Secretary of Health Care Administration, including the associated
3 appropriation amounts for these personnel and the operating expenses related
4 to these functions.

5 (c) The Agency of Human Services shall provide fiscal and administrative
6 support for the Agency of Health Care Administration until March 1, 2022.

7 (d) Not later than January 1, 2023, the Secretary of Administration shall
8 complete the transfer to the Agency of Health Care Administration of:

9 (1) all employees, professional and support staff, consultants, and
10 positions contained in the departments, divisions, and offices described in
11 Sec. 15 of this act to which the Agency is the successor in interest; and

12 (2) all balances of all appropriation amounts for personal services and
13 operating expenses for the departments, divisions, units, and offices described
14 in Sec. 15 of this act.

15 (e) Not later than January 1, 2023, the Secretary of Administration shall
16 complete the reorganization of the Agency of Human Services into an Agency
17 of Health Care Administration as described in this Act and an Agency of
18 Human Services consisting of the remaining departments, divisions, and
19 offices. The financial, legal, and departmental functions of the departments
20 described in Sec. 15 of this act, to which the departments in the Agency of
21 Health Care Administration are the successors in interest, shall be consolidated

1 in the Office of the Secretary of Health Care Administration and shall use
2 existing departmental resources as needed. Any new exempt positions needed
3 as a result of this act shall be transferred and converted from existing vacant
4 exempt positions in the Executive Branch.

5 Sec. 13. PROCESS; REORGANIZATION OF DEPARTMENT OF
6 DISABILITIES, AGING, AND INDEPENDENT LIVING

7 (a) Not later than December 1, 2021, the Secretary of Administration or
8 designee shall submit to the House Committees on Appropriations, on Human
9 Services, and on Government Operations and the Senate Committees on
10 Appropriations, on Health and Welfare, and on Government Operations a
11 proposal for dividing the Department of Disabilities, Aging, and Independent
12 Living into a Department of Long-Term Care in the Agency of Health Care
13 Administration and a Department of Independent Living in the Agency of
14 Human Services. The proposal shall include proposed legislative changes
15 necessary to effect the division recommended by the Secretary.

16 (b)(1) The Department of Long-Term Care shall have the authority to
17 administer the Choices for Care portion of Vermont's Medicaid Section 1115
18 waiver, regulate long-term care, regulate organizations providing home- and
19 community-based services, and certify long-term care facilities on behalf of the
20 Centers for Medicare and Medicaid Services.

1 (2) The Department for Independent Living shall provide services to
2 Vermonters who are elders and to individuals with disabilities to enable them
3 to remain in their homes, including vocational rehabilitation services.

4 Sec. 14. PROCESS; REORGANIZATION OF DEPARTMENTS, UNITS,
5 AND DIVISIONS

6 (a) Not later than December 1, 2021, the Secretary of Health Care
7 Administration shall propose to the House Committees on Appropriations, on
8 Human Services, and on Government Operations and the Senate Committees
9 on Appropriations, on Health and Welfare, and on Government Operations any
10 additional modifications to the departments, units, and divisions transferred
11 from the Agency of Human Services to the Agency of Health Care
12 Administration needed to reflect the following new departments:

13 (1) the Department of Health Access;

14 (2) the Department of Mental Health and Substance Misuse; and

15 (3) the Department of Public Health;

16 (b) The proposal may include moving divisions of the transferred
17 departments as necessary to ensure the efficient and rational administration and
18 regulation of Vermont's health care system.

19 (c) The proposal shall include proposed legislative changes necessary to
20 effect the modifications recommended by the Secretary.

1 Sec. 15. TRANSITIONAL PROVISIONS

2 (a) The Agency of Health Care Administration is the successor to and
3 continuation of:

4 (1) the Department of Vermont Health Access under 3 V.S.A. § 3088;

5 (2) the Department of Mental Health under 3 V.S.A. § 3089;

6 (3) the long-term care and home- and community-based service
7 components of the Department of Disabilities, Aging, and Independent Living
8 under 3 V.S.A. § 3085a; and

9 (4) the Department of Health under 3 V.S.A. § 3082.

10 (b) The Agency shall continue the duties of the departments as described in
11 subsection (a) of this section, including the duties contained in 33 V.S.A.
12 chapter 19 (medical assistance).

13 * * * Conforming Statutory Amendments * * *

14 Sec. 16. OFFICE OF LEGISLATIVE COUNCIL

15 On or before December 1, 2020, the Office of Legislative Council shall
16 provide to the House Committees on Appropriations, on Government
17 Operations, on Health Care, and on Human Services and the Senate
18 Committees on Appropriations, on Government Operations, and on Health and
19 Welfare proposed statutory amendments as needed to correct references in the
20 Vermont Statutes Annotated to the agencies and departments created or
21 amended by this act.

* * * Repeals * * *

Sec. 17. REPEALS

3 V.S.A. §§ 3082 (Department of Health), 3088 (Department of Vermont Health Access), and 3089 (Department of Mental Health) are repealed on October 1, 2021.

Sec. 18. TRANSITION FUNDING

It is the intent of the General Assembly to provide in the appropriations act funding to the Agency of Administration in fiscal year 2021 to be transferred to the Agency of Human Services for transition costs associated with the reorganization of the Agency of Human Services into an Agency of Health Care Administration and an Agency of Human Services as described in this act. Costs may include contracts for finance, accounting, federal funding, and organizational and operational restructuring consultations.

* * * Effective Dates * * *

Sec. 19. EFFECTIVE DATES

(a) Secs. 2 (Agency of Health Care Administration) and 3–11 (Agency of Human Services; revisions) shall take effect on October 1, 2021.

(b) The remaining sections shall take effect on passage.