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STATE OF VERMONT
GENERAL ASSEMBLY
HOUSE COMMITTEE ON
APPROPRIATIONS

MEMORANDUM

To: Rep. Pugh, Chair, House Committee on Human Services

From: Rep. Mitzi Johnson, Chair, House Committee on Appropriations

Date: February 1, 2016

Subject: Provisions in the Governor's Proposed FY 2017 Budget

The House Appropriations Committee has started work on the Governor's proposed FY 2017 Budget and would like to inform you about proposals that fall under the jurisdiction of the Committee on Human Sserivces.

The House Appropriations Committee welcomes and appreciates your input and would like to give you the opportunity to comment on any of the proposals; however, it is not necessary to respond to all of the proposals unless you have concerns or recommendations. If you would like to respond it would be helpful if you could do so by the end of the day on February 24th.

Below is a link to all of the Agency of Human Services Cross Walks. At this point in the process the House Appropriations Committee has not received individual budgets from department in AHS, however, the cross walks will give you a quick overview of changes in the Governors proposed budget.

Agency of Human Services Cross Walks
http://www.leg.state.vt.us/jfo/appropriations/fy_2017/Agency%20of%20Human%20Services%20--%20UP%20and%20DOWN'S.pdf

LANGUAGE SECTIONS:

Sec. B.1106 FISCAL YEAR 2017 ONE-TIME FIFTY-THIRD WEEK OF MEDICAID COST FUNDING
Sec. B.1107 32 V.S.A. § 308e is added to read:
Sec. E.100.2 SHIFT DCF PILOT POSITIONS TO DVHA
Sec. E.100.4 Funding for the Office of Health Care Advocate
Sec. E.307 INVESTING IN PRIMARY CARE SERVICES
Sec. E.307.1 INVESTING IN DENTAL CARE SERVICES

Sec. E.312 Health – public health (AIDS/HIV Funding)
Sec. E. 314 18 V.S.A. Chapter 181 is amended to read: (Court Ordered medication and assuring timely access to treatment for persons who are involuntarily hospitalized)
Sec. E. 318.2 CHILD CARE SERVICES PROGRAM; WAITLIST
Sec. E.324 LIHEAP AND WEATHERIZATION
Sec. E.321.2 2013 Acts and Resolves No. 50, Sec. E.321.2(c) is amended to read (Annual Emergency Housing report)

CONTENT OF LANGUAGE SECTIONS LISTED ABOVE

Sec. B.1106 FISCAL YEAR 2017 ONE-TIME FIFTY-THIRD WEEK OF MEDICAID COST FUNDING

(a) In fiscal year 2017, $10,300,000 of general funds, $12,248,000 of federal funds, and $22,548,000 of global commitment funds are appropriated to the Agency of Administration for appropriation transfer to the Agency of Human Services Global Commitment upon determination of the Commissioner of Finance and Management the amount necessary to fund the 53rd week of Medicaid expenditures. Any remaining general funds shall be placed in the 27/53 Reserve established by Sec. B.1107 of this Act.

(b) Upon transfer to the Agency of Human Services Global Commitment, the Agency shall allocate up to $22,548,000 of global commitment funds to appropriations where 53rd week expenditures were incurred.

(c) The Commissioner of Finance and Management shall report to the Joint Fiscal Committee in July 2017 on the status of funds appropriated in this section.

EXPLANATION: One-time appropriation to the Finance and Management to be transferred to the Agency of Human Services to cover costs associated with the 53rd week of Medicaid expenditures.

Sec. B.1107 32 V.S.A. § 308e is added to read:
§ 308e. 27/53 Reserve

(a) There is hereby created within the General Fund Reserve a known as the 27/53 Reserve. The purpose of this reserve is to meet the liabilities of the reoccurring 27th Payroll and the 53rd week of Medicaid Payments. These liabilities will be funded by paying a pro rate portion, each year, before the liability comes due. Beginning in State Fiscal Year 2018 and continuing every year thereafter, a portion of the general fund will be allocated for this purpose.

(1) Annually at the November Joint Fiscal Committee meeting, the Commissioner of Finance and Management will report on the anticipated liability for the next 27th payroll and 53rd week and provide a schedule of annual payments needed to meet the obligation of the next 27th Payroll and 53rd Medicaid payment. At the November meeting the Joint Fiscal Committee will adopt the annual recommended transfer to the 27/53 Reserve.

