

Human Rights Assessment of H.202

Assessment sections:

- I. Roadmap, planning and governance
- II. Vermont Health Benefits Exchange
- III. Green Mountain Care

I. Roadmap, planning and governance

The purpose of the new healthcare system should be to protect Vermonters' health and provide healthcare for everyone by treating healthcare as a public good. The new system should meet the human rights principles expressed in Act 128. While those principles are partially restated in Section 1 of the bill, no reference is made to them in the design and implementation components of the bill. The principles are not enforceable conditions for implementation of any provisions under this bill. There is no designated authority to ensure that decision making is in line with the principles. Meeting these principles should be the essential purpose, explicitly stated, of Green Mountain Care.

Although reference is made in the bill to the goal of universal coverage, the overarching theme of this bill is cost-containment. The primary purpose should be creation of a system that guarantees access to care for all Vermonters on an equal basis. While we expect cost containment to result from the reduction of administrative and marketing costs, this should not be the primary goal but rather serve as a means to achieving comprehensive coverage for all Vermonters.

1. Universality

All Vermonters must have access to comprehensive, quality health care. (Act 128, Sec.2(1))

The bill lacks a commitment to guaranteeing universal access as soon as possible. It does not add coverage for anyone for a number of years, until the Exchange comes into effect in 2014. Even then the increase of covered people is likely to be small. No attempt is made to provide universal coverage until 2017, when larger employers are projected to be included in the exchange.

Green Mountain Care will not be implemented at all until a waiver under Section 1332 of the federal Patient Protection and Affordable Care Act ("ACA") is approved (waiver for state innovation). This necessitates a "Plan B" or a method for achieving universal care if a waiver is not available, or if the ACA changes, is unfunded, or fails to remain as is for any reason. This second path to universal care should be included in the bill.

The bill lacks a guarantee of access to comprehensive health care, i.e. to all care needed according to medical indications. “Essential” services are foregrounded without being sufficiently defined. The preference of the term “essential” over the term “comprehensive,” combined with the emphasis on cost containment, suggests that a bare-bones benefit package may be considered, presumably based on cost imperatives, thus contradicting the moral imperative of protecting people’s health. Human rights principles do not allow prioritizing cost concerns over people’s needs when necessary resources can be identified.

2. Equity - Access

Systemic barriers must not prevent people from accessing necessary healthcare. (Act 128, Sec.2(1))

By planning for a multi-year transition period (6 years minimum), most Vermonters will continue to face severe barriers in accessing care. During this transition period, Vermonters must purchase insurance policies, if they can afford them. Deductibles allowed by the ACA, co-pays and premiums endanger access for lower- and middle income Vermonters since it has been proven that high costs (including premiums and cost-sharing) are one of the largest barriers to access.

3. Equity-Financing

The financing of health care must be sufficient, fair, sustainable, and shared equitably. (Act 128, Sec.2(6))

The financing principles for Green Mountain Care do not include the principle of equity; neither do the financing plans for the transition period prior to Green Mountain Care.

The proposed Exchange is not financed equitably (see below), and the financing mechanism for Green Mountain Care has not been specified.

Financing during the transition period is predicated on the receipt of federal funds, which may not be sustainable or sufficient. Moreover, relying on the ACA’s financing model (mandating the private purchase of insurance policies) may expose Vermont to the same uncertainties the federal law now faces due to current court challenges.

4. Transparency & Accountability

The healthcare system must be transparent in design, efficient in operation, and accountable to the people it serves. (Act 128, Sec.2 (2))

The general purpose of setting up a Health Reform Board appears to be limited to cost containment (see the purpose statement in section 9371).

The governance mechanism of the transition phase lacks accountability to the people. The independent Board taking decisions on transition planning only includes one patient

representative (of five members), yet the board has far-reaching responsibilities. Moreover, board appointment rules do not appear to include a conflict of interest provision.

It is unclear how the Board will report to and consult with the public and the legislature during all implementation phases (transition, Exchange, Green Mountain Care).

5. Participation

The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system. (Act 128, Sec.2(2))

People's participation in the planning and transition process is unclear. The Board will only have one patient/community representative. Vermonters are generally referred to as "consumers;" consumers by definition have no stake in governance or decision-making, they can only elect to purchase or not to purchase something (dependent on the money they have at their disposal). This is not a democratic role.

