VERMONT CARE PARTNERS

Supporting Vermonters to lead healthy and satisfying lives community by community

LEGISLATIVE UPDATE FOR MARCH 1, 2023

Over the last week legislative committees worked on the Fiscal Year (FY) 24 budget requests, adult protective services, changes to independent school statutes, therapeutic alternatives, suicide prevention, mobile crisis response, developing a forensic facility, violence in health facilities, access to records by the State Auditor, Medicaid rate setting, peer certification and funding housing first.

Please note that Vermont Care Partners has updated its funding request as reflected in our fact sheet.

TESTIMONY

Peer Certification Testimony at House Health Care Committee

On behalf of the Department of Mental Health, Trish Singer said they endorse peer support services as a valuable service for people receiving mental health services. She noted that Vermont has peer staff at designated agencies (DAs) and at peer-run agencies. Vermont is one of the few states without peer certification. It was highlighted that peers really listen in a nonjudgmental way and share their own experiences.

Trish Singer testified that certification includes standardized training, expectations for supervision, and guidelines for job roles. It gives structure, support, and recognition for these job roles. Certification will enable Vermont to make the service part of the Medicaid state plan and enable Medicaid funding. A peer workforce development grant already supports wellness recovery action plans (WRAP) and training for peers through pathways. Wilda White was subcontracted to develop a Vermont model for peer certification using a series of six stakeholder meetings.

The DMH budget request of $187,500 general fund (GF) will be used for training up to 60 people to be mental health peer support workers. $100,000 will be used to set up the certification process through a separate entity from the training entity. DMH will work with Office of Professional Regulation to develop the certification.

Wilda White testifying in her role as a consultant to DMH, said she was initially skeptical about peer support until she had the experience of having peers liberate her from the system that can be harsh and unkind. VT will have its own competencies and will finalize the code of ethics in relation to those competencies based on peer values. The recommended starting hourly wage is $25/hour. Another

recommendation is to use collaborative documentation. Future specialized credentialling could include supervision, forensic, and geriatric.

House Human Services Considers FY 24 Budget Recommendations

Rep Dan Noyes presented on the DAIL budget recommendations to his Committee for discussion with a 5% COLA for all DA/SSAs and Choices for Care programs. The Eldercare Clinicians were originally funded at $250,000 GF in 2000, now at $235,000 GF. Rep Noyes and Rep Garofano were thinking of recommending $50,000 for that program. The Committee Chair Wood asked them to reconsider the recommendation. Afterward, Vermont Care Partners provided very specific data and a request for $453,000 GF in additional funding.

House Health Care Committee Learns about Northeast Kingdom Therapeutic Alternatives

Deputy Commissioner of Mental Health Alison Krompf pointed out the limited residential resources in the Northeast Kingdom. She shared that a family raised the issue to the Vermont Suicide Prevention Coalition and developed a proposal to the Department of Mental Health and the Governor's Office. DMH learned that there is a high suicide rate, and ahigh use of emergency departments for crisis intervention services due to a lack of therapeutic alternatives in the Northeast Kingdom. Kelsey Stavseth, Executive Director for Northeast Kingdom Human Services (NKHS) began working with the community group, and DMH brought forth information on designs for urgent mental health centers. The proposed program will be run by NKHS for people who have suicidal ideation or other mental health crisis. Treatment will be provided at the center. Alison said they are putting out other awards to test out models with one-time funds.

Kelsey Stavseth gave an overview of the proposed program. There is $1.6 million in the Governor's proposed FY24 budget to support the 'Front Porch' program to provide a specialized mental health treatment specifically for individuals experiencing suicidal ideation or in a mental health crisis in the Northeast Kingdom with expanded availability to other community members, statewide. The facility will provide crisis stabilization, best practice interventions such as Dialectical Behavioral Therapy (DBT), Collaborative Assessment and Management of Suicidality (CAMS), and other clinically indicated supports. Staffing at this facility will include licensed clinical professionals, direct service professionals, and peers. Plus, it will have access to nursing, psychiatric, and medication management services. It will host adults and children with 4-6 beds.

