

An Independent Study of the Administration of
Involuntary Non-Emergency Medications
Under Act 114 (18 V.S.A. 7624 et seq.)
During FY 2011

Supplemental Report

Report to the Vermont General Assembly

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Submitted to:

The Senate Committees on Judiciary and Health and Human Services

And

The House Committees on Judiciary and Human Services

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Introduction

The Vermont statute governing administration of involuntary non-emergency psychiatric medications to clients of the public mental health system committed to the care and custody of the Commissioner is 18 V.S.A. 7624 et seq – referred to in this report as Act 114. The statute requires two annual assessments of the act’s implementation, one conducted by the Department of Mental Health (DMH) and a second conducted by an independent reviewer. Flint Springs Associates was contracted to conduct the independent assessment of implementation during FY 2011 (July 1, 2010-June 30, 2011).

Flint Springs Associates has conducted the independent assessment of Act 114 implementation annually since 2003. In compliance with statutory requirements for the annual independent assessment, the assessment has included review of Vermont State Hospital (VSH) documentation and interviews with VSH staff on implementation of Act 114; interviews with persons who have received medication under Act 114; analysis of data on outcomes associated with implementation of the statute; interviews with DMH staff to review steps taken by the DMH to achieve a mental health system free of coercion; and recommendations for changes in systems or the statute.

On August 28, 2011, Tropical Storm Irene flooded the Waterbury State Office Complex where DMH and VSH along with numerous other state entities were located. All VSH patients were evacuated on that day and moved to a variety of mental health facilities across Vermont. This historic event also displaced VSH staff and DMH central office staff. The havoc caused by Irene created uncertainty about whether, when and how FSA would be able to conduct and complete the annual assessment in a timely manner. Conversations with DMH central office staff led to the following decisions concerning the difficulties encountered:

- FSA should attempt to gather as much information as possible from VSH staff and records, and from willing current and former patients, in order to turn in a report to the legislature by the January 15, 2012, deadline.
- If information required by the statute was not accessible for that timeline, FSA would be able to submit an amendment to the report by April 1, 2012.

The Preliminary Report submitted on January 15 included:

- Data on persons receiving medication under Act 114 available electronically through DMH and
- Results of interviews with persons who received medication under Act 114.

This Supplementary Report includes information gathered from:

- Review of VSH documentation and
- Interviews with DMH leadership.

FSA did not conduct interviews with VSH staff members. Individuals who had been employed and situated at VSH are scattered presently throughout the state in a variety of positions. This decentralization of staff has made it difficult to locate employees and schedule interviews. In addition we believe that the upheaval of the past six months and the amount of time that has lapsed from the reporting period (July 2010 through June 2011) to the present would pose difficulties for staff reflecting on activities and conditions associated with administration of Act 114 medication.

Review of Documentation

The Act 114 statute requires the Department of Mental Health to “develop and adopt by rule a strict protocol to insure the health, safety, dignity and respect of patients subjected to administration of involuntary medications.” VSH has in place a protocol and set of forms intended to guide its personnel in adhering to the protocol, including written, specific step-by-step instructions. Instructions detail what forms must be completed, by whom and when they must be completed, and to whom copies are distributed. Quality Management at VSH is responsible for ensuring that forms are complete and updated. Act 114 packets, which include instructions, required forms and a check list to guide staff on the protocol and documentation, have been developed. Forms include:

1. Patient Information: Implementation of Non-Emergency Involuntary Medication – completed once (triplicate: patient’s copy, patient’s record, medical records) – includes information on the medication, potential side-effects and whether patient wishes to have support person present.
2. Implementation of Court-Ordered Involuntary Medication – completed each time involuntary medication is administered (duplicate: patient’s record, medical records) – includes whether support person was requested and present, type and dosage of medication, and preferences for administration of injectable medications.
3. 30-Day Review of Non-Emergency Involuntary Medications by Treating Physician – completed at 30-, 60- and 90-day intervals (duplicate: patient copy, medical records) – includes information on dose and administration of current medication, effects and benefits, side-effects, and whether continued implementation of the court order is needed. The form includes a place for the DMH Legal Unit to sign off that the form has been reviewed for auditing.
4. Certificate of Need (CON) packet – completed anytime Emergency Involuntary Procedures (EIP), e.g., seclusion or restraint, are used. This form provides detailed guidelines for assessing and reporting the need for use of emergency involuntary procedures.
5. Support Person Letter – completed if a patient requests that a support person be present at administration of medication.

