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Supporting Vermonters to lead healthy and satisfying lives community by community

Legislative Update for May 7, 2019

The Legislature is planning to complete its work in mid-May. Any Legislation that doesn't achieve passage in both houses may be picked up again next year during the second half of the biennium.

Senate Appropriations Support COLA and other Funding for DA/SSAs

The Senate Appropriations is in the process of finalizing their Senate Budget Proposal which will be voted on by the full Senate this week. It will then be messaged to the House of Representatives for consideration. After the House rejects the Senate version of the bill a committee of conference will be formed to work out the differences.

Our provider network fared better in the Senate than the House where the revenue bill will generate more money. Here are the highlights:

- COLA for DA/SSA MH and DS: \$5.4 million total funds (\$2.2 million DS, \$3.2 million MH) (0 in House)
- CRT enhanced care 12 beds \$1 million total funds (\$1.2 million total funds in House)
- One-time EHR \$2 million one-time (no match) (\$1.5 million one-time funds in House)
- Tobacco Settlement Fund \$1.5 million (no match)

There is quite a bit of language in the budget bill in the Senate budget:

- Electronic Health Records language requires a review by Joint Fiscal Committee in July before funds are released (House language releases funds in November);
- Developmental Services Payment Reform report by AHS to key Committees in January – this was a request of Vermont Care Partners and was negotiated with AHS (not in House Bill)
- Workforce Development Language will specify how loan repayment and tuition assistance will be managed (Different than House Language)
- CRT funding language specifies that 12 beds are to be created for people whose acuity and particular needs have been prohibitive to community re-entry from the hospital (no language in House)
- Success Beyond Six study language directs the Agency of Human Services (AHS) and Department of Mental Health (DMH) to evaluate spending on this program against competing priorities and include recommendation for outcome metrics and how AHS/DMH should participate in spending decisions.

The Department of Disabilities, Aging and Independent Living (DAIL) requested that the Appropriations Committees include language setting specific IQ criteria limits for eligibility for the developmental services waiver in response to a Supreme Court Decision enabling an applicant to qualify for service if their past or present scores exceed the 70 point limit, but is within the standard deviation range of the

test. The Committee determined that the issue was too complex for just the Appropriations Committee to determine. If statutory change is necessary, it will have to be addressed by the policy committees during the second half of the biennium, since the Senate policy committees are closed for this session. More on this topic below.

Related funding decisions by the Senate Appropriations Committee:

- Increase in residential care facility rate: \$1 million GF (0 in House)
- SASH \$750,000 one-time funds for 3-year phase in, replaces \$541,947 cut by Administration (funding was fully restored in the House budget)
- Recovery Centers were level funded in the Senate (House gave a one-time appropriation of \$260,000)
- Woodside received a \$525,000 reduction in the Senate as part of a transition to a detention center as the fate of the facility is determined (House level-funded)
- Both Senate and House restored \$60,000 Administration cut for the Copeland Center

House Appropriations Committee Takes up Minimum Wage Bill

The Chair of General, Housing and Military Affairs Tom Stevens and the Vice Chair Chip Troiano presented the S.23 to House Appropriations Committee. They reported that the wage increases proposed were not changed from the Senate Bill and were calculated based on the expected livable wage in 2024.

Representative Stevens described the challenge of the Medicaid providers. He wants to raise rates to enable compliance with the minimum wage and funding to address wage compression at the long term care agencies this year. A study by the Joint Fiscal Office and Agency of Human Services is proposed to address all Medicaid providers over the 5-year span of the minimum wage increases specified in the Bill. Representative Troiano noted that the target employees are somewhat limited and in the future the analysis opens up the potential to increase rates for other providers. Committee Chair Kitty Toll asked, "Why home health and nursing homes and not individuals working with people with developmental disabilities?" Representative Troiano said the focus is on seniors for FY20 and all will be looked at for future years. He noted that DA/SSA did get a minimum wage increase two years ago.

Representative Matt Treiber expressed concern about how the legislature is involved in wages. Representative Stevens said the analysis will help us understand how the Medicaid rates translate into wages.

The estimate is that if S.23 passes it will require an increase of \$3.3 million total funds for fiscal year 2020 for the increase that goes into effect on January 1, 2020. 2023 is when DA/SSA would be impacted by the minimum wage bill as the minimum wage catches up to our minimum wage.

Health care providing occupations within \$1 of minimum wage were evaluated. All would get the same compression increase of 6.7%. The final draft of the Bill doesn't require all employees to get the same increase for FY20 and for future years. Employers would need to mitigate the compression. There is no guidance as to what "mitigation" means. The costing was based on all employees receiving the same increase. The fringe benefits were figured in the first fiscal year.

