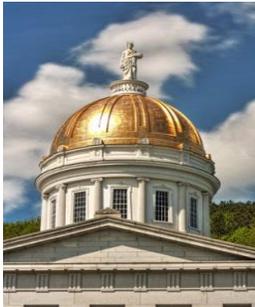




Supporting Vermonters to lead healthy and satisfying lives community by community

Legislative Update for March 23, 2021



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 being conducted remotely.

WHAT'S HAPPENING IN THE LEGISLATURE

The new federal relief bill, ARPA, will bring a larger than anticipated infusion of funds to the State of Vermont of nearly \$2.7 billion of which \$1.3 billion is directed to state government. It may lead to adjustments in state appropriations, once there is greater clarity about allowable use and restrictions of the federal fund. Most of the funds must be expended by the end of 2024 and most likely will not be used for funding base appropriations which continue on an annual basis. The state revenue forecast for FY22 is uncertain given the dynamics of federal funds and delays in income tax filing day to May. It appears that there are abundant one-time funds.

Vermont Care Partners and network agencies are advocating for resources to meet the increasing acuity and demand for services after the Governor's budget didn't address the rate increases needed to address our workforce challenges.

The Vermont Care Partners legislative agenda is quite comprehensive and focuses on our need for adequate resources to meet our mission and mandates. See this link: <https://vermontcarepartners.org/wp-content/uploads/2021/01/legislative-agenda-2021-working-draft-1.pdf>

This Week's Testimony

APPROPRIATIONS AND FUNDING-RELATED LEGISLATION

House Appropriations Committee Completes Work on FY22 Budget Bill

Vermont Care Partners is very pleased that the House Appropriations Committee is asking for a 2% Medicaid rate increase for DA/SSAs. From one-time funds they are also committing \$289,000 for the Pathways warmline and \$600,000 for the Rutland mobile crisis programs. There will also be language

redirecting the funds for tuition assistance and loan repayment directly the DA/SSAs after a 3-year delay in getting the funds distributed through AHEC and VSAC.

The full House of Representatives will be briefed on the bill on March 23rd at that time a summary and more information on the budget proposal will be available. The bill will be under consideration through Friday, March 25th. After the vote in the House, the Senate is developing its own version of the budget bill.

House Appropriations Adjusts Medicaid Rate Review for Community-based Providers

After excellent testimony by Mary Moulton and Heidi Hall of WCMHS, H.153 was amended and approved by the House Human Services Committee with new requirements, including rules on the process for annual rate reviews for DA/SSAs, as well as other community-based service providers. The Bill also requires a rate study which includes substance use disorders but not developmental and mental health services with the assumption that those rate studies have already happened or are in progress.

The Bill was amended by the House Appropriations Committee after several legislators expressed concerns about the potential to be locked into funding rate increases. Representative Yacavone clarified that the Secretary of AHS has the obligation to determine what the rates should be and make the recommendations for funding levels, similar to the process for nursing homes. The Legislature does not need to make the increase and a few times the Legislature has not appropriated the recommended added funds for nursing homes. It was pointed out that the Legislature would be better positioned to make an informed appropriation.

Representative Wood, Vice Chair of House Human Services explained that the bill is intended to tell the Administration “we mean it” about adequately funding and adjusting rates for DA/SSAs and it should apply to additional home and community-based services. She said the pandemic has put particular stress on providers. Representative Wood noted that we cannot afford for the web of home and community-based providers to further fail like the three adult day health centers that failed this year.

Committee Chair Hooper said the Appropriations Committee is clear that the community providers need to be fully funded but is having a hard time with the consequence. The bad consequence is that an executive branch could set revenue streams at a level that could result in forcing the legislature into a difficult position of making reductions. She added that sometime an automatic inflator keeps financial support when a provider may need to think about doing business differently. Here is the amendment to H.153 that is being offered by the Appropriations Committee.

§ 8914. RATES OF PAYMENTS TO DESIGNATED AND SPECIALIZED SERVICE AGENCIES

(a) The Secretary of Human Services shall have sole responsibility for establishing determine the Departments of Health’s, of Mental Health’s, and of Disabilities, Aging, and Independent Living’s rates of payments for designated and specialized service agencies that are reasonable and adequate to achieve the required outcomes for designated populations. When establishing determining these rates of payment for designated and specialized service agencies, the Secretary shall adjust rates the rate amounts to take into account factors that include:

1) the reasonable cost of any governmental mandate that has been enacted, adopted, or imposed by any State or federal authority; and

(2) a cost adjustment factor to reflect changes in reasonable costs of goods to and services of designated and specialized service agencies, including those attributed to inflation and labor market dynamics.

