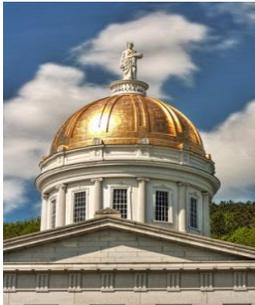




Supporting Vermonters to lead healthy and satisfying lives community by community

Legislative Update for March 30, 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 of 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 funds. 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

Fiscal Year 2022 (FY22) Budget Bill Passes House of Representatives

On Friday, the House of Representatives passed the FY22 budget bill. It includes a 2% Cost of Living Adjustment (COLA) for Designated and Specialized Service Agencies (DA/SSAs). Here is the language added to the budget bill by Representative Fagan in an effort to get the tuition assistance and loan repayment funds released to DA/SSAs.

Sec. E.311 AGENCY OF HUMAN SERVICES; DESIGNATED AND SPECIALIZED SERVICE AGENCIES; WORKFORCE DEVELOPMENT 11 (a) On or before August 1, 2021, the Agency of Human Services shall determine the amount of funds remaining from the \$5,000,000 appropriated to the Agency to make strategic investments in order to expand the supply of high-quality mental health and substance use disorder treatment professionals in 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. 106.1 and shall inform the House Committees on Health Care and on Human Services, the Senate Committee on Health and Welfare, the Joint Fiscal Committee, and the chief executive officer of each designated and specialized service agency of the amount of funds that remain. Notwithstanding any provision of 2018 (Sp. Sess.) Acts and Resolves No. 11, Sec. 106.1 to the contrary, the Agency shall direct the chief executive officers to agree on an appropriate allocation of the funds for strategic investments in order to expand the supply of high quality mental health and substance use disorder treatment professionals available to Vermont residents in need of their services, which the officers shall report to the Agency, at which time the Agency shall distribute the funds to the designated and specialized service agencies according to the agreed upon allocation. (b) On or before January 1, 2022, the Agency of Human Services shall report to the House Committees on Appropriations, on Health Care, and on Human Services and the Senate Committees on Appropriations and on Health and Welfare regarding the amounts allocated to each designated and specialized service agency and the dates of distribution

H.153 Passes the House as Amended by the House Appropriations Committee

The Senate Health and Welfare Committee will take up H.153 after it passed the House of Representatives last week with the language amended by the House Appropriations Committee. 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. It requires the Secretary of AHS to determine what the rates should be and make the recommendations for funding levels, similar to the process used for nursing homes. The Legislature does not need to make the increase but will be better positioned to make an informed appropriation. Here is the language as passed by the House.

§ 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.

H.315 Quick One-Time Bill Passed by Full Legislature

After unanimous approval by the Senate, the House concurred with H.315 as amended by the Senate. This bill includes \$4 million for DA/SSA housing and facility investments; \$850,000 for 10 DAs to hire case managers to work with people impacted by COVID; and \$150,000 workforce training and wellness supports for health and mental health professionals.

Steve Klein Provides Senate Health and Welfare with Overview of ARPA

Steve Klein, the Director of the Joint Fiscal Office, gave the Senate Health and Welfare Committee an overview of the relevant aspects of the American Rescue Plan Act (ARPA). Nationally, Vermont is number 2 in per capita allocation of the funds due to the generous small state minimum. He acknowledged that there is much we don't know about these funds and things are changing daily, with guidance from the federal government expected shortly. He estimated that Vermonters will receive \$1 billion directly from the federal government.

The funds are available until December 2024 (3.5 years) and most will arrive by May and June. CRF was for early in the crisis while these resources are a recovery resource. CRF came as one large state appropriation, but these funds are a mix:

- \$1.052 billion State Relief Funds – respond to public health emergency, negative economic impacts, assistance to households, nonprofits, businesses, lost state revenue, etc
- \$.113 billion Capital Funds – broadband, clean water, state house renovations, etc
- \$.152 billion in rental assistance (in addition to \$200m already received)
- \$.040 billion Mortgage relief funds

During the pandemic 2,400 Vermonters are being housed in hotels, 400 of which are children. FEMA is funding this at \$72 million per year, but by September FEMA funds may dry up. Additionally, some hotels will want to go back to marketing to tourists. Vermont must develop a long-term solution. The Governor wanted to hand over managing this challenge to communities who rejected that proposal. We need a strategy for the homeless within weeks to complete the FY22 budget.

H.315, the quick one-time bill and FY22 budget bill are based on assumptions of allowable uses and allows state government to spend funds in anticipation of receiving them. A good portion of the funds will be held through next January. No funds will be incorporated into new rates in the base budget. The House budget has the precaution of reserving \$38 million in general funds in case some ARPA funds are retracted.

ARPA includes:

- SAMHSA Mental Health Block Grant \$2,783,000 To be spent by 9/30/2025
- Substance Abuse Block Grant \$5,479,000 To be spent by 9/30/2025
- Plus 10% bump in FMAP for 1 year

H.438, The Capital Bill Passes House of Representatives

The Capital Bill has passed the full House of Representatives and is now under consideration by the Senate. This Bill contains language on the secure residential facility highlighted in last week's update.

