

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2014**

Bill Number: H.728 Name of Bill: An act relating to developmental services' system of care

Agency/ Dept: AHS/DAIL Author of Bill Review: Camille George

Date of Bill Review: 2/11/14 Status of Bill: (check one):

Upon Introduction       As passed by 1<sup>st</sup> body       As passed by both bodies       Fiscal

**Recommended Position:**

Support       Oppose       Remain Neutral       Support with modifications identified in #8 below

**Analysis of Bill**

**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

The purpose statement of the bill proposes to make changes to the DD Act of 1996 including:

- i. Minor wording change from "the age of" to "years of age." (§8722(2)). The proposed change is technical in nature and has no impact.
- ii. Replaces antiquated language in the definitions section of the bill with respectful language, substituting "mental retardation" with "intellectual disability." (§8722 (2)(A)). This is a necessary and important change to make to the Statute.
- iii. Replaces "department" with "Department," "state" with "State," "advisory board" with Advisory Board and "governor" with "Governor" throughout. These are all technical/editing changes with no impact on the substance of the bill.
- iv. Removes language requiring management of DDS "within the limits of available funding." It appears that this proposal would still require the Department to perform specific responsibilities, **but would not do so having to take into consideration the funding appropriated for DDS.** (§8723 line 17). The specific responsibilities described in §8723 (1) – (11) to be carried out include:
  - a. Promote the principles stated in §8724 of this title and carry out all functions, duties and powers in collaboration with people with DD and other stakeholders;
  - b. Develop and maintain an equitably and efficiently allocated system of services that reflect the choices and needs of individuals and families;
  - c. Acquire and administer funding for services and identify needed resources and legislation;
  - d. Establish a statewide procedure for applying for services;
  - e. Facilitate or provide training and technical assistance to providers;
  - f. Provide quality assurance and quality improvement support;
  - g. Encourage the establishment of locally administered and locally controlled non-profit services for people with DD based on individuals' needs and their families;
  - h. Promote and facilitate participation by people with DD and their families in activities and choices that affect their lives and in designing services.
  - i. Promote positive images and public awareness of people with DD
  - j. Certify services that are paid for by the Department;
  - k. Establish a procedure for the investigation and resolution of complaints;

It is thought the proposed changes would respond to the sense by some that too much emphasis is placed on “funding” and that instead management of the program should be based on upholding the principles of the Act. It is unclear, then, what expectation the Department would have to ensure that services are provided cost-effectively and within the appropriated amount, what would happen if the Department ran out of funds prior to the end of the fiscal year, and if/what fiscal management tools the Department would be permitted and/or expected to use when overseeing DDS and the implementation of the SOCP.

- v. Modifies §8723 (2) to insert monitor the system of services in addition to developing and maintaining it. This increases/adds emphasis to the Department’s role with regards to monitoring the effectiveness of services and individual providers.
- vi. Modifies §8723 (3), adding the requirements to exercise fiscal oversight over funding, removes language requiring DAIL to identify needed resources and legislation (this is moved to a new, separate section (12 – see below), and specifically requires management of State contracts. In this section, while the department would not be required to set priorities or implement the SOCP within available resources, this will emphasize and/or strengthen the oversight the Department is expected to have over providers of services and related grants.
- vii. Modifies §8723 (6), replaces the requirement “provide quality assessment and quality improvement support for services provided throughout the state” with Maintain a statewide system of quality assessment and assurance for services provided to people with a DD and provide quality improvement support to ensure the principles in section 8724 of this title are achieved. This language adds emphasis and envisions an increased and more robust approach to quality assurance than currently happens given the existing resources. Implementing this proposal will likely require additional staff and other resources at both the Department and possibly provider level.
- viii. Moves language from §8723 (3) to create a new (12) Identify resources and legislation needed to maintain a statewide system of community-based services. This change adds emphasis to this role for the Department, where before it was “buried” in another section of the Act.
- ix. Adds language to §8725 System of Care Plan that the plan shall be consistent with the principles of service set forth in section 8724 of this title. The Department agrees that the SOCP should be consistent with the principles set forth in the Act and furthermore, that the SOCP should be developed and evaluated using a Results-Based Accountability (RBA) approach.
- x. In §8725(a), deletes “Notwithstanding any other provision of the law” and inserts Except for the following four categories. The effect of this change is that where no aspects of the System of Care Plan were required to go through the administrative rule making process, the following four aspects of the SOCP would now be required to be adopted by rule prior to taking effect: (§8725 (a)(1) – (4)).
  - a. Priorities for the continuation of existing programs or development of new programs;
  - b. Criteria for receiving services or funding;
  - c. Type of services provided (*this requirement is proposed to be added – see below*); and
  - d. Process for evaluating and assessing the success of the program.

