



Supporting Vermonters to lead healthy and satisfying lives community by community

## Legislative Update for June 8, 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.*

### **Legislative Process for Fiscal Decisions**

The legislature has completed work on the second budget adjustment act. Now the full House of Representatives has begun the process of passing a budget for the first quarter of FY21 for the months of July through September 2020 with the third and final vote coming up this week. The Senate Appropriations Committee will then make recommendations to the full Senate and if there are differences, they will need to be worked out before the end of the month. The major change in the House version of the 1<sup>st</sup> quarter budget from the Governor's original proposal is that it calls for level funding of State Government rather than an 8% reduction. However, if an expense/program qualifies for a COVID Relief Fund (CRF) then those funds could be used instead of the state's general fund. Chair of House Appropriations Representative Toll's concern with the Governor's proposal was that it did not clearly specify where the cuts would have come from to achieve the 8% target. As reported in last week's update the 8% reduction would not have had an impact on the services provided by the Agency of Human Services, but presumably would have impacted other government services. The House Appropriations Committee wants the opportunity to carefully consider how to best make budget cuts, they do not believe that making across the board cuts is the most prudent approach and the Governor's budget did not specify where the cuts would be made.

The full FY21 budget will be developed starting at the end of August when the Scott Administration brings a proposal to the Legislature. At that time there will be a new revenue estimate and possibly more federal funding to work with. At this time, decisions about budget reductions will need to be made.

On a separate track the Legislature is considering how to best appropriate the CARES Act \$1.25 billion CRF. The Speaker of the House Mitzi Johnson is taking a different approach on appropriating these funds

from the Governor. She is proposing to reserve \$400 million to fill the holes in revenues that will be reforecast in August. The current consensus forecast for funding shortfalls includes: Education Fund (\$150M), General Fund (\$200M) and Transportation Fund (\$48M). This backfilling of shortfalls will only be possible if the federal rules change to allow it. After subtracting the \$400 million and the funds already spent, the Speaker distributed the remaining \$575 million to the policy committees to make recommendations for spending to the appropriations committee. They were also asked to make recommendations on a share of the \$400 million reserved funds as second tier recommendations, should backfilling lost revenues continue to not be possible. The House Health Care Committee was assigned \$150 million for their recommendations on CRF to the Appropriations Committee with \$75 million more should the second tier of funding be made available. The House Human Services Committee was assigned \$50 million. This is less than the \$333 million which AHS is currently recommending for health care providers. The Committees have committed to work together given that there are providers such as DA/SSAs whose service straddle both committees.

### **CRF Appropriation Deliberations**

The Joint Fiscal Office has been keeping the policy and appropriations committees up to date on the allowable uses of the CRF dollars. This is their latest update from June 1st:

<https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Health%20and%20Welfare/COVID-19/W~Jennifer%20Carbee~Coronavirus%20Relief%20Funds%20Federal%20Parameters~6-5-2020.pdf> Additional federal action could change allowable CRF usage. A new update is that CRF can be used for match on FEMA funds.

The CARES Act and U.S. Department of the Treasury (U.S. Treasury) guidance says that payments from the Fund may only be used to cover costs that:

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. are not accounted for in the budget approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. are incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

Contextual issues on CRF:

1. must be expended with costs incurred as of December 30, 2020;
2. the costs must be necessary due to or caused by the public health emergency;
3. the expenditure must be "necessary" as a result of COVID-19;
4. revenue replacement is prohibited;
5. money may be loaned for an eligible expenditure. If repaid by December 30<sup>th</sup> it may be reused by state, if repaid later it goes to US Treasury; and
6. if any CRF money is used for non-eligible expenditures, it must be paid back.

### **House Health Care Committee Takes Testimony from the Chair of the Green Mountain Care Board**

Green Mountain Care Board Chair Kevin Mullen and staff Elena Berube testified on the CRF with a focus on the hospitals. Commissioner Mullen pointed out that 7 out of Vermont's 14 hospitals lost revenues last year. Hospitals have received over \$116 million in federal funds for COVID to-date, however it's hard to judge their current fiscal status. He said there are key decisions to make on the expenditure of the \$375 million investment of CRF for health care as proposed by Secretary Smith.

1. How do these funds allow us to continue pursuing affordability?
2. How can we advance work on ensuring the sustainability of our health care system?
3. What is the right total dollar amount to reasonably accomplish priorities?

4. How to assess need, determine impact, and prioritize funding recipients?
5. What factors do the most to protect the triple aim?
6. Can and how to allocate in a way that preserves the investments that we have already made in health care reform (e.g. population health)?

