



Supporting Vermonters to lead healthy and satisfying lives community by community

Legislative Update for June 2, 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.

Opportunity for Further COVID-19 Funding

The Scott Administration is proposing reserving \$300 million from the \$1.25 billion corona virus relief fund (CRF) for health providers. This funding package will need to be approved by the Legislature and is supposed to be introduced in mid-June. The Joint Fiscal Office analysis shows that the Scott Administration requests for the COVID-19 funding exceeds funding available by \$115 million. In this context Senator Kitchel, Chair of the Senate Appropriations, is questioning the size of the \$300 million proposal for health providers.

On May 27th Human Services Secretary Mike Smith testified to the House Health Care Committee and Senate Health and Welfare Committee. After thanking the thousands of brave health care workers who have worked tirelessly throughout the pandemic, he said he has two objectives:

1. To keep the health care system financially viable
2. Stabilize the system to weather future impacts

Secretary Smith reviewed the funding initiatives created to address health providers during the height of the pandemic:

1. Support to hospitals - \$7.2 to Brattleboro Retreat and \$3.1 to Springfield Hospital. AHS will be issuing a report on the future viability of the Retreat.
2. Stood up a Retainer payment program for non-hospitals to keep health providers in business - \$4 million.

3. Stood up a Retainer program for DA/SSAs \$7million for enhanced pay, \$4 million for needs that effected revenues or increased expenses.
4. Stood up a perspective Medicaid payment program to fund shortfalls with prospective payments to fill in normal revenue flows \$13 million.
5. Nursing Home Retainer program \$4.6 million. (extraordinary financial relief)

The goal of the \$300 million CRF proposal is to stabilize all health providers and have a lasting impact. The Secretary will present a funding package to the Legislature in mid-June.

- It will be inclusive of all health care providers, but **DA/SSAs will be on a separate track through DAIL and DMH**
- Individual providers will apply for funding based on revenue loss and expenses incurred
- It will take into consideration money received already from state and federal government
- There will be a review process and the program will be audited – Providers must show they did what was proposed with the money
- Providers will need to improve health care quality and advance health care reform
- The funding infusion should lead to an eased burden on Vermonters - the burden of higher rates cannot be passed on to Vermonters

Federal and State Funding Outlook

- Joint Fiscal Office estimates a 50% chance of VT receiving additional flexible funding
- ANCOR is requesting \$20 billion in federal funds for DS population
- National Council of Behavioral Health, with support from legislators, is requesting \$38.5 billion for community mental health
- Level funding for 1st quarter of FY21 for DA/SSAs
- Current revenue forecast for VT for FY21 is 14% reduction from FY20, a new interim forecast will be out in a week and the joint forecast will be issued August 15th
- The Scott Administration will not be submitting a full FY21 budget proposal until the end of August to become effective October 1st
- COVID-19 funds must be expended by December 31, 2020
- There is some potential for increased flexibility for COVID-19 funds
- School-based services funding through School Districts is in critical condition, AOE and DMH will issue a new memo

Health Care Providers Testify to the House Health Care Committee and Senate Health and Welfare Committee

Devon Green from the Vermont Association of Hospitals and Health Systems reminded the legislators that the hospitals were in difficult financial positions going into the crisis. Federal grants have been significant, but more funding is needed. Laura Pelosi representing long term care facilities said that nursing homes are where the battle is being fought, but only two nursing homes have had COVID-19 outbreaks. There are significant cost increases and loss in revenues with ongoing workforce needs. Like the hospitals these facilities were already financially stressed. Jill Olson spoke on behalf of the visiting nurse agencies. Medicare had been helping to subsidize losses in the Medicaid programs such as Choices for Care, but these revenues have decreased due to limits on in-home and congregate services to reduce risks. A further strain for these agencies is that their provider tax is based on previous revenues. The health association executives pointed out that the Agency of Human Services did not provide supplemental funding to cover enhanced pay for medical providers, as they did for designated agencies. The health association directors also pointed out that Medicaid rates are too low and without other

revenues health providers cannot sustain these programs. They asked the Legislature to address underlying fragility of the LTC system.

Julie Tessler testified about the fiscal health of designated and specialized agencies (DA/SSAs) in the wake of the pandemic. She shared that that Americans are experiencing challenges with mental health and substance use at much higher rates than normal. For people we serve with intellectual and developmental disabilities the isolation and confinement has been extremely difficult and some have experience increased psychiatric distress. Suicide rates were already trending upward and is a serious societal problem. We expect a growing demand for our services for some time to come as trauma from large scale disasters has lasting impacts.