(b) At the end of the fiscal year, after the full statutory transfer is made to the General Fund Budget Stabilization Reserve, the Commissioner or Finance and Management will transfer funds to the 27/53 reserve up to amount recommended by the Joint Fiscal Committee at the November meeting. This transfer will occur prior to the transfers to the General Fund Balance Reserve outlined in 32. V.S.A. § 308c.

(c) Use of 27/53 Reserve:

(1) In a fiscal year where a 27th payroll or 53rd payroll is incurred, the General Assembly will appropriate the funds in the 27th/53rd Reserve to meet the expenditures within the year that these payments are due.

EXPLANATION: Establishes a reserve within the General Fund specifically for future liabilities associated with the 53rd week of Medicaid payments and the 27th Pay period.

Sec. E.100.2 SHIFT DCF PILOT POSITIONS TO DVHA

(a) Notwithstanding 2015 Act. 179 sec. E.100(d)(3), positions at the Department for Children and Families Health Access Eligibility Unit established through the position pilot established by 2014 Act 179 E.100.1(d) shall transfer to the Department of Vermont Health Access.

EXPLANATION: This language is required to enable the movement to DVHA of those HAEU DCF positions created under the position pilot.

Sec. E.100.4 Funding for the Office of the Health Care Advocate

(a) Of the funds appropriated in Sec. B.100, $ 1,297,406 shall be used for the contract with the Office of the Health Care Advocate.

EXPLANATION: Pursuant to 2015 Act 54 Sec 53 (c)

Sec. E.307 INVESTING IN PRIMARY CARE SERVICES

(a) The sum of $8,400,000.00 in Global Commitment funds is appropriated to the Department of Vermont Health Access in fiscal year 2016 to increase reimbursement rates to primary care providers beginning on July 1, 2016 for services provided to Medicaid beneficiaries.

EXPLANATION: This funding will restore the enhanced primary care payments as defined by the Affordable Care Act. These rates were in place from January 1, 2013 to December 31,2014 and were fully funded by Federal dollars. 2015 Act 54, Sec. 57 appropriated $1,000,667 to increase reimbursement rates to Primary Care providers. This funding coupled with the funding from 2015 Act 54 will restore primary care reimbursement rates to pre-December 31, 2014 levels.

Sec. E.307.1 INVESTING IN DENTAL CARE SERVICES

(a)The sum of $2,200,000.00 in Global Commitment funds is appropriated to the Department of Vermont Health Access in fiscal year 2016 to increase reimbursement rates to practicing dentists beginning on July 1, 2016 for preventive services provided to Medicaid beneficiaries.

EXPLANATION: This section provides an 18% increase in reimbursements for preventive dental services including routine care such as restorations, fluoride treatment and cleanings.

Sec. E.312 Health – public health

(a) AIDS/HIV funding:

(1) In fiscal year 2017 and as provided in this section, the Department of Health shall provide grants in the amount of $475,000 in AIDS Medication Rebates special funds to the Vermont AIDS service and peer-support organizations for client-based support services. The Department of Health AIDS Program shall meet at least quarterly with the Community Advisory Group (CAG) with current information and data relating to service initiatives. The funds shall be allocated according to an RFP process.

(2) Ryan White Title II funds for AIDS services and the Vermont Medication Assistance Program (VMAP) shall be distributed in accordance with federal guidelines. The federal guidelines shall not apply to programs or services funded solely by State general funds.

(3)(A) The Secretary of Human Services shall immediately notify the Joint Fiscal Committee if at any time there are insufficient funds in VMAP to assist all eligible individuals. The Secretary shall work in collaboration with persons living with HIV/AIDS to develop a plan to continue access to VMAP medications until such time as the General Assembly can take action.

(B) As provided in this section, the Secretary of Human Services shall work in collaboration with the VMAP Advisory Committee, which shall be composed of no less than 50 percent of members who are living with HIV/AIDS. If a modification to the program's eligibility requirements or benefit coverage is considered, the Committee shall make recommendations regarding the program's formulary of approved medication, related laboratory testing, nutritional supplements, and eligibility for the program.

(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 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.
EXPLANATION: Annual language outlining grants for HIV and AIDS services.

