

Board of Mental Health Review

1. In general, how often does the board and commission meet? Provide specific information on how often the board or commission has met in the past two fiscal years. Provide information on where agendas and minutes of meetings can be found.

The Board of Mental Health has not met since 1998. On November 7, 1998 the seven-member Board of Mental Health approved a motion to advise the Commissioner of the Department of Developmental and Mental Health Services (DDMHS) to disband the Board. This advisement to the Commissioner followed the DDMHS promulgation of Administrative Rules on Agency Designation, effective September 1, 1998, establishing the requirements for three State Program Standing Committees, one for each population served by Designated Agencies:

- State Adult Program Standing Committee - Adults with mental illness, or with significant behavioral health needs;
- State Children's Program Standing Committee - Children and adolescents with, or at risk of, severe emotional disturbance, or with significant behavioral health needs, and their families; and the
- State Developmental Disabilities Standing Committee - Individuals with developmental disabilities

The Administration Rules on Agency Designation (Rules) detail a four-year designation application cycle and standards in organizational, administrative, and quality service in initial designation and retention of subsequent designation for each population served by Designated Agencies or Specialized Services Agencies (those serving a target population and not a full spectrum service agency). Processes for corrective action and de-designation are also outlined in the Rules. Currently, the process is overseen by both DMH for adult and children's populations and DAIL for individuals with developmental disability. Further, the Rules require that each Designated Agency establish Local Program Standing Committees for each of the populations served. Composition of each committee required that committees be comprised of a majority of disclosed consumers and/or family members of the disability group that they represent. The State Program Standing Committee membership are appointed by the Governor. Local Standing Committees must have a minimum of five members and one member must also be a voting member of the DA or SSA Board of Directors. The responsibilities of both State and Local Standing Committees are to advise the DDMHS, now DMH and DAIL, and local DA respectively on the performance of the system in:

- Evaluation of Key Management
- Evaluation of Quality
- State System of Care Plan
- Resource Allocation
- Service Planning and Implementation
- Department Policy

- Grievances
- Involvement in the Agency Designation and Re-designation process

Under Executive Order 6-99 (classified as Executive Order No. 18-12), dated June 11, 1999, Governor Dean rescinded Executive Order 73A - 89 dated March 13, 1989 and replaced many of the responsibilities of the Board of Mental Health with those of State Program Standing Committees for Adults, Children, and Persons with Developmental Disability.

2. Provide the names of members of the board or commission, their term length and expiration, their appointing authority, and the amount of any per diem they receive.

| 2019 ACT 264 ADVISORY BOARD MEMBERS | | | | |
|--|-----------|--|-------------|---------------|
| NAME | TERM EXP. | | TOWN | POSITION TYPE |
| Alice Maynard | 3/31/2022 | | Underhill | Advocate |
| Heather Freeman | 3/31/2022 | | Hyde Park | Provider |
| Cinn Smith (Chair) | 3/31/2021 | | Fair Haven | Parent |
| Tiffany Moore | 3/31/2021 | | Williston | Provider |
| Teresa Sunderland | 3/31/2021 | | Essex Jct. | Parent |
| Cindy Tabor | 3/31/2021 | | Barre | Advocate |
| Kristin Holsman-Francoeur | 3/31/2020 | | Leicester | Parent |
| Matt Wolf (Co-Chair) | 3/31/2020 | | Springfield | Advocate |
| Doug Norford | 3/31/2018 | 3/8/2019 - sent his reappointment packet to the Secretary's Office for approval. | Pittsford | Provider |

