

Legislative Updates Tracking Sheet
ADVOCACY, OUTREACH, AND EDUCATION COMMITTEE

Federal Legislation

A. MFP Reauthorization/Extension Act (HR 3253)

Money Follows the Person Bill (Medicaid)

May 2, 2019 Update: More good news! Short-Term Money Follows the Person Extension signed into law through the end of this year! Now we need to wait (and advocate for) a long-term extension.

September 5, 2019 Update: There are several bills before congress that would allow for long term extensions of the MFP Medicaid Demonstration Act which provides federal money for people transitioning out of nursing homes and provides for spousal asset protection. Instead, Congress has passed short term extensions.

November 7, 2019 Update: No movement.

January 9, 2020 Update: In the 2020 budget MFP was reauthorized through May 22, 2020 and it has been paired with the home and community based spousal impoverishment protections. Additional language may be added to include Centers for Independent Living in this bill. Sarah added that in Vermont we are mandated to provide care to people transitioning out of nursing homes. Appreciation was shared for Patrick Flood, Dave Yacovone and others who helped to change the focus in Vermont.

March 5, 2020 Update: Advocates are hoping that there will be a germane reauthorization vehicle in May to append these two reauthorizations to and are hoping for permanent authorization. Marlena asked if this includes people transitioning out of corrections. Diane said this is not the case. Sam shared that it sounds like Pallone's office is amenable to having some of this funding going to Centers for Independent Living.

May 7, 2020 Update: In Stimulus Package 3, the authorization for Money Follows the Person was extended from May 22nd to November 30th along with Spousal Impoverishment Protections. There will need to be future discussions in this session or the next to extend the authorization or to make it permanent. There is also hope that the Centers for Independent Living will be written into this given the role they play in transitioning people back into the community and so advocates will be looking for this moving forward.

B. National Council on Independent Living (NCIL) Proposals (S. 3010; HR 5429)

- 1.) **Eliminate work disincentives for Childhood Disability Beneficiaries** (CDBs), and
- 2.) **Eliminating the termination age of 65 for Medicaid Buy Ins** (MBIs) as authorized in the Ticket to Work Program of 1999. Senator's

Portman and Casey may sponsor the bill appending it to an appropriations bill or the Empower Care Act. It is moving slowly.

November 7, 2019 Update: There is bipartisan support of these two policy proposals, and it is hoped that these get appended to the next continuing resolution. Republican Mary Cantwell of the State of Washington would most likely support this bill but does not want to be a co-sponsor. Republican Representative Don Young from Alaska may be interested in being a co-sponsor. Both policy proposals would slightly change the Social Security Act. There has been requests to reopen the regulations and NCIL has written opposing reopening them.

January 9, 2020 Update: Sam shared that it is a moot point in Vermont but there is incongruity in other states. The CBD portion of the bill was dropped and NCIL is unclear as to why. Congressman Welch has an intent to introduce both bills and is still waiting for a co-sponsor. Social Security's Chief Actuary Steven Goss conducted a cost analysis and the Congressional Budget Office recently came back with a figure of a cost of \$25 million per year. The field feels that this amount is misleading as it does not acknowledge that many will age into Medicare, which will have a cost associated with it. Field staff are putting in employment information for consumers who are over the age of 65 and this is not taken into account in the analysis. Sen. Portman has found the paid-fors and is thinking of inserting into a health care bill in May. Sens. Portman and Casey indicated that they would tack it into budget and drug pricing bills, but neither were able to happen.

March 5, 2020 Update: There continues to be bipartisan support here and it's just about getting people's attention. In Vermont this is called Medicaid for Working Persons with Disabilities. Vermont did away with buy-ins a few years after it was instituted as the found that the administrative cost outweighed the revenue from the buy-ins. In Vermont it can continue beyond age 65. Federally we want to remove the age restriction from the Ticket to Work language. For some reason we don't understand the other proposal was dropped which would have cost- at most- \$2 million a year. Sam recently spoke with Congressman Welch's office last month and he is intent on introducing both.