Sec. E.314 18 V.S.A. Chapter 181 is amended to read:

Chapter 181. Judicial Proceedings

* * *

~~§ 7612a. Probable cause review~~

~~(a) Within three days after an application for involuntary treatment is filed, the Family Division of the Superior Court shall conduct a review to determine whether there is probable cause to believe that the person was a person in need of treatment at the time of his or her admission. The review shall be based solely on the application for an emergency examination and accompanying certificate by a licensed physician and the application for involuntary treatment.~~

~~(b) If, based on a review conducted pursuant to subsection (a) of this section, the Court finds probable cause to believe that the person was a person in need of treatment at the time of his or her admission, the person shall be ordered held in the temporary custody of the Commissioner for further proceedings in accordance with Part 8 of this title. If probable cause is not established, the person shall be ordered discharged or released from the hospital and returned to the place from which he or she was transported or to such place as the person may reasonably direct.~~

~~(c) An 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 if there is good cause for the delay.~~

* * *

§ 7614. Psychiatric examination

As soon as practicable after notice of the commencement of proceedings is given, the court ~~on its own motion or~~ upon the motion of the proposed patient or his or her attorney or the state of Vermont ~~shall~~ may authorize one examination (this includes when applications for involuntary treatment and applications for involuntary medication are consolidated) of the proposed patient by a psychiatrist other than the physician making the original certification only if the examination can be completed as to not cause a delay of the hearing. The examination and subsequent report or reports shall be paid for by the state of Vermont. The physician shall report his or her finding to the party requesting the report or to the court if it requested the examination.

§ 7615. Hearing on application for involuntary treatment

(a)(1) Upon receipt of the application, the Court shall set a date for the hearing to be held within ~~10~~ 7 days from the date of the receipt of the application ~~or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 of this title~~ unless the hearing is continued by the Court pursuant to subsection (b) of this section.

~~(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a motion to expedite the hearing. The motion shall be~~

~~supported by an affidavit, and the Court shall rule on the motion on the basis of the filings without holding a hearing. The Court:~~

~~(i) shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have failed to address the risk of harm to the person or others;~~

~~(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.~~

~~(B) If the Court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within ten days from the date of the order for expedited hearing.~~

~~(3) If a hearing on the application for involuntary treatment has not occurred within 60 days from the date of the Court's receipt of the application, the Commissioner shall request that the Court and both parties' attorneys provide the reasons for the delay. The Commissioner shall submit a report to the Court, the Secretary of Human Services, and the patient's attorney that either explains why the delay was warranted or makes recommendations as to how delays of this type can be avoided in the future.~~

(b)(1) For hearings held pursuant to subdivision (a)(1) of this section, the Court may grant each party a onetime extension of up to ~~seven~~ five days for good cause.

~~(2) The Court may grant one or more additional seven-day continuances if:~~

~~(A) the Court finds that the proceeding or parties would be substantially prejudiced without a continuance; or~~

~~(B) the parties stipulate to the continuance.~~

(c) The hearing shall be conducted according to the Vermont Rules of Evidence, and to an extent not inconsistent with this part, the Vermont Rules of Civil Procedure shall be applicable.

(d) The applicant and the proposed patient shall have a right to appear at the hearing to testify. The attorney for the State and the proposed patient shall have the right to subpoena, present, and cross-examine witnesses, and present oral arguments. The Court may, at its discretion, receive the testimony of any other person.

(e) The proposed patient may at his or her election attend the hearing, subject to reasonable rules of conduct, and the Court may exclude all persons, except a peer or other support person designated by the proposed patient, not necessary for the conduct of the hearing.

* * *

§ 7617. Findings; order

(a) If the court finds that the proposed patient was not a person in need of treatment at the time of admission or application or is not a patient in need of further treatment at the time of the hearing, the court shall enter a finding to that effect and shall dismiss the application.

(b) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:

(1) hospitalized in a designated hospital;

(2) hospitalized in any other public or private hospital if he or she and the hospital agree; or

(3) to undergo a program of treatment other than hospitalization.

(c) Prior to ordering any course of treatment, the court shall determine whether there exists an available program of treatment for the person which is an appropriate alternative to hospitalization. The court shall not order hospitalization without a thorough consideration of available alternatives.

(d) Before making its decision, the court shall order testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency, or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.

(e) Prior to ordering the hospitalization of a person, the court shall inquire into the adequacy of treatment to be provided at a designated ~~to the person by the~~ hospital. Hospitalization shall not be ordered unless the hospital in which the person is to be hospitalized can provide him or her with treatment which is adequate and appropriate to his or her condition.