(b) When establishing determining reasonable and adequate rates of payment for designated and specialized service agencies, the Secretary may consider geographic differences in wages, benefits, housing, and real estate costs in each region of the State.

(c) The Secretary shall adopt rules setting forth the methodology for determining the payment rates for services provided by designated and specialized service agencies to individuals with mental conditions, individuals with substance use disorders, and individuals with developmental or intellectual disabilities in accordance with this section. The rules shall include a process for determining an annual inflationary rate adjustment, shall set forth a predictable timeline for redetermination of base rates, and shall use Vermont labor market rates and Vermont costs of operation.

(d) The Secretary shall redetermine the payment rates for designated and specialized agencies in accordance with this section at least annually and shall report those rates, and the amounts necessary to fund them, to the House Committees on Appropriations, on Human Services, and on Health Care and the Senate Committees on Appropriations and on Health and Welfare annually as part of the Agency's budget presentation.

Senate Passes H.315 Quick One-Time Appropriations Bill

After the Senate Health and Welfare Committee considered testimony provided by Vermont Care Partners, it made some improvements to the language of H.315. It then moved on to the Senate Appropriations Committee where further improvements recommended by Vermont Care Partners were made. While the bill was in Senate Health and Welfare, Senator Hardy recommended doubling the \$4 million for expanding and improving housing and other facilities including DA/SSAs but that change did not occur. The Senate passed the bill as amended by the two committees and it is now in the House which will determine if it wants to accept the language or convene a conference committee to work through the differences. Here is the language relevant to DA/SSAs as passed by the Senate.

Sec. 7. DEPARTMENT OF MENTAL HEALTH; HOUSING The sum of \$4,000,000.00 is appropriated from the American Rescue Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund to the Department of Mental Health in fiscal year 2021 to make existing housing and community based service facilities providing mental health services more accessible, safe, and compliant with the Americans with Disabilities Act or to expand capacity in community settings. The Department shall select the projects in consultation with the Agency of Human Services Secretary's Office, the Department of Disabilities, Aging, and Independent Living, and representatives of the designated agencies, specialized service agencies, and peer organizations. The grants shall be awarded to organizations that demonstrate the greatest ability to respond immediately to the need for housing and shall be for projects that will not require additional State funds for operating costs in future years. At least one grant shall be awarded to a peer run or peer-directed housing organization. The Department of Mental Health shall partner with the Agency of Human Services Secretary's Office and the Department of Disabilities, Aging, and Independent Living to include as potential grant candidates all designated and specialized service agencies that provide developmental and mental health services.

Sec. 8. DEPARTMENT OF MENTAL HEALTH; CASE MANAGEMENT SERVICES The sum of \$850,000.00 is appropriated from the American Rescue Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund to the Department of Mental Health in fiscal year 2021 to provide funds to the mental health designated agencies to enable them each to hire an additional case manager to provide case management services to Vermont residents who may not previously have been part of an agency's caseload but whose lives have been significantly disrupted by the COVID-19 pandemic and who are now urgently in need of these agencies' supports. Agencies have the flexibility to identify where the targeted need exists within their agency, across all programs. The purpose funded in this section is limited to addressing the impacts related to the COVID-19 pandemic and not intended to create an ongoing funding commitment.

Sec. 9. DEPARTMENT OF MENTAL HEALTH; WORKFORCE TRAINING AND WELLNESS SUPPORTS The sum of \$150,000.00 is appropriated from the American Rescue Plan Act of 2021 - Coronavirus State Fiscal Recovery Fund to the Department of Mental Health in fiscal year 2021 for training and wellness supports for frontline health care workers to help them meet Vermont residents' current mental health needs, such as training for emergency department personnel responding to an increased demand for crisis services as a result of the COVID-19 pandemic and training on trauma-informed and trauma-specific care

for mental health professionals responding to the surge in mental health treatment needs. These workers would also benefit from wellness supports as they continue to care for people in crisis while experiencing their own stress, anxiety, and trauma as a result of the pandemic.