May 7, 2020 Update: These two proposals are relatively low cost. There is a discrepancy in the authorization clauses in MBI and the Balanced Budget Act of 1997 so we want to eliminate that age discrepancy. Kelly Buckland, ED of NCIL, thinks it is worth an ask in Stimulus Package 4 though it will be low priority given the current crisis. But simultaneously, there is work happening to append this to appropriations bill for 2021 which seems the more likely route.

C. The ABLE Age Adjustment Act (S.651; HR 1814)

Was introduced with strong bipartisan support. This bill increases from 26 to 46 the age threshold for tax-favored ABLE (Achieving a Better Life Experience) accounts. It requires large offsets so as not to increase taxes.

May 2, 2019 Update: The positive movement is the National Down Syndrome Society now supports it. The National Association of State Treasurers supports it as it is the right thing to do.

September 5, 2019 Update: It is gaining momentum in Congress on a bipartisan basis. Anyone who is eligible and takes out an ABLE Account is not subject to SSI limitation up until \$100,000 and can maintain their Medicaid no matter what they have in their account. An ABLE account is a tax-advantaged savings account available to individuals diagnosed with significant disabilities before age 26. Previously, only those who incurred disability prior to the age of 26 were eligible. This act raises eligibility up to age 46. Beth Pierce, Vermont State Treasurer and a member of the National Association of State Treasurers, is in support of this change. It would benefit our veterans. It is still in committee.

November 7, 2019 Update: Five years ago, President Obama signed into the law the original Able Act. It allowed for tax free ABLE Accounts to be set up for people with disabilities, but their disabilities had to set in before the age of 26, which is the key. Currently it is gaining momentum. One is the State Treasurers (including Beth Pierce of Vermont) are finding that it was greatly overestimated the number of people that would sign up. Eight million people were originally estimated as being eligible. Only 50,000 have taken advantage of it. Because of this shortage, people are not paying the fees into the program and without this the entire program may not be sustainable. The \$2 billion scored for the program will not come close to that with the 26-year eligibility cap. If the age was raised to 46, it is estimated that 6 million for a total of 14 million would be eligible. It is hoped that in the next continuing resolution that expires November 30, 2019 that this bill would be inserted into it. November 14th is the next call in day! Get the word out to have as many people as you know call their Congressional representative to support this bill. Senator Casey is hosting a reception to gain publicity in order to pass this bill on November 19th at the Capitol Building in Washington, DC in the Russell Building in Room 385.

January 9, 2020 Update: Sen. Casey's office is attempting to tack this on to the healthcare vehicle in May and he has pay-fors established. The feeling in NCIL is that it is stalled in the House. There are 18 co-sponsors in the Senate and only 2 of them are Republican. Advocates are currently attempting to garner support from constituents in Iowa, requesting that they call in to Grassley's about this and previous bills. The World Institute on Disability has a new executive director named Marcie Roth. Under her leadership they are looking to network with other organizations like NCIL particularly on this act, including writing a letter of support.

March 5, 2020 Update: This continues to pick up more and bipartisan support. For it to have a good chance of passing alone or being appended we will need more bipartisan support from Senate Finance, Senate Appropriations, House Ways and Means, and House Appropriations. Senators Grassley and Wydan would also be key sponsors to have on this. Sam will be speaking with Senator Leahy's office in the month ahead and he will mention this if Sen. Leahy is not already a sponsor. Sam mentioned that the raise to age 46 is especially important because of veterans, neuromuscular disorders that don't get diagnosed until later in life, and due to the fact that this has been unfunded. The question was asked why the lower age limit had initially been established. Diane shared that many of the advocates who initially helped to pass this were wealthy parents who wanted to be able to have funds available to their children without affecting benefits.

May 7, 2020 Update: Strongly bipartisan but could still use more co-sponsors. Has been gaining momentum but paid-fors still need to be identified given that it is somewhat costly. Will be looking at appending to the 2021 appropriations bill.