Like all health providers, she explained, DA/SSAs have been going above and beyond to meet the needs of those we serve in our communities in partnership with state government, health care providers, schools, and other regional partners. Our staff have stepped up to the plate - learning how to provide service virtually and in new creative ways.

DA/SSAs are generally financially stable due to the support of the Legislature and Administration in allowing for flexibilities, reducing restrictions, and the use of creative approaches such as case rates to maintain ongoing funding for the agencies. Vermont Care Partners is particularly grateful for the partnership and support of Secretary Smith, Commissioner Hutt and Commissioner Squirrell who worked with the agencies to identify our funding needs and address them in several stages of retainer payments resulting in approximately \$10 million in COVID-19 related investments. However, the average amount of cash on hand at DA/SSAs is just 6- 7 weeks, so few agencies could weather significant losses. With that in mind Vermont Care Partners has many questions about what will happen July 1st knowing that Agencies will continue to have extraordinary expenses and some services will need to continue on a remote or limited basis. School-based services and funding are particularly concerning. A link to that testimony is here:

<https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Health%20and%20Welfare/COVID-19/W~Julie%20Tessler~Vermont%20Care%20Partners%20Testimony~5-27-2020.pdf>

The health committees are looking at Act 91 to determine which provisions should continue, at least through January 21st. Representative Lippert, Chair of the House Health Care Committee said they are working closely with Commissioner Squirrell on language to increase budget review and quality oversight of the Brattleboro Retreat. There was also a request by Representative Cordes to do more analysis of the psychiatric pediatric inpatient care.

Highlights of Information Presented to Appropriations Committees

Steve Klein, Director of JFO reported to House Appropriations:

- Joint Fiscal Office is estimating \$230 Million shortfall in FY 21 in GF
- The Administration is looking at hiring a national firm to study the most creative and effective use of the federal funds
- The federal unemployment insurance benefit supplement will end on July 28th
- The CRF funds must be fully spent December 30th – contractors/providers must spend the money to cover incurred costs
- Current revenue forecast doesn't include the possibility of a second closedown occurring
- CRF may be used for increased caseload
- State government has a non-essential hiring freeze with exceptions for critical operations and COVID-19

Finance Commissioner Adam Greshin Presents FY21 First Quarter Skinny Bill to House Appropriations Committee

Commissioner Greshin explained that the skinny bill is for the first quarter of FY21 with the goal of presenting a full year budget by mid-late August after the next revenue forecast. There are rumblings that new guidance from federal government may be issued in the next month or two on the CRF. The commissioner wants time to be thoughtful of what will be asked of State government in the next year. The proposed first quarter bill asks the departments to absorb the \$1,400 one-time payments to state employees, as well as their step increases. If caseload goes up the Departments are to go to the Emergency board to request additional funding. A similar presentation was made to the Senate Appropriations Committee.

AHS CFO Sara Clark Presents to House Appropriations Committee

AHS makes up 50% of the State budget. Sarah Clark CFO, AHS presented a simple budget for the first quarter of the year to allow for more time to present a thoughtful budget later for the full fiscal year. AHS is still dealing with the fallout from the pandemic from both a programmatic and fiscal perspective. The Agency also will need to close out the FY20 books which will be challenging due to the complexities of the funding and spending this year. That information will impact the FY21 budget request.

There are several mechanisms that AHS will use to manage the first quarter budget. There is authority to request additional funding from the Emergency Board if more funds are needed. AHS has excess receipt authority which can be used to access Medicaid funding. Underspending in programs in FY20 could be used as carry forward into FY21, for instance Medicaid utilization is down and those funds will be available to carry into FY21. The hiring freeze at AHS which will also generate some savings. AHS will look at leveraging CRF for FY20 and FY21. If the 6.2 % improved federal match for Medicaid (FMAP) extends beyond July 1st then it will help for the next 3 months and reduce costs by \$19 million, but it is unknown if this will occur. They will use with guidance and support from the Joint Fiscal Committee (JFC) to free up general fund and meet the spending target. At this time, JFC has approved expenditures of CRF on continued costs for housing in hotels, reach-up, etc. Over the next couple of weeks AHS will have a better idea of how much general fund will be freed up through use of CRF. In the end, AHS is proposing to proceed with level funding for the first quarter of FY21.