Representative Dave Yacavone asked about day support workers for developmental disability services which are managed by families. The Joint fiscal Office will look into this. Later in the week Sarah Clark the Chief Financial Officer for AHS reported that home care workers who are employed by families just

negotiated hourly pay at \$11.30 or \$.25 above the minimum wage if the wage goes up. The agreement is through FY20. There could be other pockets of employees impacted, she added.

There will likely be at least four amendments put forward to change the \$15 minimum wage bill late next week, when it goes to the full House for deliberation. There is concern that the Governor will veto the bill if it is not modified and that there may not be enough votes to override a veto.

House Appropriations Learns about Supreme Court Decision from Commissioner Hutt

DAIL Commissioner Monica Hutt reviewed the criteria for DS Waiver Services:

1. IQ – score of 70 or below
2. Two areas of adaptive functioning
3. The funding criteria set forth in the State System of Care Plan

In the case brought to the Supreme Court, the applicant exceeded the IQ criteria of 70 or below, but since scores can vary an historical view was taken. This young man does not have a score below 70 in his history. The Secretary overruled the decision of human service board who had overruled the DAIL denial for services.

The Commissioner said that the Court decision could effectively lead to changing the IQ cut-off from 70 to 75. This would lead to many more people becoming more eligible. There are double the number of people with IQs between 70 and 75 than with IQs of 70 or below (the IQ criterion does not apply to people on the Autism Spectrum). The Supreme Court said the language of the DAIL regulations does not clearly explain historical practice in plain language. The intent of language proposed by DAIL for inclusion in the State budget is to revise the regulations to ensure that the plain language is clear about the criteria of 70 or below.

Katie McLinn, the legislative council explained that DAIL's perspective is that the standard error only applied to other tests referenced in the regulation, not the IQ test. The Court is focused on the plain meaning of the regulations, which they interpret differently. Diane Lanpher said the DSM 5 already references a five-point deviation for IQ. Katie McLinn confirmed this. If there is no language change there is still an opportunity for emergency or regular rule change according to Legislative Council. There has been a question about what has been happening in practice.

Monica said nationally there are changes in criteria with a greater focus on functional capacity and less on IQ score. Representative Diane Lanpher asked about the tool and noted that the person who administers the tool makes a big difference. She also asked about the historic practice for a person scoring at 72. Monica Hutt replied that it depended on the history of the person and consistency of scores because usually there will be a history of tests, particularly at life transition points.

Representative Hooper said adding budget language seems like a large response to a narrow decision. Monica Hutt explained that the decision references the plain language around the standard deviation on the IQ score in the rule. The regulation will need to go through the public process. The budget language would be used to cover the gap in time to avoid an immediate flood of funding requests.

Representative Toll questioned changing statute to bypass the Supreme Court decision. Monica said this plaintiff is already in the program, but the current situation could enable more applicants to come given the expanded IQ limit. Vermont now serves 30% of eligible Vermonters based on IQ scores of below 70. Representative Dave Yacavone sees the exposure as more limited because of the eligibility

requirements related to functional deficits and funding priorities already narrow down entry into the program.

Representative Yacavone was interested in learning how many people apply with IQs between 70 and 75. Could those people be offered more modest service packages? Monica Hutt said that the current decision would not allow DAIL to limit packages for those at the higher end of the IQ scale.

House Human Services Returns to Bill to Decriminalize Buprenorphine

Tony Folland Clinical Services Manager and State Opioid Treatment Authority of the Department of Health spoke about the buprenorphine diversion concerns. He wants to build in positive incentives for people to access treatment. Criminalization is enough external pressure to encourage people to change, and he noted that nobody is incarcerated with only a buprenorphine drug possession misdemeanor charge.

Tony Folland said that 85% of people on the street who are injecting buprenorphine in a regional study were found to be using buprenorphine to get high. He acknowledged that we don't know how many people in Vermont are shooting buprenorphine to get high. He is supportive of the use of buprenorphine for Medication Assisted Treatment (MAT).

The Committee Chair Ann Pugh noted that people can access buprenorphine from safe recovery or from the emergency room, but the 72 hour wait to access treatment can still be problematic. Tony said there are pre-trial services available for everyone statewide, so that people can avoid getting a criminal record. Pugh noted that pre-trial services have wait lists.

Diversion of buprenorphine, according to Tony Folland, can be disruptive to the person treated and the person who receives it. Commissioner Levine added that there have been several incidents of overdosing since MAT began to be offered in correctional settings. The Commissioner pointed out that there is no statistic or trial information to say that decriminalizing buprenorphine will save lives; no other state has done this.