~~(f) Preference between available hospitals shall be given to the hospital which is located nearest to the person's residence except when the person requests otherwise or there are other compelling reasons for not following the preference.~~

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§ 7624. Application for involuntary medication

(a) The Commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication, of the type or in the amount prescribed by the treating psychiatrist, and meets any one of the following ~~six conditions~~:

(1) has been placed in the Commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has been placed in the Commissioner's care and custody on an order of hospitalization and for whom an application for continued treatment on an order of nonhospitalization is currently pending;

(3) has previously been hospitalized ~~received treatment~~ under an order of hospitalization and is currently under an order of nonhospitalization, including a person on an order of nonhospitalization who resides in a secure residential recovery facility;

(4) has been committed to the custody of the Commissioner of Corrections as a pretrial detainee or convicted felon ~~and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title~~ and for whom the Departments of Corrections and of Mental Health have determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H); or

(5) has an application for involuntary treatment pending or for whom an application for involuntary treatment and application for involuntary medication are jointly filed. ~~for which the Court has granted a motion to expedite pursuant to subdivision 7615(a)(2)(A)(i) of this title~~;

~~(5)(A) has an application for involuntary treatment pending;~~

~~(B) waives the right to a hearing on the application for involuntary treatment until a later date; and~~

~~(C) agrees to proceed with an involuntary medication hearing without a ruling on whether he or she is a person in need of treatment; or~~

~~(6) has had an application for involuntary treatment pending pursuant to subdivision 7615(a)(1) of this title for more than 26 days without a hearing having occurred and the treating psychiatrist certifies, based on specific behaviors and facts set forth in the certification, that in his or her professional judgment there is good cause to believe that:~~

~~(A) additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence; and~~

~~(B) serious deterioration of the person's mental condition is occurring.~~

(b)(1) ~~Except as provided in subdivisions (2), (3), and (4) of this subsection, an application for involuntary medication shall be filed in the Family Division of the Superior Court in the county in which the person is receiving treatment.~~

~~(2)~~ If the application for involuntary medication is filed pursuant to subdivision (a)~~(4)~~ (5)of this section,~~:~~

~~(A)~~ the application shall be filed in the county in which the application for involuntary treatment is pending~~;~~ and shall be consolidated for hearing with the application for involuntary treatment if the application for involuntary medication was filed on the same day or within 48 hours of the filing of the application for involuntary treatment. The Court shall rule on the application for involuntary treatment before ruling on the application for involuntary medication.

~~(B) the Court shall consolidate the application for involuntary treatment with the application for involuntary medication and rule on the application for involuntary treatment before ruling on the application for involuntary medication.~~

~~(3)~~ (2) If the application for involuntary medication is filed pursuant to subdivisions (a)~~(5)~~ (1) through (4) ~~or (a)(6)~~ of this section, the application shall be filed in the county in which the person is present ~~application for involuntary treatment is pending~~. In instances where an application for involuntary medication is filed and there is an application for continued treatment pending, both matters shall be consolidated for hearing. The Court shall rule on the application for continued treatment before ruling on the application for involuntary medication.

(3) When an application for involuntary medication is consolidated for hearing with either an application for involuntary treatment or an application for continued treatment, the consolidated hearing shall occur no later than seven days from the date the application for involuntary medication is filed.

~~(4) Within 72 hours of filing an application for involuntary medication pursuant to subdivision (a)(6) of this section, the Court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the Court determines that the requirements of subdivision (a)(6) of this section have been established, the Court shall consolidate the application for involuntary treatment with the application for involuntary medication and hear both applications within ten days of the date that the application for involuntary medication is filed. The Court shall rule on the application for involuntary treatment before ruling on the application for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.~~

(c) The application shall include a certification from the treating physician, executed under penalty of perjury, that includes the following information:

(1) the nature of the person's mental illness;

(2) that the person is refusing medication proposed by the physician;

(3) that the person lacks the competence to decide to accept or refuse medication and appreciate the consequences of that decision;

(4) the necessity for involuntary medication, including the grounds for the person's commitment to the Commissioner of Mental Health's care and custody pursuant to 13 V.S.A. § 4822;

(5) any proposed medication, including the method, dosage range, and length of administration for each specific medication;

(6) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:

(A) the person's prognosis with and without the proposed medications; and

(B) the person's health and safety, including any pregnancy;

(7) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;

(8) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives, including information on the availability of any appropriate alternatives; and

(9) whether the person has executed an advance directive in accordance with the provisions of chapter 231 of this title, and the identity of the agent or agents designated by the advance directive.

(d) A copy of the advance directive, if available, shall be attached to the application.