Kelsey Stavseth noted that the 10% Medicaid rate increase will better enable mental health agencies to provide upstream services and avoid more costly hospital care. He said the reason staff leave their jobs is pay. He also pointed out that people with I/DD often have mental health crisis and will be served by the program.

House Health Care Learns about the State's Medicaid Rates Setting

Alycia Cooper presented the Department of Vermont Health Access's (DVHA's) reimbursement goals

- "To be a reliable and predictable payer partner
- To efficiently allocate resources to ensure access to cost-effective care for Medicaid members
- To identify opportunities to pay for value and enable delivery system transformation
- To support other AHS departments in developing or modifying reimbursement methodologies"

She shared information on which services have annual rate adjustments: hospital inpatient and outpatient care, home health agencies, FQHCs, rural health clinics, durable medical equipment, hospice, lab fees, and primary care. Other than applied behavioral analysis, mental health and developmental disability services were not listed as services for which DVHA sets rates.

Vermont Care Partners Weighs in on S.9 Enabling the State Auditor Access to State Contractor Records
In response to S.9, a bill under consideration in the Senate Health and Welfare Committee, which would give the State Auditor the authority to examine the books and records of any contractor providing services to the State. Vermont Care Partners joined with other health associations in opposition to it. The bill which would allow the state auditor to bypass the agency overseeing the contract and perform a "governmental" audit under the GAO's 247-page Government Auditing Standards. The bill would also allow the State Auditor to examine all documents relevant to the contract with the State, opening these documents to public records requests. State agencies have public information officers that understand the subject matter of the documents that they are dealing with. This bill would allow the auditor to get documents from non-governmental organizations directly and any public records request would be mediated by the auditor, not the organization. We are concerned that this will inadvertently result in the release of HIPAA-protected and other sensitive information.

House Health Care Committee Learns about Pathways for Housing and Gets Request for Soteria House
Hilary Milton, Executive Director of Pathways for Housing and Jason Young of Soteria House described their programming to the Health Care Committee. Pathways is a statewide agency which has a warmline, a community center in Burlington, Soteria House, and supports a statewide coalition of peer services. They have advocated for more funds for housing first services through the Housing Committee. Jason Young explained the housing first process. After 3-6 months of residential services, there are follow up services for another 6 months. As a peer-based model, 4 out of 15 staff at Soteria are former residents. They highlighted the cost effectiveness of the residential services at Soteria House with a daily cost of $547 compared to $2,625 per day for psychiatric hospitalization in 2020.

Pathways is requesting $985,000 in one-time funds to purchase a building which will allow them to have 9 instead of 5 residents. Hilary Milton said 45 people were not able to access services this year due to a lack of capacity. She was supportive of a rate increase for designated and specialized service agencies but noted that Medicaid is only a portion of their total funding. They would like to use the current Soteria building for peer respite, but they don't have funding for that yet.

Senate Health and Welfare Accepts Testimony on S.37 Addressing Violence in Health Facilities
After consideration by the Senate Judiciary Committee, Senator Sears asked that the Health and Welfare Committee consider definition of disorderly conduct, a new section on protection of HIPAA information, and de-escalation practices in hospitals. Senator Lyons wants to focus on what happens if a patient becomes violent

State Health Advocate Michael Fisher stated that this is a difficult bill. He recognized the previous testimony about how health care providers have experienced real trauma. He also pointed out that people who are hard to treat need care. He said he knows that health staff are struggling to treat patients, but it's important to recognize that sometimes when people feel out of control, they are more likely to become violent. He has no concern about warrantless arrest for assault or criminal threatening,

but does for disorderly conduct. Disorderly conduct is currently defined as interference with medically necessary procedures. He said a lot of behaviors could fall under that definition of disorderly conduct in the bill that should not lead to warrantless arrest. For instance, unreasonable noise, abusive or obscene language should not lead to warrantless arrest. The health information amendment includes if a person is "medically-cleared" needs further analysis. His final concern is that people who are exposed to bias and hate speech will be put at greater risk. He wants to see hate speech added to the reasons for warrantless arrest.