POLICY LEGISLATION

House General, Housing and Military Affairs Passes Resolution Offering Eugenics Apology

J.R.H. 2. A 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” was voted out of committee on Friday March 26th on an 11-0 vote. The version passed by the committee can be found here:

<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20General/Bills/JRH.2/Drafts.%20Amendments%20and%20Legal%20Documents/JRH.2~Michael%20Chernick~%20As%20Recommended%20by%20House%20Committee%20on%20General,%20Housing%20and%20Military%20Affairs~3-26-2021.pdf>

After many hours of discussion there were not ultimately many substantial changes to the resolution as it was originally introduced. The committee added historical references for context that included the establishment of the State Hospital in Waterbury in the 19th century as well as the establishment of the Brandon Training School in 1915. The committee added language to reference persons targeted by eugenics policies to be: “Vermonters of Native American Indian heritage, including French-Indian and Abenaki families, and persons of mixed ethnicity and of French-Canadian heritage, as well as the poor and persons with disabilities, among others” They clarified that the Eugenics survey “received” (v. “advocated for”) financial assistance from the State and municipal governments and that the effects of the survey “had devastating and irreversible impacts that still persist in the lives of the targeted groups and especially the descendants of those who were directly impacted” This was an addition to the resolution, introducing language acknowledging that the impacts of the survey continue to this day.

The committee did not include language suggested by Susan Aranoff of the Developmental Disabilities Council that made specific reference to the health disparities currently suffered by the BIPOC and disability communities.

Senate Health and Welfare Hears update on All Payer Model (APM)

Ena Backus, Director of Health Reform, Agency of Human Services, gave an overview on the All Payer Model (APM) including information on plans to improve the model. She explained that it focuses on health care delivery and payment reform related to health outcomes. She noted that in Medicaid we have advanced to population-based prospective payments to providers linked to quality and outcomes. She explained that accountable care organizations (ACOs) are “composed of and led by health care providers who have agreed to be accountable for the cost and quality of care for a defined population.” These providers share governance and work together to provide coordinated, comprehensive care for their patients. Under the All-Payer ACO Model, ACOs are the organizations that can accept Medicare’s alternatives to fee-for-service payment (prospective payment, capitation, budget, full risk).

She acknowledged that we have not achieved scale targets and submitted a letter with strategies to achieve the targets which was accepted by CMS. Fee-for-service payments have not been fully phased out, she explained, and it’s difficult for providers to receive payments both prospectively and by fee-for-services at the same time. The Committee learned that the prospective payments were helpful during the pandemic when service utilization went down because they created predictability and stability. She said that payers also benefit from stability and predictability of payments.

Ena highlighted the three years of program results. In 2019, Medicaid spending was higher than negotiated so OneCare had to cover some of the added costs totaling \$6.7 million to DVHA. She pointed out that providers paid prospectively had lower than expected expenditures, but providers paid by fee-

for-services had higher than expected expenditures during the last two years. This gives the Department of Vermont Health Access greater certainty for planning expenditures and shows the value of the prospective value-based payment model on controlling costs. Incremental improvement in care coordination and quality performance were highlighted, too.

Alena Berube, Director of Value Based Programs & ACO Regulation, Green Mountain Care Board (GMCB) explained their role in regulating certain private health care entities in support of the state's broader health care reform goals of (1) curbing health care cost growth and (2) improving quality and population health outcomes. Additionally, she noted that the GMCB is involved in developing health care data and analytics on health care costs and quality to inform public policy. She presented on the role of the GMCB with the APM:

1. Proxy for Medicare
2. Regulatory Alignment
3. Statewide Health Care Data/Analytics

Data analytics include:

1. Reports state's performance under APM agreement on scale, cost, quality, and population health outcomes
2. Monitors for rationing/cherry picking etc.
3. Analyzes patterns in utilization and costs over time and across the delivery system

The ACO represents 46% of Vermont's health care spending. GMCB regulates just over half of Vermont's health care spending.

H.210 Health Equity Bill Passes House of Representatives

The House of Representatives passed the Health Equity Bill. Consideration of the Bill begins in the Senate Health and Welfare Committee this week.

S.117 Health Care Flexibilities Bill Ready for Governor's Signature

S.117 relating to extending health care regulatory flexibility during and after the COVID-19 pandemic and coverage of health care services delivered by audio-only telephone has passed both chambers and was messaged to Governor Scott for his signature to enact it into law on March 25th. The Governor is expected to sign it.

Senate Passes 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. The Bill passed the full Senate and is now under consideration by the House Judiciary Committee. Kristen Chandler, of Team Two, will be testifying on the Bill and will address concerns of Vermont Care Partners around notification to the Department of Mental Health when orders of non-hospitalization are violated.

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.