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Vermont House Committee on Appropriations

Re: Proposed 2023 Agency of Human Services budget

Dear Committee Members,

On behalf of Disability Rights Vermont (DRVT), please accept this letter commenting on the Agency of Human Services proposed FY23 budget. DRVT is the federally authorized disability protection and advocacy system in the state of Vermont pursuant to 42 U.S.C 10801 et seq., and the Mental Health Care Ombudsman for the state of Vermont, pursuant to 18 V.S.A. §7259. DRVT's mission is to promote the equality, dignity, and self-determination of people with disabilities. DRVT does this by working with people with disabilities and advocating for their rights.

Investments in community placements and supports for people with disabilities are required and encouraged by federal law. In 1999, the United States Supreme Court decided *Olmstead v. L.C.*, holding that pursuant to the integration mandate of the Americans with Disabilities Act, the State has a duty to serve people with disabilities in the most integrated setting appropriate to their needs.¹ The Center for Medicare & Medicaid Services recently issued guidance on explaining how the COVID-19 pandemic highlighted "the urgent need to reduce the reliance on institutional services and expand access to high-quality home and community-based services (HCBS) to improve outcomes for people with long-term services and supports (LTSS)." ²

The AHS 2023 proposed budget makes some progress towards addressing the need for a more robust community system of care. For example, funding the DMH Mobile Response Expansion and Suicide Prevention is a good step. DRVT would support further development of crisis community services to divert people away from using emergency rooms as a last resort. Similarly,

¹ *Olmstead v. L.C.*, 527 US 581 (1999).

² Strengthening and Investing in Home and Community Based Services for Medicaid Beneficiaries: American Rescue Plan Act of 2021 Section 9817 Spending Plans and Narratives, MEDICAID.GOV (2021)
<https://www.medicare.gov/medicaid/home-community-based-services/guidance/strengthening-and-investing-home-and-community-based-services-for-medicare-beneficiaries-american-rescue-plan-act-of-2021-section-9817-spending-plans-and-narratives/index.html>

DRVT would support further development of peer services and short-term stabilization services for people experiencing a mental health crisis.

The AHS proposed budget splits funding among the Departments as follows: 38% DVHA, 21% DAIL, 17% DCF, 10% DMH, and 6% DOC. It is unclear why DAIL and DMH are on the lower end and a bit concerning as DMH and DAIL are the Departments responsible for most of the direct oversight and management of the system of care.

Increased funding for service agencies that provide community services is encouraging, although DRVT agrees with the suggestion of the House Healthcare Committee that more is needed to further develop our community system of care.³ The proposed budget for the Designated Agencies (DA)/ Specialized Services Agencies (SSA) and Adult Community Clinical Services (ACCS)/ Home and Community Based Services (HCBS) is set to increase by \$7 million.⁴ That increase represents a 3% rate increase for ACCS providers in DVHA, a 3% rate increase for DA/SSA providers in DMH and DAIL, and a 3% rate increase for HCBS providers in DAIL. These are the primary sources of community mental health and developmental disability services and they need to be adequately funded so that current services are able to be maintained and new and additional services can be added. Currently, staffing shortages are crippling these agencies and community placements are closing due to lack of staff and resources. Not only does that need to be addressed but it is clear that Vermont needs more residential programs and more crisis placements and services. DRVT agrees with both the House Human Services Committee and House Healthcare Committee that this increase is not enough and a 10% increase would be more appropriate.⁵ DRVT also agrees with the House Healthcare Committee that increasing funds for Pathways Vermont is important so that they can serve more Vermont families in the community.⁶

The investments above are a great start, but more action is needed. Much of these rate increases for providers are necessary by virtue of inflation and increased costs of living, but will not significantly alter the landscape of psychiatric and developmental disability services in Vermont. Community mental health services have been historically underfunded in Vermont compared to the rest of the United States. Between 1980 and 2010, the number of inpatient and residential beds in Vermont climbed from 602 to 737, an increase of 31%, while the rates in other states

³<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202023%20State%20Budget/Subject%20Matter%20Committees/W~House%20Health%20Care%20Committee~FY23%20Budget%20Recommendations~2-23-2022.pdf>

⁴ <https://lifo.vermont.gov/assets/Uploads/4721350e85/WGovernors-Recommended-FY-2023-State-BudgetJenney-Samuelson-Interim-Secretary-Agency-of-Human-ServicesAHS-Budget-Presentation1-19-2022.pdf>