Administration's Response to Senate on H.315

The Scott Administration gave the legislature a less than enthusiastic response to H.315 as passed by the Senate. They appear to want to hold off on appropriating new funds. Here is an excerpt from their letter to Senator Kitchel:

"The Secretary of the U.S. Treasury has the discretion to send the State its share either all at once, or with some amount held back for at least a year. We do not know yet what the decision will be for Vermont or when it will be made. Another key difference from the CRF money is that we have nearly 4 years from March 3, 2021 to expend the State fiscal recovery funds – we have until December 31, 2024. This means that, with the exception for emergency and immediate needs to respond to the pandemic and its economic impacts, there is time for state and local governments to thoughtfully plan around the best uses of what we hope will be the bulk of this money... pandemic permitting. Other funding sources are available, however, right now – General Fund and Coronavirus Relief Fund.

POLICY LEGISLATION

Substance Use Disorder System of Care Redesign Reviewed by House Human Services

Kelly Dougherty, Deputy Commissioner and Cynthia Seivwright, Director, Alcohol and Drug Abuse Programs in the Vermont Department of Health gave an overview of ADAP, its mission, structure and range of work. Kelly pointed out that alcohol is the most widely used drug at over 60% of the population verses less than 5% for opioids and cocaine. They reviewed the goals of system redesign:

- All Vermonters will have access to a core set of evidence-based services
 - One SUD treatment system, agnostic of substance, able to meet the needs of all Vermonters
 - Enhanced care coordination to include the physical health care system, cooccurring, and recovery services
 - A seamless system that is easy for clients to access and navigate (includes intervention, interim, co-occurring, recovery, and care management services)
 - Eventually - value based payment structure to incentivize a higher quality of care and outcomes for Vermonters
- Reduce duplicative effort on behalf of the client, includes financial savings (e.g., multiple assessments)
- Recruiting and retention of high-quality staff, includes competitive wages/benefits, staff development career ladders, and co-occurring capacity
 - A reduction in administrative functions would increase QI activities geared towards improving care for Vermonters
 - Reduction in state resources to execute legal agreements

She shared that they had interviews with a lot of stakeholders about the strengths and challenges of the system of care. The RFI is based on the themes that were heard from the stakeholders. It was emphasized that it is for information gathering only. There is no commitment to a particular way the system will look like, only to meet the goals.

Representative Pugh said she is hearing that ADAP is looking to outsource coordination of the system of care. Kelly said that is a misunderstanding, but that is an option in the RFI. "There is no specific model that has been predetermined". Cindy said different models for managing the service are possible and

were discussed during the stakeholder interviews. The RFI is structured to allow people to respond to ideas like that. Kelly said the new system will not take effect until 2023. They plan to work with the provider network and will have representatives from all types and levels of care.

Representative Pugh said it's unfortunate that they did not see Legislators as part of the stakeholder group. Representative Whitman understands that a vendor would be the service coordinator and asked if OneCare could apply for this. Kelly said they are not looking for one statewide entity, but OneCare could take on this role. Representative Wood said the RFI seems to seek additional providers and multiple service coordinators. Where will the resources come from as there is not an additional appropriation. Will the funds come from payments to service providers? Kelly Dougherty responded that one of the goals is increased efficiency in the system and that there could be savings from value-based payment system. Cindy said they have no intention of reducing funds to providers. Representative Wood replied that if there is no increase in payments and they don't reduce funds to providers, she is unclear where ADAP will get resources to enter into contracts for the management of the system. Kelly Dougherty said that's "a really good question that we have ourselves. We haven't addressed that yet." Representative Whitman agrees with the goals, but wondered if value-based care and the goals be achieved in-house? Cindy said ADAP has done payment reform for the Hubs and residential treatment and is prepared to do payment reform.

Chadd Viger, Executive Director, Recovery House operates a small MAT program, two residences and a public inebriate program. He is aligned with the goals for the redesign but has concerns about the language of the RFI. Finding a service delivery coordinator and finding cost effectiveness as the focus raises concerns about a large out-of-state company coming in that does not have ties to the people served. He is also concerned about the idea of the service coordinator also being a service provider it raises conflicts of interest. He would like to have community-centric approach. He sees the RFI as opening the door to privatizing services and bringing in larger entities. He sees a risk of losing quality of care even if it is more efficient to have a large national company. His agency is seeing the value-based payment in action. What is cost effective and what is the cost of treatment? Workforce in SUD has many people aging out and few people who want do the work. He said that we need to address the wage issue within the field. How can agencies control cost but not become unsustainable? What he has seen is large corporations in other states profiting off these services having negative consequences for the quality of care.

