

# Journal of the Senate

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TUESDAY, MARCH 27, 2012

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

## Devotional Exercises

Devotional exercises were conducted by the Rabbi Tobie Weisman of Montpelier.

## Pledge of Allegiance

Page Thomas DeMag then led the members of the Senate in the pledge of allegiance.

## Bill Called Up

### S. 138.

Senate bill of the following title was called up by Senator Benning, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to the record keeping of search warrants.

## Bills Referred

House bills of the following titles were severally read the first time and referred:

### H. 440.

An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

To the Committee on Education.

### H. 467.

An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

To the Committee on Judiciary.

### H. 781.

An act relating to making appropriations for the support of government.

To the Committee on Appropriations.

**Bills Referred to Committee on Appropriations**

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

**S. 143.** An act relating to disclosing building energy performance and promoting thermal energy efficiency.

**S. 180.** An act relating to the universal service fund and establishment of a high-cost program.

**S. 204.** An act relating to creating an expert panel on the creation of a state bank.

**Joint Senate Resolution Adopted on the Part of the Senate**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

**J.R.S. 53.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Thursday, March 29, 2012, or, Friday, March 30, 2012, it be to meet again no later than Tuesday, April 3, 2012.

**Bill Passed**

Senate bill of the following title was read the third time and passed:

**S. 115.** An act relating to malpractice claims against public defender contract attorneys.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Cummings, Doyle, Flory, Kittell, Lyons, Mazza, McCormack, Miller, Mullin, Pollina, Sears, Snelling, Westman, White.

**Those Senators who voted in the negative were:** Galbraith, Giard, Hartwell, Illuzzi, MacDonald, Starr.

**Those Senators absent or not voting were:** Campbell (presiding), Fox, Kitchel, Nitka.

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**Bill Amended; Third Reading Ordered****S. 89.**

Senator Ayer, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to Medicaid for Working Persons with Disabilities.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

**Sec. 1. ANALYSIS OF COSTS AND SAVINGS**

(a) The agency of human services, in consultation with the legislative joint fiscal office, shall analyze the costs or savings associated with the following options:

(1) Entering into an agreement with the Social Security Administration in which the state pays the Medicare Part B premium for individuals enrolled in the Medicaid for Working People with Disabilities program.

(2) Increasing or eliminating the income limits or asset limits or both for eligibility for the Medicaid for Working People with Disabilities program.

(3) Disregarding spousal income or spousal assets or both when determining eligibility for the Medicaid for Working People with Disabilities program.

(4) Disregarding the income of a spouse enrolled in the Medicaid for Working People with Disabilities program when determining the other spouse's eligibility to receive Medicaid benefits.

(5) Permitting an individual receiving Medicaid pursuant to 33 V.S.A. § 1901(b) immediately preceding a hospitalization or period of temporary unemployment to maintain his or her Medicaid eligibility during that period, as long as the period of hospitalization or unemployment does not exceed 90 days.

(6) Allowing an individual's enrollment in the Medicaid for Working People with Disabilities program to establish his or her eligibility for services under Vermont's developmental services waiver, provided that the individual must meet clinical eligibility and funding priority criteria in order to receive services pursuant to the waiver.

(7) Using benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and other work incentives for individuals with disabilities.

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results of the analysis conducted pursuant to subsection (a) of this section, as well as recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

Sec. 2. STATE PLAN AMENDMENT; SPOUSAL INCOME DISREGARD;  
RULEMAKING

(a) If supported by the analysis performed pursuant to Sec. 1 of this act, the secretary of human services shall apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that the income of an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) shall be disregarded in determining the eligibility of such person's spouse to receive medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act.

(b) The secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the income disregard will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

(c) Upon approval of the state plan amendment pursuant to subsection (a) of this section, the secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the income disregard.

Sec. 3. STATE PLAN AMENDMENT; DEVELOPMENTAL SERVICES  
WAIVER

(a) If supported by the analysis performed pursuant to Sec. 1 of this act, the secretary of human services shall apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that an individual's enrollment in the Medicaid for Working People with Disabilities program establishes his or her financial eligibility for services under the state's developmental services waiver; provided that the individual shall still be required to meet clinical eligibility and funding priority criteria in order to receive services pursuant to the waiver.

(b) The secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the financial eligibility criteria will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the report of the Committee on Health and Welfare be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ANALYSIS OF COSTS AND SAVINGS

(a) The agency of human services, in consultation with the legislative joint fiscal office, shall analyze the costs or savings associated with the following options:

(1) Entering into an agreement with the Social Security Administration in which the state pays the Medicare Part B premium for individuals enrolled in the Medicaid for Working People with Disabilities program.

(2) Increasing or eliminating the income limits or asset limits or both for eligibility for the Medicaid for Working People with Disabilities program.

(3) Disregarding spousal income or spousal assets or both when determining eligibility for the Medicaid for Working People with Disabilities program.

(4) Disregarding the income of a spouse enrolled in the Medicaid for Working People with Disabilities program when determining the other spouse's eligibility to receive Medicaid benefits.

(5) Permitting an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) immediately preceding a hospitalization or period of temporary unemployment to maintain his or her Medicaid eligibility during that period, as long as the period of hospitalization or unemployment does not exceed 90 days.

(6) Allowing an individual's enrollment in the Medicaid for Working People with Disabilities program to establish his or her eligibility for developmental disability services under Vermont's Global Commitment to Health waiver.

(7) Using benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and other work incentives for individuals with disabilities.

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results of the analysis conducted pursuant to subsection (a) of this section, as well as

recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

Sec. 2. STATE PLAN AMENDMENT; SPOUSAL INCOME DISREGARD;  
RULEMAKING

(a) If the general assembly is not in session upon completion of the analysis required pursuant to subdivision (a)(4) of Sec. 1 of this act and if the agency's cost-benefit analysis supports implementation of the spousal income disregard, the secretary of human services shall request approval from the joint fiscal committee to apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that the income of an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) shall be disregarded in determining the eligibility of such person's spouse to receive medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act.

