



Supporting Vermonters to lead healthy and satisfying lives community by community

## Legislative Update for October 7, 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. This may be the status quo for the 2021 session, as well.*

### Legislature Finalizes the Fiscal Year 2021 Budget

#### ***Budget Overview***

On September 25<sup>th</sup>, the Legislature approved the fiscal year 2021 budget. The language in the bill, H.969 repeals all the appropriations in the original bill first quarter budget bill (except one payment for the state colleges). The budget restatement for fiscal year 2021 is for a full year. Although the budget preserves services to vulnerable Vermonters, there are no increases in the base budget. The total budget is \$1 billion over the FY20 budget due to federal one-time corona virus relief funds (CRF). Additionally, there was \$130 million in general funds from tax receipts filed in July which would have normally been filed and used for the previous fiscal year. Due to offsets of federal funds \$28 million less in general fund was required for the base budget. Plus, the boost in the Medicaid match rate (FMAP) reduced another \$44 million in general fund appropriations.

#### ***Fiscal Year 2022 Pressures***

Vermont's reserves are full with over \$200 million. However, the Fiscal Year 2022 budget will face a significant gap between expected revenues and expenditure pressures currently estimated at \$90 – 115 million as summarized by the Joint Fiscal Office:

- a. Loss of enhanced Federal Medicaid match (FMAP): ---\$40 million pressure
- b. Loss of offsetting CRF funds that freed up General Funds in FY 2021: \$10-15 million pressure
- c. Pension obligations due to lower returns: \$15-\$20 million pressure

d. Normal annual budget growth: This includes Pay Act rate increases, and other inflationary pressures -- \$35-45 million.”

### ***Corona Virus Relief Funds (CRF)***

The Budget Bill appropriates \$223 million in federal Corona virus Relief Fund (CRF), not previously appropriated, which must be expended by the end of the calendar year. If more CRF funds come in or more is unspent the Joint Fiscal Committee will determine how the funds will be spent. The Agency of Human Services (AHS) is directed to allocate \$274.5 million for provider stabilization of which \$3 million is specifically appropriated to Designated and Specialized Services Agencies for expenditures through December 2020. This provision was developed by Representative Mary Hooper.

### **Sec. B.1121 AGENCY OF HUMAN SERVICES; HEALTH CARE PROVIDER STABILIZATION GRANT PROGRAM**

(a) Appropriation. The sum of \$247,500,000.00 is appropriated from the Coronavirus Relief Fund to the Agency of Human Services in fiscal year 2021 for purposes of establishing the Health Care Provider Stabilization Grant Program as set forth in this section. The Agency shall disburse these funds to eligible health care provider applicants as expeditiously as possible using a needs-based application process. ()

(d) Specific allocations. Notwithstanding any provisions of this section to the contrary, of the funds appropriated in subsection (a) of this section, the Agency of Human Services shall make the following allocations for the following purposes: ()

(3) Up to \$3,000,000.00 for COVID-19-related expenses incurred by designated and specialized service agencies through December 30, 2020.

### ***Mental Health Budget Remains in DMH***

The Conference Committee on the budget chose not to move the mental health budget into DVHA as proposed by the House Health Care to unify health care policy.

### ***Mental Health and Public Safety***

The Budget Conference Committee spent considerable time negotiating the language on mental health and public safety (E.314.2). Representative Mary Hooper acknowledged the leadership of the Senate and their effort to shift the paradigm of mental health from public safety to health care. The House felt strongly that the health care framework is best supported by moving the funding from the Department of Public Safety (DPS) to the Department of Mental Health (DMH). The House wanted DMH to lead the collaboration.

Senator Jane Kitchel said the Senate wanted to modify the approach of law enforcement and its culture in responding to Vermonters in need. From her perspective moving the money to DMH would have made it a mental health initiative instead of a public safety initiative. She pushed for leadership and ownership from State Police. Senator Ashe emphasized the importance of having DPS think about how they support public safety from a more comprehensive perspective. There was also much discussion about requiring a hiring preference of peers for the program. The Senate felt it was too prescriptive and was “over-engineering a successful program”. The Senate position on this provision held. Language on data collection was added through an amendment in the Senate by Senator Balint who worked with Wilda White to develop it. Vermont Care Partners will work with DMH and the Director of Racial Equity to determine how to best meet the intent of the legislature.

### **Sec. E.209 PUBLIC SAFETY – STATE POLICE ()**

(c)(1) Of this appropriation, \$525,000 is allocated for expanding the capacity of embedded mental health clinicians in barracks through contractual arrangements with local Designated Mental Health Agencies and through a master memorandum of understanding with the Department of Mental Health. This

program intends to strengthen partnerships between law enforcement and mental health and social service entities.

