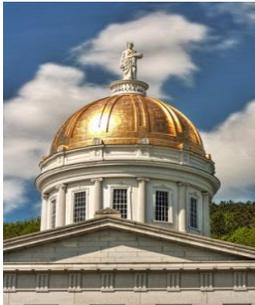




Supporting Vermonters to lead healthy and satisfying lives community by community

## Legislative Update for March 3, 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**

***On January 26<sup>th</sup> Governor Scott presented his budget proposal for fiscal year 2022 (FY22) which starts July 1, 2021. The Appropriations Committees are now reviewing the budget by taking testimony from Agency Secretaries and Department Commissioners, as well as by hearing from constituents and advocates. The House Human Services Committee and House Health Care Committee have completed their requests to the House Appropriations Committee which is now developing the bill for consideration by the full House of Representatives. Soon the Senate Health Care Committee will provide input to the Senate Appropriations Committees on the budget relevant to designated and specialized service agencies (DA/SSAs). Differences between the House and Senate are worked out in committee.***

***H.315 has been advanced by the House of Representatives in advance of the fiscal year 2022 budget bill for the purpose of allocating federal COVID one-time funds already received by Vermont, as well as carry forward for FY21. The Senate will consider this bill next.***

***Legislators have been briefed by Congressman Welch on the next federal COVID relief bill. This bill is expected to bring state government \$600 million, in addition to allocations to local and county government. The new federal relief bill may lead to adjustments in state appropriations, once there is greater clarity allowable use and restrictions of the federal fund.***

***Vermont Care Partners and network agencies must use this window of opportunity to advocate 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 Health Care Committee Recommendations to the Appropriations Committee**

Here is the recommendation of the House Health Care Committee to the House Appropriations Committee relevant to designated and specialized service agencies (DA/SSAs) and Pathways.

The House Health Care Committee Recommended a \$2.6 million from the General Fund to provide a much-needed 3% cost-of-living adjustment (COLA) for employees of the designated and specialized service agencies and employees of Department of Mental Health contracted community mental health and developmental disability peer agencies, including Alyssum and Another Way. It is our understanding that this General Fund investment may be eligible for federal match under Vermont's Global Commitment to Health Section 1115 Medicaid demonstration, which means that the \$2.6 million in General Fund dollars could be leveraged to direct almost \$6 million for these increases. If it is not feasible to provide a COLA to these dedicated employees, the Committee recommends providing them with a one-time payment from one-time funds, like the \$1,400 payment provided to State employees in fiscal year 2021 through the collective bargaining agreement and 2020 Acts and Resolves No. 120, Sec. B1. We recommend the amount of the payment not be less than \$1,000 per eligible employee, ideally leveraging available federal matching funds. We also encourage the House Committee on Appropriations to consider limiting eligibility for these payments based on individual employee income to ensure that the payments have a meaningful effect on the income of the employees who receive it, which would not necessarily be the case for some of the highest-paid employees.

Pathways Vermont: Maintaining 24/7 Peer Warm Line. The House Committee on Health Care recommends appropriating \$289,000 to Pathways Vermont to continue operating its warm line 24 hour per day, seven days per week for another year. Pathways' current funding is only sufficient to keep the warm line going through June 30, 2021. Ideally, we would

#### **House Human Services Reviews Medicaid Reimbursement Rates for Community-based Services**

The House Human Services Committee began review of H.153 which would expand the statute on nursing home rates. It would add community-based services, specifically enhanced residential care, choices for care, home health and hospice services to the automatic cost of living adjustment (COLA) process by requiring the Director of Rate Setting to develop an annual inflation factor for these services. The division of rate setting would collaborate with DAIL. Determination of the rates would be based on the inflation factor added to the prior rates plus any other increases in funding passed by the legislature, for instance a minimum wage law. It also directs DVHA and DAIL to do rate studies and align rates with other payers. Rates would not increase until July 1, 2022 for FY23.

The House Appropriations Committee eliminated this language last year from the older Americans bill. Representative Noyes explained that that nursing homes get automatic increases each year and this bill would create parity for community-based services. Representative Wood said she would like to see DA/SSAs added to the bill. It is a matter of equity for home and community-based providers which Representative Noyes noted addressed the community needs during COVID. Representative Pugh said this bill fits into the Committee's priorities. Vermont Care Partners will testify in support of this bill next week.