This language is assumed to be proposed due to a sense by some that the Department has too much independent authority in developing and administering the SOCP and that there should be greater legislative oversight of DDS. Advocates have described that they want DDS to be managed more like the Choices for Care Program. There are pros and cons with the requirement to go through rule-making that would benefit from further examination and consultation with the Advisory Board established in the DD Act. On the one hand, rule making does provide an increased level of legislative involvement and oversight of DDS. At the same time, the administrative rules process is

lengthy and therefore any changes proposed will likely take longer to approve and therefore implement.

The aspects of the SOCP that would not be required to go through rule making are not components of the plan, but other process steps, such as developing the plan based on a range of information, submitting the proposed plan to the Advisory Board at least 60 days in advance and consulting with said Advisory board.

- xi. Per x above, adds a new §8725 (3) types of services to be provided. DAIL already includes this information about the categories of services in the current SOCP and has in previous plans. It would be important to clarify whether the information about services already contained in the SOCP is sufficient, or what changes would need to be made to the description and definition of services.
- xii. §8725 (b) Deletes “Each plan shall be” and replaces with The Commissioner shall determine plan priorities... This proposal emphasizes the expectation that the priorities be established based on the full range of information gathered from consumers, stakeholders, demographic and other data and including information about unserved and underserved people, and gaps in services.
- xiii. §8725 (b) deletes language at the end of this section “The commissioner shall determine the priorities of the plan based on funds available to the department.” As with earlier proposed changes, this proposal appears to relieve the Commissioner of having to take into consideration funding and resources available when setting priorities.
- xiv. . Adds language to (§8725 (c) except that the Commissioner shall submit those categories within the plan subject to 3 V.S.A chapter 25 to the Advisory Board at the commencement of the public comment period. The Advisory Board shall provide the Commissioner with written comments on the proposed plan, and, if applicable, may submit public comments pursuant to 3 V.S.A chapter 25. DAIL already submits all proposed changes to the plan at least 60 days in advance and at the start of the public comment period. The proposed language also seems to codify that in addition to providing written comments, the Advisory Board will be able to provide public comment as part of the administrative rules process.
- xv. Adds new §8725(d): The Commissioner may make annual revisions to the plan as deemed necessary in accordance with the process set forth in this section. The Commissioner shall submit the proposed revisions to the Advisory Board established in section 8733 of this title for comment within the timeframe established by subsection ( c) of this section. The DD Act already allows the Department to make revisions to the SOCP. This proposal will require all revisions/updates to go through rule making.
- xvi. §8725 ( e) is revised as follows: Deletes “The department” and inserts Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Department, deletes “annually, “ deletes “general assembly” and replaces with committees of jurisdiction, deletes “and shall make annual revisions as needed,” and inserts the extent to which the principles set forth in section 8724 of this title are achieved, and whether people with a developmental disability have any unmet service needs, including the number of people on waiting lists for developmental services. The result of these changes is that a specific timeline is established for the submission of the annual report, the audience to receive the report is streamlined and specific direction that the report address whether the principles of the Act are added. While the Department agrees with setting an established timeline for submission, we need more time to evaluate the current content of the annual report, revisit and revise the content of the report and determine the most reliable and efficient means of collecting and analyzing data and information to include in the report and based on that, agree on a realistic timeline for submission of the report. It is possible that January 15 is realistic, but it is a worthwhile summer project to look at the annual report and process in more detail.

**xvii.** Sec 2 of the bill proposes that it will take effect July 1, 2014. The Department is currently in the process of developing the new SOCP to go into effect July 1, 2014 for FY 15 – 17. This would not afford time for the Department to go through rule making for the new SOCP. The Department would either have to delay implementation of the SCOP, or apply the rule making provisions to any future updates, revisions and plans.