Devon Green, VAHHS, said that medical clearance is in response to law enforcement requesting that information. A health care worker spoke about the trauma that health care workers are exposed to including stalking and violence with weapons. She wants both verbal and physical de-escalation training. She said the metal detectors in her emergency department are not always used. She said people are escalating faster than before and feels that all health care facilities, including physician and long-term care, should be covered by the bill.

The Committee reviewed the bill with Legislative Council Eric Fitzpatrick.

Suicide Prevention is Addressed in House Health Care Committee

The House Health Care Committee worked through a bill, H.230, whose purpose is to prevent death by suicide by reducing access to lethal means of firearms. Firearms is the focus of the bill because unlike other means of suicide, it is extremely rare for someone to survive a suicide attempt in which a firearm is used, and there is a high prevalence of firearms in Vermont. The bill requires safe storage of firearms out of reach of children and high-risk individuals, extends the applicants for Extreme Risk Protection Orders [ERPOs] to family members as well as law enforcement, and creates a waiting period.

Chris Brandley, Executive Director of the Vermont Federation of Sportsmen's Clubs, provided testimony against the bill. He noted that many in the room have been affected by suicide and he has worked hard to address the connection between suicide and firearms. To decrease suicide, he recommends shifting the focus from firearm legislation to mental health supports. Speaking to the safe storage issue, he suggests looking at Maine and New Hampshire laws, where there is no violation for the act of failing to store a firearm properly, only a violation if it is used improperly. It is unconstitutional to force citizens to lock up their firearms. He also sees waiting periods as unconstitutional. Regarding ERPOs, there is no evidence that use as is with law enforcement petitioning the court isn't working.

Alison Shih, General Counsel for Everytown USA, testified in support, and a consortium of Vermont Medical Providers provided written testimony in support of H230.

After considerable discussion, the committee was tied as to whether to impose a fine if guns are not safely stored, no matter whether the firearm was discharged improperly. The bill they voted out of committee included the fines. The committee also defined a waiting period of 72 hours after the purchaser has cleared a background check. They also discussed the required signage alerting purchasers to the new law. Chair Lori Houghton noted that Bill H.283 is coming and will focus on education efforts for suicide prevention. H.230 passed out of committee 7-3 and will now move to House Judiciary.

Mobile Crisis Services Testimony at House Health Care Committee

House Health Care took testimony on the topic of mobile crisis from DMH Commissioner Emily Hawes and Director of Mental Health Services Samantha Sweet. They shared information about current mobile services in the community, which they described as highly variable by region, as well as the assessment findings from the Health Management Associates [HMA] report. They shared a "comparison chart" defining the differences between Street Outreach, Embedded Mental Health Clinicians with law enforcement, Designated Agency Emergency Services, and "NEW Mobile Crisis."

The Commissioner shared that currently 86% of 988 calls are answered in Vermont. A chart on service utilization was shared which indicated trends of service reductions in child, youth and family services (CYFS), and community rehabilitation and treatment (CRT) services, while emergency services utilization increased. The Committee Chair noted that the dip in CRT and CYFS is less than the increase in emergency services.

They described a robust stakeholder engagement process by consultants, HMA, who determined how to pay for services at a rate per "hit". The Commissioner reported that HMA found mobile crisis and follow-up is not consistent. An RFP was issued for a statewide response, which they have just finished scoring. Rep McFaun was interested in the voice given to people with I/DD in the stakeholder engagement process. They did not appear to have had a direct voice, rather parents and providers were relied upon.