The protocol includes a requirement that each patient on court-ordered medication will have a separate file folder maintained in Quality Management including:

1. Copy of court order
2. Copy of Patient Information Form
3. Copies of every Implementation of Court-Ordered Medication Form
4. Copy of 30/60/90-day reviews
5. Copies of Support Person Letter, if used
6. Copies of CON, if needed
7. Summary of medications based on court order
8. Specific timeline of court order based on language of court order

To assess the implementation of the Act 114 protocol, FSA reviewed forms completed by VSH staff for 29 persons under Act 114 orders in effect during FY 11 (July 1, 2010 - June 30, 2011). Multiple orders were issued for three individuals during that time period, resulting in 33 orders

for which documentation was reviewed.¹ VSH Quality Management staff provided copies of most of the relevant forms from files, removing all identifying information to protect patient confidentiality for each of 29 persons receiving involuntary medication during FY11. Staff had access to Quality Management files retrieved from the flood, but most medical records were lost in the flood. Some forms, particularly the Certificate of Need (CON), were most often kept in medical records; therefore, in the case of missing forms, compliance with this requirement could not be verified because of the damage caused by Tropical Storm Irene.

Patient Information Form

Patient Information forms were present for 28 of the 33 Act 114 orders (85%); five Patient Information Forms were not present. Three of the missing forms were for individuals who had been under multiple Act 114 orders and Patient Information Forms for these individuals from previous orders were included in the files. Two explanations are possible for these three missing forms: the three forms may have been in medical records; or the forms may not have been completed if staff considered the Patient Information Form for the first order sufficient. If the latter explanation were correct, VSH should consider ongoing training for staff on the issue. It was not possible to determine why the Patient Information Forms were missing from the other two files; again the forms might have been in medical records, or they may have never been completed.

All the available forms had complete information. Three of the forms had been signed by patients; forms without patient signatures were checked to indicate that the patient refused to sign. The Patient Information Forms had been finished, as required, prior to completion of the forms for Implementation of Court-Ordered Involuntary Medication. Most often, the Patient Information Form was dated within a day or two of the date of the court order; in one instance, an appeal procedure delayed implementation of the order for four months.

Form for Implementation of Court-Ordered Medication

FSA examined the forms documenting the first three administrations of involuntary medication following the court order, and then the forms used for administration of medications at 30 days and 60 days following the court order. Of the 158 Implementation Forms reviewed, 156 (99%) were complete; two forms were missing information regarding whether or not the patient wanted a support person. In both cases, the remaining implementation forms for that court order were complete. In most cases, the first implementation form was completed on the same day or within one or two days following completion of the information form. In three cases, all involving long-lasting intravenous injection (IV) medication (e.g. two to four weeks), there was a corresponding delay of two to three weeks between the first administration of medication and completion of the Patient Information form.

One form indicated that the patient wanted a support person present when medication was administered. For this individual, a support person was requested on the first four forms reviewed, but not the fifth (two months after initial administration of medication). The specific support person named varied, but all were psychiatric technicians. When a requested staff

¹ During FY 2011, 40 petitions were filed requesting orders for non-emergency involuntary medication under the provisions of Act 114 for 36 different individuals. Of those 40 petitions, 30 (75%) were granted, 9 (23%) were withdrawn, and 1 (2%) was dismissed. Documents for the 30 petitions granted in FY11 were reviewed, along with documents for three orders granted in FY10 and implemented during FY11.

person was not at work at the time of the medication administration, another served in the role of support person, and a note to that effect was entered on the form.

