VAHHS Comments on Draft 3.1 of S.287
April 28, 2014

Our primary concern remains developing a judicial process that can meet the specific needs of all patients on a case-by-case basis.

We agree that time to establish a therapeutic relationship and a voluntary plan of care is essential, as demonstrated by the fact that a voluntary plan of care is established in the vast majority of hospitalizations. Our goal for S.287 is to better serve a very small group of individuals for whom that is not the case.

We believe it is essential that the judicial process is responsive to the reality that the condition of some patients deteriorates with time.

In the interest of brevity, in most cases we have limited our comments to provisions we oppose or to which we have a suggested revision. In a few instances it seemed important to make our support a change explicit. There are a number of other proposals in the draft that we either support or on which we do not have a specific position that we have not listed here.

Section 1

VAHHS proposes **restoring the term** "head of hospital" to the definition of interested party. The term is used in the section on the Application for Involuntary Treatment which generally take place in a hospital. The head of the hospital (or designee) is often the interested party in those cases.

Section 2

VAHHS proposes amending §7259 to say "….within five days **~~of the certificate's production~~ after the certificates are received by the Department in accordance with it's contracts or memoranda of understanding with hospitals, or designated hospital criteria.**

Section 3

Technical proposal: Eliminate or modify §7504(c). The provision's purpose is not clear because the reference back to §7504(a) doesn't seem to comport.

Sections 4 – 6 (emergency examination process)

Overall, VAHHS is supportive of the amendments to these sections and the goal of the changes.

We have a few specific proposals:

1. Section 5, §7508(a) add a final sentence: **The department of mental health shall maintain a process by which the psychiatric examination and certification can be made available in hospital emergency departments when admission to a inpatient psychiatric unit is delayed for more than twenty-four hours.**

2. Section 5, §7508(b), change the term "held for admission" to "held for admission **to an inpatient psychiatric unit.**" This is a technical proposal that reflects that fact that sometimes patients are admitted to medical/surgical units of hospitals that do not have psychiatric units while they await a psychiatric placement.

Section 7 (Probable Cause)

Support:

§7612a(c) – application for involuntary treatment shall not be dismissed solely because the probable cause review is not completed within the time period required by this section.

Section 8

Support:

1. §7615 (a)(2)(A) – Clarifies that the court can rule on the motion to expedite based on the affidavit without a hearing.
2. §7615 (a)(2)(A)(i) – "Good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regain [sic] competence" is a standard that gets at the crux of the issue: additional time is helpful for some patients and may result in voluntary treatment, but it can worsen the condition of others.

3. §7615 (a)(2)(A)(ii) – Change from "may" to "shall" grant for the "serious bodily injury" expedited group.

Section 9

VAHHS **supports** §7624(b)(2)(B): Automatic consolidation of involuntary treatment petition with involuntary medication petition for individuals that can be expedited based on the "serious bodily injury" criteria.

VAHHS **opposes** the elimination of the "motion to consolidate" provisions from the Senate version of the bill.

Section 11

VAHHS **supports** the new language in §7626(d) about providing education and information on advance directives.

Section 12

VAHHS **supports** the clarification about the primacy of "competence" in §7627(d) and §7627(e).

VAHHS **opposes** the additions to §7627(f)(1) which limit the clinical options available for the court to consider for each individual patient. Under current law, the court specifies in the medication order the "type of medication, the dosage range, the length of administration and method of administration for each." This allows the court to hear clinical evidence from both sides and render a decision.

VAHHS **opposes** the proposed changes to §7627(f)(2). To comply with this sections, physicians currently complete a monthly assessment and submit it to the Department of Mental Health. This is in addition to more frequent documentation in the medical record. Physicians already have to notify the court when involuntary medication is no longer necessary under 18 VSA §7627(l). Legal Aid has the authority to move to have the order terminated under 18 VSA §7627(m). Disability Rights Vermont has staff on the psychiatric units and there are also patient advocates on the unit. Either could alert Legal Aid if they believed a hospital was continuing an order improperly. We **support** the addition to §7627(g) that says <u>If at any time a treatment provider finds that a person subject to an</u>

order for involuntary medication has become competent pursuant to 7625(c) of this title, the order shall no longer be in effect.

Section 13

Proposal:

§7629(c): The distress and insult to human dignity that results from compelling a person to participate in medical procedures against his or her will are real regardless of how poorly the person may understand the procedures or how confused or mistaken the person may be about the procedures. A~~ny trauma ensuing from the administration of involuntary treatment or medication shall be considered whenever a medication decision is made for a person without the person's consent.~~ **When a medical decision must be made for a person who has been found to lack capacity to make his or her own decision, the trauma ensuing from administration of medication against the person's will must be carefully balanced with the need to restore an individual's liberty, personal autonomy, and capacity to make his or her own decisions regarding current and future health care.**

We want to be sure that the intent language explicitly acknowledges that in some circumstances, involuntary medication is appropriate.

Section 14

VAHHS **supports** the addition of 18 VSA §9707(h)(1)(D)(ii) which creates a process by which the Probate Court will rule on the validity of the "Ulysses Clause" before it is implemented by the hospital.