New mobile crisis teams will have a 2-person team: a BA or MA level staff and peer or paraprofessional for each response. Now it is typically done with one-person response. The Committee was told that evenings and weekends there is very limited ability to do mobile response now. The new mobile crisis program will have consistency in performance measures. The Committee was told that standards are not consistent and not monitored and that communities usually just have phone or emergency department responses for crisis intervention. It was specified that the 85% federal Medicaid match will last 3 years.

Hawes testified that the end goal is to start to make a shift toward earlier intervention. The Department reported that they are embarking on a project to understand gaps in service delivery region by region. Chair Houghton asked for a document with more details on how this will be integrated with the current mobile crisis, as well as how peer support credentialing ties in. Last year the State received funding for five regions, and this budget request is to take the initiative statewide. Statewide implementation allows increasing standardization: same training, same tools, same data, and use of 988.

Loree Zeif, Emergency Services Director at Rutland Mental Health Services/Community Care Network, testified next. She sees a downside of statewide response. Standards are great, but a statewide response loses familiarity with local people and resources. Clarifying their work she said, "we absolutely do mobile crisis." Zeif shared examples of collaborative work with the agency's Development Services staff in responding to a client crisis. RMHS has had a clinician embedded with local police for about 15 years. Zeif's Crisis Team goes out with police 24/7 in alignment with Team Two. RMHS has a staff person embedded in the ED and is looking to develop a position to respond to school crises. RMHS is funded for eight clinicians to cover 24/7 mobile crisis and ED. Two positions have been empty for a year, and she has three open positions. She said crisis teams compete for the same staff as outpatient programs, with crisis teams requiring people to work on holidays and two weekends a month. It's hard to imagine how agencies will staff the new mobile crisis initiative. She said having a peer workforce would be excellent. Her BA level staff does follow-up services for nearly 100% of crisis interventions within 24 hours.

Zeif noted that the VCP network was forced to respond as a single entity, given the requirement of no more than five contracts. Painting a state with one brush moves us in the wrong direction. "We know our community, our resources, our clients." Zeif is concerned about separating ED crisis services from mobile crisis. Zeif said she is one of 10 crisis directors who meet monthly to problem solve. "Each director is as passionate as I am…we work hard not to send people to the ED…we tell people to call us before you go to the ED." Making a shift in these practice patterns as a system will require increasing the number of clinicians available to respond and will mostly happen over time.

Chair Houghton responded that "we appreciate and value the community-based services and we know that you are unfunded. We need to ensure that all Vermonters have the ability to be served."

House Health Care Committee Receives Overview of VCP Agencies and Budget Request

Julie Tessler and Dillon Burns provided an overview of Vermont Care Partners network agency services, including the history and mission of the agencies as a public and person-centered system of care, examples of typical clients served, and outcomes. Burns shared data on the thousands of CRT, CYFS, and school-based clients who are being served in the community, preventing utilization of crisis services. Tessler spoke to the funding mechanisms, the payer mix, vacancies and turnover data, and the risks to the overall system and to Vermonters of inadequate funding levels. The 8% increase last year helped, and this year Vermont Care Partners is requesting a 10% rate increase.

Establishment of a Forensic Facility Presented to the Senate Judiciary Committee

Legislative Counsel Katie Mclinn provided a walk-through of S.89, a bill whose purpose is to establish a forensic facility. It defines a forensic facility as a licensed therapeutic community residence for individuals with mental illness coming in through the criminal door—or an individual with intellectual and development disabilities who is coming in with ID/DS who need custody, care, and habilitation in a secure setting for an extended period of time. For individuals with mental illness, Mclinn explained that the focus of this bill is on Orders of Non-hospitalization [ONH]. Applications for involuntary treatment must note that the forensic facility is sought, and has to justify that treatment can only be provided in the forensic facility. The applicant can seek to expedite the hearing based on and must provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the person's condition can be provided safely only in a forensic facility. The bill states that the court

(i) shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while in custody, and clinical interventions have failed to address the risk of harm to the person or others;

(ii) (ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.