D. President's 2021 Budget

The president's budget includes many across the board decreases, particularly for independent living. About \$5 million was transferred from the Part B funding stream to Part C. There was a stipulation that these funds go only to employment incentive programs located within Centers for Independent Living, but this is now dead on arrival. Diane shared that this is something the administration can do without Congressional approval and shared that HHS and SSA partnered with support from Mathematica Policy Research and have \$40 million in grant funds to prevent people from going onto Social Security benefits. Sam reminded the committee that historically Independent Living was under the Department of Education like Vocational Rehabilitation but that it was moved after WIOA to the Administration for Community Living.

E. Social Security Administration Rulemaking

Sam shared information about the technical rule being proposed by SSA which will result in more frequent Continuing Disability Reviews (CDR) for people on SSI and SSDI. It has yet to be clearly defined, but the current thinking is that the Trump administration believes it will save money with more CDRs given the increases in better medical and assistance technology in recent years available to support people in rehabilitative employment and recovery. In plain language, this means that they anticipate a lot of people will be kicked off benefits, and it is anticipated that 4.4 million people will be affected. In theory or in rule Congress can ask for disability reviews more often, but SSA has never had the staff capacity. However, 11,000 new people were just hired which implies that there will be an eventual cost savings through reduction in benefits. A fourth CDR category of "likely to recover" is being proposed for people with severe neurological disabilities who might be able to return to work with new assistive technology, but the delineation of how this will differ

from the already established categories of “not expected to recover”, “expected to recover”, and “possible to recover” is unclear. The fear in the field is that people who respond to the CDR as not working will trigger SSA to ask why not and then kick them off. Or if they say that they are working and still needing support SSA will deny benefits moving forward. Brian asked if other departments should come up with a response in preparation for requests from the field. It was shared that NCIL and the Consortium of Citizens with Disabilities (CCD) will be suggesting best practices in responding to the new rule.

Sam shared that there is some good news to report: SSA field offices will once again be open all day on Wednesdays, and they recently made the formal determination to not use applicants’ social media content in disability determination.

March 5, 2020 Update: Public comment period was extended and nearly 150,000 comments were submitted that were not in favor. The decision is still pending and Sam suspects that SSA is reviewing the comments before making a decision. During the Reagan administration a similar process happened resulting in many people being kicked off of benefits. Sam shared that after this time period there was an increase of people with disabilities dying by suicide and that this was mentioned numerous times in the comments and there is a concern that this will be done in a reckless manner. Sherrie shared concerns that SSA is already unable to meet their current role given decreased capacity and that these proposed changes will only further exacerbate these problems while at the same time resulting in negative outcomes for people with disabilities. Sam mentioned that the rule regarding non-fluent English speakers is now in effect.

F. Family CARES Act:

This is also known as Stimulus Bill. It includes \$85 million in Part C money for Centers for Independent Living. Part B money was requested for SILCs, but was not included in the bill. There was no extra money for VocRehab included. Agency of Education Secretary DeVos has decided not to ask for waivers for IDEA. According to NCIL, there is some uncertainty as to what the status is for request of waivers in the Rehab Act. Diane said that she recently emailed Sam language about how to request waivers and, based on that, does not believe there is lack of clarity. This language was recently sent to leaders on Capitol Hill but no decisions have been made yet so it is currently pending. Sam said that per yesterday’s NCIL meeting there was still uncertainty about the waiver process so it seems confusing at this point from NCIL’s perspective. DeVos asked for five waivers and Diane shared that of the three that will impact all VR agencies she is supportive and hopeful that Congress will pass these.

State Legislation

A. \$15 Per Hour Minimum Wage/Family Leave Bills

May 2, 2019 Update: The House General, Housing and Military Affairs Committee approved legislation Friday to increase Vermont's minimum wage to \$15 by 2024. The bill has already passed the Senate. The House committee didn't make many changes to the bill, but this week's deliberations were occasionally tense as lawmakers argued for protections to prevent the bill from hurting the business community. The bill, S.23, would raise the minimum wage to \$11.50 in 2020, \$12.25 in 2021, \$13.10 in 2022 and \$14.05 in 2023. The measure seemed to hit a speed bump Tuesday after an analysis found a bill amendment would have forced the state to increase Medicaid spending by as much as \$27.9 million over the next five years.