Melanie Gidney, Executive Director, Clara Martin Center and Board of CVSAS testified on behalf of Vermont Care Partners (VCP). She said ADAP system restructuring must be considered in the context of the larger health delivery reform taking place in Vermont. As providers of not only substance use disorders but also of mental health and developmental disabilities services, the VCP network believes that any restructuring of the SUD delivery system, including quality assurance, contracting and oversight, must align with the rest of the Agency of Human Services and especially with the efforts of the Department of Disabilities, Aging and Independent Living (DAIL) and the Department of Mental Health (DMH). She encouraged ADAP to consider aligning this system with other state agencies who oversee care coordination, such as DMH and DAIL, rather than further bifurcating the current system. Alignment would enhance opportunities for integrated and continuous care for people with complex needs and those who have co-occurring mental health and other health conditions. VCP and its network agencies have been intricately involved in system redesign with DMH, DAIL, the Department of Vermont Health Access (DVHA), and One Care Vermont in their payment and delivery reform efforts. Based on this experience we feel that state government working together in a transparent and iterative process, with people who use and provide services along with other stakeholders, leads to a more effective and efficient process and outcome. The RFI indicates that ADAP is looking to bring treatment and recovery services under management by an outside entity. At a time when there seems to be little appetite for

state general fund dollar increases for the system, this would add yet another layer of administration outside of state government and the expense for contracting would directly take away from service delivery dollars. This is very concerning given that providers already struggle to recruit and retain direct service providers based on low reimbursement rates that have not seen an increase in several years.

Melanie offered these recommendations for the restructuring:

- Meaningful, iterative, and collaborative engagement with VAATP and VCP, as well as other impacted organizations, and AHS departments in the context of payment reform.
- No reduction in direct service dollars
- A true co-occurring continuum of care that allows for blending of mental health and substance use disorder funding streams
- Emphasis on immediate access to care
- Peer recovery supports embedded in treatment programs and services at all stages of the continuum
- Meaningful outcome measures that align with outcomes in mental health and health care payment reform
- The Intercept framework for individuals involved with corrections

Rick DiStefano, of Valley Vista said they are paid higher rates from out-of-state and private insurance than Vermont Medicaid. They are seeing more co-occurring individuals and moving them to higher levels of care has been difficult. Nursing, LADCs and licensed mental health providers are hard to find and he wants more adequate pay in the episodic care rate.

Corrections and Institutions Considers Proposal for Secure Residential

Representative Donahue detailed the proposal of the House Health Care Committee for a staged proposal for a full funding to 16-beds, but beginning construction with 8 beds with the ability to add 8 more and study the bed need and alternatives sites and services in the community. The Committee was somewhat mixed with four members preferring the original 16-bed proposal made by the Department of Mental Health.

Representative Donahue said the demand for beds is related to increased length of stay and is due to higher clinical need and the dearth of community resources. Representative Donahue said the community system investments have stagnated while inpatient capacity is increasing. The housing and residential needs report shows a shortage of intensive residential, group home and supportive living options. These shortages may be creating the backlog. One of her biggest fears is that we will never invest in the proactive approach of care. It was pointed out that we don't know about the impact of the new inpatient beds or potential for more federal investments; We need more information on the need for beds. She suggests building 8 beds and wait to build the other 8. Then reassess the needs when all inpatient beds are up and running and the federal funds are invested in the system of care.

Representative Emmons said this approach would increase the cost by delaying construction. Currently, the facility is due to open in December of 2022. The Committee members seemed to have mixed responses, but in the end they decided to move forward with the new expanded 16-bed facility. In addition they added this language to capital bill.

(b) On or before July 1, 2021, the Department of Mental Health shall issue a request for proposals from designated and specialized service agencies and peer-run agencies for developing and implementing programming for unlocked community residences for transitional support for individuals being discharged from inpatient psychiatric care or for intervention to prevent inpatient care. Proposals shall be provided to the Department of Mental Health not later than December 1, 2021 and shall include

provisions that address the need to develop and implement community residential programming for youths.

(c) The Department of Mental Health shall convene a steering group of interested stakeholders, including individuals with lived experience, to consider and provide input to the Department's prioritization process in determining the area of highest need across the mental health system of care with regard to additional bed proposals described in subsection (b) of this section.