If the court finds that the person is in need of treatment at a forensic facility, the court will order that treatment for 90 days, at which point there will be a review. The bill also proposes that placement in a forensic facility is a condition which allows applications for involuntary medication.

For individuals with intellectual and developmental disabilities, "if the Commissioner seeks to have a person committed pursuant to this section placed in a forensic facility, the Commissioner shall provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility." It defines a person in need of custody, care and habilitation as a person with ID/DS who "has inflicted or attempted to inflict serious bodily injury to another or who has committed an act that would constitute a sexual assault or lewd and lascivious conduct with a child."

The bill establishes an annual review process where there needs to be clear and convincing evidence that continued treatment is required. It also requires the departments to engage in rulemaking to establish this facility.

Senator Hashim asked if there was a facility planned. DMH Commissioner Emily Hawes testified that the plan is to repurpose nine beds at the Vermont Psychiatric Care Hospital for this facility. She testified that this facility would serve individuals coming from the criminal system who do not meet hospital level of care. DMH's River Valley Facility, which is opening soon, is one level down from hospital care and cannot do Emergency Involuntary Procedures [EIPs]. This facility is for people with higher needs, she said the system needs all the tools available including EIPs and involuntary medication. EIPs include stopping someone from moving into a certain area, or seclusion, or restraint. Senator Vyhovsky asked about the impact on the rest of the system of this plan. Hawes acknowledged it would take nine beds offline, but other system initiatives to address prevention will likely have an impact on the capacity in the system. Hawes noted that Vermont has a low rate of EIP use compared to national rates and people have due process with a public defender and Vermont Legal Aid—the decision rests with the court. DMH is not convinced the rulemaking piece is needed because the ONH and Act 248 processes already provide protections. DMH would like to see competency restoration as a component of the forensic system.

The Governor's General Counsel Jaye Pershing Johnson testified that S.89 will address a critical gap in the mental health system for dangerous individuals who don't meet hospital level of care criteria.

Public Tuition Dollars to Independent Schools Considered in House Education Committee

House Education heard more testimony on H.258, summarized in last week's legislative summary, which seeks to limit tuition dollars for students in towns without high schools to designated public schools, therapeutic schools, or schools that meet eligibility criteria (the four historic academies Burr and Burton, Lyndon Institute, St. Johnsbury Academy, and Thetford Academy). Witness Andrew Jones, Assistant Superintendent at Mt. Mansfield Union School District, discussed the shift nationally as a result of the recent Supreme Court decision Carson v Makin whose intention is to support vouchers for private and religious schools. The vast majority of voucher users are families who already go to private and religious schools. He argued that vouchers for private and religious schools subsidize the wealthy, allow for exclusion and discrimination, and defund public schools.

Jay Nichols, Executive Director of the Vermont Principal's Association, gave examples of Vermont private schools discriminating on the basis of disability and pregnancy status. The VPA supports some form of the current bill. He noted that there are 82,909 students who are publicly funded. Approximately 79,000 attend public schools. Just over 2,000 go to the four historic academies, so this bill could impact the 1,491 kids attending other independent schools. Public tuition should pay for public schools or

"schools that follow the rules…same dollars, same rules." Rep Williams asked how to deal with the lack of public schools in the Northeast Kingdom. Nichols noted that the bill requires these changes by 2028.

None of the committee testimony or questions focused on the portions of the bill that define and carve out therapeutic schools.

House Human Services Committee Conducts H.171 Mark-up

The committee resumed mark-up work on H.171, an act relating to adult protective services. Under the Assessment and Investigation section, the Committee questioned whether it was reasonable to believe that Adult Protective Services "shall respond to reports of alleged abuse, neglect, or exploitation that occurred in Vermont and to out-of-state conduct when the vulnerable adult is a resident of Vermont." DAIL representatives clarified that APS would have limited jurisdiction for action but would participate and respond as needed.