Grassroots organizations need to be represented in the transition process in order to make certain that there is meaningful participation from a broad cross-section of the people of Vermont.

The Board has the power to review and approve the Green Mountain Care benefit package, and to review and approve the budget, including any changes to benefits. It is not clear if these processes will allow for and encourage public participation.

6. Public Good

Healthcare is a public good for all Vermonters (Act 128, Sec. 8)

The bill does not mention that Act 128 has recognized healthcare as a public good.

The transition process is predicated on treating health care as a market commodity; the Exchange is a marketplace. Nowhere is a commitment made to treating healthcare as a public good, even under Green Mountain Care, where public financing is not specific and the administration of the system will likely be contracted out to a private party.

II. Vermont Health Benefit Exchange

1. Universality

All Vermonters must have access to comprehensive, quality health care. (Act 128, Sec.2(1))

Not many new Vermonters will receive insurance, even once the Exchange becomes operational (not before 2014). Coverage will by no means be universal. Vermonters will be

required to purchase private insurance in 2014, but there is no similar obligation on the state to make sure that everyone is able to do so or receives meaningful coverage in return.

Only Vermonters with the money to pay deductibles, premiums and co-pays will get access to healthcare if the implementation is managed according to the ACA (with the exception of those eligible for public programs such as Medicaid).

The Exchange excludes undocumented people based on the legal requirements of the ACA. There is a risk that other exclusions may be triggered by ACA requirements, such as an exclusion of full reproductive care. By implementing health reform according to ACA mandates, Vermont accepts those federal standards as guidelines, rather than the human rights principles of Act 128.

Incarcerated persons will not be included, and the bill does not mention whether this means that the private corporation that currently provides most of the care to inmates will remain in place.

2. Equity - Access

Systemic barriers must not prevent people from accessing necessary healthcare. (Act 128, Sec.2 (1))

The Exchange requires payment of premiums for access to care, which may constitute a barrier for low and middle income people. The subsidies provided under the ACA limits are likely to be insufficient to help many Vermonters gain access.

The Exchange explicitly allows deductibles, in addition to other forms of cost-sharing, which is likely to pose a significant barrier to access.

3. Equity-Financing

The financing of health care must be sufficient, fair, sustainable, and shared equitably. (Act 128, Sec.2(6))

The financing of healthcare through the Exchange is not equitable. Most Vermonters will have to buy a private health insurance policy (either through the Exchange or through their employer), so there is insufficient pooling of financial resources (apart from insufficient subsidies for low-income people) which would be needed to distribute contributions more equitably. Financing access to health care will remain an individual responsibility instead of a collective responsibility.

As we have seen from Vermont's experience with Catamount Health, attempts to provide universal healthcare to people through the purchase of private sector insurance policies is unsustainable for the state and for individuals. Additionally, taxpayer dollars should not be used to subsidize another private risk pool or pools, especially as the fragmentation of risk pools makes coverage more expensive and adds unnecessary administrative costs.

The financial burden will remain on people who get the sick, since the Exchange explicitly allows deductibles and other forms of cost-sharing.

Financing of coverage expansion through the Exchange may not be sustainable, as it depends upon the status of the ACA.

4. Transparency & Accountability

The healthcare system must be transparent in design, efficient in operation, and accountable to the people it serves. (Act 128, Sec.2(2))

The Exchange is a marketplace, even if hosted by the Vermont government. Unlike public goods, markets are not publicly accountable for operating in the public's interest.

The bill seems to give the Board a limited role during the period the Exchange is projected to be operational, confined to making recommendations and approving benefits packages.(Section 9374(c)(5) and (6)).

Although health insurers in the Exchange will need to have their rates approved, as they do now, and “provide accurate and timely disclosure” to the public on a certain issues, supported by so-called navigators, plans will continue to operate according to their own revenue imperatives, outside the full reach of public oversight.

5. Participation

The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system. (Act 128, Sec.2(2))

There does not appear to be a public consultation process regarding setting up and running an Exchange.

Neither the Board nor the advisory committee appear to have a significant role in decision-making related to the Exchange.