House Appropriations Committee Budget Discussions

During discussion about FY21 budgeting Representative Yacavone said that borrowing might be prudent to get through the crisis. Representative Hooper said, "I know in my heart that there are vulnerable populations we need to protect." She believes "that means spending more money in certain places to make sure people are safe. Vulnerable people must be protected" Representative Lanpher agreed that "we need to protect the vulnerable people first" Chairman Toll summarized their options: reduce spending, increase revenues or a combination. The Legislature will want input into areas of reduction. The Chair is clear that they need to talk to Vermonters and give advocates time to provide input.

Currently the House Appropriations Committee is developing language for the first quarter bill. They are considering calling for no changes in policy or program structure during the first quarter. The draft bill gives the Emergency Board authority to adjust the Appropriation by 1% of the total full year budget which is equivalent to 4% of the one-quarter budget. The draft language prevents the Administration to make any rescissions during the first quarter of FY21.

Budget Adjustment Bill Ready for Governor Scott's Signature

The Vermont House passed the second budget adjustment bill H.953 which was then amended by the Senate. The full House concurred on May 29th with the Bill as amended by the Senate. It has been messaged to the Senate which will submit it to the Governor for his signature. The bill addresses the \$195 shortfall in the FY20 budget due to delays and reductions in tax revenues.

Telehealth Options Studied by Senate Health and Welfare

The Senate Health and Welfare Committee has been studying telehealth and is proposing that the Vermont Program for Quality Health Care (VPQHC) existing workgroup take a lead role in improving access to care through telehealth. Katherine Fulton, Executive Director of VPQHC testified on the draft bill and explained that they are applying a quality improvement approach to define the problem and are developing solutions. They plan to apply for grant funds and work with providers who need additional support to do telehealth. The Workgroup is at the final stage on a charter to guide the work. The goal is to identify and remove barriers for accessing care.

On the proposal for an extension of emergency rules for telehealth, Nissa James of DVHA said they will continue funding coverage during the state of emergency. CMS audio-only services are tied to the authorities of declaration of a public health emergency by the federal department of Health and Human Services. CMS has expanded what codes can be delivered by audio only: evaluation and management, plus counseling and educational services. For the period of the state of emergency, evaluation and management is at a higher reimbursement rate equivalent to in-person or telehealth. DVHA is expecting to be asked to go to the narrower CMS rules. Reimbursement will be based on new CMS guidance after the state of emergency. Where they find alignment with CMS, DVHA agrees that telephone reimbursement should continue. The proposed VPQHC workgroup will work through the specifics including access to broadband and potential funding sources.

House Human Services Hears DCF testimony on Woodside and COVID Residential Programs

On May 21, the House Human Services Committee heard testimony from the Department for Children and Families on Woodside and COVID response in residential programs. DCF Commissioner Ken Schatz noted that the youth who had to make several moves to vacate the Woodside building for potential use as a COVID facility have now moved back. He acknowledged that the Middlesex Therapeutic Community Residence was not adequate. The population has remained relatively low, and a search for an alternative/secure site continues. The timeline to close Woodside has slowed. Schatz doesn't know yet what will be happening July 1 but promised to come back to the committee to share plans when they are ready, which he hoped would be very soon.

Commissioner of Buildings and General Services Chris Cole testified that the state has enough money for Woodside design and demolition in FY21, with the rest of the work to go in the FY22 budget, but he won't be starting demolition until DCF has found an appropriate placement for the current youth who are there.

Deputy Commissioner Christine Johnson shared some of the steps that DCF has taken to support its contracted programs during the COVID-19 pandemic. She shared data on youth who are in residential placements. Johnson stated "our residential providers have done an amazing job. The commitment that has been out there willing to shelter in place with these youth: that's been tremendous....They are an amazing/committed group of people that understand that this was the best road to go" and cited foster parents in this category as well. Johnson noted that there has started to be more flow in the system after several weeks with little movement. When asked about the financial viability of these

programs Johnson stated that for March and April DCF was able to pay their regularly anticipated fiscal amount. On May 1st they switched to extraordinary financial relief, following guidance from the federal government.

Johnson shared that DCF is partnering with a consultant who is looking at Vermont's residential system of care and how mental health, education, and DCF all interact together. They are interviewing youth, foster parents, Vermont Federation of Families, Vermont Coalition of Residential Providers, and others. Their report will weave in Families First federal legislation.

The committee also heard testimony from Woodside staff counselor Carol Ruggles. She chronicled several of the challenges for youth and staff of multiple transitions over the last several weeks. Ruggles asked the committee to "stop the administration from causing more chaos for the kids. Don't close the only facility in the state that is currently equipped to meet our needs."

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.