(2) The Department of Public Safety shall collaborate with the Department of Mental Health to develop a master memorandum of understanding that supports a unified statewide program that incorporates trauma-informed responses and is developed with the ongoing engagement of stakeholders, including individuals with lived experience of a mental health condition or psychiatric disability, those whose identities cause them to experience additional marginalization, and those with direct experience with families in crisis and domestic violence.

(3) The Department, in partnership with the Designated Agencies, shall provide the following reports:

(A) on or before January 15, 2021, to the House Committees on Appropriations, on Judiciary and on Health Care and to the Senate Committees on Appropriations, on Judiciary, and on Health and Welfare on the implementation status of this program; and

(B) on or before January 15, 2022, to the House Committees on Appropriations, on Judiciary and on Health Care and to the Senate Committees on Appropriations, Judiciary, and on Health and Welfare on:

(i) the impact of this program in promoting a better understanding, more effective response, and greater public safety in addressing mental health issues;

(ii) the impact of this program in addressing crisis response to mental health and other public safety emergencies, and

(iii) the impact of this program on individuals whose mental health issues have led to law enforcement interaction by connecting individuals to ongoing mental health support with the goal of reducing future mental health crises that would require a law enforcement response.

#### Sec. E.314.2 MENTAL HEALTH CRISIS SERVICES; DATA COLLECTION

(a) The Department of Mental Health, in collaboration with the Director of Racial Equity, the Mental Health Crisis Response Commission, and the Department of Public Safety, shall explore strategies for collecting data related to persons accessing emergency services related to a mental health crisis. The Department shall solicit recommendations from persons with lived experience of a mental health condition or psychiatric disability and members of other impacted communities, including those communities experiencing inequities or marginalization, such as racial discrimination, that expose them to additional risks from unnecessary law enforcement or mental health system interventions.

(b)(1) The Department, in collaboration with the Director of Racial Equity, the Mental Health Crisis Response Commission, and the Department of Public Safety and in consultation with persons with lived experience and members of other impacted communities, shall examine how to collect the following types of data in a manner that comports with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-5 and 1320d-6, and ensures best clinical practice:

(A) the number of 911 calls received by category that are related to an individual's medical condition, mental or emotional condition, developmental or intellectual disability, or substance use, or any combination thereof;

(B) the race of the individuals that are the subject of a 911 call;

(C) the number and race of individuals referred to the Department of Mental Health or arrested for a misdemeanor or felony, or both, or where no subsequent action was taken;

(D) the number of referrals received by the Department of Mental Health from State law enforcement agencies;

(E) the race of individuals referred to the Department of Mental Health by State law enforcement agencies;

(F) the number of individuals referred to the Department of Mental Health by State law enforcement agencies who are already a client of a designated or specialized service agency; and

(G) the disposition of a referral to the Department of Mental Health, by race, including whether the individual was referred for mental health or substance misuse services, regardless of whether action was taken by the Department or the individual was referred to another State agency.

(2) The Department shall also examine and make recommendations regarding how to store data securely and make aggregated data available to the public.

(c) On or before September 1, 2021, the Department shall report the recommendations developed pursuant to this section to the House Committee on Health Care and to the Senate Committee on Health and Welfare, including the extent to which the information collected may inform the data available through the dashboard established pursuant to Sec. B.1121(d)(4)(B) of this act.

### ***Justice Reinvestment***

The budget includes \$360,000 for Justice Reinvestment II and establishes a method to allocate future savings for future investments. This language is complimentary S.338 (Act 148) passed and signed into law this Summer. The Act focuses on reducing incarceration and redirecting resources to support these efforts. Specifically, it (*excerpt from summary on legislative website*):

- Establishes an avenue for certain people to be eligible for parole consideration prior to reaching their minimum sentence; establishes two tiers of presumptive parole to be rolled out over the next 3 years; and sets up a system of administrative review of all presumptive parole cases prior to release.
- Reduces furlough to three types of statuses: Temporary Furlough, Treatment Furlough, and Community Supervision Furlough; repeals reintegration furlough, furlough without approved housing, treatment furlough for low-risk people, and treatment furlough for people with specific DUI convictions; and establishes a review and notification process for furlough revocations.
- Allows incarcerated people to earn 7 days off their minimum sentence for every month they are incarcerated without a major disciplinary rule violation and removes the requirement that a person participate in DOC-recommended programming to earn good time.
- Requires stakeholders to develop recommendations regarding racial and geographic disparities in sentences and report to the standing committees; directs the Parole Board to report to the standing committees on the administrative burden of the new presumptive parole policy and the anticipated change in that burden from expanding presumptive parole eligibility in 2023 to offenders who commit certain listed offenses; tasks the Justice Reinvestment II Working Group with overseeing the implementation of the policies in the act if federal funding is available and gives the Working Group specific directives to work with the Council of State Governments.