Anthony Zarriello who is a clinical director at a Spoke testified in favor of the bill. He said that some people fear DCF involvement or simply aren't ready for treatment, so taking buprenorphine is a way of moving in the right direction. Close to half of the people he treats started to use buprenorphine in advance of seeking treatment which reduced their risk of overdose. The recent spread of fentanyl has increased the risk of death for addicts. So, he believes we should be creative in finding ways to support people who are addicted to enable them to work their way toward treatment.

Anthony said it is extremely rare that people became addicted through illicit buprenorphine use. From his perspective addiction should be viewed as a health condition which needs treatment. Court and correctional involvement tend to multiply rather than solve problems. He thinks we are in a public health crisis and need to do everything we can to save lives and support people to access treatment. He emphasized that treatment works, but people need to be able to stay in the community and survive long enough to take advantage of it.

At the end of the Testimony Committee Chair Ann Pugh made it clear that she supports lowering the limit for the legal amount of buprenorphine that is set in the Bill, but does want it to move forward with the legislation to save lives and provide a path to treatment.

Bill to Prohibit Prior Authorization for Medication Assisted Treatment Passes the House

The Vermont House of Representatives passed S.43, a bill that prohibits prior authorization requirements for medication-assisted treatment on a unanimous vote. “This bill improves access to medication-assisted treatment and prevents delays when people struggling with an opioid use disorder take their first steps toward treatment,” said Representative Logan Nicoll (D-Ludlow), the member of the House Committee on Human Services who reported the bill on the House floor. “Currently, health insurance providers have their own policies and some require prior authorization before a person is able to start medication-assisted treatment. These prior authorizations cause delays in obtaining treatment and we understand that asking for help can be the hardest step for those who are in need. It can take a long time to build that courage and that courage often has a shelf life. This bill removes those barriers and would allow Vermonters to receive proper aid when they need it.”

“Unfortunately, opioid addiction impacts almost every Vermonter in one way or another,” added Speaker of the House, Representative Mitzi Johnson (D-South Hero). “We must do whatever we can to help those who are addicted and find new solutions to address the addiction crisis we face. This bill will make sure that when a Vermonter asks for help, they have proper and easy access to medication-assisted treatment. Improving access to medication-assisted treatment will save lives and signal to those who are dependent on opioids that help will be readily available when they make the choice to begin the recovery process.”

House Health Care Committee Pass Bill to integrate Social Services into Health Care

The House Health Care Committee has passed S. 7 about integrating social services into the health care system with stronger language requiring involvement of consumers and families in planning. The next stop for S.7 is the House Human Services Committee.

The Bill requires AHS to do a report to the Legislature by January 1, 2021, in collaboration with the Green Mountain Care Board on their plan to coordinate the financing and delivery of Medicaid mental health services and Medicaid home- and community-based services with the all-payer financial target services. The Agency shall consult with individuals receiving services and family members. By January 15, 2020, the Agency must provide an update on its progress and the process for the plan’s development, including the identities of any stakeholders consulted. The Green Mountain Care Board must also report on its evaluation of social service integration with accountable care organizations by December 1, 2019, including the manner and degree to which services provided by the designated and specialized service agencies and other community-based agencies are integrated into accountable care organizations (ACOs). Individuals receiving services and family members of individuals receiving services are to be consulted in developing the report. The evaluation shall address: (1) the number of social service providers receiving payments through one or more ACO, and for which services; (2) the extent to which any existing relationships between social service providers and one or more ACOs address childhood trauma or resilience building; and (3) recommendations to enhance integration between social service providers and ACOs, if appropriate.

To take action or for more information, including the weekly committee schedules:

- Legislative home page: <https://legislature.vermont.gov/>
- Sergeant-at-Arms Office: (802) 828-2228 or (800) 322-5616
- State House fax (to reach any member): (802) 828-2424
- State House mailing address (to reach any member):
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- Email, home address and phone: Legislators' email addresses and home contacts may be found on the Legislature home page at <https://legislature.vermont.gov/>
- Governor Phil Scott (802) 828-3333 or <http://governor.vermont.gov/>

The purpose of the legislative update is to inform individuals who are interested in developmental, mental health and substance abuse services about legislative advocacy, policy development and activities that occur in the State Legislature. The Vermont Council is a non-profit trade association which works in partnership with Vermont Care Network to form Vermont Care Partners. Together our mission is to provide statewide leadership for an integrated, high quality system of comprehensive services and supports. Our membership consists of 16 designated developmental and mental health agencies.