(b) Upon approval by the joint fiscal committee, the secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the income disregard will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

(c) Upon approval of the state plan amendment pursuant to subsection (a) of this section, the secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the income disregard.

Sec. 3. STATE PLAN AMENDMENT; DEVELOPMENTAL SERVICES  
WAIVER

(a) If the general assembly is not in session upon completion of the analysis required pursuant to subdivision (a)(6) of Sec. 1 of this act and if the agency's cost-benefit analysis supports implementation of the presumptive eligibility, the secretary of human services shall request approval from the joint fiscal committee to apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that an individual's enrollment in the Medicaid for Working People with Disabilities program establishes his or her financial eligibility for developmental disability services under the state's Medicaid Section 1115 Global Commitment to Health waiver.

(b) Upon approval by the joint fiscal committee, the secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the financial eligibility criteria will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

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Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Health and Welfare was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered**

**S. 209.**

Senator Miller, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to naturopathic physicians.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4088d(a) is amended to read:

(a) A health insurance plan shall provide coverage for medically necessary health care services covered by the plan when provided by a naturopathic physician licensed in this state for treatment within the scope of practice described in ~~chapter 81 of Title 26~~ V.S.A. chapter 81 and shall recognize naturopathic physicians who practice primary care to be primary care physicians. Health care services provided by naturopathic physicians may be subject to reasonable deductibles, co-payment and co-insurance amounts, and fee or benefit limits, consistent with those applicable to other primary care physicians under the plan, as well as practice parameters, cost-effectiveness and clinical efficacy standards, and utilization review consistent with any applicable regulations published by the department of banking, insurance, securities, and health care administration. Any amounts, limits, standards, and review shall not function to direct treatment in a manner unfairly discriminative against naturopathic care, and collectively shall be no more restrictive than those applicable under the same policy to care or services provided by other primary care physicians, but may allow for the management of the benefit consistent with variations in practice patterns and treatment modalities among different types of health care providers. A health insurance

plan may require that the naturopathic physician's services be provided by a licensed naturopathic physician under contract with the insurer or shall be covered in a manner consistent with out-of-network provider reimbursement practices for primary care physicians; however, this shall not relieve a health insurance plan from compliance with the applicable Rule ~~40~~ H-2009-3 network adequacy requirements adopted by the commissioner. Nothing contained herein shall be construed as impeding or preventing either the provision or the coverage of health care services by licensed naturopathic physicians, within the lawful scope of naturopathic practice, in hospital facilities on a staff or employee basis.

Sec. 2. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

(a) As used in this section:

\* \* \*

(8) "Primary care" means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include prenatal care and the treatment of mental illness.

\* \* \*

Sec. 3. 18 V.S.A. § 704 is amended to read:

§ 704. MEDICAL HOME

(a) Consistent with federal law to ensure federal financial participation, a health care professional providing a patient's medical home shall:

\* \* \*

(b) A naturopathic physician licensed pursuant to 26 V.S.A. chapter 81 may serve as a patient's medical home.

Sec. 4. 18 V.S.A. § 706(c) is amended to read:

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance's Physician Practice Connections - Patient Centered Medical Home (NCQA PPC-PCMH) score to the extent practicable and shall be in addition to their normal fee-for-service or other payments.



(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement changes to the payment amounts or to the payment reform methodologies described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, including primary care naturopathic physicians' practices; payment toward the shared costs for community health teams; or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

\* \* \*

Sec. 5. 26 V.S.A. § 4131 is added to read:

§ 4131. SUPERVISION

A naturopathic physician licensed pursuant to this chapter shall be authorized to work independently and shall not require supervision by any other health care professional; provided, however, that this section shall not be construed to limit the regulatory authority of the director or office of professional regulation.

Sec. 6. 33 V.S.A. § 1823 is amended to read:

§ 1823. DEFINITIONS

For purposes of this subchapter:

\* \* \*

(10) "Primary care" means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include family planning, prenatal care, and mental health and substance abuse treatment.

\* \* \*

Sec. 7. HEALTH INFORMATION TECHNOLOGY

Vermont's health information technology coordinator shall actively seek to secure electronic health record funding opportunities and incentives for naturopathic physician practices comparable to those available to other health care practitioners.

Sec. 8. EFFECTIVE DATES

(a) Secs. 1 and 2 (insurance provisions) of this act shall take effect on October 1, 2012, and shall apply to all health benefit plans on and after

October 1, 2012 on such date as a health insurer offers, issues, or renews the health benefit plan, but in no event later than October 1, 2013.

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

And that when so amended the bill ought to pass.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendations of amendment was agreed to, and third reading of the bill was ordered.

### **Bill Passed**

Senate bill of the following title was read the third time and passed:

**S. 238.** An act relating to establishing the Vermont farm guest worker program.

Senator Brock having demanded the yeas and nays, they were taken and are as follows:

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, \*Brock, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Illuzzi, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Pollina, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent or not voting were:** Campbell (presiding), Fox, Kitchel, Nitka.

\*Senator Brock explained his vote as follows:

“Let me be clear; I support immigration reform and a rational national guest worker policy. I strongly support legal immigration, and I have gone on record calling for changes to federal law.

“I sympathize with the plight of migrant workers. I wish they could come and work here in the light of day.

“But my vote in favor of this bill does not suggest that I support granting driver’s licenses to illegal aliens. I do not.

“Today, I am simply voting for a study of an issue that to date has been inadequately scrutinized. Studies, as members of this body well know, are often places where bad bills go to die.”

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, March 28, 2012.