



Supporting Vermonters to lead healthy and satisfying lives community by community

Legislative Update for April 17, 2020



The COVID 19 pandemic has changed the focus of Vermont Care Partners' advocacy efforts as our provider network has revamped our services to meet the needs Vermonters in new ways with careful precautions for health and safety of those we serve, our workforce and partners. Legislative work is now happening remotely.

Updates on State Actions and Advocacy

The Legislature Makes Adjustments to Respond to the COVID-19 Pandemic

The Legislature ceased meeting at the State House after March 13th and began remote committee meetings and caucuses of the full chambers the week of March 24th. Now both chambers have met remotely and have been holding caucuses and rules meetings remotely, as well. The House and Senate met as bodies three weeks ago, to pass emergency legislation and the House passed resolutions to allow committees to vote remotely and permit the House of Representative to vote remotely as well. The House still needs to hold a remote vote to approve the rule change. The Senate met last week and has approved remote voting in the Senate. Key legislation that will need to be passed includes: FY20 budget adjustment, FY21 budget, as well as changes to election and open meeting laws. Some additional legislation may also continue to move forward.

Act 95 Addresses COVID-19

Despite the turmoil, the House and Senate managed to pass emergency legislation H.742 to adjust health care, human service and labor laws to address the COVID 19 crisis. The bill was enacted into law as Act 91 by Governor Scott on March 30th. It updates the unemployment insurance program and gives greater flexibility to our health care system to meet the unknown needs the State will be facing. The legislation was powered through a collaborative effort of health care providers, including Vermont Care Partners. An important component of the bill is that it directs the Agency of Human Services (AHS) to consider waiving or modifying existing rules or adopting emergency rules to protect access to health care services, long-term services and supports, and other human services and to consider the importance of the financial viability of providers that rely on public funding during the COVID-19 state of

emergency. A summary of the Act is at this link.

<https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Appropriations/Bills/H.742/H.742~Jennifer%20Carbee,%20Legislative%20Counsel~Section%20by%20Section%20-%20as%20recommended%20by%20Senate%20Committee%20on%20Health%20and%20Welfare~3-25-2020.pdf>

Legislature Explores New Financial Realities

State Revenues are taking a big hit as rooms and meals, income and other taxes and fees are affected by the pandemic. Significant federal funds are becoming available, but the \$1.25 billion earmarked specifically for Covid-19 relief may not be used to replace lost revenues in order to maintain state-funded services. It is hoped that the fourth federal bill will improve the flexibility of these funds so states can comprehensively address existing obligations, as well as new Covid-19 expenses. The State has new expenses specific to the COVID 19 crisis are still being calculated. On a positive note, the Families First Coronavirus Response Act (P.L. 116-127), signed into law on March 18, provided states and territories with a temporary 6.2 percentage point increase in the federal match for Medicaid funding known as FMAP. The temporary increase in the FMAP is effective from January 1, 2020, through the last day of the calendar quarter in which the public health emergency declared by the secretary of the Department of Health and Human Services (HHS) terminates. CMS will inform states when the public health emergency period for COVID-19 ends. Additionally, the Department of Health and Human Services distributed payments to health care providers based on Medicare payments. Given the low amount of Medicare revenue received by designated and specialized service agencies (DA/SSAs) this distribution to us was quite small. The State will look in to whether the All Payer Model unfairly reduced Vermont's share of the funding.

An excellent summary of Vermont's current fiscal picture can be found at this link developed by the Joint Fiscal Office: https://jfo.vermont.gov/assets/Subjects/General-Updates/c5f1d7ab26/GENERAL-347645-v3-April_14_update-v2.pdf Additional fiscal information related to COVID-19 can be found on the Joint Fiscal Office website: <https://jfo.vermont.gov/subjects/covid-19-documents/jfo-updates-and-information>

Due to the fluid fiscal picture the Administration and Legislature are looking at another budget adjustment act to finish out fiscal year 2020 and passing a fiscal year 2021 budget that will only be focused on the first quarter of the fiscal year with the expectations of budget adjustments as the year progresses and anticipated revenues and expenses become more defined. There is a real possibility that rescissions will be necessary due to significant revenue decline in fiscal years 2020 and 2021.

