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LEGISLATIVE UPDATE FOR APRIL 3, 2023

Last week the House of Representatives passed the Fiscal Year (FY) 24 budget bill. With major money and policy issues on the House and Senate floors, the Committee agendas were a little more limited last week.

PROGRESS and TESTIMONY

House Judiciary Committee Begins Testimony on Health Care Workers Warrantless Arrests

Legislative Council Eric Fitzpatrick walked the House Judiciary Committee through H.36 which would permit arrest without a warrant for assaults and threats against health care workers without probable cause and without a witness under certain circumstances. The bill adds to the existing allowances for warrantless arrest:

1. assault against a health care worker in a health care facility
2. criminal threatening against the health care worker in a health care facility
3. disorderly conduct: engaging in fighting, violent, tumultuous, or threatening behavior that interferes with medically necessary care in a health care facility.

Alison Davis, MD, Director of Emergency Services at Rutland Regional Medical Center, spoke about how staff are under increasing stress from assaults. Staff feel that no one is going to do anything about it. She gave examples of violence and noted that dealing with these crises takes time and resources away from other patients. Rep Rachelson asked her about people who are violent as part of their medical condition, such as dementia. Dr. Davis said it's about competency, and it's not up to health providers to determine if the person is cognizant. Rep Rachelson expressed concern that if such a person was considered medically stabilized and removed by law enforcement, they might not be able to manage without support.

Rep Dolan expressed similar concerns about moving patients into the criminal justice system. Davis said it's not always mental health patients. The situation can involve family members or people with substance use or homelessness. She would put people with mental health conditions as having these issues only in the context of substance use or homelessness. Dr. Davis said sometimes multiple law enforcement officers drop off people at risk for nurses and hospital staff to deal with them. If hospital staff could call law enforcement back it would be safer. Rep Rachelson asked if there could be a collaborative approach with having trained law enforcement to keep staff and patients safe on site. Dr. Davis said there is no funding for that. If a person was arrested, but

couldn't leave the facility, the Department of Corrections (DOC) would have custody and DOC staff would need to supervise at the facility.

Jill Maynard, Director of nursing at Southwestern VT Medical Center spoke about the physical and psychological trauma. She said the nursing profession is struggling because the amount and severity of violence has been increasing over the last three years. She stressed that there is no coordinated mental health system in Vermont, and that if patients have a mental health diagnosis, they are not held accountable for their actions while the staff are victimized. She spoke about being stalked, sexually threatened and assaulted by people with mental health conditions. She then gave examples of people without mental health diagnoses who were violent. She wants consequences for people who are violent. Patricia Johnson, a nurse at the same hospital shared her experience with violence and verbal assaults and noted that the harassment has followed her into her personal life.

Dr. Sexton, Director of the Emergency Department (ED) at Northeast Vermont Medical Center and President of VT Medical Society, said the environment is challenging and unpredictable with 100% of ED nurses experiencing violence. He said law enforcement could stay with the person in the ED if continued care is necessary. He would like people brought in for involuntary treatment by law enforcement to have officers remain if there is a threat of violence. Committee Chair LaLonde replied that he would look into that option. Dr. Sexton said this bill is for people for whom de-escalation techniques don't work.

Drew Hazelton spoke about his EMS experience with violence and gave an example of law enforcement not willing to accompany staff in an ambulance with a violent patient. He emphasized that the EMS worker is usually alone with the patient inside an ambulance. He noted the law enforcement won't respond to people who are suicidal. If it is unsafe and law enforcement won't come, EMS will leave and not take the person. Sometimes the result is a death. He said historically, law enforcement used to come until the Use of Force Policy was implemented. If they go into a home and there is violence, they retreat. It wasn't clear if the bill will cover EMS, as it is already a protected profession.