⁵<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202023%20State%20Budget/Subject%20Matter%20Committees/W~House%20Human%20Services%20Committee~FY23%20Budget%20Recommendations~2-24-2022.pdf>;

<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202023%20State%20Budget/Subject%20Matter%20Committees/W~House%20Health%20Care%20Committee~FY23%20Budget%20Recommendations~2-23-2022.pdf>

⁶<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Appropriations/FY%202023%20State%20Budget/Subject%20Matter%20Committees/W~House%20Health%20Care%20Committee~FY23%20Budget%20Recommendations~2-23-2022.pdf>

dropped by 34%.⁷ These numbers indicate a system that is too focused on the treatment of inpatients, rather than community supports, an approach that is neither fiscally responsible nor legally appropriate.

The lack of community supports and resources has an effect on all Vermonters. This can be seen in the high volumes of people waiting in emergency departments around the state seeking mental health services and the long wait times for receiving outpatient mental health treatment.⁸ In a 2019 report, DMH indicated that there is a lack of Community Care Home capacity, with group homes operating above 95% capacity.⁹ Over the years, DRVT has worked with a number of psychiatric inpatients who are medically cleared to return to the community, but due to the lack of community resources and placements remain stuck in an institutional setting.¹⁰ Based on snapshot data provided by the Vermont DMH, on various dates from 2020-present, there are anywhere from 10-20 individuals under DMH's purview who are in a locked psychiatric unit who do not need to be there but are simply awaiting community placements of services.¹¹ This data confirms that there have consistently been individuals who were not placed in most integrated community setting appropriate to their needs.

When Vermonters are unnecessarily or excessively confined in a hospital instead of receiving services in the community, they lose out on opportunities to further their career, spend time with friends, pets, and family members. Inpatient funding and other locked units, including the building of a new 16-bed locked residential facility, have been overrepresented in the AHS mental healthcare budget.¹²

More important in terms of successful treatment outcomes and also fiscal responsibility are the home and community based care and peer supports. The average cost per patient per day in a state-run inpatient psychiatric hospital is \$2,537, a private inpatient setting is \$1,425, while the cost of home placements or community services are approximately \$64 per day according to a 2018 data report.¹³ Community-based settings can help people transition back into a successful life in the community, and keep them out of resource-intensive hospital settings.¹⁴ Community

⁷ [DRVT-Olmstead-Report.pdf \(https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O\)](https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O), citing National Association of State Mental Health Program Directors, "Assessment #10: Trends in Psychiatric Capacity, United States and Each State, 1970-2014", August, 2017, p. 45.

⁸ <https://www.sevendaysvt.com/OffMessage/archives/2021/09/01/state-launches-investigation-into-long-wait-times-for-medical-care>.

⁹ https://mentalhealth.vermont.gov/sites/mhnew/files/documents/AboutUs/Leg/Act_26_Section_2_Report_Analysis_of_Need_FINAL_01152020.pdf at p. 10.

¹⁰ [DRVT-Olmstead-Report.pdf \(https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O\)](https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O).

¹¹ Public record requests from DMH from 2/20/20, 10/14/21, and 2/16/22.

¹² [DRVT-Olmstead-Report.pdf \(https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O\)](https://disabilityrightsvt.org/wp-content/uploads/2020/06/DRVT-O) at 14.

¹³ Vermont Care Partners 2018 "FY 2018 Outcomes and Data Report"; "Narrowing the Gap in Recovery-Oriented Community Services: A presentation by Alyssum, Another Way Community Center, Pathways Vermont, and Vermont Psychiatric Survivors" October 22, 2019; Vermont Department of Mental Health FY2018 Budget Presentation Melissa Bailey, Commissioner.

¹⁴ Key Community-Based Services Can Reduce Reliance on Hospital Admissions and Length of Stay, Melodie Peet, M.P.H.

placements can keep individuals with disabilities in a more comfortable environment, thereby decreasing the likelihood that they will need to be admitted into a hospital in the future. Community and home-integrated placements can also help prepare people for independent life after spending time in an institution. Community placements are a clear win-win.

In light of the Integration mandate of the ADA and Vermont Fair Housing and Public Accommodations Act, AHS needs to prioritize its community settings moving forward to improve the mental health of those relying on the mental healthcare system. An investment in community settings will improve outcomes for Vermonters with disabilities and start to bring Vermont into compliance with federal law. This investment must be a stark departure from the status quo, which currently puts a majority of resources into existing, inpatient units.

Sincerely,
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