| 2019 STATE CHILDREN'S PROGRAM STANDING COMMITTEE | | | | |
|---|-----------|---|------------------|-----------------------|
| NAME | TERM EXP. | | TOWN | POSITION TYPE |
| Laureen Mulhern | 6/30/2022 | | Bennington | Parent/Consumer |
| Ron Bos-Lun | 6/30/2021 | | Bellows Falls | Parent/Consumer |
| Ward Nial | 4/30/2021 | | South Burlington | Parent/Consumer |
| Tiffany Moore | 6/30/2021 | | Williston | Provider |
| Cindy Tabor | 6/30/2020 | | Barre | Parent/Consumer |
| Cinn Smith (Chair) | 6/30/2019 | 7/10/2019 – Waiting for the Governor's approval | Fair Haven | Parent/Consumer |
| Vacant | | (was Kimberlee Tardy) | | Parent/Provider/Other |
| Vacant | | (was Cindy Martell) | | Parent/Provider/Other |
| Vacant | | (was John Pierce) | | Parent/Provider/Other |

| 2019 ADULT STATE PROGRAM STANDING COMMITTEE MEMBERS | | | | |
|--|-----------|--------------------------|------------|------------------|
| NAME | TERM EXP. | | TOWN | POSITION TYPE |
| Dan Towle | 4/9/2022 | | Montpelier | Family Member |
| Bert Dyer | 4/9/2022 | | Burlington | Lived Experience |
| Vicki Warfield | 1/23/2022 | | Barre | Lived Experience |
| Marla Simpson | 7/1/2021 | | Randolph | Lived Experience |
| Thelma Stoudt | 4/1/2021 | | Rutland | Lived Experience |
| Uli Schygulla | 4/30/2020 | | Vergennes | Provider |
| Joanna Cole | | Potential Member | | Advocate |
| Malaika Puffer | | Application under review | | Provider |

3. Provide an overview of the board or commission's purpose.

Title 18, Chapter 175: The Board of Mental Health

The State Board of Mental Health is created. It shall consist of seven persons, two of whom are physicians and one an attorney. A member may not be a trustee, officer, or employee of any institution for mental patients. Biennially the Governor shall appoint, with the advice and consent of the senate, two or three members for terms of six years in such manner that three terms expire in each third biennial year and two in other biennial years. The Board, with the advice of the Commissioner, shall make Department policy. Biennially or when a vacancy occurs the Board shall elect a Chair and a Secretary. (18 V.S.A. § 7301)

The current statutory language is problematic in its description of a non-state staffed board setting policy for DMH. This system sets up several potential conflicts with the powers, duties, and functions of the Commissioner of DMH who is also statutorily charged with the administration of the department in 18 V.S.A. § 7401. Requiring DMH to implement policies it did not draft could create substantial liability.

DMH does receive input on policies by the advisory committees for each of the populations served established by the Rules. These committees provide evaluation and input to the Commissioner for advancing department policy.

Subcommittee on Institutions

The Board may delegate to a subcommittee on institutions, composed of two doctors and a lawyer, its functions under sections 7305, 7306, and 7308-7313 of this title; and the action of a majority of the subcommittee shall be that of the Board. (18 V.S.A. § 7302)

This language allows a sub-committee to be given the potential authority to make decisions for the State Mental Health Authority and the State in several areas.

Persons Not Hospitalized

The Board shall have general jurisdiction of persons with an intellectual disability or mental illness who have been discharged from a hospital by authority of the Board. It shall also have jurisdiction of persons with a mental illness or intellectual disability of the State not hospitalized, so far as concerns their physical and mental condition and their care, management, and medical treatment and shall make such orders therein as each case duly brought to its attention requires. (18 V.S.A. § 7304)

Only the justice system has the type of jurisdiction outlined above. In addition, the development of local community mental health services during the 1960's following the Community Mental Health Services Act makes available voluntary treatment and support services for these populations. Both DMH and DAIL are the Departments within the Agency of Human Services responsible for administering services and oversight of local DA's and SSA's.

Federal legislation for state creation of entities to support these populations has also occurred such as the 1977 Legal Services Corporation Act Amendments (adding financially needy people with disabilities to the list of those eligible for publicly funded legal services in America), the 1985 The Mental Illness Bill of Rights Act (requiring states to provide protection and advocacy services to protect and advocate for people with psychological disabilities), and the 1986 The (American) Protection and Advocacy for Mentally Ill Individuals Act (creating protection and advocacy (P & A) agencies for people who are inpatient or residents of mental health facilities).