Devon Green, representing the Vermont Hospital and Health Systems Association (VAHHS) explained that the bill will clear up confusion between hospitals and law enforcement. Federal regulations say if a person is "in custody" then law enforcement can be with them in a hospital or remove them. This bill would enable taking the person into the custody of law enforcement. VAHHS knows hospitals are hiring security staff and doing de-escalation training. Last year UVMC had 700 incidents, of which 500 were in the ED. VAHHS proposes that the language "medical cleared" be changed to "stabilized". Rep Rachelson asked, "if the person is agitated or anxious how will you determine that they are stabilized? Won't staff have an incentive to say they are stabilized maybe when they aren't, just to get them out of there?" Devon Green said the staff are professionals and have skills to de-escalate.

Chair Lalonde clarified that "stabilized" means the person's condition is safe for them to be transported somewhere else and their medical condition won't worsen immediately. Additionally, if law enforcement thinks violence has ended, they may leave.

Zach Hughes spoke in his role of the Vice President of VT Psychiatric Survivors. He noted that he has had the experience of being assaulted in his role as a mental health staff person and has seen these behaviors in the ED. He said in his work at Maple House Crisis bed, he looks at the totality of the situation. He questioned who will determine if a person is cognizant about a situation and expressed concern about them being arrested and put out on the street. He noted that when that happens, a person may not want to come back for medical care. He pointed out that the majority of people who

behave like this are under medical duress. He wants to get rid of special mental health units in EDs, which he feels are very prison-like. Rep Richelson asked about best practices and he suggested more peer support, training for hospital staff and alternatives to EDs. When asked by Rep Dolan if arrest without charge is a middle ground, Hughes said arrest itself is a traumatic event and will deter people from using the hospital.

Daniel Batsie, Deputy Commissioner of Public Safety (DPS), said their biggest concern had been about medical clearance and the Department is no longer in opposition to the bill, but they are concerned about where law enforcement will bring people.

Major Jim Whitcomb of the VT State Police testified that when they take custody of an angry person in response to health care workers' need for safety, there is automatic escalation due to their uniform, but they are well-trained to de-escalate. The State Police ensure the person receives what they need which could be a substance use treatment facility or to a responsible adult. While they have cruisers and cells, they would rather offload to a different facility, however, if a person is assaultive, they would not be accepted. The individual may be brought back to barracks temporarily until released or taken to a correctional facility. Soft restraints are used for transport.

Chair LaLonde is interested in finding an alternative approach to arrest and wondered if the person could be put under temporary custody instead of an arrest occurring? Rep Arsenault asked if other personnel could intervene. Major Whitcomb said yes, they could use embedded workers to provide crisis response and there is also hospital security.

Mourning Fox, Director of Mental Health Programs for DPS, spoke about the crisis specialist at state barracks who could accompany police to come to EDs and noted that there are other mental health staff at local police, and designated agency (DA) alternative services. Training on de-escalation is done for embedded crisis specialists including de-escalation skills. There is also Act 80 training at the police academy on interacting with people in mental health crisis with a focus on de-escalation and risk factors for violence. He pointed out that a person in crisis may not have a mental health condition. Generally, the person is feeling out of control. While it can be helpful to move a person from the location of crisis, arrest and transport to a barracks is traumatizing. He agreed with Zach Hughes, that it will not have a calming effect and dissuade a person from seeking health care in the future.

The House of Representatives Passes FY24 Budget

See last week's update for a summary of budget provisions that impact developmental, mental health and substance use services. The big picture is that the House budget has a "General Fund (GF) appropriations total \$2.4 billion. All funds (unduplicated) total \$8.5 billion. Compared to the FY 2023 budget as adjusted, this reflects a GF increase of \$303 million, and all funds decrease of \$118 million. This total includes \$227 million of one-time GF appropriations."

From the Summary:

- \$175 million for Housing
- \$48 million for workforce bill
- \$46.8 million Medicaid rate increases
- \$11,293,696 DS Medicaid rate increase by 4%
- \$5,243,992 8 DMH – Increase rates for DA/SSAs by 4%

- \$198,964 for GF-only DMH – increase rates for DA/SSAs by 4%
- \$1 million for VDH-SUP – rate increase – preferred providers – 4%
- Adds 3 positions to DAIL’s Office of Public Guardian and creates 9 quality assurance and compliance oversight positions.
- \$1.15M to DMH for mobile crisis response

Independent School Bill Amended with Moratorium on New Independent Schools

Rep Conlan, on behalf of the House Education Committee, successfully had H.483 amended to include a moratorium on new independent schools.