6. Public Good

Healthcare is a public good for all Vermonters (Act 128, Sec. 8)

Healthcare continues to be a commodity under the ACA, and the Exchange mandated by the ACA.

III. Green Mountain Care

1. Universality

All Vermonters must have access to comprehensive, quality health care. (Act 128, Sec.2(1))

All residents appear to be included in Green Mountain Care, although the exact definition of “resident” will be left to the agency of human services.

It is important that Green Mountain Care states that its purpose is to provide *comprehensive* health coverage (proposed 33 V.S.A. Section 1821), and the Board should not have the authority to reduce this to bare-bones coverage. Yet the bill also says that dental and vision care will only be covered if money allows, which contravenes the principle of health protection. Moreover, it is not clear that all necessary services would be covered; as services such as long-term care and transportation are not mentioned.

2. Equity - Access

Systemic barriers must not prevent people from accessing necessary healthcare. (Act 128, Sec.2(1))

Green Mountain Care appears to require cost-sharing, which could constitute a barrier to accessing needed care. All forms of cost-sharing, even at low levels, have been proven to deter access to care by those with limited means.

The Board will determine cost-sharing limits through reviewing “affordability.” Although cost-sharing in any form deters access, the development of an income/expense based formula for exemptions and reductions (based upon geographic statistics) could mitigate this.

Cost-sharing would not be necessary if an equitable funding mechanism were developed that does not discriminate against sick people (see below).

3. Equity-Financing

The financing of health care must be sufficient, fair, sustainable, and shared equitably. (Act 128, Sec.2(6))

No financing mechanism is specified for Green Mountain Care, which constitutes a grave omission. The bill does not even explicitly state that Green Mountain Care would be publicly financed.

The bill should commit the state to using an equitable financing mechanism. This would require progressive tax-based contributions from Vermonters according to their abilities. Wealthier people, including those with investment incomes, should contribute in line with their means. Corporations should contribute according to their profitability.

If cost-sharing is implemented, the financial burden would disproportionately fall on those who get sick.

4. Transparency & Accountability

The healthcare system must be transparent in design, efficient in operation, and accountable to the people it serves. (Act 128, Sec.2(2))

The proposed 33 V.S.A. Section 1826 allows for the Agency of Human Services to contract with private companies, including insurance companies, for the administration of certain elements of Green Mountain Care. Yet private entities, even when providing services to the state, are not required to operate in a fully transparent manner. Additionally, private entities are less accountable to the people than the state itself.

It is unclear whether the private contractor would be in a position to deny Vermonters access to care, or to mismanage Vermonters' healthcare dollars.

It is unclear how the Board reports to the public and the legislators. The Advisory Committee's recommendations would have to have some binding character in order to be a relevant element in an oversight process.

5. Participation

The state must ensure public participation in the design, implementation, evaluation, and accountability mechanisms in the health care system. (Act 128, Sec.2(2))

The Board should have more than only one patient/community representative, and it should also include representation from grassroots organizations.

The Advisory Committee (consisting of Medicare, Medicaid, VHAP recipients) may offer a limited opportunity for participation, but it cannot replace full participation by a broader cross-section of the community. Participation also requires decision-making powers, which advisory committees do not have, unless some mechanism is devised to enforce of recommendations through governance structures.

6. Public Good

Healthcare is a public good for all Vermonters (Act 128, Sec. 8)

The policy of treating healthcare as a public good is not explicitly included in the bill. This should be rectified, including by stating that Green Mountain Care will treat healthcare as a public good that belongs to all Vermonters, which entails that Vermonters share contributions and benefits equitably.

The private subcontracting of Green Mountain Care's administration (insurance carriers or other third parties will be invited to bid for certain aspects of administration) puts Vermont's public good policy into question. The bill must state that the Board will hold all third parties

fully accountable for compliance with the human rights principles, including the treatment of healthcare as a public good, and that the Board will itself be held accountable by the people.

The proposed 33 V.S.A. Chapter 18 Section 1827 states that the agency will develop the budget for Green Mountain Care based on payment methodologies, payment amounts and cost-containment targets established by the health reform board. Yet if healthcare is a public good, and if the state is committed to implementing the principles in Section 1, the budget for Green Mountain Care should be prepared based on those principles, i.e. based on meeting the the healthcare needs of all Vermonters on an equal basis.