In addition, organizations like Vermont Legal Aid/the Mental Health Law Project and Disability Rights-Vermont (DRVLT) provide representation for this population in both community and inpatient settings. They hold legal authority to review and potentially litigate potential rights violations. DRVLT also is identified in 18 V.S.A. § 7259 as the Mental Health Care Ombudsman for the state pursuant to 42 U.S.C. § 10801 et seq.

Additionally, Vermont's Adult Protective Services (APS) program is the primary unit of state government responsible for investigating allegations of abuse, neglect and exploitation of vulnerable adults under Title 33 of Vermont Statutes. APS is a program within the Division of Licensing and Protection (DLP). DLP includes Survey and Certification (S&C). S&C monitors licensed health care facilities for compliance with state and federal regulations, and they conduct their own investigations as a result of complaints and self-reports from facilities.

Powers of Board

The Board may administer oaths, summon witnesses before it in a case under investigation, and discharge by its order, in writing, any person confined as a patient in a hospital whom it finds on investigation to be wrongfully hospitalized or in a condition to warrant discharge. The Board shall discharge patients, not criminals, who have eloped from a hospital and have not been apprehended at the expiration of six months from the time of their elopement. The Board shall not order the discharge of a patient without giving the superintendent of the hospital an opportunity to be heard. (18 V.S.A. § 7305)

The State could bear substantial liability for decisions made by such a Board. Authorities now exist in other entities to oversee and assure that the rights of individuals are protected. As worded, such authority would override the right to such review and due process.

Referrals from Governor

The Governor may refer the case of a patient in a hospital to the Board for its investigation. The Board shall investigate the case and by its order grant such relief as each case requires. If the Board is without power to grant the necessary relief it shall cause proceedings to be commenced in a court of competent jurisdiction at the expense of the State, in order to obtain the necessary relief and promote the ends of justice and humanity. (18 V.S.A. § 7309)

As previously referenced, there are now established investigatory bodies in statute to provide this function and legal due process.

Petition for Inquiry

The attorney or guardian of a patient or any other interested party may apply to the Board to inquire into the treatment and hospitalization of a patient, and the Board shall take appropriate action upon the application. (18 V.S.A. § 7310)

As previously referenced, there are now established investigatory bodies in statute to provide this function and legal due process.

Investigation

If, in the judgment of the Board, an investigation is necessary, it shall appoint a time and place for hearing and give the patient's attorney, guardian, spouse, parent, adult child, or interested party, if any, in that order, and the head of the hospital reasonable notice thereof. At the time appointed, it shall conduct a hearing and make any lawful order the case requires. (18 V.S.A. § 7311)

As previously referenced, there are now established investigatory bodies in statute to provide this function and legal due process.

Penalty; Failure to Obey Summons

A person legally summoned as a witness before the Board on behalf of the State, or summoned by other parties with a tender of his or her fees, which shall be the same as those allowed witnesses in a Criminal Division of the Superior Court, who willfully and wrongfully refuses to attend or testify shall be imprisoned not more than six months or fined not more than \$100.00 nor less than \$10.00, or both. 18 V.S.A. § 7312)

As previously referenced, there are now established investigatory bodies in statute to provide this function and legal due process.

Board Shall Visit Institution

The Board shall ascertain by examination and inquiry whether the laws relating to individuals in custody or control are properly observed and may use all

necessary means to collect all desired information. It shall carefully inspect every part of the hospital or training school visited with reference to its cleanliness and sanitary condition, determine the number of patients or students in seclusion or restraint, the diet of the patients or students, and any other matters which it considers material. It shall offer to every patient or student an opportunity for an interview with its visiting members or agents, and shall investigate those cases which in its judgment require special investigation, and particularly shall ascertain whether any individuals are retained at any hospital or training school who ought to be discharged. 18 V.S.A. § 7313)

