



Supporting Vermonters to lead healthy and satisfying lives community by community



LEGISLATIVE UPDATE FOR MARCH 28, 2023

Last week the House Appropriations Committees worked on finalizing the Fiscal Year (FY) 24 budget bill. Plus, many other Committees worked on critical issues: updating emergency transport, competency and sanity evaluation processes, forensic facility development, independent school oversight, housing for people with developmental disabilities, use of seclusion and restraint in schools, and the transition at Green Mountain

Support Services. A highlight of the week was testimony from staff to the Workers Caucus about the rewards and challenges of their work.

PROGRESS and TESTIMONY

Crossover Leads to Progress on Many Bills

The Senate passed:

- S.36 Warrantless Arrest with Senate Health and Welfare adjustments
- S.47 Transport and Mental Health Warrants
- S.9 State Auditor Access to State Contractors

The House passed:

- H.171 Adult Protective Services
- H.230 Mechanisms to Prevent Suicide
- H.481 Initiatives to Prevent Death by Suicide Prevention

More bills will cross over between the chambers this week.

House Appropriations Fine Tunes the Fiscal Year 2024 (FY24) Budget Bill

The FY24 budget bill has been finalized by the House Appropriations Committee. The full bill will be considered and voted on by the House of Representatives this week. Here are some highlights:

- 4% rate increase for developmental, mental health and preferred providers of substance use services

- \$3 million in one-time funds for designated and specialized service agency (DA/SSA) tuition assistance and loan repayment program with all staff eligible (previously it was limited to mental health and substance use staff)
- \$1 million for 9 new Quality Reviewers for developmental services
- \$9.5 million Developmental Disabilities/Public Safety caseload increase
- \$422K for 4 mobile crisis response positions at Department of Mental Health
- \$2.9 million for community-based mobile crisis response
- \$375K for peer support credentialing
- \$1.6 million for emergency department alternative in Northeast Kingdom

Vermont Care Partners is working with the Agency of Human Services (AHS) on language related to the 4% rate increase and the Tuition Assistance and Loan Repayment program. The legislature wants to specify that the intent of the 4% rate increase is to improve salaries and benefits for direct service and contracted employees and AHS wants the flexibility for using the increase to achieve improved equity in access to services and payment rates. Options for how the new tuition assistance and loan repayment funds will be administered are under consideration.

The bill also calls for a rate study for developmental disability services.

Sec. E.334 DEVELOPMENTAL DISABILITIES AND TRAUMATIC BRAIN INJURY SERVICES RATE STUDY; REPORT (a) The Department of Vermont Health Access, in collaboration with the Department of Disabilities, Aging, and Independent Living, shall conduct a rate study of the Medicaid reimbursement rates paid for developmental disability and traumatic brain injury (TBI) related services. (b) On or before February 15, 2024, the Department of Vermont Health Access shall report the results of its rate study to the House Committees on Human Services and on Appropriations and the Senate Committees on Health and Welfare and on Appropriations.

House Human Services Hears about Green Mountain Support Services (GMSS) Transition

Beth Sightler, Executive Director of Champlain Community Services, provided information on designation rules to the House Human Services Committee. She then shared a history of GMSS redesignation process over the last 18 months and how new concerns arose during the process, including a Department of Labor decision which could have prevented GMSS from contracting with Vermont state government. Other serious concerns that arose during the course of redesignation included: communication, organizational structure and processes, morale, inability to report on encounter data, human resource management, training, and fiscal oversight. Importantly, what wasn't found during the 18-month review process was any problems with quality of care.

After the Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL) issued a letter calling for de-designation of GMSS, agencies from across the state came together to determine how they could assist GMSS in working through the crisis. Commissioner White reached out to two DA's, Lamoille County Mental Health Services and Upper Valley Services to lead the response. Other independent developmental disability agencies stepped up to help,

not wanting people in services to lose staff and possibly homes, or staff to lose their jobs. CCS was identified as being willing to initiate operational control. GMSS, DAIL, and CCS worked quickly to draft an MOU for CCS to initiate operational control. Since then, they designed a work plan and addendum to the MOU focusing on: client needs, communication (internal/external), Agency culture, programs: DS, AFC, TBI and Brain Injury Association, management team, Agency structure, HR, budget, designation, liabilities, IT, training, governance, and encounter data.