In response to 21 (64%) orders, patients chose to receive medication orally beginning with the initial administration; in five cases (15%) the first 1-3 administrations of medication patients choose to receive medication by injection, subsequently electing oral administration; three individuals (9%) switched back and forth between oral and injection administration; and, five individuals (15%) received all medications through long-lasting injection.

30-Day Review of Non-Emergency Involuntary Medications by Treating Physicians

Required review forms (filled out at 30, 60 and 90 days) were present and complete in 28 of the 29 files (97%). In one file, the first 30-day review form was present, but the second form was missing. It was not possible to determine whether the missing form had been in medical records. In two files the forms were completed after the 30-day time period. One of these files was for an individual who had multiple orders; the reviews which were supposed to be completed for this individual in September, October, November and December were all completed in December. The other file had a review due in February which was completed in March.

Certificate of Need (CON) Form

Seven Certificates of Need (CON) Forms were required in the study period for administration of medication. Specifically, four patients required hands-on restraint for administration of medication through injection. For one patient, brief hands-on restraint was required once for the first administration of medication; for one patient it was required for the first two administrations of medication; and, for one patient it was required for the first three administrations. One patient initially took medication orally and subsequently refused oral medication and required brief hands-on restraint for administration of medication orally. That patient later took medication orally.

CON forms are generally kept in medical records, and in past years retrieved for purposes of this assessment. This year, six forms were not available because medical records were not accessible. However, one file had a copy of a needed CON; this form was complete. The restraint was described as “brief hands-on” to facilitate administration of the injection.

Steps to Achieve a Non-Coercive Mental Health System

In order to identify steps taken in FY11 to achieve a mental health system free of coercion, a group interview was conducted on March 5, 2012, with seven Department of Mental Health (DMH) central office leaders, including the Commissioner. DMH staff anticipate that significant changes will be seen in the implementation of Act 114 for FY12, as the provisions of the statute must now be followed by a number of hospitals around Vermont that have been treating individuals who would have been hospitalized at VSH.

DMH was able to report on steps taken prior to the evacuation of VSH in August 2011 toward creating a mental health system free of coercion. These steps represent a continuation of work underway in FY10, including:

- A Workgroup to study Orders of Non-Hospitalization (ONH) – this group was exploring the appropriate and effective use of ONHs. The goal had been to bring to the legislature information on the most effective use for ONHs.
- A Workgroup to study self-injurious persons and persons with diagnoses of borderline personality disorder – this group sought to understand effective treatment, and explore the concern often raised that individuals with these diagnoses might be hospitalized for unnecessarily long periods of time.
- A Workgroup to review children’s psychotropic medications – this group was discussing concerns about the use of psychotropic medications for children with a focus on identifying appropriate use of the medications and development of guidelines.
- Continuation of advances made with the Reduction of Seclusion and Restraint grant – VSH had plans to continue to incorporate the core strategies identified through the grant, including continuation of the monthly review of data on involuntary procedures by moving this function from the grant’s Advisory Committee to the VSH Steering Committee. DMH had intended to move the grant coordinator into a DMH position tasked with introducing evidence-based practices and securing necessary technical support, consultation, or resources for the community mental health centers.

In FY10 DMH had begun discussions about implementing the provision of Act 114 which allows for community administration of involuntary non-emergency medication, in settings beyond VSH. The closing of VSH resulting from the flood has required that non-emergency medication be administered under Act 114 in a number of hospitals. During FY12, DMH is responsible for providing guidance to these hospitals on adherence to the statute, including procedures and documentation employed by VSH.

Recommendations

FSA makes the following recommendations for the implementation of Act 114.

Hospital Practices

In order to assist hospitals responsible for implementing Act 114, FSA recommends that DMH use the VSH protocol and forms to guide hospitals in developing a clear set of procedures and documentation. The FY12 Independent Study of the Administration of Involuntary Non-Emergency Medications should carefully study establishment and implementation of protocols and methods of documentation in each institution administering non-emergency involuntary medication under Act 114.