(d) On or before December 15, 2021, the Department of Mental Health shall submit a report to the House Committees on Health Care and on Corrections and Institutions and to the Senate Committees on Health and Welfare and on Institutions containing the following:

(1) a review of all responses received pursuant to the request for proposals issued pursuant to subsection (b) of this section;

(2) a bed needs assessment for all levels of care in the mental health system, including an update to the statewide bed needs assessment conducted pursuant to 2019 Acts and Resolves No. 26, Sec. 2 with regard to inpatient beds and community residences;

(3) a summary of the input provided by the stakeholder steering group pursuant to subsection (c) of this section; and

(4) an analysis of opportunities under the American Rescue Plan Act of 2021, Pub. L. 117-2, for capital or operational bridge funding for additional unlocked community residential capacity described in subsection (b) of this section or additional similar community capacities.

House Health Care Completes Testimony on Secure Residential Residence

Mental Health Commissioner Sarah Squirrell returned to the committee to reiterate information and respond to follow-up questions from members of the Committee. She reiterated the need to replace the Middlesex facility. DMH sees this as a strategic investment to serve people who cannot be served in community facilities and who are stuck in level one beds. She acknowledged the need for continued investment in community resources and pointed out that new federal resources may support those efforts. It was highlighted that the community partners are not able to serve these individuals who should have the right to stepdown to this level of care to avoid long-term hospitalization, with 100% of the people at the secure residential coming from level one beds. This capacity is critical as we need to adhere to the 16 bed IMD limit for the size of inpatient, stand-alone psychiatric hospitals in the future.

Alisson Richards, M.D., Executive Medical Director, Vermont Psychiatric Care Hospital described the individuals who need the services. The point was made that the individuals who would live in the new facility have safety risks that cannot be served in community residential programs but do not need hospital level of care and would benefit from living in this type of facility. Deputy Commissioner Mourning Fox said individualized staffed programs for individuals in the community can cost \$300,000 to \$800,000 in the community.

The Committee Chair made it clear that the Committee fully agrees that the facility should be replaced. The Commissioner said that there are already people in the system of the care that could fill the planned number of beds. Representative Lippert said its helpful to understand the number of beds off-line and wants to know what the forecast is. Commissioner Squirrell said pre-pandemic there were not enough beds. Commissioner Squirrell said having expanded stepdown capacity is critical now and when we need to phase out IMDs. Representative Lippert said where you put dollars is where your policy is. There are no funds for expanding community capacity. He thinks we need 16 beds but is unsure if we need them now in the secure residential facility.

Representative Houghton asked about the beds for youth. Commissioner Squirrell said that is a system of care issue that we need to look at. All the youth inpatient capacity is at the Retreat and we are seeing

an increase in demand in emergency departments. We should look at the capacity needs for inpatient and residential system of care for children and youth. Representative Houghton noted that not having inpatient capacity for youth in northern Vermont is a big issue.

Representative Donahue said the Department made a compelling case for transitional care. This proposal in addition to the beds at Brattleboro would add beds from the original number of beds at VSH. It's her understanding that the number of beds needed is related to increased length of stay. Is it due to higher clinical need or the dearth of community resources? Representative Donahue said the community system investments have stagnated while inpatient capacity is increasing. The housing and residential needs report shows a shortage of intensive residential, group home and supportive living options. These shortages may be creating the backlog. One of her biggest fears is that we will never invest in the proactive approach of care. We don't know about the impact of the new inpatient beds or potential for more federal investments. Representative Cordes said community-based services have been coming to us for years due to lack of resources. There are staff shortages and waitlists and reflected on the requests from Vermont Care Partners. Should there be a statutory requirement that community resources should be invested in first. She supports an 8-bed facility with the potential to expand it later. She said it is painful not to be addressing the needs of children and youth.

Commissioner Squirrell does not believe that a smaller facility will meet the needs of people currently in level 1 beds and that we won't see a decrease in the need for secure care. She said community partners cannot meet this level of need. Representative Lippert said he would use a staged process to study whether the community system can meet those needs. He wants a proposal from DMH for the full continuum of care. The mental health block grant will be enhanced by a minimum of \$4 million which will need to be spent by 2025. All of those funds will be targeted to enhancement of the community mental health system. Commissioner Squirrell said she will work with VCP and community agencies on how those funds will be invested.