The committee accepted proposed language to change the response time from APS to 1 business day for life-threatening or severe injuries. Witnesses suggested revised language to add guardrails on collaboration with law enforcement, other departments and agencies to protect vulnerable adults and their information. The Committee and Joe Nusbaum of APS agreed to add "In no event shall the Department disclose information to other divisions, departments, or agencies unless such a disclosure is necessary to further the express purpose of this section." VT Legal Aid and DAIL also recommended revised language around privilege and confidentiality of information when the perpetrator requests an administrative review to only allow "a redacted investigation file, which means only the portion of the investigation file relevant to an Adult Protective Services recommendation, redacted as necessary to minimize disclosure of any confidential information."

Referring to previous testimony, the Committee noted that a vulnerable adult has no say in whether a report is made to APS, and considered language that would give the vulnerable adult the option to pursue legal action. The Committee will need more information before making a decision on this language. Disability Rights VT recommended adding notice of the outcome of the assessment to the vulnerable adult. The Committee agreed and added it to the bill and recommended any entry that includes APS making written notification to the vulnerable adult, that it should be in plain language.

The Committee discussed the pros and cons of using "may" or "shall" when there is a stay of administrative review, and if the alleged perpetrator's name is entered on the registry, and how it affects the rights of the alleged perpetrator. There is potential for harm if a person's name is wrongly entered on the registry.

Removing subpoena power from the DAIL administrative review has historically been the norm and DAIL recommended new language to add clarity. Also, the standard of judgment was debated, and the Committee settled on a "preponderance of evidence" standard. The order of decisions and appeals, particularly administrative review by Commissioner, is confusing because it appears that the Commissioner is reviewing their own report. Chair Wood asked DAIL for a decision-making flow chart to better understand timelines.

Under the Penalties section, the committee decided to replace the sentence that links failure to report to neglect. The Committee also agreed to change the responsibility of imposing an administrative penalty from the Commissioner to the Department of Adult Protective Services. References to the "Commissioner" were changed to the "Department" throughout the bill.

In the Communications section, a clause to require plain language in written materials was added: “Any written communications from the Department, administrative reviewer, or Human Services Board to the alleged victim to the alleged perpetrator shall use plain language.”

The committee reviewed the Request for Relief section and the orders that may be filed in the case of a vulnerable adult to seek relief from abuse, neglect or exploitation. Vermont Legal Aid suggested adding a list of orders to be included that were taken into consideration and added 11 additional orders that were added, including “an order that the defendant shall not come within a fixed distance from the vulnerable adult;” and “an order regarding possession, care, and control of any animal owned, possessed, leased, kept, or held as a pet by the vulnerable adult.”

Revisions to the medical section in the abuse definition raised concerns with the healthcare community, as there are mechanisms in place for medical neglect or abuse with which this definition will conflict. Chair Wood felt it should not be left out, as APS would work with a healthcare facility or law enforcement. An additional consideration is that an APS investigation would be needed to add a perpetrator to the Abuse Registry, which would not happen through other avenues.

LEGISLATIVE RESOURCES

Vermont Care Partners Advocacy Fact Sheet
Here is a link to our updated Advocacy Fact Sheet. The critical points are the rising demand, the impact of the ongoing workforce crisis and need for improved funding.

You Tube link for Mental Health Advocacy Day
https://www.youtube.com/watch?v=S3ml6skUE4A

NAMI-VT Fact Sheet on Mental Health
Here is the NAMI-VT fact sheet on mental health.

Vermont Care Partners Legislative Advocacy Webinar
In case you missed it, here’s a link to the recording of our Legislative Advocacy Webinar to help guide you through the process of working with legislators. In just 40 minutes you can learn the basics for effective advocacy.

Key Committees in relation to Network Agencies
Here are the key Committees in relation to our network services with the Agencies in each legislator’s region noted. We encourage everyone to reach out to your local legislators to introduce yourself and share the issues most important to you: Legislative Committees by DA and SSA Region.

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.