#### **Mental Health Commissioner Squirrell Presents Residential Needs to House Health Care Committee**

Information and analysis of residential settings serving individuals with mental health treatment needs in Vermont was presented to the House Health Care Committee. Current residential capacity includes:

**Designated Agencies**

- Adult Crisis Beds: 38 beds
- Youth Crisis Beds: 12 beds
- Adult Intensive Residential: 42 beds

**Peer Service Agencies**

- Adult Crisis Beds: 2 beds
- Adult Intensive Residential: 5 beds

**Physically Secure Residential (State-run)**

- Middlesex Therapeutic Community Residence:

In order to allow individuals to live in the least restrictive environment, DMH recommends the following:

- Physically secure residential facility
- Some growth in intensive residential residences
- Expansion of group home capacity
- Continued focus on housing
- Further exploration of needs related to the geriatric population

The Commissioner will return to the Committee to present the proposal for expanding the secure residential facility to 16 beds. According to DMH a state-run, physically secure residential facility will help reduce barriers to discharge from Level 1 inpatient beds across the state and improve the flow of individuals through the system of care to reduce back-ups in the emergency departments of hospitals.

The House Health Care Committee will provide comments to the House Corrections and Institutions Committee on the \$11 million capital investment to build a new secure residential facility to replace the Middlesex Therapeutic Residential Facility. The funding to build the facility would be included in the Capital but operational funding would need to come from ongoing appropriations.

**POLICY LEGISLATION****House Committee on Corrections and Institutions on Sequential Intercept**

Karen Gennette, Executive director of Crime Research Group, [testified](#) to the House Committee on Corrections and Institutions on the Sequential Intercept Model as an introduction for new committee members and a refresher for others.

Gennette explained that a 2007 Taskforce on Mental Health and Substance Abuse brought this SAMHSA Sequential Intercept model to the criminal justice system to Vermont. She shared the framework [here](#), noting that it provided multiple points of interception where Vermonters' needs could be addressed so that they stay out of incarceration and/or avoid violating conditions of release. She noted that the state developed pre-trial services as a result of this framework. Gennette [shared Addison County](#) as a sample community, pointing out that after arrest, instead of pressing charges, Vermonters could potentially be referred to one of the community agencies such as CSAC.

Representative Dolan, who works at a community justice center, noted the importance of "intercept point 0." Chair Emmons commented: "you want to stop the cycle, you want to address the real risk and needs that would decrease the need for the criminal justice system. [That is why] when you see the data for DOC, you see only a handful of folks with misdemeanors -- [because of the Sequential Intercept]"

framework.” The purpose is to “leave the hard beds for folks who are at high risk to reoffend and high severity of crime... for those who are low risk to reoffend, and medium severity of crimes -- let’s meet their needs in the community.”

### **Senate Health and Welfare Looks at Audio-Only**

The Senate Health and Welfare Committee heard testimony and worked on the audio-only provisions of the “flexibility bill” throughout the week. Senator Lyons opened the conversation by noting that the goal was to have guardrails around use of audio-only care but also allow access to it. Pediatrician Kate McIntosh, who is currently Director of Quality at Blue Cross Blue Shield of Vermont, expressed concerns about patient safety, quality of assessment, and appropriate protections for consumers. BCBS is concerned that paying parity may incentivize providers to use this modality. CVMC Rheumatologist Dr. Teresa Fama and Primary Care Provider Dr Fay Homan provided examples of how audio-only was able to improve access to care for some their patients.

Dr. Joe Lasek, CSAC Medical Director, representing CSAC, VCP, and the Vermont Psychiatric Association, testified to the mutual benefits for providers and patients. Primary care providers and psychiatrists could provide less uncompensated care, leading to less burnout, and patients could have greater access instead of having to come into the office when it’s not necessary. He shared a literature review that showed little difference in outcomes between telephone and in-person for care for mental health, and provided examples of how audio-only can be helpful in engaging first-time patients, especially those with agoraphobia, depression, paranoia, and trust issues.

The committee also heard input from insurers (BCBS, MVP, America’s Health Insurance Plans), the Vermont Program for Quality in Health Care, the Department of Financial Regulation, and members of a provider coalition including Jessa Barnard (Vermont Medical Society), Devon Green (VAHHS) and Helen Labun (Bi-State Primary Care representing federally qualified health centers).

