



STATE OF VERMONT
HOUSE OF REPRESENTATIVES

MEMORANDUM

To: Rep. Mitzi Johnson, Chair, House Committee on Appropriations
From: Rep. Ann Pugh, Chair, House Committee on Human Services
Cc: Rep. Shap Smith, Speaker, House of Representatives
Date: February 24, 2016
Subject: Recommendations on Governor's FY17 budget

As requested, the House Committee on Human Services (Committee) has reviewed provisions of the Governor's proposed FY17 budget. The Committee thanks the House Committee on Appropriations for the opportunity to comment on these provisions.

In reviewing the budget and making recommendations, the Committee aims to balance available resources with the following policy goals:

- to ensure that vulnerable Vermonters are safe and protected;
- to ensure that structures are maintained to assist Vermonters in moving out of poverty;
- to ensure that the General Assembly addresses problems and removes barriers that can lead to even greater costs to the State; and
- to ensure that all Vermonters have access to services and supports that will enable them to attain their highest level of independence and realize their potential.

Part I of this memorandum addresses specific language proposals in the budget and other issues the Committee wishes to note. Part II identifies the Committee's priorities around the distribution of resources.

I. Proposed Language and Other Items of Note

E.312 Public Health

The Committee recommends the following changes to the language pertaining to AIDS and HIV:

(a) AIDS/HIV funding:

* * *

(4) In fiscal year 2017, the Department of Health shall provide grants in the amount of \$100,000 in general funds to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for community-based HIV prevention programs and services. These funds shall be used for HIV/AIDS prevention purposes, including syringe exchange programs, improving the availability of confidential and anonymous HIV testing; prevention work with at-risk groups such as women, intravenous drug users, and people of color; and anti-stigma campaigns. No more than 15 percent of the funds may be used for the administration of such services by the recipients of these funds. The method by which these prevention funds are distributed shall be determined by mutual agreement of the Department of Health and the Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers.

(5) In fiscal year 2017, the Department of Health shall provide grants in the amount of \$150,000 in general funds to Vermont AIDS service organizations and other Vermont HIV/AIDS prevention providers for syringe exchange programs. These funds shall be added to the current grants for the three existing syringe exchange providers receiving grants under subdivision (4) of this section. The distribution of this sum shall take into consideration the number of Vermonters served and shall prioritize those providers offering wraparound services. The funding shall be used to cover provider costs incurred in excess of the current level of funding and to expand providers' services. The performance period for these grants will be from April 2015 through June 2016.

Also, in past years the budget contained language directing the Department of Health to fund tobacco cessation programs that serve pregnant women. The FY17 budget proposal contains no such language. The Committee recommends the addition of the following language:

Funding for the tobacco programs in fiscal year 2017 shall include funding for tobacco cessation programs that serve pregnant women.

E.314 Involuntary Treatment and Medication (18 V.S.A. chapter 181)

The Committee recommends deletion of all proposed language and all anticipated savings related to the involuntary treatment of mental health patients in the care and custody of the Commissioner of Mental Health. It believes that neither the statutory changes nor the “booked” savings are appropriate for the reasons set forth below.

First, the Committee is very surprised at the proposed wholesale repeal of a law that the General Assembly carefully revised just two years ago. In 2014, Act 192 received

extensive review in the Senate prior to weeks of testimony in both the House Committees on Judiciary and on Human Services. The resulting law represents a very careful balance between the desire of the Department of Mental Health and designated inpatient providers to medicate patients who choose not to consent to psychotropic drugs and the basic civil rights of individual patients (who have the right to refuse any particular treatment under Vermont law). Since the closing of the Vermont State Hospital following Tropical Storm Irene, the annual number of applications for involuntary treatment has nearly doubled from 40 to 76.

This is a very sensitive issue. The initial law in 1998 was hard fought. The public hearing in 2014 was intense and emotional. The Committee believes that a revision of this magnitude to a major policy in mental health treatment has no place in the budget. The Committee is still considering the possibility of taking up the issue as a stand-alone bill, but asks that all language be deleted from the budget bill.