Sec. 18. MORATORIUM ON NEW APPROVED INDEPENDENT SCHOOLS ELIGIBLE TO RECEIVE PUBLIC TUITION Notwithstanding any provision of law to the contrary, the State Board of Education shall be prohibited from providing initial approval for an approved independent school to be eligible to receive public tuition to any school that submits an initial attestation pursuant 16 V.S.A. § 166(b)(9)(x) after August 1, 2023. The moratorium created under this section shall remain in effect until further direction by the General Assembly.

Forensic Facility and Adjustments to Competency and Sanity Evaluations Passes the Senate

This week, the Senate passed two bills that were a priority for the Agency of Human Services: S.89, which establishes a forensic facility, and S.91, which separates competency evaluations from sanity evaluations.

Senate Health and Welfare successfully amended S.91 to include language to require DAIL and DMH to include other interested parties in their report on developing a Competency Restoration Program. They also adjusted language to ensure Senate Health and Welfare and House Health Care Committee involvement in the Legislative Justice Oversight Committee’s review process of procedures for competency and sanity evaluations, specifically, which types of clinicians can perform the evaluations.

The Senate Health and Welfare Committee made a few minor amendments to S.89 regarding establishing a forensic facility, including: adding language to specify that a unit at the Vermont Psychiatric Care Hospital shall be relicensed as a Therapeutic Community Residence; requiring a report due on February 1, 2024 outlining the staffing and training plan and resources need at the forensic facility; and requiring annual reporting from 2025-2030 from DMH and DAIL on average daily census, the quantity and location of people waiting to receive treatment, and the number and types of Emergency Involuntary Procedures used. Both bills will now move to the House.

During a lull in the Senate Health and Welfare Committee, Susan Aranoff from the VT Developmental Disabilities Council requested to speak. The VT DD Council has not taken a position on S.89 and S.91. Their focus has been working with a parent group on housing. It is now March 2023, which means the State closed Brandon 30 years ago. And yet “100 families wish we had a Brandon because there is no housing.” In addition to housing, the VT DD Council would like to see an increase in oversight in the community and in facilities. She noted last year’s Act 186 required a report on oversight, and the recommendation of that report is “not to do anything” – no new positions. She characterized the recommendation as “we are going to wait for CMS to tell us what to do.” Aranoff said, “I’m sorry-- people are dying, families are scared – it’s a battle here.” They support the budget as passed by the

House with 9 positions for oversight and thanked Sen Lyons for continuing to ask about people with developmental disabilities in relation to S.89 and S.91.

Looking at the Rule 4500 Series on Seclusions and Restraints in House Education Committee

House Education Chair Conlon opened the meeting by addressing a statement made by VISA Executive Director Mill Morre in VT Digger on H.483, the bill that tightens the use of public tuition dollars to independent schools, in which Moore stated that VISA was not able to testify. Conlon rebutted this account, quoting email invitations. He said it was so contrary to the reality that he needed to respond on the record.

Shifting to H.409, which addresses restraints and seclusions, Conlon said the Committee was not going to look at the bill specifically but rather discuss the current situation on the ground through discussion of Rule 4500 led by Committee member Chris Taylor from Milton, who is a Behavior Interventionist [BI]. Taylor opened by stating that he is glad to have the bill because it forces discussion on the issue. He walked the Committee through Rule 4500, the administrative rule that governs the use and reporting of seclusions and restraints. He noted “imminent risk of harm” is subjective, although Rule 4500 is pretty clear where staff *shouldn't* be using physical restraints and seclusion. He said, “every story we heard in testimony was a horror story...or an adult who wasn't trained.” He believes the system should be tweaked and evaluated but noted that rules are limited in that they can't dictate what a human being is going to do in every circumstance. Taylor said it's a very small percentage of students who are restrained who don't have a behavior plan, and it's a very small percentage of students statewide who are restrained or secluded. He noted that the current incident report is comprehensive; H.409 requires a lot of reporting which duplicates Rule 4500. H.409 would have the incident report go home. Taylor thinks more oversight would be a good thing, but he wonders if it should focus on human services and mental health oversight instead of the Agency of Education. H.409 addresses chemical restraint, which he has not seen.