Other considerations:

- Goals of triple aim and the All Payer Model, are still central tenets
- Continued participation in Health Care Reform, including reducing reliance on FFS
- Scale/Attribution in the All Payer Model
- Workforce
- Telehealth
- Long-term return on investment
- Independent Provider Support
- Collaboration between providers

Commissioner Mullen was clear that he thinks the All Payer Model has been important to the fiscal health of hospitals. He is interested in developing a system of global budgets similar to Maryland's.

#### **Coalition of Health Care Providers Make Recommendations to the House Health Care Committee on June 3<sup>rd</sup>**

Jill Olson, speaking on behalf of the coalition, explained the importance of supporting the Administration's request to invest \$375 million CRF into the health care system. COVID related expenses include retrofitting buildings, training staff, etc. The Committee heard that health providers don't have enough information to predict funding needs moving forward, nor can they predict demand for services. She said the Retainer process for accessing funds through DVHA worked well in that it was based on actual expenses. Jill expressed concern about the proposed restrictions for meeting quality and payment reform goals. She said given the one-time nature of the funds and the great demands of the system, there should not be too many strings on one-time money. The Coalition asked for a broad authorization for AHS to work through with the providers. Jill reviewed the letter from the health care coalition. [Health Care Coalition Letter re CRF 06 02 20.pdf](#) In addition to the points made in the letter about the importance of the retainer payments for developmental and mental health services, Julie Tessler added that the demand for mental health services is increasing, while the availability of inpatient psychiatric beds are extremely limited due to COVID-19.

#### **Secretary Smith Testifies about the CRF to Human Service and Health Care Committees on June 3<sup>rd</sup> and 4<sup>th</sup>**

Mike Smith said keeping the health care system viable and in operation during the pandemic has been a primary objective for the CRF. His definition of the health care system includes DA/SSAs. He reviewed investments into the health care system (see previous update). The \$7 million for enhanced pay and \$4 million for other expenses related to COVID-19 for DA/SSAs was highlighted. At this point \$42 million has been distributed to health providers. So the proposal is to use the \$42 million already distributed from the \$375 million target for the investment of CRF. For mental health \$17.4 million has been spent to date leaving a pool of \$46.7 million for future payments. (this is inclusive of inpatient). Although they are considering lump sum payments to health providers he believes that sustained monthly payments work better for DA/SSAs.

He is in the process of designing a \$375 million program for the broad array of health providers to address business interruption and added expenses impacted by the pandemic. He is concerned that

some health providers will close without this assistance. Hospitals alone are estimating business interruption of at least \$300 million. The program will be application based. It will take into consideration federal funds received. There would be an application process and ensuing expenditures must have the capacity to be audited. He wants to get the funds approved and out the door quickly to meet critical needs. Secretary Smith is cautious about giving out money and then still having impacts on the rate payers of Vermont who don't have the capacity to pay increased health insurance costs.

In response to a question from Representative Wood, Secretary Smith said he will consider each providers' total share of the total state health care spend. Representative Wood noted that some of the smallest providers have the highest level of risks, such as Area Agencies on Aging and Adult Day Health Centers. House Human Services Committee Chair Representative Pugh suggested that in considering the distribution of funds she will not want to put money into a system that is upside down as there are some areas that need a greater investment of funds than others. She sees this as an opportunity to rebalance the health care system. Mike Smith said probably \$50 million has been spent to date to stabilize the health system. He highlighted the enhanced pay for DA/SSAs.

Applications will be evaluated based on these principles:

1. Must be auditable and used for what it was asked for
2. How will it sustain quality and preparedness for next round
3. Will support the current and future participation of payment reform
4. Indicate content to continue to provide essential services to the community
5. Attest that the funds will offset costs associated with the pandemic – without increased costs to Vermonters

Secretary Mike Smith testified to the Senate Health and Welfare Committee on CRF and shared the same information.

Senator Lyons asked about furloughed employees at DA/SSAs. Mike said they made sure DAs used money for what it was needed for.

### **House Health Care Committee Continues Deliberations of CRF Expenditures on June 5<sup>th</sup>**

Jill Olson, representing the health care provider coalition shared recommendations for how the funds should be processed and potential statutory language. We strongly recommended that the House consider the Vermont Provider Relief Fund as a single proposal that would apply to our organizations as a whole rather than appropriating specific amounts to different provider types. The approach would involve distribution of the funds through a needs-based Provider Relief Fund grant authorized by the legislature and administered by the Agency of Human Services, according to US Department of Treasury guidance. It would build on the Phase 1 and Phase 2 work already implemented by AHS. This approach would have each individual provider considered on a case by-case basis. It makes sense because the future remains deeply uncertain and at this juncture, it is impossible to precisely project our needs going forward. Given the time restrictions of the fund, the Agency must have the authority to shift funds from one sector of the health care system to another. There should be a requirement for applicants to document COVID-19 related expenses and fiscal impacts of business disruption for Medicaid, Medicare, commercial and private payers to ensure the program meets federal requirements.