Committee members who were most concerned about these elements of the draft language:

1. Reimbursement for audio-only at parity with in-person care: Senators Hardy and Cummings in particular are concerned that this would drive up costs for co-pays and that this would ultimately increase health insurance rates. Senator Cummings gave the example of a parent calling after hours with a baby with croup. If families are going to get charged for it, this might drive them away from calling. Providers tried to clarify that reimbursement parity would only apply to calls that would previously have been an office visit, and that the provider is obligated to inform the patient of the cost parity.
2. Reimbursement for audio-only with new patients: committee members are concerned that this clause could be exploited and may not have sufficient guardrails to ensure quality of care. They noted the value for mental health but are concerned about its use with other services.
3. Timeline for data collection: Senators wondered if the data collection process could be accelerated so that the provisions above would not be in place through 1/1/25.

In his testimony representing the Department of Financial Regulation (DFR) ([link here](#)), Sebastian Arduengo shared the stakeholder process that they used to develop the emergency rules on COVID flexibilities and offered for DFR to determine reimbursement rates for audio-only when it works with stakeholders to develop codes. The committee felt that this was a better solution than deciding themselves, and would help alleviate the concerns above, although Senator Lyons anticipated that stakeholders may have strong feelings about this approach, and she expected to hear from them. The committee decided to add language to ensure that the cost impact of audio-only is studied during the data collection process and expressed consensus that the goal is to collect data so that audio-only care can be one element of a value-based payment reimbursement system, rather than fee-for-service.

The committee will look over a revised version of the bill during their town meeting week break, and pick it back up on March 9.

### **House Health Care Committee Considers Legislative Priorities**

The House Health Care Committee plans to address the following bills with the goal of completing their work before the March 12<sup>th</sup> cross-over deadline when bills must move out of committee to be considered by the other chamber: H.210, H.46 and H.104. (H.210 was summarized in a previous legislative update)

### **House Health Consider H.104 to Allow use of Telemedicine Across State Lines for Mental Health Care**

Representative Durfee introduced H. 104 - An act relating to allowing certain licensed out-of-state mental health professionals to treat Vermont patients using telemedicine to ensure that during the state of emergency there is continuity of care. It would allow certain clinical mental health counselors to provide clinical mental health counseling services if the services were already being provided in a state where the health care professional is licensed. A health care professional would be subject to regulatory requirements. Vermont clinicians could serve patients who move out of state. It could improve access to mental health services and is limited in scope to ongoing clinical services. It does not allow access to new services across state lines.

Jessa Barnard, Executive Director, VT Medical Association shared her support for continuity of care and believes regional compacts are one way to approach it. She suggests adding a clause to achieve this. The current language is unclear whether psychiatrists are included. If so, it might be confusing to only have one category of MDs.

Jessa Barnard and Lauren Hibbert, Director, Office of Professional Regulation, Secretary of State's Office, agreed that Vermont should establish a workgroup to study this from a broader perspective to be more inclusive of all mental health and health professionals. Additionally, the bill does not require the professionals to check in with the State of Vermont to inform them that they are practicing here. Lauren Hibbert explained that if you don't know who the professional is, there is no way to check on their licensure and if they are practicing in good standing. She said out-of-state professionals may not know about local resources if a client goes into crisis. Lauren also noted that standards for practice are very varied between states.

Kirke McVay, Ethics Committee Chair, Vermont Mental Health Counselors Association, is supportive of the bill because it promotes continuity of care. He was open to the concept of having a workgroup study the proposal.

In the end the Committee decided not to move forward with the bill as presented, instead it will develop language for a workgroup that may be added to the telehealth bill.

### **Rep. Donahue Introduces H.46 to Expand Reporting on Involuntary Mental Health Procedures**

The Legislation introduced by Representative Anne Donahue requires the Department of Mental Health (DMH) to oversee and collect information and report on data regarding the use of emergency involuntary procedures for patients admitted to a psychiatric unit regardless of whether the patient is under the care and custody of the Commissioner.