Senate Institutions Committee Receives Testimony on Secure Residential Residence

Commissioner of Mental Health Sarah Squirrell and Deputy Commissioner Mourning Fox presented the proposal for the secure residential residence. (see previous updates for a summary of this presentation) Alisson Richards, M.D., Executive Medical Director, Vermont Psychiatric Care Hospital described the individuals who need the services. The point was made that the individuals who would live in the new facility have safety risks that cannot be served in community residential programs but do not need hospital level of care and would benefit from living in this type of facility. Senator McCullough wanted to know if there is anywhere else where residents of the Middlesex facility could stay until the new facility is built. The answer was no, but the individuals continue to turnover.

Regulatory Flexibilities Bill is Reviewed by House Health Care Committee

The House Health Care Committee reviewed the "regulatory flexibilities bill" [S117](#) with legislative counsel Jennifer Carbee and Sebastian Arduengo from the Department of Financial Regulation. A very valuable and comprehensive summary of the bill is [here](#).

On the topic of audio-only reimbursement, Arduengo clarified that it is DFR's intent to make clear that the status quo will be in place for the rest of 2021. Representative Black and other committee members expressed some disappointment that the Senate had moved away from their original language which included reimbursement parity between audio-only and telehealth but acknowledged that gathering data is important and trust that DFR would use a thorough process for rate setting, similar to the

workgroup over the summer. The committee passed the bill as approved by the Senate for consideration by the full House.

Senate Judiciary Committee Continues Consideration of S.3

As described previously, S.3 addresses people in the care and custody of DMH because of findings of insanity at the time of a crime or lack of competency to go to trial. It establishes procedures for notification of the crime victim when the defendant is discharged from a mental health treatment facility or from Department of Mental Health custody if the case involves certain serious offenses. The bill also establishes a forensic care working group and requires the Departments of Corrections and of Mental Health to jointly submit an inventory and evaluation of the mental health services provided by the entity with whom the Department of Corrections contracts for health care services.

AJ Ruben, supervising attorney, Vermont Disability Rights, is pleased with the bill but is concerned that there is too much information shared about a person who is not adhering to their orders of non hospitalization. The federal rules require that you need to give a person notice that their information is shared. He thinks more study is warranted. He understands that victims of crime should be safe. No other states or the federal government require this level of information be disclosed. If a DA or Commissioner thinks there is danger the ONH can be revoked. This bill creates a middle ground. There is no mechanism for the Commissioner to become aware if a person is in noncompliance with an ONH which could range from drinking a beer to a more critical behavior. There are 300 people on ONHs. Many think they are ineffective and should be eliminated. For DAIL funded services anyone can go to the Commissioner if a person being served is perceived to create a threat and there is a need to do something. He sees the possibility of a legal challenge due to HIPAA violations.

David Scherr, Attorney General's office said there are imperfections in the language. He said the problem is agreed to. If a person poses public safety or threat to a person, sharing information with the state's attorney would be helpful. He understands that DAs and clinical providers may decide which information to share. Legislative Counsel felt comfortable that the language was within the law. He sees this as a stop gap to help until the forensic working group will come up with a more comprehensive solution for reworking the laws.

AJ said the way to fix the problem is to increase the supports and capacity in the community. James Pepper, Deputy State's Attorney, Department of State's Attorneys & Sheriffs thinks if someone is non-compliant the State's Attorney needs to know about it. Mourning Fox agreed that the language could use more work through the Forensics Committee. One question is, who determines if the treatment is not working well and how the notification would work. Senator Baruth would rather this went to court and continuing discussions as it moves through the building, but inaction is not the choice he would make. Sears is open to looking at language of how the Commissioner becomes aware of non-compliance to the ONH.

Senator Sears developed an amendment that was approved by the Committee and will be brought to the full Senate on March 23rd. It read as follows: (3) Consider the notification process under 13 V.S.A. § 4822(c)(2)(C) when the Commissioner is required to provide notification to the prosecutor upon becoming aware that persons on orders of non-hospitalization are not complying with the order or that the alternative treatment is not adequate to meet the person's treatment needs. The Working Group shall make any recommendations it deems necessary to clarify the process, including recommendations as to what facts and circumstances should trigger the Commissioner's duty to notify the prosecutor, and recommendations as to steps that the prosecutor should take after receiving the notification.

Here is other relevant language from the bill which is ready for a vote by the full Senate.

Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH SERVICES On or before November 1, 2021, the Departments of Corrections and of Mental Health shall jointly submit an inventory and evaluation of the mental health services provided by the entity with whom the Department of Corrections contracts for health care services to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary. The evaluation shall include a comparison as to how the type, frequency, and timeliness of mental health services provided in a correctional setting differ from those services available in the community. The evaluation shall further address how the memorandum of understanding executed by the Departments of Corrections and of Mental Health impacts the mental health services provided by the entity with whom the Department of Corrections contracts for health care services.

Sec. 6. FORENSIC CARE WORKING GROUP (a) On or before August 1, 2021, the Department of Mental Health shall convene a working group of interested stakeholders, including as appropriate, the Department of Corrections, the Department of State's Attorneys and Sheriffs, the Office of the Attorney General, the Office of the Defender General, the Director of Health Care Reform, the Department of Buildings and General Services, a representative appointed by Vermont Care Partners, a representative appointed by Vermont Legal Aid's Mental Health Project, two crime victims representatives appointed by the Vermont Center for Crime Victim Services, the Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259, a representative of the designated hospitals appointed by the Vermont Association of Hospitals and Health Care Systems, a person with lived experience of mental illness, and any other interested party permitted by the Commissioner of Mental Health...

(1) Identify any gaps in the current mental health and criminal justice system structure and opportunities to improve public safety and the coordination of treatment for individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity. The working group shall review competency restoration models used in other states and explore models used in other states that balance the treatment and public safety risks posed by individuals found not guilty by reason of insanity, such as Psychiatric Security Review Boards, including the Connecticut Psychiatric Security Review Board, and guilty but mentally ill verdicts in criminal cases. (2) Evaluate various models for the establishment of a State-funded forensic treatment facility for individuals found incompetent to stand trial or who are adjudicated not guilty by reason of insanity. The evaluation shall address: (A) the need for a forensic treatment facility in Vermont; (B) the entity or entities most appropriate to operate a forensic treatment facility; (C) the feasibility and appropriateness of repurposing an existing facility for the purpose of establishing a forensic treatment facility versus constructing a new facility for this purpose; (D) the number of beds needed in a forensic treatment facility and the impact that repurposing an existing mental health treatment facility would have on the availability of beds for persons seeking mental health treatment in the community or through the civil commitment system; and (E) the fiscal impact of constructing or repurposing a forensic treatment facility and estimated annual operational costs considering "institutions of mental disease" waivers available through the Center for Medicare and Medicaid Services that do not provide federal fiscal participation for forensic mental health patients. (b) Members of the working group who are not State employees shall be entitled to per diem compensation and reimbursement of expenses for attending meetings as permitted under 32 V.S.A. § 1010. (c) On or before November 1, 2021, the Department of Mental Health shall submit a report containing the findings and recommendations of the working group to the Joint Legislative Justice Oversight Committee. The report shall include proposed draft legislation addressing any identified needed changes to statute.

House General, Housing and Military Affairs Continues Work on Eugenics with JRH2

JRH2 – 'Joint resolution sincerely apologizing and expressing sorrow and regret to all individual Vermonters and their families and descendants who were harmed as a result of State-sanctioned eugenics policies and practices' has continued to be worked on by the House General, Housing, and

Military Affairs Committee. They are strengthening the language with the goal to pass the resolution out of Committee by March 26th.

Chief Don Stevens of the Abenaki Nation discussed the need, beyond the resolution, for a resource for Native Americans to have representation in State Government such as an Office of Native American Affairs. Carol McGranaghan, Chair, Vermont Commission on Native American Affairs pointed out that the Commission currently exists, but it is a volunteer commission. She expressed concerns about creating a new, possibly competitive, organization when the Vermont Commission on Native American Affairs which is charged with representing the Native American tribes but receives no state funding or support. Representative Bluemle wondered if funding a paid staff to support to the Commission would provide the Commission with a way to stay aware of legislative initiatives and apply for possible funding sources.

Susan Aranoff from the Developmental Disabilities Council made the connection between the Eugenics movement and the current healthcare inequities experienced by people with I/DD. She expressed frustration with what she felt was an inability to get either House Human Services or House Health Care committees to address those inequities. She felt that the apology was a good first step but emphasized to the committee that, for people with disabilities, based on unequal treatment in health care, eugenics is not over. Susan Aranoff again asked the committee to include a whereas clause connecting the eugenics movement with continuing healthcare disparities experienced by people with disabilities and other populations targeted by the eugenics movement. She agreed to provide draft language to the committee, which was also shared with the committee on March 19th.