In addition to earlier references to mandatory reporting, advocacy, and legal protections now in place, hospitals in Vermont that provide services these populations are also Certified by the Centers for Medicare and Medicaid Services and accredited by The Joint Commission in multiple areas such as environment of care, ancillary services within the hospitals infrastructure, quality, and rights protections afforded through the Hospital Patients Bill of Rights. Advocacy and legal remedies are also available, and state level advisory committees are also in place. DMH also has an Emergency Involuntary Procedures (EIP) Review Committee that meets quarterly to review all hospital inpatient trends and has varied membership including individuals with lived experience and family members for input and evaluation. Under Act 79 (2012) DMH reports annually on mental health inpatient and community systems of care.

Reciprocal Agreements

The Board may enter into reciprocal agreements with corresponding state agencies of other states regarding the interstate transportation or transfer of persons with a psychiatric or intellectual disability and arrange with the proper officials in this State for the acceptance, transfer, and support of residents of this State who are temporarily detained or receiving care in public institutions of other states in accordance with the terms of such agreements. (18 V.S.A. § 7314)

A non-state board does not have the legal authority to enter into such agreement.

4. Is that purpose still needed? What would happen if the board or commission no longer fulfilled that purpose?

No, the Board's purposes are not needed. There are plenty of oversight bodies that provide, and have the appropriate jurisdiction to provide, the purposes of the Board:

- Division of Licensing and Protection responsibilities and oversight
- APS reporting and investigation for vulnerable adult populations

- Joint Commission and CMS for Hospitals
- DRVT – both state and federal authority
- VT Legal Aid and Mental Health Law Project representation
- Sentinel event reporting – Joint Commission and Department of Health hospital reporting requirements.
- Judicial due process and court proceedings via family court and criminal court

5. How well is the board or commission performing in executing that purpose? What evidence can you provide to substantiate that performance?

There is no performance for this Committee as multiple other entities are now providing this function.

6. If the purpose is still needed, can State government be more effective and efficient if the purpose was executed in a different manner?

The functions of the Board of Mental Health within these statutes are no longer needed as they are fulfilled by other entities or responsibilities elsewhere through federal or state government entities created or further authorized subsequent to 1967.

7. If the purpose is still needed, do any of your board or commission's functions overlap or duplicate those of another State board or commission or federal or State agency? If so, is your board or commission still the best entity to fulfill the purpose?

The Board of Mental Health is no longer needed as the overlapping functions are adequately covered by federal and/or other state branches or agency divisions and accreditation bodies deemed by CMS.

8. Does the board or commission's enabling law continue to correctly reflect the purpose and activities of the board or commission?

No.

9. Provide a list of the board and commission's last fiscal year expenditures including staffing costs. How are these funded?

No expenditures for the Board of Mental Health.

Approximately \$2,500.00 annually in attendance and travel reimbursement expenditures for the State Adult Program Standing Committees. Expenditures for DA/SSA standing committees is within annual allocation and parallels requirements for attendance and travel stipends as

needed. Staff time associated with supporting these committees is also within the scope of employee responsibilities.

DAIL expenditures for functions of Adult Protective Services functions and Division of Licensing and Protection to survey licensed residential and hospitals serving adult populations

Department of Health Expenditures – Sentinel events reporting responsibilities, sanitation inspections of residential and inpatient facilities

Expenditures of Hospitals for Survey and Accreditation by the Joint Commission

State Expenditure of Fire/Safety inspections of residential and inpatient facilities

State Expenditures supporting DRVT

State Expenditures supporting MH Law Project representation

10. Is the board or commission required by law to prepare any reports or studies for the Legislature, the Governor, or any State agency or officer? If so, have those reports or studies been produced? Does the board or commission have ongoing reporting obligations?

There are no legislatively required reports from this bodies. Other oversight bodies provide reports related to survey and accreditation. DMH produces annually Act 79 Report and Act 114 Reports (Involuntary Court-Ordered Medication). Annually, Independent Evaluator Act 114 Report.

11. How would you measure the performance of the board or commission?

There has been no measurable performance from this Board since 1998.