These recommendations were made to both House Human Services and House Health Care Committees to avoid sector specific appropriations that are difficult to divide since agencies like DA/SSAs and home health agencies span across the jurisdiction of both committees. The Chair of the Human Services Committee Representative Pugh reassured the provider groups that the two committees will work together on the social determinants of health and health care.

House Health Care Chair Bill Lippert said he wants the money to go out the door without being tied up like the tobacco funds that were supposed to go out to DA/SSAs but got tied up in the bureaucracy. He said it left a bad taste. Ena Backus, the Director of Health Reform for AHS, said the first \$42 million in relief funds were distributed quickly and AHS is prepared to distribute these funds as efficiently as possible. Ena Backus noted that these funds are for health providers that might not have previously received Medicaid or other state funding. The program is available to physicians and nurses, allied mental health professionals and other therapists. Childcare providers are not eligible. The dollar amounts proposed by Secretary Smith are not the set allocations for providers but give a general broad framework of health care spending by provider type. Each provider need will be assessed individually. Ena said AHS would launch the next funding phase within a week of legislative approval. They are proposing a single application date, rather than a rolling one. If they can review the applications together, then they think they can better compare and contrast the needs of providers.

Bill Lippert asked about mental health services in schools. He noted that school boards are making decisions right now, so it needs to rise-up for attention right now. He said his Committee wants to look at racial equity issues, as well.

While Bill Lippert is open to using the proposed broad framework of the Coalition and Representative Pugh is committed to work together, Representative Pugh clarified that the House Human Services Committee may choose to use some of the \$50 million of the funds for human services that are not part of the health care system.

Anne Donahue wants to drill down on the factors for how need is determined. Specifically, she wants to address the needs of individuals, as well as population health. Peer services programs are not represented by the provider coalition. She is concerned that they don't have a voice and wants to ensure that they can access these funds. The Committee will review which providers have received the funds up to this point and indicated an interest in setting priorities. Representative Lippert wants a grant process that AHS will oversee with principles and criteria of the federal government and as set by the legislature. He would like to have the opportunity to weigh back in if the funds are distributed in two tiers per the Speaker's proposal so that they can respond to the changing environment.

Representative Donahue thinks the two committees should consider guardrails for priorities and what other essential services fall outside of the health care provider bucket and how much of the funds should be reserved for them. For the health care committee this alternate bucket would include services that promote the social determinants of health. She said there could be patient-based need, health equity issues and other factors outside of the provider bucket. Representative Donahue will compile a list of other recommendations for consideration on Tuesday including special areas of concern and initiatives that fall within the guidelines set by the federal government.

### **Brattleboro Retreat to Receive Additional Funding**

Representative Lippert announced that DMH has finished its review of finances and programming at the Brattleboro Retreat. The Administration plans to provide \$10.2 million additional CRF funds to stabilize the Retreat due to its critical role to mental health system. There is an action plan and an MOU with state government. The Report will be released imminently. It is not clear if these funds will come from the bucket of CRF funds that House Health Care is considering for appropriations.

## **Judiciary Committee**

Alison Krompf from the Department of Mental Health shared updates on [suicide related data](#) to the House Judiciary Committee on June 4<sup>th</sup> at the request of committee vice chair Representative Burditt. Livestream [here](#). Krompf noted that COVID-19-related social isolation exacerbates domestic violence and substance use disorder. She noted a decrease in suicides in April and an increase in May (preliminary data). In the first week of May, five Vermonters died by suicide. It appears so far that those who are dying by suicide are not those served in the mental health system.

DMH expects that the uptick for mental health will peak later than the pandemic itself. DMH is tracking how many people are seeking supports and resources. Crisis text line data shows young people's school stress is decreasing and stress around isolation is increasing. National Suicide Lifeline had a 27% increase in calls in May from Vermont. People have been googling these resources more and DMH is encouraged by this.

Krompf noted the increase in telehealth usage. DMH has seen more people showing up to telehealth appointments than prior to COVID-19. DMH is also looking at outcomes for people who are accessing care through telehealth. Do they feel connected? Representative Burditt asked if there is anything House Judiciary or the legislature could do to "open up telehealth" in the legal system. Krompf spoke about informed consent and some of the challenges of providing care from a clinician's home.

### ***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.