**2. Is there a need for this bill?** *Please explain why or why not.*

Not yet. DAIL believes this bill is premature and recommends that next year would be a more appropriate time to consider revisions to the DD Act. While DAIL agrees that after nearly 20 years in effect without changes that it is valuable to review the Act and identify whether any changes are needed, DAIL has convened a Task Force to examine what we want DDS to look like 20 years into the future. As part of this process, the Task Force will be looking at the DD Act and recommending any changes needed to implement the long-term strategic vision. This Task Force is comprised of numerous stakeholders and will be providing its input into the long-term strategic vision this summer. In addition, §8733 of the DD Act establishes an Advisory board (the State Program Standing Committee – SPSC) to advise DAIL on the status and needs of people with DD and their families and to advise the DAIL Commissioner regarding the development of the DS SOCP and to recommend legislation, rules, policies and standards to implement the SOCP. The SPSC has not been consulted about the changes proposed in this bill, nor has it been consulted about any other changes that may be needed to the DD Act. Given the timing of the Task Force and since it is legislatively dictated that the SPSC give input into legislation, this bill is premature to consider at this time. Instead, it makes more sense to present proposed changes next year after the Task Force has completed its work and there has been ample time to solicit input from the SPSC. It is important to emphasize; however, that the Department agrees with and sees value in placing a greater spotlight on the principles contained in the Act.

Please also refer to question 1 for comments related to the need for specific changes.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

There are likely to be both fiscal and programmatic implications of this bill for this Department. Most notably, there are likely to be fiscal implications if the requirement to administer DDS within the limits of available funding is removed. In 2013 the Department was on track to overspend in DDS by several million dollars and a BAA was requested and funded. This year, DDS is currently managing to within .5% of the appropriated amount, but a rescission was necessary as a result of the \$2.5 million savings target that was included in the budget that was not able to be found. The fiscal implications can also be impacted based on the priorities set in the SOCP. If priorities are set without taking into consideration available funding, more people may be eligible for services and additional funding would be needed to serve them. In addition, based on the strengthening/increasing of expectations around quality assurance and monitoring, it is likely that depending on how this is defined, additional staff and other resources will be required in both programmatic and business office staff, especially if the number of people receiving services increases. Finally, if the SOCP is required to go through the Administrative rulemaking process, this will require additional staff time and resources from programmatic and legal staff.

**4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

The implications for this bill for other departments may be difficult to articulate without better and more fully understanding the expectations for the department to administer the program without the requirement that

this be done “within the limits of available funding.” If this is the case, does this mean that other programs and services may need to be reduced to help fund DDS? It is possible that if more people are found eligible for DDS that some individuals may be served through the DDS system and may not need other services and supports they may currently be receiving.

**5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example, public, municipalities, organizations, business, regulated entities, etc)*

Similar to the implications for DAIL, there are likely to be implications for the Designated Agencies and Specialized Services Agencies that provide services locally, as well as on their contractors. There may also be an impact on Transition II (which provides supports to individuals who self- or family-manage services) and ARIS, the fiscal intermediary for many contracted workers if the number of people to be served and number of employees/contractors increases. With regard to increased quality assurance and monitoring of services, this is likely to get a mixed reaction, with some agencies welcoming the support and technical assistance that comes with it and others needing to increase resources and take other actions to meet increased QA and monitoring expectations.

**6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?**

There is an active advocacy coalition within DDS, including Green Mountain Self Advocates, Vermont Legal Aid, Vermont Protection and Advocacy, Disability Rights Vermont and others that will likely support the proposal, anticipating increased funding and capacity to meet the needs of individuals with DD and their families, and who also see a need to regain the QA that used to exist in DDS. This group is also likely to support the specific requirements for formal rulemaking to bring increased legislative attention and oversight. Individuals with DD, families and some providers/staff are also likely to support the proposal for the same reasons, especially the prospect greater focus on the principles, increased funding and increased QA.

**6.2 Who else is likely to oppose the proposal and why?**

Certain members of the SPSC and the DDS Imagine the Future Task Force are likely to oppose the proposal at this time, agreeing with DAIL’s rationale that while we agree that it makes sense to revisit the DD Act, they were and are expecting to play a role in providing input into changes and will want time to do that.

**7. Rationale for recommendation:** *Justify recommendation stated above.*

The rationale is described in #2 above.

**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

Primary modification is to delay by one year consideration of this bill in order to more thoroughly contemplate these and other necessary changes and to have time to consult with DS Task Force and the legislatively designated DDS Advisory Board, the SPSC.