Second, the Committee does not see the basis for the \$5 million savings asserted by the administration for many reasons. DVHA cites a “90-day median length of time to decide whether ‘treatment’ (meaning involuntary medication) will be provided.” However, we heard testimony from the Director of Psychiatry at Rutland Regional Medical Center that level 1 patients’ total stays averaged 60 days in 2015. The Committee also questions the assertion by DVHA that level 1 beds are largely subsidized without a federal match. Rather, it is the Committee’s understanding that all designated hospitals, including the Vermont Psychiatric Care Hospital and the Brattleboro Retreat, qualify for federal funds through the State’s Global Commitment waiver.

In this context, it should be noted that on February 11, the Department of Mental Health testified that the statistics were inaccurately reported in the Department’s official 2015 report, so the Committee does not have accurate numbers regarding patients and their length of stay.

The proposed budget savings also fail to reflect the costs of increased litigation, which would inevitably follow the proposed change in the law. Both the Rutland Director of Psychiatry and the Mental Health Law Project acknowledged that speeding up the legal process would result in more contested cases, more 2–3 hour hearings, and more difficulties in building trust between patients and treating physicians.

While the Committee spent many hours taking testimony on this issue, there are still many questions that the Committee did not have time to pursue due to the compressed timeframe allotted for review of the proposed budget. It does intend to revisit the question of whether the law should be revised. At this stage, however, it respectfully requests that both the language and the savings be removed from the budget.

E.318.2 Child Care Services Program; Waitlist

The Committee was surprised to learn that there may be a waitlist in the child care services program. It would like more information as to who will be impacted by the waitlist and when use of the waitlist will be triggered.

E.321.2 General Assistance Report

The Committee agrees with the proposed budget language that would authorize one report each year pertaining to General Assistance. To effectuate this policy change, the relevant proposed language should be changed from "...preceding calendar half-year..." to "preceding calendar year...."

Other Considerations

First, in reviewing the budget proposal pertaining to Choices for Care, the Committee noticed that the annual inclusion of language governing "savings" is absent and recommends that it be added to this year's budget. The language in question is as follows:

Sec. E.308 CHOICES FOR CARE; SAVINGS, REINVESTMENTS, AND SYSTEM ASSESSMENT

(a) In the Choices for Care program, "savings" means the difference remaining at the conclusion of fiscal year 2016 between the amount of funds appropriated for Choices for Care, excluding allocations for the provision of acute care services, and the sum of expended and obligated funds, less an amount equal to one percent of the fiscal year 2016 year total Choices for Care expenditure. The one percent shall function as a reserve to be used in the event of a fiscal need to freeze Moderate Needs Group enrollment. Savings shall be calculated by the Department of Disabilities, Aging, and Independent Living and reported to the Joint Fiscal Office.

(1) It is the intent of the General Assembly that the Department of Disabilities, Aging, and Independent Living only obligate funds for expenditures approved under current law.

(b)(1) Any funds appropriated for long-term care under the Choices for Care program shall be used for long-term services and supports to recipients. In using these funds, the Department of Disabilities, Aging, and Independent Living shall give priority for services to individuals assessed as having high and highest needs and meeting the terms and conditions of the Choices for Care program within the Global Commitment waiver.

(2)(A) First priority for the use of any savings from the long-term care appropriation after the needs of all individuals meeting the terms and conditions of the waiver have been met shall be given to home- and community-based services. Savings may also be used for quality improvement purposes in nursing homes but shall not be used to increase nursing home rates under 33 V.S.A. § 905.

(B) Savings either shall be one-time investments or shall be used in ways that are sustainable into the future. Excluding appropriations allocated for acute services, any

unexpended and unobligated State General Fund or Special Fund appropriation remaining at the close of a fiscal year shall be carried forward to the next fiscal year.

(C) The Department of Disabilities, Aging, and Independent Living shall not reduce the base funding needed in a subsequent fiscal year prior to calculating savings for the current fiscal year.