Beth Sightler spoke about carefully looking under the hood at GMSS to plan. The Chair asked about a specific timeline to for working through the issues and thinks one should be in place. She asked GMSS interim Executive Director Elizabeth Walters about the continuity of care. She expressed gratitude that DAIL chose to maintain provisional designation which allows continuity for supports and services. She said originally, the GMSS community was very concerned, and they are now communicating transparently about what's going on. It helped to have CCS management team come in to meet with the GMSS staff. People are now feeling hopeful.

Chair Wood said having GMSS enables Vermonters to have a choice in the services they access and expressed gratitude and kudos to Beth Sightler and CCS. Beth Sightler then complimented Elizabeth Walters for stepping up at a difficult time and DAIL Commissioner Monica White for making courageous decisions.

Final Senate Testimony on Transportation of Involuntary People/Mental Health Warrants

Senate Health and Welfare took testimony on S.47, which is a bill proposed by VCP to amend 18 V.S.A §7505, the warrant statute and 18 V.S.A §7511, the transportation statute. The proposed change would remove “mental health professional” as a potential person to transport a patient to the hospital in order to see a physician, unless it is “clinically appropriate” for the mental health professional to do so. It also adds language to provide for transport in the least restrictive means possible, with soft restraints being a first option for law enforcement. The bill clarifies that a warrant can be applied for while the person is in temporary custody. Finally, the bill cleaned up gender language and clarified that a “licensed” physician conducts an evaluation. The bill was voted out of committee, approved by the Senate and will be sent over to the House to consider.

Lamoille County Sheriff Roger Marcoux testified about the cost of soft restraints (\$500-700 per set) and suggested that the language be amended from requiring every officer to have a set of soft restraints (there are 1400 sworn officers in Vermont) to having soft restraints in every cruiser, which is a far smaller number. The Committee made this adjustment.

Jack McCullough, from the Mental Health Law Project, proposed additional language to the bill that would require a signed, sworn affidavit from a witness, if the author of the warrant did not personally observe the behavior that is the subject of the warrant. VCP opposed this language. The committee did not include the language.

DMH submitted written testimony that they opposed the bill altogether and did not see a need for any of the changes.

The Department of Public Safety testified that they supported the bill and especially appreciated the language of allowing a mental health professional to transport a person “when clinically appropriate”. DPS supported the Sheriff’s language of having soft restraints in every cruiser.

Developmental Disabilities Housing Initiative—Act 186 Update

Jennifer Garabedian of the Developmental Disabilities Services Division (DDSD), reviewed the progress of the Developmental Disabilities Housing Initiative with [related slides](#), including background and work with community partners. Julie Abrahamson, the new DDSD Residential Program Developer, has been leading the initiative. Ms. Abrahamson’s key achievements so far include development of Pilot Planning Grant RFP drafts and leadership of the Act 186 Steering Committee. DDSD is working on maintaining a balance between what members want versus what can be done. An example is that some steering committee members wanted to participate in scoring RFP responses, which could be perceived as a conflict if they are connected to applicants. Chair Wood requested that they reconsider that stance because it is not consistent with the statute language, and to add a process for a member to recuse themselves if they find they are in a conflict of interest. The whole committee should be part of scoring.

The Act 186 Steering Committee representation consists of three individuals from Green Mountain Self-Advocates, including a co-chair; two from the Developmental Services State Program Standing Committee, also including a co-chair; and two from provider agencies. The Act 186 Steering Committee timeline is mapped out and the anticipated commencement of grants is expected to occur by mid-August of this year.

The Vermont Developmental Disabilities Council (VTDDC) [housing research brief](#) concluded that Vermont will need at least 600 units to meet the need. Chair Wood noted that she has heard from family members who are concerned that the report doesn’t sufficiently focus on people with higher levels of medical or behavioral need. There are people living in hotels, and a waiting list now which is unheard of, even though some have resources. Director Garabedian clarified that while six hundred is a daunting number, there is room to shift within the existing models and services. The VTDDC brief worked from the Vermont definition of Intellectual and Developmental Disabilities not the federal definition, which is broader. Because of that the number of needed units is probably higher.

