Strengthening Vermont's Human Services Board - AHS Recommendations from the Act 22 HSB Report

Testimony provided by:
Ashley Johns, General Counsel, Agency of Human Services

Legislative Charge

Act 22, Sec. 7 (2025) directed AHS to consult with:

- Human Services Board (HSB),
- Office of the Attorney General,
- Community partners, and
- Individuals with lived experience

AHS was asked to submit recommendations to the Legislature on:

- Attorney training,
- Appeals processes,
- Data collection,
- Early resolution of appeals, and
- Any additional legislative changes needed to improve the HSB system.

The Role of the Human Services Board

- The HSB is a citizen panel of 7 members serving as the fair hearing board for appeals from individuals aggrieved by AHS decisions.
- The Board employs 3 hearing officers to hold hearings when cases involve factual disputes.
- Hearing officer recommendations are reviewed by the HSB, which may affirm, modify, or reverse the decision.
- Certain decisions involving TANF, child support, Medicaid, and the Vermont Health Benefit Exchange are also subject to AHS Secretary review and approval.

AHS Recommendations

AHS has identified 4 areas for legislative attention:

1. HSB Authority and Jurisdiction
2. Consistency
3. Timeliness
4. Exclusion of child victim testimony

- The recommendations are intended to strengthen fairness, predictability, and efficiency in the HSB appeals process.
- They also aim to protect vulnerable appellants and safeguard state and federal program integrity.

HSB Authority and Jurisdiction

- **Current statute:** Interpreted broadly, resulting in the HSB ruling on policy decisions rather than the individual application of facts to existing law and policy.
- **Board composition:** Hearing officers and board members are not required to be licensed attorneys.
- **Intended role:** An administrative hearing forum to adjudicate individual benefit appeals, not to interpret or invalidate policy, laws, or regulations.

Vermont's current statute is an outlier among states and creates significant legal and policy risks. The result of the current processes grants quasi-judicial and policy-making authority to a body not structured or qualified for those functions.

Recommendation: Vermont should align its administrative hearing authority with national norms to protect legal clarity, fairness, federal compliance, state budgets, and statewide policy integrity.

HSB Authority and Jurisdiction: Risks

- **Legal Risks:**
  - Undermines separation of powers between the executive, legislative, and judicial branches.
  - Creates potential for inconsistent decisions.
- **Policy Risks:**
  - Substitutes case-by-case fact review for comprehensive policy analysis.
  - Allows individual appeal outcomes to shape statewide policy without consideration of system-wide impacts.
- **Operational Risks:**
  - Leads to inefficiency and confusion, requiring agencies to adjust operations based on isolated HSB rulings.
  - Undermines public confidence in administrative processes.
- **Financial Risks:**
  - HSB rulings that expand benefits or eligibility beyond the existing constraints of law and regulation may create budget pressures outside of the legislative process.
- **Fraud, Waste, and Abuse Risks:**
  - Rulings that expand benefits or eligibility beyond the constraints of law and regulation risk Vermont's Medicaid compliance.

HSB Authority and Jurisdiction:

Recommendation: Vermont should align its administrative hearing authority with national norms to protect legal clarity, fairness, federal compliance, state budgets, and statewide policy integrity.

- **Administrative principle:** Policy development should occur through agencies with subject-matter expertise.
- **Judicial principle:** Legal determinations belong to the judiciary.
- **System coherence:** Prevents isolated, fact-specific decisions from setting unintended precedents.
- **Legislative oversight:** Ensures statutory clarity and legislative accountability for major policy questions.

Consistency

- **Current State:** Inconsistencies and failure to meet required decision timelines that creates a lack of predictability, risks benefit continuity, adds administrative burden, and results in financial consequences for both appellants and the state.

  - A consistent process reduces confusion, delays, and the risk of inequitable treatment across cases.
  - Predictability helps appellants understand what will happen and when, and helps departments prepare cases, manage workloads, and respond appropriately.

Consistency

Recommed: Formalizing the HSB hearing process.

- The goal is to make the process understandable from the beginning, not after problems arise. Formalization should include published timelines, standardized filings, and clearer hearing expectations. This should be strictly followed.
- The HSB should adopt formal procedures through rulemaking or legislation.
- The report outlines in detail aspects of the HSB hearing that should be formalized:
  - Strict timelines, including standards for continuances
  - Impartiality
  - Formal procedures
  - Form filings
  - Closing statements
  - Secretary reversal

Timeliness

- AHS recommends responding to persistent decision delays through:
  - mandatory deadlines,
  - deciding cases in order received / heard,
  - increased HSB meeting frequency, and
  - an independent efficiency assessment.
- Delays harm appellants, threaten program integrity, and create federal compliance risk.

Exclusion of child victim testimony

- AHS recommends amending the statute to protect child victims.
- Specifically, the report recommends prohibiting the requirement that any child victim or witness testify in abuse or neglect substantiation hearings, regardless of age.
- The purpose is to prevent traumatization and protect child welfare.

Additional areas addressed by the report

- **Training and education**
  - **Recommend:** AHS, HSB, and Vermont Legal Aid should collaborate to create plain-language educational materials for appellants, including a guide to practicing before the HSB. Key HSB documents be written in plain language. HSB hearing officers to complete nationally recognized training or certification to support neutrality, professionalism, and effective hearing management.
- **Data collection**
  - **Recommend:** Expanding the HSB's existing case management system, following a judiciary model to track: appeal types, timeliness, continuances, board decisions, and workload indicators. Improved reporting will help identify patterns and systemic issues.
- **Internal department appeals processes**
  - Five AHS departments appear before the HSB. Each department has program-specific internal review processes before a case reaches the Board. Internal reviews resolve disputes early, correct errors, reduce HSB workload, and produce more timely outcomes.
  - These processes necessarily vary because legal and clinical requirements differ by program.