House Health Care and Senate Health and Welfare Hear from Secretary Smith on Response to Covid-19

On April 14th Secretary of Human Services Mike Smith testified to both the House Health Care and Senate Health and Welfare Committees on April 14th. He praised the staff of the Agency of Human Services and said it's amazing what people have gotten done. He described how the Agency of Human Services is continuing its mission of supporting Vermonters and making necessary adjustments every single day. After his testimony he submitted a memo to the Legislature outlining AHS's response to COVID-19. He stated that the Agency of Human Services has been working to continue its mission of supporting Vermonters, as well as making incredible adjustments to how they do business. In addition to supporting the State's overall response to the crisis, it is a priority of the Agency to preserve Vermonters' access to health care services during and after the COVID-19 emergency. They are working to buffer providers from financial instability, plus identifying and assisting providers in financial distress.

The committees received a lengthy summary of the work done across the Agency to date under the framework granted to by Act 91 (H.742).

- Guidance issued to our community providers on how to protect their staff and clients
- Rule variances granted, along with emergency rules filed where appropriate
- Directions and announcements put out by the Health Department on how qualified Vermonters can obtain a temporary license during this crisis
- Major expansion in telemedicine/telehealth with a variety of providers and services
- Launched a Medicaid retainer process for providers experiencing cash flow challenges

Here is the link to the memo which includes specific adjustments for DA/SSAs:

[https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Health%20and%20Welfare/COVID-19/W~Mike%20Smith~Implementation%20of%20Act%2091%20\(H.742\)%20of%202020%20-%20An%20act%20relating%20to%20Vermont's%20response%20to%20COVID-19~4-14-2020.pdf](https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Health%20and%20Welfare/COVID-19/W~Mike%20Smith~Implementation%20of%20Act%2091%20(H.742)%20of%202020%20-%20An%20act%20relating%20to%20Vermont's%20response%20to%20COVID-19~4-14-2020.pdf)

In his testimony the Secretary said he is trying to ensure that we keep the health care system viable. There are going to be changes along the way. They are still looking at identifying locations for special populations and developing places for them to recover. There has been little time for dialog with communities about the siting these facilities. They will be as safe and caring as possible.

Bill Lippert said that CSAC is offering additional compensation to keep residential programs fully staffed and that the federal unemployment insurance supplements of \$600 per week are creating pressures on staff pay. He asked if these dynamics will be reflected in AHS's efforts to keep the providers whole. Ginny Lyons also noted that her committee sees this as a critical issue, as well. Mike said they are looking at two phases for the DA/SSAs. Phase 1 involves the emergency case rate and keeping ongoing value-based payments going out to DA/SSAs. They are working on Phase 2 right now to address the issue that Representative Lippert asked about. Mike Smith believes that the staffing issues are exacerbated by the federal government and by fears at the early stages of the pandemic. He said, "We are trying to get relief out to them by the end of the week". When asked about personal protective equipment (PPE) he assured the Committees that the state has a good supply and is getting it out to health providers. He also credited health reform for enabling the State to continue payments to health providers thereby supporting them to achieve financial security.

DMH Testimony at House Health Care on March 27th

Commissioner Squirrell discussed pressures around maintaining adequate staffing. She explained that case rate payment implemented as part of payment reform has put us in a good position. Although she acknowledged that programs such as private non-medical institutions (PNMI), two residential programs, and a school-based program which fall outside of the case rates will take further analysis. She said they were looking into case rate flexibility to provide more funding to those programs because the billing that they can draw down does not equal the cost to maintain staff. The Commissioner explained that "we are creating a process whereby CFOs can let us know what they need and can match that against the resources we have."

It was reported that Emergency Service providers are doing a lot of work at the community level through telehealth. Commissioner Squirrell worries that there is unmet need. She said that we're not seeing a lot of individuals waiting in emergency departments (EDs) and there is a 30-40% softening of census at inpatient psychiatric facilities with 76 open beds out of the 231 available. It was noted there are people in the community who are struggling to get by with less services without bringing themselves to the attention of emergency services.

Commissioner Squirrell explained that given the staffing shortages, DMH will be temporarily consolidating the Middlesex secure residential facility into the Vermont Psychiatric Care Hospital. Staff have been co-trained. The State will be using the Woodside facility to set up a place for people who need psychiatric care and who test positive. The hospitals are still admitting patients with psychiatric conditions for inpatient care. Screenings for those who are going through emergency evaluation will still have to include evaluation by the ED doctor. They are avoiding EDs as a waiting spot with the emergency service teams all set up for Skype/Zoom.

