



Supporting Vermonters to lead healthy and satisfying lives community by community



LEGISLATIVE UPDATE FOR APRIL 25, 2023

Last week Vermont Care Partners provided advocacy on the appropriations bill, adult protective services, transport of people in psychiatric crisis, and our tuition assistance and loan repayment program. We also followed multiple bills impacting our services and those we serve related to development of a forensic facility, seclusion and restraint, independent schools, suicide prevention and interstate compacts for mental health professionals.

PROGRESS and TESTIMONY

Senate Appropriations Approves FY24 Budget Bill

The Senate Appropriations Committee is finalizing its budget proposal. The good news is that they are raising the rate increase for Designated and Specialized Services Agencies to 5% from the 4% appropriated by the House. However, the Agency of Human Services wanted the authority to distribute the funds to achieve “transparency, accountability and equity”. VCP was advocating that the rate increase be distributed equally across all Agencies with a separate appropriation to achieve equity. A compromise was struck that ensures all agencies will receive a 3% COLA and AHS will have authority to distribute the remaining 2% rate increase to improve equity in rates.

Senate Language

Sec. E.300.1 DESIGNATED AND SPECIALIZED SERVICE AGENCIES; INCREASE

(a) In fiscal year 2024, the Agency of Human Services shall increase funding to the designated and specialized service agencies in the following manner: (1) a three percent base increase. (2) The remaining fund increase shall be used to provide payment equity across the provider agencies. These funds will be distributed as determined by the Agency of Human Service in the annual agreements or appropriate valuation model allocations for providers. The Agency shall report to the General Assembly in the fiscal year 2023 budget adjustment process and the status of these payment changes and shall recommend the reallocation of funding across budget line items if necessary.

Both the House and the Senate budgets have \$3 million in one-time funds to continue the tuition assistance and loan repayment program, however, the language on how the funds will be administered and for what will need to be worked out when the House and Senate convene a Committee of Conference to work through differences. Now is the time to advocate to House legislators to maintain the 5% rate increase as proposed by the Senate.

Testimony on Updating the Warrant Statute in House Health Care and House Judiciary Committees

Brandi Littlefield, Assistant Director of First Call at Howard Center testified to House Health Care on the Vermont Legal Aid proposal to add language that requires that the writer to personally observe the actions that demonstrate risk to self or others, or obtain a signed affidavit from a witness. She provided some case examples where the team would not have been able to provide a timely warrant if an affidavit was required. She noted that sometimes her team is following up on a situation where the police officers who observed the behavior were off-duty. These are cases that can involve domestic violence and human trafficking and it's important to get people to safety as quickly as possible. The need continues to rise, and there is a clinician shortage. Littlefield will share data with the Committee.

On Friday, House Judiciary took testimony on [the bill](#) in response to concerns raised in House Health Care on the constitutionality of the warrant statute. Legislative Counsel Ben Novogroski supplied a [memo](#) supporting that this statute provides constitutionally adequate due process.

Team Two Coordinator Kristin Chandler provided an overview of the goal of S.47 from the Vermont Care Partners perspective. The point of the mental health warrant is to get someone help and it is the last resort. This bill is responding to some hiccups in the field. She explained that typically law enforcement detains the person while the qualified mental health professional [QMHP] writes the warrant and tries to contact the judge, although the logistics depend on the time of day. WCMHS Director of Intensive Care Services Karen Kurrle provided three case examples, focusing on challenges if the requirement for a witness affidavit is added. Kurrle explained the process of a conditional diagnosis if the QMHP does not know whether the person has a mental illness. In response to the Committee's questions, she explained that QMHPs take required cultural competence training, and have supervision and training as part of ethical practice.

Wilda White, Founder of Mad Freedom, testified that she challenged the constitutionality based on the 4th and 14th amendments. Her concerns include that people are being picked up based on no personal observations and she is concerned about the application form. She is also concerned about the explanation people are provided when picked up. The term "temporary custody" is without definition and ambiguous. Transport when a warrant hasn't been issued yet violates constitutional rights. She noted "the testimony you've heard assumed the person needed care." She also noted that Mad Freedom attended but didn't participate in the stakeholder meetings.