A.J. Ruben, Supervising Attorney, Disability Rights Vermont spoke in favor the bill which would enable his organization to receive information on length of stays in emergency departments and use of force on all patients in psychiatric units. He suggested that the bill will support the goal of reducing the use of coercion in the mental health system. Currently DRV receives only information on voluntary patients, except for Brattleboro Retreat which provided data on all patients. One benefit of the bill would be the ability to access data for people receiving psychiatric care in emergency departments.

### **House Health Care Testimony on Health Disparities and H.210 the Health Equity Bill**

Maria Mercedes Avila, Ph.D, member of the Governor's Task Force on Racial Equity said health disparities are unnecessary, avoidable, unfair and unjust. All people in Vermont should have a fair and just opportunity to be healthy and to live in healthy communities. She gave examples of health disparities in Vermont. Black people represent just 1.4% of the Vermont population but 14% of Vermonters with COVID. Children of color make up 56% of the children who have gotten COVID and 1 in 3 Indigenous people in the Vermont have a diagnosis of depression, while the rate for white Vermonters is 1 in 5. Furthermore, Native American youth have the highest suicide rate of all ethnic and age groups. Avila said there is a lack of cultural competence by mental health providers, plus racially diverse populations often perceive mental health care as stigmatizing and are more likely to use primary care.

Dr. Avila supports that the legislation would put a structure and system in place to ensure that we are following state and local laws, as well as professional guidelines to eliminate health disparities. She spoke in favor of diversifying the health workforce and would like to see the required training in the bill expanded to include all health and allied health professionals and to include ongoing education and training.

Mike Fisher, the Vermont Health Advocate, strongly supports H.210 especially the proposal to create an office of health equity. He questioned whether placement inside of state government is a wise choice given the potential for future state leaders to not want such an office criticizing its work. He asked if there is a way to better address oversight of health providers. He also suggested an explicit link between the Office of the Health Advocate with the Office of Health Equity. He asked about placing the Health Advocate on the Health Equity Commission.

Mike Bensel, Executive Director, Pride Center of Vermont, spoke about the health disparities that impact LGBTQ Vermonters. He described the minority stress model as experienced by the LGBTQ population who face stressful social environments that impact their mental health. LGBTQ youth are more than twice as likely to be depressed, and adults are 3 times more likely to have considered suicide than other adults. He mentioned that substance use disorders are more prevalent, as well. Furthermore, the risk increases when someone holds more than one minority identities. He strongly supports the bill.

Dana Kaplan, Executive Director, Outright Vermont, spoke in favor of the bill because LGBTQ youth are dying due to outsized risk related to the lack of positive culturally validated identity and ongoing bullying isolation and rejection. The increased mental health risk is due to prejudice, stigma, discrimination. The 14% of state's youth who identify as LGBTQ are more likely to smoke cigarettes, misuse pain relievers, and/or use drugs. In fact, 50% of LGBTQ youth have self-harmed compared to 13% CIS gender and heterosexual youth. Plus, 36% of had a suicide plan compared to 9% of peers and they were 5 times more likely to have attempted suicide. Only 37% of LGBTQ felt valued compared to 65% of other youth. This data is from before COVID, it is likely that there is now increased risk when resilience is stressed and these youth have less opportunity to be in community with peers and supportive adults. Representative Lippert said he could amplify his testimony "with stories from his personal life, life of his close family,

friends and those that he has lost as a result of the incredibly harsh discrimination against LGBTQ family”.

Xusana Davis, Executive Director of Racial Equity and Chair of the Governor's Task Force on Racial Equality, spoke about how H.210 could be impactful from a public health perspective and that the benefits to minorities will be felt by the fuller population. She sees that the comprehensiveness of the bill will go a long way in improving health outcomes. She believes the advisory committee is a great place to start and should include people with direct-experience and could be put in place before the office and then advise on setting up the office. Xusana credited the Department of Health with doing a good job collecting data but said analysis and use the data collected should be bolstered. She agreed with Mike Fisher that if the office is outside of state government there can be greater trust in it but noted that placement outside of state government could reduce the sustainability of the funding and reduce the data sharing.

Jill Sudof-Guerin representing the Vermont Medical Society, Pediatric Association, Family Physicians and Vermont Psychiatric Association testified in favor of the bill and gave some background on how those professionals are addressing inherit bias and explained that it is one of their highest priorities. Jessa Barnard, Executive Director, Vermont Medical Society, also spoke in support of the bill, but against the specific training requirements.

#### ***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.