Restraints and Seclusion Discussed in House Education Committee

House Education heard testimony on [H.409](#), which seeks to prohibit the use of physical restraints and seclusions in publicly funded schools, as well putting in place a performance

monitoring system for restraints and seclusion and requires technical assistance on evidence-based practices that reduce the likelihood of restraints and seclusions.

Harwood Union Unified School District Superintendent Mike Leichter testified in support of the bill. Prior to his arrival, the Harwood community raised concerns about the use of prone and supine restraints in their schools in the context of the death of George Floyd. He placed a districtwide moratorium on restraints this year and demonstrated a significant decrease in their use. Guy Stevens, a national advocate and parent, shared that there is a growing policy trend at the state level to ban these practices. His organization is partnering with CPI to work on completely eliminating seclusions. Katie Ballard, chair of the Vermont State Special Education Advisory Council, testified in favor of the bill, stating that these practices have disproportionately impacted students with disabilities and have led to trauma.

Committee members asked questions about who is responsible for employing these practices. Typically, each school has a crisis team who is trained in this type of intervention. In 95% of situations, they may have staff from the community mental health agency. Ballard shared concerns that although there is supposed to be an incident report, that is not always the experience of the family or child. Stevens said nationally underreporting is a significant issue.

Chair Conlon concluded the testimony noting that the committee had not yet walked through the bill and will attend to it "later." Based on where this was left and Chair Conlon's statement in the media that this bill would not make the crossover deadline, it appears likely that this bill will not be taken back up until next session.

Oversight of Approved Independent Schools in House Education Committee

House Education continued to work on a bill that would tighten oversight of independent schools who receive public tuition dollars. The purpose of the bill is to limit the use of public dollars to schools that meet the same requirements that public schools are required to meet. The bill contains a definition for therapeutic schools, carving them out as a separate type of independent school: "Therapeutic approved independent school" means an approved independent school that limits enrollment to students who are on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school." In working through amendments this week, House Education dropped the language that would have required all independent schools to become accredited, which would likely have been a significant lift for VCP therapeutic schools. House Education will vote on the bill this week.

Bill on Competency to Stand Trial and Insanity as a Defense in Senate Committees

Senate Judiciary took testimony and then passed S.91 to Senate Health and Welfare. This bill is intended to separate the process for evaluating competence to stand trial from evaluating

sanity. It also requires the exploration of a Competency Restoration Program, with a report to be submitted on November 15, 2023.

Legislative Counsel Erik Fitzpatrick explained that insanity is about the person's condition at the time of the criminal offense, i.e. that the person is unable to understand that it is criminal, or they are unable to control their behavior. If the defendant successfully argues this, it is a complete defense, they will not be able to be charged again, and it can only be raised by the defense. Competency refers to the person's state at the time of the trial and whether they are able to understand the charges and to participate in their defense. Competency can change. The defense, the court, and State's Attorneys can all raise this. Right now, these are evaluated together. If the defendant is found to be incompetent, a defendant can't raise the sanity defense. This bill would decouple them.

DMH Commissioner Emily Hawes and General Counsel Karen Barber testified in Senate Health and Welfare in support of separating competency and sanity evaluations. There is a backlog for competency and sanity evaluations of 1-4 months for inpatient evaluations and 12-month wait for outpatient evaluations. During the pandemic, the backlog started to increase. DMH contracted with Novotel, who provides telehealth evaluations. Novotel has pointed out areas where Vermont is an outlier, including that the number of evaluations is out of line with other states, and that other states don't have competency and sanity evaluations together. Novotel clinicians say they can't argue a sanity defense unless the person is found competent. Additionally, right now DMH is the entity responsible for coordinating and paying, even though DMH may not be a party in the case. This isn't about cost shifting. This gives ownership to the parties in the case. Where DMH comes in is *if* someone is found incompetent, then DMH or DAIL gets involved, and then DMH looks at the person's mental health needs.