Jack McCullough, Director of the Mental Health Project at Vermont Legal Aid, testified as director of the organization who represents everyone in Vermont who is subject to this law. He believes personal observation is what makes the statute constitutional. He rebutted Kurrle's examples, noting that in each case a signed affidavit could have been obtained. Karen Barber, General Counsel for DMH, feels that this discussion might need more time, as the conversation went further than expected. DMH wants to see people get treatment as quickly as possible and wants to be careful about making changes. Regarding personal observation, DMH does not have a strong opinion. DMH hears the concerns of the DAs and hears the concerns of Vermont Legal Aid.

Smooth Sailing for Interstate Mental Health Compacts in Senate Health and Welfare Committee

Senate Health and Welfare passed both interstate mental health compact bills out of committee this week on 5-0 votes. [H.62](#) is the Interstate Counseling Compact, which would apply to Licensed Clinical Mental Health Counselors. H.282 is the Interstate Psychological Compact, known as "PsychPact," summarized [here](#). Due to the nature of compacts, most of the bills' language cannot be altered.

Schools Accepting Public Tuition Dollars Discussed in Senate Education Committee

The Senate Education Committee heard testimony from a variety of stakeholders on H.483, the bill on accountability and oversight of approved independent schools that are eligible to receive public tuition. This bill focuses on public tuition dollars going to schools that may have admission criteria that limit enrollment. It carves out therapeutic schools. Witnesses testifying in support included the Superintendent of the Dresden School District, the Vermont VNEA, Principal's Association, and School Board Association. Oliver Olsen, a former legislator, rebutted some of the financial testimony provided, and said the Committee needs to hear from students and parents. Agency of Education Interim Secretary Heather Bouchey testified that new legislation should wait until after the new Rule 2200 series takes effect this summer.

The Vermont Independent Schools Association [VISA] has shared its position on H.483 with Vermont Care Partners. VISA proposes to modify the moratorium on approving new independent schools so that new therapeutic schools can be approved, given that the moratorium was designed to fend off approval of new religious schools.

Reducing Suicides through Firearms Policy in Senate Judiciary Committee

The Senate Judiciary Committee took [H230](#) back up on April 19. The bill seeks to reduce suicide deaths through safe storage requirements, a 72-hour waiting period, and allows family members to seek Extreme Risk Protection Orders. The Committee heard testimony from Robert Ottey, expressing concerns about the impact for shooting ranges of both the safe storage requirements and the lack exemption of the waiting period for gun shows. They reviewed a new version of the bill, which clarifies how fines will be applied if a child uses an unsecured firearm in a threatening manner or causing death or bodily harm; establishes "a clear and convincing evidence" standard for an ERPO filed by a family member; and allows each portion of the bill to be voted on separately. The Committee will take more testimony next week.

H.481 Suicide Prevention Bill Gets Attention in Senate Health and Welfare Committee

The Senate Health and Welfare Committee took testimony from several witnesses on [H.481](#), which defines the role the Suicide Prevention Director for the State and requires a strategic plan and school protocols for suicide prevention. Caitlin Quinn and Nick Nichols from the Vermont Department of Health shared data on suicide rates and risk and described current public health efforts. Nichols noted that suicide prevention work must go beyond enhancing mental health treatment to schools, communities, health care, and the general population. "All Vermonters have a role in facing suicide" is their tagline. Chris Allen, the Director of Suicide Prevention at the Department of Mental Health, shared information about 988, the Governor's Challenge to Prevent Suicide among Service Members, Veterans, and their Families, and Zero Suicide efforts at designated agencies. Terri Lavallee, speaking in her role as a volunteer for the Vermont Chapter of the American Foundation for Suicide Prevention, emphasized the importance of the bill to establish a comprehensive strategic plan, to target the high-risk populations of veterans, farmers, and construction workers, and to ensure support for schools, including postvention work.

Senate Health and Welfare Reviews Workforce Language Related to Health and Human Services

The Senate Health and Welfare Committee reviewed the workforce development sections of the appropriations act, including the funds for the designated and specialized service agencies loan

repayment and tuition assistance program. Julie Tessler spoke to the Committee about the value of the program and its excellent outcomes in achieving significant workforce retention. At the invitation of the Committee Chair, Vermont Care Partners recommended language to strengthen provisions of the program. The Senate Economic Development Committee reviewed the workforce development proposals and made recommendations for incorporating its provisions and funding into the appropriations bill.

House Judiciary Committee Finalizes Warrantless Arrest Bill

The House Judiciary finalized S.36, “An act relating to permitting an arrest without a warrant for assaults and threats against health care workers and disorderly conduct at health care facilities”, which allows for warrantless arrests. It is teed up for third (final) reading in the House of Representatives. After clearing the House, the Senate may choose to accept the updated bill, or a committee of conference will be convened to work through the differences.

