
**Report to
The Vermont Legislature**

Security Protocols in Emergency Departments

In Accordance with H.97/H.532 of 2019, Sec. 103

**Submitted to: House Committee on Health Care
House Committee Appropriations
Senate Committees on Health and Welfare
Senate Committee on Appropriations**

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Background

The Department of Mental Health's (DMH) FY'19 Budget Adjustment and FY'20 budget request each included a proposal to eliminate funding for sheriff supervision in emergency departments. Pursuant to Sec. 103 of the Senate Proposal of Amendment to H.97 (An act relating to fiscal year 2019 budget adjustments) and Sec. 103 of the House-passed version of H.532, the language stated that DMH shall "study security protocols in emergency departments to ensure the safety of patients and hospital staff and compliance with federal regulations."

The language also required that DMH consult with representative(s) of the Vermont Association of Hospitals and Health Systems, Vermont Care Partners, Department of State's Attorneys and Sheriffs, the Department of Vermont Health Access, the Department of Health, and an individual who provides peer support services in an emergency department, appointed by Vermont Psychiatric Survivors.

On or before April 1, 2019, the Department of Mental Health shall submit its findings and recommendations to the House Committees on Appropriations and on Health Care and to the Senate Committees on Appropriations and on Health and Welfare.

Stakeholders

DMH engaged the group of required stakeholders and facilitated a conversation with representatives from:

- Department of State's Attorneys
- Sheriff's Association (Lamoille Sheriff)
- Vermont Association of Hospitals and Healthcare (VAHHS)
- Vermont Care Partners (VCP)
- a person with lived experience from Vermont Psychiatric Survivors (VPS)
- the Division of Licensing and Protection in the Department of Disabilities, Aging, and Independent Living (DAIL)

Findings

Federal Regulatory Requirements

The Division of Licensing and Protection (L&P) section of DAIL is the State Survey Agency for the State of Vermont for the Centers for Medicare and Medicaid (CMS). In this role they license and certify health care organizations to ensure they meet minimum state and federal regulations. The L&P representative explained to the group the federal requirements around the use of security in emergency departments. L&P described that the only people who can provide care and place hands on a patient are:

1. Staff of the hospital OR
2. Staff the hospital contracts with and trains and who are under the supervision of the medical professionals of the hospital.

L&P also described that NO Law Enforcement personnel can lay hands on an individual in a hospital unless they are in “protective custody”. “Protective Custody” refers to:

1. Someone that has committed a crime and in the process of an arrest, law enforcement assessed that the individual required medical attention prior to being brought to their station/barracks/or jail, OR
2. A person in an ED commits a crime and Law enforcement is removing them from the hospital for the purpose of arresting and lodging the individual.

Federal regulatory requirements prohibit anyone other than hospital staff, or staff contracted and directly reporting to that hospital’s medical staff, from placing hands on an individual in their care. Law Enforcement cannot lay hands on an individual who is committing (or has committed) a crime in the emergency department *unless* they are going to arrest and remove the individual.

FY’18 Sheriff Supervision Costs by Hospital

The information below illustrates that smaller Critical Access Hospitals (CAHs) have a greater demand for external supervision resources than larger hospitals who are currently able to manage their staffing needs within their budgets.

| Sheriff Supervision Costs: FY’18 By Hospital | | | |
|---|---------------------|--------------------|------------------|
| HOSPITAL | TOTAL COST | NUMBER OF INVOICES | PORTION OF TOTAL |
| BMH | \$25,871.98 | 5 | 4% |
| COPLEY | \$77,838.75 | 14 | 12% |
| CVMC | \$165.00 | 1 | 1% |
| GIFFORD | \$38,190.77 | 8 | 7% |
| MT ASCUTNEY | \$22,387.65 | 6 | 5% |
| NMC | \$27,370.18 | 5 | 4% |
| NORTH COUNTRY | \$28,115.85 | 10 | 9% |
| NVRH | \$68,206.25 | 13 | 11% |
| PORTER | \$134,924.56 | 23 | 20% |
| SPRINGFIELD | \$135,017.85 | 19 | 16% |
| SVMC | \$6,395.03 | 6 | 5% |
| UVM-MC | \$2,665.00 | 2 | 2% |
| VPCH | \$633.07 | 4 | 3% |
| TOTAL | \$567,781.94 | 116 | 100%* |

* Percentages are rounded.

Data based on invoices sent from Sheriff Departments to the Department of Mental Health. Supervision includes supervision in Emergency Departments and Court Hearings (VPCH).

Considerations

The representatives considered how to ensure the safety of patients and staff in emergency departments while at the same time complying with federal regulations. To achieve this goal, the participants decided that the needs of smaller, non-designated hospitals (except Windham Center/Springfield Hospital) are different than those of the larger designated hospitals (Central Vermont Medical Center, the University of Vermont Medical Center, and Rutland Regional Medical Center). The participants found that the larger designated hospitals have already considered the security needs of their emergency departments and have taken measures to address those needs.

Recommendations

Staffing and Security Recommendations

Overall, the Stakeholder participants agree that hospitals should have supervisory capacity in emergency departments and that they are required to provide this capacity per federal regulations. Stakeholders also believe that the State has some responsibility to help support hospitals in building this capacity for people who are under the care and custody of the Commissioner of DMH. The stakeholders have the following recommendations regarding staffing and security:

1. In order to ensure the safety of patients and hospital staff, the stakeholder participants unanimously agreed that some security or other staffing would be beneficial for the smaller hospitals.
2. The designated hospitals (except Windham Center/Springfield Hospital) do not appear to need the added resource of Sheriff Supervision as they have that built into their system already.

Funding Recommendations

Should the legislature decide to allocate funds for supervision, the stakeholders have the following recommendations regarding funding:

1. Create a per diem daily rate for emergency departments that could be billed for each day for any person who is under the care and custody of the Commissioner of DMH and is waiting for placement in an inpatient bed. DMH has begun discussing this option with DVHA staff to determine the optimal method.
2. Distribute funds to specific hospitals via grants from the state. These could be one-time funds to help smaller hospitals grow their capacity around supervision.