The Committee discussed the challenges of enforcement of Rule 4500. “How do you discipline a public school?” Taylor shared information about the de-escalation training he does across the district. A committee member would like to see that kind of training getting out to parents. It would be valuable “if we worked on it cross-level, the way our designated agencies come out of the school and into the home.” Taylor said that every student is different, and a relationship model is key. BIs know what works for their students.

Chair Conlon wrapped up the in-depth discussion by saying, “This is a very challenging topic – no one wants to come in and say, ‘Gee, we want to do it.’ It was helpful to walk through the current rules.” Taylor thinks the Legislature is going to find a path. There was no mention of the bill moving out of Committee this session.

Independent Schools Overview in Senate Education Committee

Agency of Education General Counsel Emily Simmons presented an overview on Independent School categories. The memo focused on the different types of independent schools that are categorized for the purpose of reporting attendance and truancy. Simmons noted that the memo does not include discussion of the Agency's responsibilities for therapeutic approved independent schools. It states “These schools limit enrollment to students who are on an IEP or 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 a local education agency and the school. These schools are eligible to receive public tuition,

which is inclusive of both general and special education services and is at a rate approved by the Agency of Education.” Simmons noted that the House bill focused on use of public tuition dollars carves these schools out. Some examples include the Vermont School for Girls, and the Howard Center’s Jean Garvin School. School districts use tuition to pay for that, so they are not schools subject to school choice. The Senate Education Committee will be inviting AOE back to hear testimony on their positions.

The Interstate Counseling Compact in Senate Health and Welfare Committee

House Health Care Representative Daisy Berbeco introduced the Interstate Counseling Compact to her Senate counterparts. The House Health Care Committee thinks this bill will improve access and expand the profession. She noted that because it’s a Compact, the Legislature cannot adjust a lot of language, but House Health Care did add background check language. With a Compact in place, a licensed mental health counselor can join the compact and get a compact license in a compact member state; they then have license reciprocity. This allows clients and clinicians to extend their clinical relationship if someone leaves the state, which can be great for the client. Maine, New Hampshire, and 18 other states are included. She noted that this will benefit military personnel and their families who relocate a lot. The Compact also preserves each state’s authority to regulate the practice. The state where the clinician holds the license is the state where they are disciplined. There won’t be additional fees for currently licensed counselors.

Rep Gulick asked what impact this Compact will have, “given that we have capacity issues in mental health nationwide?” Sen Lyons said the Committee will want to see the interplay between the Office of Professional Regulation’s telehealth rules and the Compact. Legislative Counsel Katie McLinn then walked the Committee through a [section by section overview](#).

Senate Passes School Safety Bill

The Senate passed S.138, a school safety bill. The bill requires:

- (1) public and approved independent schools to adopt a policy mandating biannual options-based response drills, following upcoming guidance that will reflect trauma-informed best practices;
- (2) public schools and approved independent schools to adopt all-hazards emergency operation plans;
- (3) public and approved independent schools to adopt an access control and visitor management policy; and
- (4) public and approved independent schools to submit certain data to the Agency of Education if the school utilizes a behavioral threat assessment team. If a student is on an IEP or 504, the bill stipulates that “a behavioral threat assessment shall not replace the manifestation determination review process required under the Individuals with Disabilities Education Act.”

The Senate approved an amendment that allows a school to leave a structure unlocked for “agricultural, recreational, or other reasonably practical purposes directly related to a school’s mission or curriculum.” This bill will now move to the House.

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.