Senate Health and Welfare Returns to S.290

The fate of S.290, a broad health care bill that addresses a myriad of health reform issues including regulation and oversight of the accountable care organizations (ACOs) is not clear. It may well need to be restarted in the next biennium. The current draft would require that the ACO consult with the Agency of Human Services and its departments regarding public health issues and to coordinate its services and initiatives in these areas with Agency and Department programming.

Per Vermont Care Partners testimony and request. The latest version contains the following language regarding the duties of the Green Mountain Care Board.

(b) The Board shall have the following duties:

(16) Collect and review data from each community mental health and developmental disability agency designated by the Commissioner of Mental Health or of Disabilities, Aging, and Independent Living pursuant to chapter 207 of this title, which may include data regarding a designated or specialized service agency's scope of services, volume, utilization, payer mix, quality, coordination with other aspects of the health care system, and financial condition, including solvency. The Board's processes shall be appropriate to the designated and specialized service agencies' scale and their role in Vermont's health care system, and the Board shall consider ways in which the designated and specialized service agencies can be integrated fully into systemwide payment and delivery system reform.

VSEA is concerned about the expansion of OneCare as a process to privatize state government, specifically DVHA. Steve Howard said that VSEA has chosen not to enroll employees into the ACO pending more information. Senator Lyons pointed out that it is important for the ACO and APM to achieve scale to validate the model. The State of Vermont Director for Human Services said she wants to respect the wishes of the VSEA and its benefits advisory committee, so she supports waiting a year for attribution of state employees into the ACO. She sees the need for a big educational effort to achieve a positive reception by state employees for attribution into the plan. New contractual language with BC/BS to enroll in the ACO will enable the state to back out if the enrollment into the ACO does not go well. A contract amendment with VSEA will enable the transfer of lives into the ACO in the future.

House Health Care Committee

In March, before the COVID-10 process interrupted the normal legislative process Representative Anne Donahue expressed interest in submitting language for the budget bill to establish a health integration council for the purpose of addressing the integration of mental health into the health care system including:

- (1) identifying obstacles to the full integration of mental health into a holistic health care system and identifying means of overcoming those barriers;
- (2) helping to ensure the implementation of existing law to establish full integration within each member of the Council's area of expertise;
- (3) establishing commitments from non-state entities to adopt practices and implementation tools that further integration;

- (4) proposing legislation where current statute is either inadequate to achieve full integration or where it creates barriers to achieving the principles of integration; and
- (5) fulfilling any other duties the Council deems necessary to achieve its objectives

The Council would include a representative of Vermont Care Partners along with an array of mental health and health care representatives. Commissioner Squirrell testified in full support of the proposed council and sees it as critical to achieve the implementation of the DMH 10-year plan and its vision for an integrated health care system. She sees its value to support decision making to achieve goals such as payment parity. It also creates a broad infrastructure for accountability.

Representative Anne Donahue developed language to transfer inpatient funds from DMH to DVHA so that all psychiatric inpatient funding would be located within DVHA effective 2023. Commissioner Squirrell wants to ensure that level 1 patients have their care managed by DMH and feels that the language does support this. The language reads as follows:

“The Agency of Human Services and the Departments of Mental Health and of Vermont Health Access shall integrate public funding for inpatient mental health care services with the funding for other health care services within the Department of Vermont Health Access budget, while maintaining oversight, utilization review, care management, and data collection within the Departments of appropriate jurisdiction based on legal custodial obligations and responsibilities”

The committee also considered language that would include the Brattleboro Retreat in the full hospital budget review process done by the Green Mountain Care Board as part of the FY21 budget bill.

House Education Hears Testimony from Four School Superintendents

On April 10, the House Education heard testimony on the educational impacts of COVID-19. Video available at this link: <https://www.youtube.com/watch?v=KFQx6gXmlpc>. Four superintendents, the NEA, the Principal’s Association, Secretary French, and others updated the committee. Themes included information about how schools are attempting to reach students; concerns about equity and access; concerns about current and future budget pressures, and expressions of immense gratitude at school staff going above and beyond. When asked about mental health services in the schools (47:50 in the video), the superintendents were somewhat reserved, indicating that they may not have complete information about whether or how these supports were being provided.

In Secretary French’s update (minute 1:47:50), he reiterated the message from the joint AOE and DMH memo earlier in the week, citing that mental health services were vital to student success and contracts should not be terminated. Special Education Directors’ Association Executive Director Traci Sawyers provided testimony [focusing on special ed services](#). Referencing independent therapeutic schools, including schools embedded in residential programs, Sawyers said “I can’t stress enough that these schools are critical. We need clarity from the state to ensure that LEAs will be reimbursed. We are working with AOE and looking at federal guidance and continuing to figure out the financial piece.”