§ 7625. Hearing on application for involuntary medication; burden of proof

(a) Unless consolidated with an application for involuntary treatment or an application for continued treatment pursuant to subdivision 7624(b)(1) or (2) ~~or (b)(4)~~ of this title, a hearing on an application for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, and 7616 and subsections 7615 (b)-(e) of this title.

(b) In a hearing conducted pursuant to this section, section 7626, or section 7627 of this title, the Commissioner has the burden of proof by clear and convincing evidence.

(c) In determining whether or not the person is competent to make a decision regarding the proposed treatment, the Court shall consider whether the person is able to make a decision and appreciate the consequences of that decision.

* * *

§ 7627. Court findings; orders

(a) The Court shall issue an order regarding all possible findings pursuant to this section, and for persons subject to an application pursuant to subdivision 7624(a)(3) of this title the Court shall first find that the person is a person in need of treatment as defined by subdivision 7101(17) of this title.

* * *

(f)(1) If the Court grants the application, in whole or in part, the Court shall enter an order authorizing the Commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the permitted dosage range, length of administration, and method of administration for each. The order for involuntary medication shall not include electric convulsive therapy, surgery, or experimental medications. ~~A long-acting injection shall not be ordered without clear and convincing evidence, particular to the patient, that this treatment is the most appropriate under the circumstances.~~

(2) The order shall require the person's treatment provider to conduct weekly reviews of the medication to assess to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient has become competent pursuant to subsection 7625(c) of this title and shall also require the person's treatment provider to document this review in detail in the patient's chart. The person's treatment provider shall notify the Department when he or she determines that the patient has regained competence. Within two days of receipt, the Department shall provide a copy of the notice to the patient's attorney.

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EXPLANATION: Proposed changes to Title 18 regarding court-ordered medication and assuring timely access to treatment for persons who are involuntary hospitalized.

Sec. E.318.2 CHILD CARE SERVICES PROGRAM; WAITLIST

(a) Prior to implementing a waitlist for or cap on the number of subsidized child care slots in fiscal year 2017, the Department for Children and Families shall report to the Joint Fiscal Committee.

EXPLANATION: Requires that DCF report to the Joint Fiscal Committee before implementing a waitlist or cap on subsidized child care slots.

Sec. E.321.2 2013 Acts and Resolves No. 50, Sec. E.321.2(c) is amended to read:

(c) On or before ~~January 31 and~~ July 31 of each year beginning in ~~2015~~ 2016, the Agency of Human Services shall report statewide statistics related to the use of emergency housing vouchers during the preceding calendar half-year, including demographic information,

deidentified client data, shelter and motel usage rates, clients' primary stated cause of homelessness, average lengths of stay in emergency housing by demographic group and by type of housing, and such other relevant data as the Secretary deems appropriate. When the General Assembly is in session, the Agency shall provide its report to the House Committee on General, Housing and Military Affairs, the Senate Committee on Economic Development, Housing and General Affairs, and the House and Senate Committees on Appropriations. When the General Assembly is not in session, the Agency shall provide its report to the Joint Fiscal Committee.
EXPLANATION: Recommendation to provide one annual General Assistance report per year, on July 31, which we believe will provide a better picture of the overall program.

Sec. E.324 LIHEAP AND WEATHERIZATION

(a) Notwithstanding 33 V.S.A. §§ 2603 and 2501, in fiscal year 2017, the Secretary of Administration may, upon recommendation of the Secretary of Human Services, transfer up to 15 percent of the federal fiscal year 2017 federal Low Income Home Energy Assistance Program (LIHEAP) block grant from the federal funds appropriation in Sec. B.324 of this act to the Home Weatherization Assistance appropriation in Sec. B.326 of this act to be used for weatherization in State fiscal year 2017. An equivalent appropriation transfer shall be made to Sec. B.324 of this act, Low Income Home Energy Assistance Program, from the Home Weatherization Assistance Fund in Sec. B.326 of this act to provide home heating fuel benefits in State fiscal year 2017. At least three days prior to any such transfer being made, the Secretary of Administration shall report the intended transfer to the Joint Fiscal Office and shall report any completed transfers to the Joint Fiscal Committee at its next meeting.

EXPLANATION: The FY17 budget only includes federal funds for LIHEAP; this language allows DCF to meet costs that are solely state funded to cover benefits for recipients over 150 percent of the federal poverty limit as well as administration costs in excess of ten percent of the federal award.