November 7, 2019 Update: Democrats are really trying to push this bill but there is concern that it will cut programs in other places and hurt those individuals with disabilities.

January 9, 2020 Update: There is currently agreement from the House Speaker and Senate President Pro Tempore that they will take up and vote on these bills this session, with a desire to move them through early in the session. The specifics are unclear at the moment and may include raising the wage to a dollar figure less than \$15 an hour or increasing the time frame for getting to \$15 an hour (i.e., \$12 an hour in three years and then reevaluate). Sarah shared that VCIL and Vermont Coalition for Disability Rights are both Raise the Wage members. Comments were submitted to the Raise the Wage Coalition and, as a result, the Coalition included language around not harming services, as well as benefits cliffs information. The Coalition has guiding principles that specifically named women and labor rights but not disability rights. As a result of the submitted comments, they have now included disability rights in the guiding principles and there is language that people with disabilities won't be harmed. However, this cannot be mandated without additional funding being allocated to services. It is unclear if the Governor will compromise and sign bills if passed, or veto.

March 5, 2020 Update: The legislature overrode the Governor's veto. Diane shared that DAIL is concerned that the legislature did not do adequate research before passage and that it will result in service reductions. Diane shared that benefits counselors could help to provide additional information about work incentives and benefits cliffs. Family Leave did not override the veto, failed by one vote. Expects this to come back up again next biennium.

May 7, 2020 Update: The hope is that advocates will push for a better Paid Family and Medical Leave bill for next session.

B. Attendant Services Program (ASP)

Advocates are working through appropriations to unfreeze the Attendant Services Program (ASP). The Attendant Services Program has been frozen for more than four years. Advocates successfully advocated to have it return

but with a smaller budget. The budget surplus was the rationale for the legislative push. Currently, and unique to Vermont, there is no resource/income limit for program; but there may be need to compromise to pass the bill. The program allows more people with disabilities (PWD) to gain and maintain employment. This program is for middle class individuals who would have to impoverish themselves in order to get services. Commissioner Monica Hutt agrees with the inequity but is concerned that when the legislature hears that people have funds in the bank, we may need to compromise on the resource/income limit. Bill Botzow suggested that the advocates work on the financial threshold not with the legislators in the best interest of individuals with disabilities. This will be VCIL's main legislative platform.

May 5, 2019 Update: At the last meeting, Sam reported that we were hoping to unfreeze the program to new applicants. Unfortunately, there is currently a gap in the State's budget. The bill is in Senate Appropriations and it is not considered a priority. Many individuals testified. It doesn't look good for the program to be unfrozen this session. Currently, no one can even apply so there is no wait list. The main advantage of the program is that those that are not eligible for Medicaid can receive their personal attendant care services but can also direct their care without impoverishing themselves.

September 5, 2019 Update: Unfreezing the ASP Program (General Funded PDAP) didn't get anywhere last legislative session. It has been suggested that we should at least implement a waiting list as this wouldn't cost anything. In addition, you can gauge the interest in the program. If we can't get it passed any other way, perhaps having a high-income limitation.

November 7, 2019 Update: No movement.

January 9, 2020 Update: Sarah reported that VCIL has been working on the VCDR platform which will soon be available on their website. Legislators have requested a disability package that prioritizes a handful of items that advocates will push for, but it was decided to not do it this session and instead focus on planning for the next biennium. For example, this might include platform items such as increased funding for the Vermont Association for the Blind and Visually Impaired and the Attendant Services Program. The need for ASP exists. With more funding comes more outreach and more applications which result in a waiting list. The waiting list demonstrates need to the legislature, but Sarah noted that she is skeptical that the full need is being shown as people are being put in Medicaid ASP instead and continuing conversations are being held about that. Sarah also shared that VCIL and VCDR are not in favor of moving towards an asset limit, as the goal is for people to have the opportunity to build more assets. Brian asked how return on investment can be demonstrated and Sarah shared that— because many people in the program have already aged out of working age and because the program was frozen a few years ago— the numbers in the program remain small, making return on investment harder to calculate.