FSA recommends that hospitals ensure that persons receiving medication under an Act 114 order receive:

- clear and understandable information about the Act 114 protocols already developed
- a review of the rights to and process for filing grievances
- a reminder of one's right to have a support person present when receiving medication under Act 114
- an opportunity to debrief after receiving the medication
- ongoing emotional support about receiving court-ordered medication throughout the patient's stay at an inpatient facility

FSA also recommends that hospital staff continue efforts established by VSH to:

- help patients understand the reasoning behind the decision to seek an involuntary medication order
- invest time in talking with patients about the process and their options.

In order to ensure the proper administration of non-emergency involuntary medications by staff at all levels, FSA once again recommends development of an Act 114 Debriefing Tool similar to the tool VSH had in place to help the Treatment Team debrief after emergency involuntary procedures undertaken with patients.

FSA recommends that hospitals administering Act 114 medication provide formal training or formal orientation annually for all clinical staff including physicians, nurses, social workers and psychiatric technicians on the statute and its provisions.

FSA recommends that staff training be available, focused on a principle-based model which emphasizes collaborative problem-solving between clinical staff and patients (Professional Assault Crisis Training, Pro-ACT) as had been provided through the Reduction of Seclusion and Restraint grant.

Statutory Changes

As noted in past assessment reports, the statute requires two separate assessments of Act 114 implementation, one by DMH and one by independent contractors. In practice this means that information is gathered twice, often requiring VSH staff, and more significantly patients, to

participate in somewhat duplicative interviews. FSA recommends that the Vermont General Assembly consider revising this to require that one annual assessment of the statute be conducted by an independent evaluation team.

Annual Act 114 Assessment

FSA recommends that the following steps continue to be used in future assessments of Act 114:

- Provide a financial incentive for the participation, through interviews, of individuals who have received court-ordered medication.
- Request input from individuals who received medication under Act 114 in previous years, not just the year under review, in order to learn about longer-term outcomes including individuals' engagement in treatment and their lives in the community as well as experiences receiving medication under Act 114 orders.
- Ask persons interviewed if they would like any family members to be interviewed and pursue these as permitted.
- Use the same source of data on dates of admission, commitment, petition and court orders for both the Commissioner's assessment of Act 114 implementation and the independent assessment.

Conclusion

Vermont State Hospital has used written protocols and record-keeping forms to guide adherence to the provisions of Act 114. In FY11, documentation was generally complete enough to indicate that all provisions of Act 114 were implemented.

Persons who had received medication under Act 114 and were interviewed for the FY10 assessment were divided in their perception about how they were treated when receiving court-ordered medication. Individuals whose last hospitalization had taken place between July 1, 2009, and July 1, 2010, reported improved treatment experiences and more positive perceptions of their treatment than individuals whose more recent hospitalizations had taken place farther back in time. However, interviews with individuals hospitalized during FY11 did not reflect the same positive experiences and in fact these individuals reported feeling coerced in similar ways to reports from interviews conducted in earlier years.

FSA believes that the training provided during FY10 through the Reduction of Seclusion and Restraint grant was associated with the positive responses heard in the FY10 interviews. Staff may have used the communications and collaborative problem-solving skills learned in the Pro-ACT training in all aspects of their work during FY10. However, FSA's evaluation of the Reduction of Seclusion and Restraint indicated that in FY11 staff did not continue to receive this training. FSA can only speculate that without the ongoing availability of skill-building training, the staff behavior may be perceived as more coercive and less positive by patients in crisis.

It is critical to provide ongoing staff training to ensure adherence to the provisions of Act 114, and perhaps even more importantly, to provide staff with the tools to reduce the use of seclusion and restraint, thus promoting a less coercive mental health system.

Tropical Storm Irene has presented Vermont with new challenges. With respect to administration of Act 114, there is no longer one institution with an established set of protocols to ensure adherence to the statute. The challenge for institutions now responsible for administering non-emergency involuntary medication under Act 114 will be to establish protocols, documentation practices, and most important, staff training to ensure that the provisions are implemented appropriately.