Howard Center Medical Director Dr. Simha Ravven testified in favor of competency restoration in both committees. Dr. Ravven is on the faculty at Yale and UVM Medical Schools and teaches on forensic mental health topics. She defined forensic mental health as the intersection of mental health and law. She prefers the term "criminal responsibility" to "sanity" due to the stigma. Dr. Ravven supervises trainees and performs sanity evaluations in private practices. She testified that "it is important to develop competency restoration programs for individuals charged with serious crimes that affect community safety so that those individuals have a reasonable opportunity to resolve their charges." Vermont currently has an idiosyncratic process when people are found not competent, which speaks to the need for a Competency Restoration Program. Core elements of those programs include assessment, individualized treatment, and education. A recent study demonstrated that competency was able to be restored across inpatient, jail, and outpatient settings.

In Senate Judiciary, she shared two case examples where competency restoration could have benefited the client or the community. In Senate Health and Welfare, she noted that it is unethical to evaluate sanity when someone is not competent; separating the two evaluations will also decrease wait times. On the question of expanding restrictions on who can perform evaluations, she noted that psychologists typically have training in neuropsychological testing,

and it's rare that evaluating competence includes those tests. Some states have team evaluations. Often there is a medical condition, which is important to have a medical provider evaluate.

One of the remaining questions is what provider type will be able to provide these evaluations. Vermont and Rhode Island are the only two states that require a psychiatrist to do evaluations. The Vermont Judiciary supports psychologists doing the evaluations. Senate Judiciary added language that allows for psychologists to do the evaluations but with the Justice Oversight Committee exploring this, as well as whether doctorate-level mental health providers and psychiatric nurse practitioners can provide this. The Vermont Medical Society and Vermont Psychological Association support the overall intent of the bill but have concerns about expansion of the providers and do not support the requirement in the bill that defendants should have to pay for their competency evaluations.

In Senate Health and Welfare, DAIL Commissioner Monica White said that DAIL supports S.91. Regarding Competency Restoration, she said the outcome may be different for people with intellectual and developmental disabilities versus mental health. The Committee will take up the bill again on March 28.

Forensic Facility Bill Testimony in Senate Health and Welfare Committee

Senate Health and Welfare had limited time to look at S.89, which would establish a forensic facility, after receiving the bill from Senate Judiciary. DMH General Counsel Karen Barber clarified for the committee that the goal of this bill is to create a new level of care that currently does not exist. She described it as a physically secure residential level of care, where individuals through an Order of Non-hospitalization can receive necessary clinical care, but also the public safety risk is addressed. In earlier testimony, Emergency Involuntary Procedures (EIPS) and involuntary medication would be used at this facility. Senate Health and Welfare will take up the bill on Tuesday, March 28.

Agency Staff Give their Perspective to the Legislative Workers Caucus

Rep Brian Cina organized having designated agencies' staff speak to the legislature's workers' caucus. The three staff were asked to speak about what makes their work meaningful to them and valuable to Vermonters, as well as the recruitment and retention challenges.

After a brief introduction by Rep Cina and Julie Tessler, Larissa Hackett, who provides developmental disability services at Northeast Kingdom Human Services spoke. She said it's important to support marginalized populations to ensure their voices are heard and to enable them to have independence and control of their lives. She explained that staff burnout is high because vacancies lead staff to be stretched too thin, with some working 80-90 hours per week.

Andy Blanchet who provides supported employment support for people with developmental disabilities at the Howard Center, and is also a leader at AFSCME union, spoke about how meaningful it is to support people to achieve autonomy and choice, as well as to move away from

their expected social roles. He reminded the caucus that the system of care has experienced 40 years of underfunding. He also spoke to the importance of investment in upstream funding to reduce more expensive interventions later. He said there is no system of care without a system of people to provide care, and that's hard when people must work multiple jobs to make ends meet.

Brittany Rhoades, a licensed clinical social worker at Lamoille County Mental Health Services, believes in the value of her work and knows that the people she serves appreciate her support, but she feels devalued by the level of compensation. She gave an example of a co-worker with a bachelor's degree and 10 years of experience earning just \$18.25/hour when the local bagel shop is offering \$25/hour. She agreed with the others about how the staff vacancies are causing burnout and said the documentation and paperwork is also stressful. She was clear the pay level is the most critical factor impacting recruitment and retention with some staff unable to live locally.

UPCOMING EVENT

Disability Awareness Day "We Are Your Neighbors"

Online Forum Event, Wednesday, April 19 – 5:00 to 6:30

[REGISTRATION LINK](#)

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.

YouTube 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 and specialized developmental and mental health service agencies.