Improvements made in the by the House Judiciary Committee include:

- Limiting the health care workers to hospital employees and people providing emergency medical treatment (EMTs).
- Reducing the definition of disorderly conduct to engaging in fighting or violent threatening behavior that interferes with the provision of medically necessary health care services.
- When a law enforcement officer responds to an alleged crime, the hospital staff or EMT shall disclose if the patient is stabilized, has been evaluated or is awaiting inpatient care, and any other information necessary to ensure safety of the patient if custody is taken.
- The law enforcement officer shall not remove the patient if they are not stabilized, have not yet been evaluated or are awaiting inpatient care.

House Judiciary Committee Takes up Bill to Develop a Forensic Facility

Joan Kortendick, whose sister was murdered in 2010, provided heart-wrenching testimony. The alleged assailant never stood trial for the crime because he was determined not competent to stand trial. He was transferred to the mental health department and was hospitalized for years until his death 8 or 9 years later. She also addressed the need to ensure an effort to restore competency as part of S.91. She said there is no enforcement of victims’ rights.

Kelly Carroll of Bennington, whose daughter Emily Hammond was murdered, also gave painful testimony about her family’s experience and why she has been advocating for improved mental health services. The person who murdered her daughter was previously alleged to have committed a crime and was found incompetent and then hospitalized. When he was released into the community there was no notification, she said, and added that he was supposed to be supervised, taking medications, and receiving treatment. Carroll said that he wasn’t following the treatment plan when he murdered her daughter. She feels victims are without recourse once the perpetrator goes into the mental health system. She feels that the murderer has far more rights than she and her family have as victims. She is grateful that there is victim notification in the bill.

Matt Valerio, Defender General, said Vermont is absolutely in need of a forensic facility. He would like doctorate-level psychologists to be able to do competency evaluations, which has been added to the bill. There is a shortage of evaluators, leading to a 6-month delay. He does not support the latest version of S.89 in which the Human Services Panel is similar to a civil commitment board without due process

protections that a civil commitment process requires. Civil commitment was considered previously in Vermont and was rejected in favor of minimum sentencing. A civil commitment panel requires medical doctors, lawyers, psychologists, and others to ensure the person has due process rights substantively and procedurally. The panel, as currently designed, is made up of all political appointees. The person doesn't have the right to counsel and has no rights to challenge the evidence and present their own evidence.

Rachel Seelig, Director of Disability Law Project, related S.89 to the Brandon Training School. The standard applicable to Brandon is applicable to Act 248 today—it assumes that people cannot care for themselves and need to be put in the custody of the commissioner for care, and rehabilitation, with the goal of using the least restrictive setting. In 1988 Act 248 was created to commit people with I/DD who commit crime. Most people receive services voluntarily. There are 25 people committed under Act 248 who are in danger of harm to others. The expectation was to find programming in the community for these individuals. She said people are not placed in incarcerated settings, they live in the community and receive involuntary services for longer than they otherwise would have, had they been incarcerated. They are restricted in access to weapons, privacy and other ways. She said no one under Act 248 section would want a forensic facility placement. She acknowledged that a few people with I/DD have been sent out of state. Rachel added that some people with Autism or other I/DD have not been able to access inpatient mental health treatment because of the complexity of their care needs.

Jack McCullough, Director of the Mental Health Law Project, said it has not been shown that we need forensic facility. He questioned the loss of inpatient beds. He said if people are a danger to self or others then they are eligible for hospitalization. He thinks the burden of proof for orders on non-hospitalization rests with the State. He agreed with Matt Valerio's concerns about the safety panel. The person affected will not have the ability to influence the panel. He doesn't think the victim should have the right of being at the discharge hearing where confidential information is shared.

Max Barrows, Outreach Director for Green Mountain Self Advocates (GMSA) testified that people with disabilities are affected by ablism which reduces their rights. GMSA does not support having a forensic facility for people with disabilities. People with disabilities were not involved in developing the proposal and want to be included in the any future efforts to develop a facility. He spoke about the lack of adequate support to people with I/DD during the pandemic and feels this is not the time to create a segregated institution. He said sometimes people act out as a commentary on the quality of their lives. He reminded the Committee of the promise made to Vermonters when Brandon Training School closed, to a continued commitment to quality services to people with I/DD. He said when people with a disability make a mistake, ablism causes society to respond in a harsher way than when others take the same actions. Rep Rachelson agreed with Max that it would be better to have a stakeholder process to work through the issues he raised.

