Testimony to Senate Health and Welfare

February 28, 2023

Re: S. 36

Mary Moulton, Executive Director, Washington County Mental Health Services

Thank you for allowing me this opportunity to testify on S. 36. I am also testifying for Vermont Care Partners which represents the DAs and SSAs in the State of Vermont. In reviewing the Bill, questions came to mind based on the current language and in view of known scenarios for people we serve and advocate for, particularly regarding individuals who are in need of treatment or who are extremely vulnerable to the Emergency Room environment.

As a mobile outreach crisis clinician, I have had my share of close calls and beyond. Within my career's span, I have taken my turn at difficult encounters. In our region's ER, I have been choked, thrown against a wall, and threatened with murder. In the community, I have been held at gunpoint and I have been sexually assaulted. Although these were traumatic episodes, I had a view of my work and a team of people around me that were so supportive, I was able to continue. And hearing the stories of those who came forward gave me the courage to speak these words, which I have never shared publicly. It is hard to speak the words. Having shared this with you, I have some concerns I'd like to share regarding the Bill's language and perhaps need for clarity in being sure that we are not removing rights for those in need of treatment.

Medical Clearance & History: I would like to ask that the term medical clearance, which is a clinical decision made by a physician, is clearly understood. By the way, medical clearance for people in mental health crisis who were going to a psychiatric unit did not used to exist. 30 years ago, a person was admitted directly onto a unit. It was only in early 2000 that medical clearance came to pass for these admissions because medical emergencies were missed in a couple of cases.

Law Enforcement Support and History: Medical staff and law enforcement actually worked together for many years to maintain safety in ERs and, in some instances, hospitals hired security. This happened significantly after Vermont State Hospital was destroyed by Tropical Storm Irene and the emergency room environment changed. Other hospitals stepped forward to open beds but, on any given day during that time and through current day, there are not enough staff for the available beds and/or not enough high acuity beds available to accept individuals, leaving some very big challenges for emergency rooms.

Following the state hospital's closure, law enforcement continued the work of being in ERs and DMH paid for Sheriffs to sit with individuals to augment staff. DMH also trained staff to differentiate between when law enforcement could intercede and when staff should intercede per CMS standards.

Support for consistent staff training - given the fact that law enforcement seldom, if ever, provides that level of support any longer in ERs (particularly in view of the new use of force policy/law) and many ER staff are saying they are not receiving a level of training necessary to enhance safety in working with some of these very challenging situations, Vermont Care Partners is very much in favor of a provision for training and workplace safety. Perhaps DMH could be helpful in recommendations as there was a volume of work done in this regard; and that training, which was given to ER staff and Sheriffs, is no longer provided.

What does medical clearance mean? There are people who have been given "medical clearance" who remain in emergency rooms awaiting a bed or community placement. The Bill's current language:

When an authorized representative of a health care facility that operates as a covered entity requests that a law enforcement officer respond to and potentially arrest a patient for an alleged crime committed on the premises, the facility shall disclose to the law enforcement officer information that is sufficient to confirm whether the patient is medically cleared so that the patient may be removed from the facility and shall disclose any other information that will be necessary for purposes of safely taking custody of the patient.

Also enhancing concerns about behavior that might be considered extremely disruptive to an ER: (*20) The person has committed a violation of 13 V.S.A. § 1026 (disorderly conduct) that interfered with the provision of medically necessary health care services in a health care facility as defined in 13 V.S.A. § 1028(d). Sec. 2. 18 V.S.A. § 1883 is added to read…*

> Example: young adult with autism awaiting community placement with staffing is ready for discharge with no program available for weeks. During this time, waiting in the ER, there may be episodes of physical or verbal aggressions. Could there be a medical clearance and determination to charge for aggressive behavior. Answer: yes
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> Example: person in mental health crisis, awaiting a hospital bed for voluntary or involuntary hospitalization, may be "medically cleared" with no available bed for days and exhibiting behavior as described within the disorderly conduct definition. Does that status create a situation where the person could be subject to arrest?

Suggested language to create guardrails for treatment:

> *Any person who has been determined to need voluntary or involuntary hospitalization due to a mental health crisis shall not be subject to the provisions in this bill that would criminalize any resultant behavior. (This could also be the case for individuals requiring hospitalization for substance use treatment – voluntary only).*
>
> *In* addition, *any person with an Intellectual/Developmental Disability or Autism will not be subject to having their behavior identified as criminalized should that behavior be a result of a mental health crisis or manifestation of unmanageable stress directly related to their disability.*
>
> *Any person who has dementia would not be subject to having their behavior identified as criminalized should that behavior be a result of a mental health crisis or manifestation of unmanageable stress directly related to their dementia …*

I would also recommend some level of tracking take place regarding the actual implementation of this law. How many times did law enforcement respond to issue a citation for a warrantless arrest and due to what situations, noting if individuals were mentally ill, developmentally disabled, diagnosed with dementia, members of the BIPOC or LGBTQA+ communities.

Lastly, I would fully agree with Mike Fisher's testimony to exclude those elements of disorderly conduct related to a person being loud and threatening, *unless that behavior is determined to be volitional.*

And at the root of all of this is the lack of upstream services for individuals who we hope would not be entering the emergency room if sufficient supports were in place for housing, mental health, substance use, and emergency room diversion units that could be staffed by mental health clinicians, psychiatric staff, and peers. I understand that the spirit of this Bill is a step to protect; we would really tackle the problem if we take steps to prevent. Prevention is our real problem.

Thank you!