March 5, 2020 Update: Sam shared that advocates are now favoring having a waiting list as a compromise. Another compromise would be to have a high income/asset limit threshold. Diane asked if there has ever been discussion about tying the program to employment (at the moment very few people in the program are employed). Sam said that this discussion has happened in the past though it currently not part of the legislation. Sherrie wondered if this might be tied to people being able to stay in their homes and communities instead of going to skilled nursing facilities.

May 7, 2020 Update: Will not go anywhere this session given COVID-19 situation.

C. An act relating to health insurance coverage for hearing aids (H. 348, S. 137)

There is momentum in these bills on both the house and senate sides given that the states of Maine and New Hampshire recently passed similar laws. Group members acknowledge that they would like to see similar legislation in the future for dentures, especially given that lack of dentures present barriers to people seeking employment.

March 5th, 2020 Update: Diane said that she is surprised that there isn't currently a constituent group working on this, mobilizing and contacting their legislators. Members wondered if it would fit well under the work of Community of Vermont Elders (COVE), VCDR, or AARP. Diane said that she will follow-up to see if Commissioner Levine has come up with an estimated cost of increase in subsidy to the state under the Affordable Care Act. Will Pendlebury and Bill Hudson have been taking a lead on this but due to being state employees their involvement in this must be limited and they will be available to the Ad Hoc committee to provide information. Sam shared that recent studies have confirmed that untreated hearing loss contributes to increase in dementia and it was noted these costs are considerably more expensive than the cost of a hearing aid, not to mention the loss of being able to live independently and be employed. Marlena shared that people in corrections facilities are unable to get hearing aids and it impacts them negatively. Sherrie asked if a smaller group can work on this.

Sam asked for a motion to create a time limited Ad hoc work group. Sherrie moved it was seconded. No further discussion. All approved. Vote unanimous 6-0-0

May 7, 2020 Update: Will not go anywhere this session given COVID-19 situation.

D. COVID-19 Related Legislation

This includes unemployment and Gov. Scott's Stay Home, Stay Safe orders, which were recently relaxed. We will continue to stay tuned.

Legislation with No Movement to Report at This Time

- **[Stop the Wait Act](#)** (S.2496; H.R.4386)
This bill would eliminate the five-month waiting period plus eliminate the general two-year waiting period for Medicare after determination of SSDI. This bill is important because when people begin receiving the appropriate healthcare the sooner they are able to get back to work.
- **[Capability Act](#)** (H.R. 3070)
Representatives Seth Moulton (D-MA) and Cathy McMorris Rodgers (R-WA) introduced on June 4th, 2019 an amendment to the Rehabilitation Act of 1973 in order to establish a demonstration program to assist transition-aged youth with covered disabilities in obtaining customized, competitive integrated employment. This Act may be cited as the "Customized Approaches to Providing and Building Independent Lives of Inclusion for Transition-aged Youth Act of 2019" or the "CAPABILITY Act of 2019". The bill creates six competitive grants for states that would span four years. The states that earn the grants would use them on pre-employment transition services that support Americans with autism spectrum disorder or intellectual and developmental disabilities that comply with requirements applicable to competitive, integrated employment.

On June 3, 2019 the bill was referred to the House Committee on Education and Labor. The details will be in the regulations.

- **[Disability Employment Incentive Act](#)** (S.255)
A bill to amend the Internal Revenue Code of 1986 to include individuals receiving Social Security Disability Insurance benefits under the work opportunity credit, increase the work opportunity credit for vocational rehabilitation referrals, qualified SSI recipients, and qualified SSDI recipients, expand the disabled access credit, and enhance the deduction for expenditures to remove architectural and transportation barriers in the handicapped and elderly.

On January 29, 2019, the bill was reintroduced. The bill text had not changed from last year. It will expand three existing tax credits to support employers who hire individuals with disabilities and make workplaces more accessible to those employees.

September 5, 2019 Update: There is bipartisan support and is just sitting in committee. 1) It would double the opportunity tax credit from \$15K to \$30K 2) employers could include those on SSDI and SSI and 3) extends credits to employers who eliminate transportation and physical barriers to employment for people with disabilities and seniors.