(c) The Department, in collaboration with Choices for Care participants, participants' families, and long-term care providers, shall conduct an assessment of the adequacy of the provider system for delivery of home- and community-based services and nursing home services. On or before October 1, 2016, the Department of Disabilities, Aging, and Independent Living shall report the results of this assessment to the House Committees on Appropriations and on Human Services and the Senate Committees on Appropriations and on Health and Welfare in order to inform the reinvestment of savings during the budget adjustment process.

(d) On or before January 15, 2017, the Department of Disabilities, Aging, and Independent Living shall propose reinvestment of the savings calculated pursuant to this section to the General Assembly as part of the Department's proposed budget adjustment presentation.

(e) Concurrent with the procedures set forth in 32 V.S.A. § 305a, the Joint Fiscal Office and the Secretary of Administration shall provide to the Emergency Board their respective estimates of caseloads and expenditures for programs under the Choices for Care program.

Second, the Committee reviewed the Report on Improving Grants Management for Results-Based Programs submitted by the Agency of Human Service in compliance with 2015 Acts and Resolves No. 58, § E.300.4. It believes that the report should be codified at 3 V.S.A. § 3022a to avoid having to include it in each year's budget bill. The Committee further recommends that the required grants inventory be submitted on January 15 rather than February 15, to provide the General Assembly with more time to review the information contained therein. The Committee also recommends the addition of language requiring that the inventory measure the number of people served. The proposed language is provided below:

Sec. E.300.4 3 V.S.A. § 3022a is added to read:

§ 3022a. IMPROVING GRANTS MANAGEMENT FOR RESULTS-BASED PROGRAMS

(a) The Secretary of Human Services shall compile a grants inventory using the Department of Finance and Management's master list of all grants awarded during the prior fiscal year by the Agency or any its departments to any public and private entities. The inventory should reflect:

- (1) the date and title of the grant;
- (2) the amount of federal and State funds committed during the prior fiscal year;
- (3) a summary description of each grant;
- (4) the recipient of the grant;
- (5) the department responsible for making the award;

- (6) the major Agency program served by the grant;
- (7) the existence or nonexistence in the grant of performance measures;
- (8) the scheduled expiration date of the grant; and
- (9) the number of people served by each grant.

(b) Annually, on or before January 15, the Agency shall submit the inventory to the General Assembly in an electronic format.

(c) The Secretary of Human Services and the Chief Performance Officer shall report to the Government Accountability Committee in September of each year and to the House and Senate Committees on Appropriations annually on or before January 15 regarding the progress of the Agency in improving grant management in regard to:

- (1) compilation of the inventory required in subsection (a) of this section;
- (2) establishing a drafting template to achieve common language and requirements for all grant agreements, to the extent that it does not conflict with Agency of Administration Bulletin 5 ~ Policy for Grant Issuance and Monitoring or federal requirements contained in 2 C.F.R. Chapter I, Chapter II, Part 200, including:
 - (A) a specific format covering expected goals and clear concise performance measures that demonstrate results and which are attached to each goal;
 - (B) providing both community organizations and the Agency the same point of reference in assessing how the grantees are meeting expectations in terms of performance.
- (3) executing Designated Agency Master Grant agreements using the new drafting template;
- (4) executing grant agreements with other grantees using the new drafting template; and
- (5) progress in improving the overall timeliness of executing agreements.

Third, upon reviewing the Integrated Family Services program, the Committee finds that the pilot is headed in a good direction, but recommends that the Agency of Human Services provide a Gantt chart as part of its FY18 budget presentation to provide some clarity around the pilot's projected timeline.

Fourth, the Committee supports the inclusion in the budget of a variation on language from H.832 pertaining to an expansion of the postsecondary education program connected to Reach Up. The relevant language is as follows:

Sec. X. 33 V.S.A. § 1106 is amended to read:
§ 1106. REQUIRED SERVICES TO PARTICIPATING FAMILIES

(a) The Commissioner shall provide participating families case management services, periodic reassessment of service needs and the family development plan, and referral to any agencies or programs that provide the services needed by participating families to improve the family's prospects for job placement and job retention, including the following:

* * *

(3) Career counseling, education, and training, and job search assistance consistent with the purposes of this chapter, including detailed information on the postsecondary education program pursuant to section 1122 of this chapter.