### ***Woodside Juvenile Detention Facility***

Representative Sandy Haas and Senator Sears worked together to fine tune the language on Woodside Juvenile Detention Facility. The final language repeals the existing law and closes the facility permanently effective October 1<sup>st</sup>. It also calls for the Administration to submit a long-term plan for residential services and treatment for youths who are in the custody of the Department for Children and Families and those in the custody of the Department of Corrections who had historically been served in Woodside, and are adjudicated or charged with a delinquent or criminal act, and who require secure placement. The plan must also compare the expertise and costs of nonprofit verses state operation of facility with a no-reject/no-eject approach. The Joint Legislative Justice Oversight Committee and the Joint Legislative Child Protection Committee will meet jointly by mid-November to review the Agency's plan and report to the Joint Fiscal Committee on their recommendation on whether to approve the Agency's plan. By November 20, 2020, the Joint Fiscal Committee shall act on their recommendation.

### **Sec. E.316 LONG-TERM PLAN FOR JUSTICE-INVOLVED YOUTHS**

(a) Notwithstanding 2020 Acts and Resolves No. 120, Sec. A.29 and 33 V.S.A. §§ 5801 and 5802, on or before October 18, 2020, the Agency of Human services shall permanently cease operations at the Woodside Juvenile Rehabilitation Center facility and discontinue all associated programming and treatment services for youths provided at that facility.

(b) On or before November 1, 2020, the Agency of Human Services shall submit to the Joint Legislative Child Protection Oversight Committee, the Joint Legislative Justice Oversight Committee, the Senate Committee on Judiciary, and the House Committee on Human Services a long-term plan for Vermont youths who are in the custody of the Department for Children and Families, are adjudicated or charged with a delinquent or criminal act, and who require secure placement (target population). The long-term plan to provide ongoing residential treatment and services to the target population shall: (1) continue to adequately fund alternative programs and placements for the target population, including those programs and placements that currently accept such youths; and (2) provide placements for all youths under 18 years of age who are in the custody of the Department of Corrections and who have historically been placed at Woodside Juvenile Rehabilitation Center instead of a Department of Corrections facility pursuant to the memorandum of understanding between the Department for Children and Families and the Department of Corrections.

(c) On or before November 1, 2020, the Agency of Human Services shall: (1) in consultation with the Joint Fiscal Office, conduct a cost comparison, including available federal matching funds, associated with contracting with a provider of youth treatment and services to operate a youth treatment facility in Vermont with the costs associated with the State operating a similar youth treatment facility, to include: (A) the “no reject/no eject” service capacity need for both the contract service arrangement and the State-operated facility; and (B) an evaluation of any construction and renovation costs necessary for a contracted provider of residential treatment services or the State; (2) evaluate the capacity and expertise of the contracted provider of residential treatment services to successfully operate a program appropriate for the target population, including: (A) conducting a treatment model evaluation; (B) determining whether the model is evidence-based, strength based, trauma informed, and focused on restorative practices; and (C) evaluating the cultural competency training of staff; and (3) include the results of the cost comparison and capacity and expertise evaluation required by this subsection in its report pursuant to subsection (b) of this section.

(d)(1) On or before November 13, 2020, the Joint Legislative Justice Oversight Committee and the Joint Legislative Child Protection Committee shall: (A) meet jointly to review the Agency’s plan pursuant to subsection (b) of this section, including the cost-comparison, capacity, and expertise evaluations required by subsection (c) of this section; and (B) report to the Joint Fiscal Committee on the Committees’ joint recommendation on whether to approve the Agency’s plan pursuant to subsection (b) of this section. (2) On or before November 20, 2020, the Joint Fiscal Committee shall act on the recommendation.

(e) On or before December 15, 2020, the Agency of Human Services shall report jointly to the Joint Legislative Justice Oversight Committee and the Joint Legislative Child Protection Committee regarding:

- (1) the status of the FY21 appropriation for Woodside including the costs expended to-date for the partial year operation of Woodside;
- (2) the placements and costs projected for the remainder of the fiscal year to support the Agency of Human Services’ plan for target population placements, including costs associated with third-party contractors; and
- (3) the status of FY21 funding for target population placements.

## **Other Legislation**

### **S.124 Directs the Criminal Justice Council to Address Racism and Improve Mental Health Supports**

S.124 passed the Legislature and was delivered to Governor Scott for signature. The Bill amends the Criminal Justice Council to include membership by the Commissioner of Mental Health, a mental health crisis worker, and a person with lived experience of being in mental health crisis. The Council is responsible to regulate, set standards for and train law enforcement. The legislation requires greater focus on racism and the experience of BIPOC Vermonters. The public hearings on the bill identified

concerns about racism and interactions with people with mental health conditions. The intent of the bill is to improve equity within the criminal justice system. The legislation asks the Council to develop policies on use of body cams, surplus military equipment and facial recognition technology, as well.

***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.