House Education Hears Testimony on School Mental Health

The House Education Committee heard [testimony](#) on the topic of school-based mental health on April 14. Marilyn Mahuskey from the Disability Law Project shared that the advocacy community is tracking the CARES Act and whether funds from it can include access to mental health services, summer learning, and supplemental services. She also noted that the Act 173 work (census funding of special education) is likely to be delayed.

Laurel Omland, CAFU Chief at the Vermont Dept of Mental Health, provided a summary of the adjustments made by the department to shore up school-based services funding [here](#). Omland noted that DMH wants to retain staff in school-based programs. She also noted that families and kids can prefer texting but this is not reimbursable currently and DMH is looking into this.

NFI's director of Outpatient Services, Dave Melnick, testified about the risks and resiliency factors for kids and families during this time. He noted that it's not 50-minute therapy hours but "short moments of action throughout the day" that builds resilience. Educators [and school-based staff] are "up-tooling" so that they can engage with students.

The committee also heard testimony from NKHS Executive Director Tomasz Jankowski and Marcia Stricker, Vicki Whitehill, and Noreen Shapiro-Berry. Shapiro-Berry pointed to several successes: school staff already had laptops so it was seamless to transition to online contact. NKHS continues to provide treatment team meetings and other services, using zoom and phone. Multiple providers are reaching out to students on a daily basis. NKHS is also providing support for the parents through a warmline, which they intend to continue after COVID-19. Despite persistent challenges of internet access, technology, privacy, they are reaching 80-92% of families. Whitehill emphasized the strong community collaborations that are still happening. She shared some of the creative strategies that NKHS is using to support families, such as phone cards, gas cards so families can get to the school parking lot to access WiFi for distance learning; sending pedometers to kids who are resistance to paper packets to help them count steps and self-regulate, and sending art supplies.

House Education Chair Webb asked about Act 264 – does that need an update? Is it working? Witnesses and representatives discussed that there are challenges in areas where there are multiple DAs, DCF districts, and school districts. Even when providers understand the complexities, it's confusing for families. Jay Nichols from the Vermont Principal's Association [VPA] commented in the chat box that from the perspective of many principals, Act 264 is not working, and they have met with the administration about this.

Representative Austin asked about data on ability to access learning. "Any data that you can provide that says this intervention helped this child advance in their learning?" Omland referenced behavior data that is student-by-student. She added, "In our contracts with DAs, we have tools, including the CANS, which we have them administer at beginning and end of the school year. It's going to be interesting this year. Where typically we might see improvement, this year we might see some increased stress." Representative Austin commented that she was most interested in was the advancement of learning. Echoing other committee members, she thanked the witnesses for sharing what is happening. "It makes me calm down to know there are people out there helping Vermont's children."

AOE Special Ed Guidance

AOE's guidance on a variety of topics related to special education services, is available here: <https://education.vermont.gov/covid19>.

Justice Reinvestment Bill Continues Moving Forward

The House Corrections and Institutions Committee is working on an amendment to S.338, the Justice Reinvestment Bill. The Bill looks at ways to reduce incarceration rates, particularly the return of individuals in the custody of the Commissioner of corrections back into prisons after release into the

community. Vermont Care Partners sees an opportunity to develop collaborations to support these individuals when they transition into the community and to support their success in the community by addressing treatment needs to reduce recidivism. The House version of the Bill indicates that the “Department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.” It also outlines a working group: “During the 2020 legislative interim, the Chief Superior Judge, the Defender General, the Department of Corrections, and the Executive Director of the Department of State’s Attorneys and Sheriffs shall work with the Council of State Governments to: (1) identify tools to assist in identifying specific offender risk factors that can be targeted with services and treatment programs based on evidence-based practices shown to be effective in reducing recidivism; (2) determine how to share information about risk assessments and available programming among each other to inform plea agreement, sentencing, and probation revocation decisions; and (3) on or before January 15, 2021, report to the House and Senate Committees on Judiciary and the House Committee on Corrections and Institutions regarding suggested legislation to ensure sentencing, revocation, and plea agreement decisions are informed by available programming and individual risk assessment information.

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
- Legislators' email addresses 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.