- **[Long Term Unemployment Elimination Act](#)** (S.1920)
On June 20, 2019.U.S. Senators Chris Van Hollen (D-Md.) and Ron Wyden (R-Ore.) introduced the Long-Term Unemployment Elimination Act, which would create an innovative federal program that would generate real job opportunities for people who have been unemployed for six months or more. It would provide another funding stream through the Workforce

Investment Board and encourage them to utilize their influence to reduce the possibility that PWD and others with difficulty obtaining employment to have extended periods of unemployment. This bill is in the first stage of the legislative process. It will typically be considered by committee next before it is possibly sent on to the House or Senate as a whole. It is supported by a wide range of groups.

- [**Empower Care Act**](#) (Money Follows the Person Reauthorization) (H.R.5306; S.2227)

Would reauthorize, and appropriate money follows the person Medicaid demonstration project that shifts money from institution care to home and community-based care. This is important because more people with disabilities could live at their homes and be able to work. The president signed three months of appropriation.

May 2, 2019 Update: We are still waiting for longer term legislation.

September 5, 2019 Update: This bill is still sitting in Congress.

- U.S. Representatives Brett Guthrie (R-KY) and Debbie Dingell (D-MI) introduced a **companion bill** in the U.S. House of Representatives which is **identical to the Senate bill S. 2227, the EMPOWER Act**. This bill would renew the Money Follows the Person (MFP) program as well as improve it.

September 5 Update: This bill is still sitting in Congress.

- [**Transformation to Competitive Employment Act**](#) (S.260; HR 873) Provides states, services providers, subminimum wage certificate holders, and other agencies with the resources they need to create competitive integrated employment service delivery models and the inclusive wraparound services that some individuals with disabilities will need. The clauses are also in the [**Raise the Wage Act**](#) (Senator Sanders)

September 5 Update: This is a continuation of several bills presented over several congresses. For Vermont, however, it is a moot point as Vermont already dispensed with sheltered workshops with Competitive Integrated Employment being the focus. It would allow for appropriations for the sheltered workshops to transition to integrated sustainable employment. Senator Grassley promised that when Congress reconvenes to move NCLS remove employment disincentives and Sam interpreted that he would put it in an appropriations bill.

November 7, 2019 Update: This bill would phase out sheltered workshops for people with disabilities and also has funding to transition to competitive integrated employment. This bill has bipartisan backing.

- **The Social Security 2100 Act (H.R. 860)**, Introduced in the House on 1/30/2019, this bill increases various Old Age, Survivors, and Disability Insurance (OASDI) benefits and related taxes.

- The bill increases the primary insurance amount (e.g., the amount a Social Security beneficiary receives if the beneficiary begins receiving benefits at normal retirement age) by increasing the percentage of the beneficiary's average indexed monthly earnings used to calculate the amount.
- The Bureau of Labor Statistics shall publish a Consumer Price Index for Elderly Consumers, which the Social Security Administration (SSA) shall use to calculate cost-of-living adjustments to benefits. Currently, the SSA uses a price index for wage earners to make such adjustments.
- The bill increases the minimum benefit amount for individuals who worked for more than 10 years by creating an alternative minimum benefit. A qualifying beneficiary shall receive that alternative minimum if it is higher than the standard calculated benefit amount.
- The bill increases the income threshold that a beneficiary must reach before Social Security benefits are taxable.
- Increased benefits from this bill shall not count as income when determining an individual's eligibility or benefit amounts for (1) Medicaid, (2) the Children's Health Insurance Program, or (3) the Supplemental Security Income program.
- Income above \$400,000 shall be included when calculating Social Security benefits and taxes. The bill also increases rates for the payroll and self-employment taxes that fund OASDI.
- The bill establishes the Social Security Trust Fund, which replaces the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

September 5 Update: House Majority Leader Pelosi indicated that this would come to a House vote prior to the end of the year. This would extend the base of social security benefits for everyone. PWD tend to work less months than people without disabilities. The bill raises the social security benefit based upon the number of months worked. The National Council on Independent Living (NCIL) expressed the concern that it might increase the disparity but were reassured that this would not happen.