Susan Aranoff, Senior Planner and Policy Analyst, VT Developmental Disabilities Council, testified on behalf of the Council against inclusion of people with I/DD the proposal for the forensic facility. She shared horror stories about the forensic facility in Connecticut. She said S.89 is lacking due process protections. She spoke about abuse and neglect in the community-based system which has been grossly underfunded. She does not want to see resources diverted from the community to an institutional setting to achieve public safety. She agreed with Max Barrow's concern about the potential of people who have not received adequate services ending up in the forensic facility, saying it's not right and doesn't match up with Vermont values.

Senate Health and Welfare Continues Testimony on Adult Protective Services

Jamie Brew, Senior Director of Nursing at Howard Center, testified on behalf of Vermont Care Partners and the Health Associations. She made the case for two critical changes to the Bill as passed by the House of Representatives:

- Strike the word negligently under § 6902. DEFINITIONS, 1 (A), “Abuse”, and retain the words “purposefully, knowingly, and recklessly.”
- Strike the word negligent under § 6902. DEFINITIONS, 21 (A), “Neglect”, and retain the words “purposeful, knowing, and reckless.

She said that the use of the words negligent and negligently expands the scope of the mandatory reporting to include unintentional errors or omissions, and the potential ramifications of this are significant. Her testimony pointed out that “paid or unpaid, one thing all caregivers have in common is that they are human beings, and even the most well-trained or experienced of providers (including nurses, physicians, therapists, and many other disciplines in the healthcare profession) make mistakes.” If the scope of the mandatory reporting is expanded to include unintentional errors or omissions based on the proposed definitions, she said it would have a detrimental impact on an already strained workforce. If a report is made to Adult Protective Services, the worker would not be able to provide patient care. Without the requirement to make reports, the workers are more likely to report errors and it will be easier to respond.

Betsy Hassan, speaking for the American Nursing Association of Vermont, and health associations including Vermont Care Partners, testified in concurrence with Jamie Brew that the expansion of mandatory reporting to include “negligence” within the definitions of abuse and neglect, including the “negligent failure or omission by a caregiver,” “to carry out a plan of care”, will adversely affect all nurses. She also noted that the broad definition of a vulnerable adult could encompass almost every adult admitted as an inpatient in a hospital who is temporarily “disabled” and requires “assistance” with “personal care,” or who have “some impairment” in their ability to protect themselves from abuse or neglect. Both testified that the bill will negatively impact a culture of safety and create a punitive system.

Ruby Baker, Executive Director, Community of Vermont Elders (COVE), testified in support of the bill and was involved in its development. She requested changes to the definition of “vulnerable adult” to include clinical eligibility for long-term care Medicaid waiver services and adding impairment to ability to provide for self-protection. Michael Benvenuto of Vermont legal Aid agreed that the definition of vulnerable adult should be revised to speak more clearly to the person’s vulnerability to protect themselves.

Stuart Shurr, General Counsel for DAIL, testified that DAIL is willing to adjust the definition of vulnerable adult to “some impairment of the adult’s ability to protect the adult from the reported act of abuse, neglect, or exploitation.” He testified that adding a “the” serves to respect the dignity of persons with disabilities by acknowledging that not every disability or infirmity renders one vulnerable to every type of alleged maltreatment. He addressed the concerns about language specific to “negligence” by proposing carving out medical professionals on a temporary basis until a study committee can further study the issue. Jamie Brew and other health association representatives communicated to Stuart after his testimony that his proposal is limited to address their concerns.

House Health Care Committee Reviews Forensic Facility Bill

The Committee listened to an overview of H.89 by Legislative Counsel Katie McLinn as passed by the Senate. A section by section summary can be found at this [link](#).

Mental Health Commissioner Emily Hawes explained that purpose of S.89 is to address a gap in our system of care for people who need treatment at the therapeutic level rather than the 24-hour nursing to meet hospital level treatment needs. A forensic facility would be locked, and staff could provide hands-on restraint and use seclusion, as well as involuntary medication with a court order. Karen Barber said that the beds will help the flow in the system of care, and that most people waiting in emergency departments are not waiting for the level 1 beds at Vermont Psychiatric Care Hospital, so taking these 9 beds offline will not have a significant impact on the inpatient system of care.

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.