The committee will take up the resolution again on Thursday March 25th for possible final markup and vote, but they have also scheduled time on Friday March 26th if needed.

Judy Dow, author of a book about eugenics, testified that she supported the use of the word "indigenous" instead of "Abenaki" in the apology to be more inclusive. She also shared that most individuals targeted in the eugenics movement identified as French-Indian and that the State of Vermont considered all Native American peoples in the state as coming from Canada and therefore "French."

As the Committee reviewed an updated draft with Representative Steven's proposed edits on March 18, there were several issues still to be resolved. Legislative Council Michael Chernick advised the Committee that a resolution cannot direct action by future legislative sessions, which was a part of several proposed clauses. They also discussed whether to use "Abenaki", "Abenaki and other Indigenous Peoples" or just "Indigenous Peoples." Witnesses provided conflicting testimony as to which terms were historically correct and which terms, especially the inclusion of specific reference to the Abenaki people, were desired by the various witnesses and supporters of the resolution.

Mercedes de Guardiola, Author of "Segregation or Sterilization - Eugenics in the 1912 Vermont State Legislative Session" felt that the resolution should reference behavior by the State of Vermont prior to the Eugenics survey that supported the prevention of procreation by certain Vermonters in an effort to control perceived population characteristics. Michael Chernick was directed to draft language to reference policies in Vermont as early as 1912. This newly drafted language was shared with the committee on Friday March 19.

Disability Advocacy Day Legislative Panel

Disability Advocacy Day which occurred over a period of days had the theme “Justice & Access for All: More Important Now Than Ever”. The panel consisted of Representative John Killackey, Senator Polina, Representative Donahue and Representative Christie.

Representative John Killackey had surgery 25 years ago for a tumor on his spine which resulted in his becoming quadriplegic. He was shocked at how he was treated - he became invisible and people projected their fears on him and his art was not taken seriously. He spoke about what people see as disabilities. He created a film called holding on – about couples dealing with disabilities. He spoke about the challenges in changing awareness in the state house. He suggested that we continue to bring issues and concerns to him. He spoke about the work on eugenics in the House General and Military Affairs Committee. He encouraged the disability community to make its voice heard. “All Committees should hear from the people with lived experience, not just about disability bills. Your voices need to be louder.”

Senator Pollina started to be affected by his disability which is related to Parkinson’s disease. It has made him feel impatient with the pace of change. He feels more vulnerable than he used to. He feels more self-consciousness about leaving a room of people. Policy makers must be confident, loud and clear, that’s been more of a challenge. The most impressive speech he has heard in the state house was by Troy Daniels a young man with developmental disabilities. He began working with parents of children with disabilities. He learned from them that it’s hard for people with disabilities to speak up – it’s important that their voices are heard. He thinks legislators need more empathy. It’s important that people with disabilities speak for themselves.

Representative Christie came to Vermont when he was 23 years old. He pushed his body in sports which began to affect his knees and mobility. He became aware about how insensitive people can be. He said all people need to feel safe. If people feel safe their ability to contribute will increase. Legislators should ensure that people who come to share their voice that they feel comfortable enough to share their experiences. It’s the mission of legislators to listen.

Representative Donahue said the first half of her life she had no interest in politics and mental illness. She wanted to be an advocate for children. She remembers her first admission to the hospital and her sense of failure. She then found out that her health insurance was not going to fully cover her health care needs. She first came to the state house to advocate for the parity law. She believes it is an ongoing battle to have mental health fully accepted as health care. For example, only the mental health system is capped, not the rest of health care. It’s an ongoing battle. When she ran for the legislature and went door to door, she found people wanted to talk about their and their families’ struggles with mental illness. Part of the struggle is for people to be confident to show vulnerability, but when you have the mental illness label, you can’t show your vulnerability. She thinks psychiatric disability is the last disenfranchised group for whom it’s okay to discriminate.

Information on Your Senators and Representatives

Follow this link to determine your legislators and access their contact information. Legislators are listed both by DA/SSA and by the Committee they serve on. Please note there are new legislators on committees that have purview over policy and funding for the Vermont Care Partners network.

<https://vermontcarepartners.org/wp-content/uploads/2021/02/2021-Legislative-Committees-by-DA-SSA.xlsx>

Action Circles Calendar

Action Circles maintains a calendar of Legislative breakfasts and events. This information can be found at: <https://www.action-circles.com/legislator-events/>

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.