* * *

Sec. X. 33 V.S.A. § 1115(f) is added to read:

(f) The Commissioner shall allocate 25 percent of any realized savings in Reach Up caseload expenditures from each prior fiscal year to expand the postsecondary education program pursuant to section 1122 of this chapter for the following fiscal year.

Sec. X. 33 V.S.A. § 1134 is amended to read:
§ 1134. PROGRAM EVALUATION

On or before January 31 of each year, the Commissioner shall design and implement procedures to evaluate, measure, and report to the Governor and the General Assembly the Department's progress in achieving the goals of the programs provided for in sections 1002, 1102, and 1202 of this title. The report shall include:

* * *

(7) a description of the current basic needs budget and housing allowance, the current maximum grant amounts, and the basic needs budget and housing allowance adjusted to reflect an annual cost-of-living increase; ~~and~~

(8) a description of the families, during the last fiscal year, that included an adult family member receiving financial assistance for 60 or more months in his or her lifetime, including:

(A) the number of families and the types of barriers facing these families; and

(B) the number of families that became ineligible for the Reach Up program pursuant to subsection 1108(a) of this title, and the types of income and financial assistance received by those families that did not return to the Reach Up program within 90 days of becoming ineligible; and

(9) a description of the families in the postsecondary education program pursuant to section 1122 of this chapter, including the number of participating families and any barriers to their further participation.

Fifth, it has come to the Committee's attention that the Department of Vermont Health Access has proposed language pertaining to prior authorization for certain mental health services. The Committee believes that this proposal is likely contrary to federal law and recommends that another way be found to reassess the need for services.

Lastly, the Committee believes that the State should encourage psychiatric nurses to remain in-state after graduation. To that end, the Committee recommends that the Area Health Education Centers (AHEC) program be directed to prioritize applications for psychiatric nurses over other pending applications.

II. Priorities Relating to the Distribution of Resources

Identifying spending priorities was a challenge for the Committee as there are many essential needs served by the Agency of Human Services. Each member of the Committee was tasked with examining a particular area of the Agency's budget, and reporting back to the whole Committee. Once members gave their reports, the Committee identified several priority areas. Each member was then asked to individually rank the identified priority areas as most important, important, and less important. The result described below is the result of merging members' individual weighted rankings.

The Committee's most important priorities included deleting from the budget any savings attributed to changes in existing involuntary treatment and involuntary medication policies. Likewise, the Committee ranked its support of the Governor's proposed budget pertaining to the Department for Children and Families' Family Services Division as most important. This proposal included the creation of new positions, restructuring the residential treatment program, and grants for alcohol and drug treatment. The Committee's support for a new medical assisted treatment hub in St. Albans was also ranked most important by the Committee, as was the Department for Disabilities, Aging, and Independent Living's proposed budget.

The Committee identified four of its priorities as important. These priorities included a \$150,000 appropriation to existing syringe exchange programs and an increase in the Medicaid reimbursement rate for community mental health providers. The Committee also believes that an increase in the existing child care subsidy is important to shrink the gap between it and the current market rate. Finally, the Committee has identified as important the proposal to use 25 percent of any realized savings in the Reach Up caseload expenditure to expand the postsecondary education program.

Of the priorities identified by the Committee, four were ranked slightly less important than the items discussed above. This category included expanding the intensive residential recovery bed capacity in the mental health system; expanding funds to the Vermont Tobacco Evaluation and Review Board for the purposes of independent evaluation; providing additional funds to AHEC to encourage psychiatric nurses to work at the Vermont Psychiatric Care Hospital; and repealing changes made in last year's budget that counted \$125 of Supplemental Security Income towards the calculation of a family's benefit.