An Independent Study of the Administration of Involuntary Non-Emergency Medications Under Act 114 (18 V.S.A. 7624 et seq.) During FY 2021

Report to the Vermont General Assembly

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EXECUTIVE SUMMARY

The Vermont statute governing administration of involuntary nonemergency psychiatric medications to clients of the public mental health system committed to the care and custody of the Commissioner is 18 V.S.A. 7624 et seq. – referred to in this report as Act 114. The statute requires two annual assessments of the Act's implementation, one conducted by the Department of Mental Health (DMH) and a second conducted by an independent reviewer. The following report summarizes Flint Springs Associates' independent assessment, providing a review of implementation during FY21 (July 1, 2020, through June 30, 2021).

This report examines implementation of Act 114 at designated hospitals responsible for administering involuntary psychiatric medications under Act 114 during FY21.

During FY21, DMH reported that 65 petitions were filed requesting orders for nonemergency involuntary medication under the provisions of Act 114 for 56 different individuals. Petitions were sought by physicians at four of the hospitals designated to administer the medications and sent through the Attorney General's DMH office to the court. Of those 65 petitions, 50 (77%) were granted, 13 (20%) were dismissed, and two (3%) were denied. Hospitals involved included: Brattleboro Retreat, Rutland Regional Medical Center, University of Vermont Medical Center, and the Vermont Psychiatric Care Hospital. Vermont Psychiatric Care Hospital.

In compliance with statutory requirements for the annual independent assessment, this report provides information on:

- Implementation of Act 114.
- Outcomes associated with implementation of the statute.
- Steps taken by the Department of Mental Health to achieve a mental health system free of coercion.
- Recommendations for changes.

We feel it important to note that this assessment was again conducted during the COVID-19 pandemic, requiring changes to our processes and to how information was collected. No on-site visits were conducted to meet with leadership at the four hospitals

Key Findings

Among the findings presented in this report, this year's assessment found that:

- Documentation indicates that staff at four hospitals administering medications under Act 114 in FY21 were generally aware of the provisions as shown by documentation of adherence to most Act 114 provisions. Hospital staff feel that the process leading to involuntary medication should move as quickly as possible. They believe that individuals for whom Act 114 petitions are filed suffer on many levels when not receiving psychiatric medication as soon as possible.

- Mental Health Law Project (MHLP) believes that hospitals which administer Act 114 medication orders continue to rely on the use of medication as the first line of treatment in dealing with patients.

- MHLP questions whether the method the state uses to draw blood for persons taking Clozaril, which it believes is highly intrusive, is legal under the statute.

- Input from the Judiciary suggests that lawyers for the state need training in how to better present evidence to the court to support the case for Act 114 applications.

- The number of petitions filed for involuntary medication under Act 114 was similar in FY21 (n=65) and FY20 (n=68), lower than in FY19 (n=70) and FY18 (n=90).

- Petitions were filed a bit sooner after admission in FY21 than in past years: 61% were filed within 30 days and 21% within 30-60 days of admission, or, on average, 34 days from admission to petition filing, as compared to 39 days in FY20. Once the petition was filed, a decision was reached within an average of 12.5 days as compared to 13 days last year. The average time from admission to an Act 114 order was 46 days in FY21, as compared to 51 days in FY20 and a consistent trend toward decrease in time from admission to Act 114 order over the past several years. This assessment focuses on tracking time between admission, filing of petition, and court decision. It does not consider factors which may influence the timeline, such as changes in clinical practice, Vermont laws, DMH data collection strategies, or additional factors which may influence the implementation of Act 114.

- In FY21, length of stays for persons receiving Act114 medication continued to shorten as in previous years. On average, patients under Act 114 orders in FY21 were discharged from psychiatric inpatient care, on average, 91 days (approximately 3 months) from admission, and 46 days (about 7 weeks) after the Act 114 order for medication was issued.

- Four persons who received Act 114 medication during FY 2021 provided input regarding their medication experience. Responses were mixed to the questions regarding:
    - *how the Act 114 protocols were followed*
    - *whether they felt they had some control*
    - *how they felt they were treated, supported, and respected during the experience of receiving Act 114 medication.*

- The only point on which respondents agreed was their belief that the state did not make the right decision in ordering Act 114 medication for them.

Recommendations

Flint Springs Associates offers the following recommendations:

<u>Hospital Practices</u>
FSA recommends that staff at hospitals administering Act 114 medication continue efforts to help patients understand the reasoning behind the decision to seek an order for involuntary medication and to invest time in talking with patients about the process and available options.

To maintain clear records for documenting implementation of Act 114 in accordance with provisions of the statute, all hospitals have followed past FSA recommendations that each hospital maintain an electronic file or section within the electronic file for persons receiving medication under Act 114. This practice should continue.

Annual Act 114 Assessment

FSA recommends that the following steps continue to be used in future assessments of Act 114:

- Provide a financial incentive for the participation of individuals who have received court-ordered medication in the independent assessment of Act 114.

- Ask persons interviewed if they would like any family members to be interviewed and pursue these as permitted.

- Given the similar content to assess the implementation of Act 114 protocols required by the legislature through two reports, one generated by DMH and the other by an external entity, the legislature should clarify the purpose of having an internal and an external, independent report.

INTRODUCTION

The Vermont statute governing administration of involuntary nonemergency psychiatric medications to clients of the public mental health system committed to the care and custody of the Commissioner is 18 V.S.A. 7624 et seq. The statute requires two annual assessments of the act's implementation, one conducted by the Department of Mental Health (DMH) and a second conducted by an independent reviewer. This report will refer to the statute as Act 114. Implementation of Act 114 commenced in late 2002.

This independent assessment report provides a review of implementation during FY21 (July 1, 2020, through June 30, 2021). The report also summarizes feedback from:

- 4 individuals who received an Act 114 order in FY21.
- 1 individual on whom an Act 114 application was not approved (e.g., either dismissed, denied or withdrawn).

As a result of the petitions filed during FY21, court orders for administration of involuntary nonemergency psychiatric medication under the provisions of Act 114 were granted for 45 individuals.

The Commissioner of Mental Health has designated five hospitals to administer medications under Act 114: Brattleboro Retreat, Central Vermont Medical Center, Rutland Regional Medical Center, University of Vermont Medical Center, and Vermont Psychiatric Care Hospital. CVMC has infrequently administered medication under Act 114. During FY21, four of the five hospitals administered medication under Act 114, in FY21 CVMC did not.

This report, in compliance with statutory requirements for the annual independent assessment, provides the following information:

Section 1: The performance of hospitals in the implementation of Act 114 provisions, including surveys of staff, interviews with Mental Health Law Project and Vermont Psychiatric Survivor Patient Representatives, review of documentation, and interviews with persons involuntarily medicated under provisions of Act 114.
Section 2: Outcomes associated with implementation of Act 114.
Section 3: Steps taken by the Department of Mental Health to achieve a mental health system free of coercion.
Section 4: Recommendations for changes in current practices and/or statutes

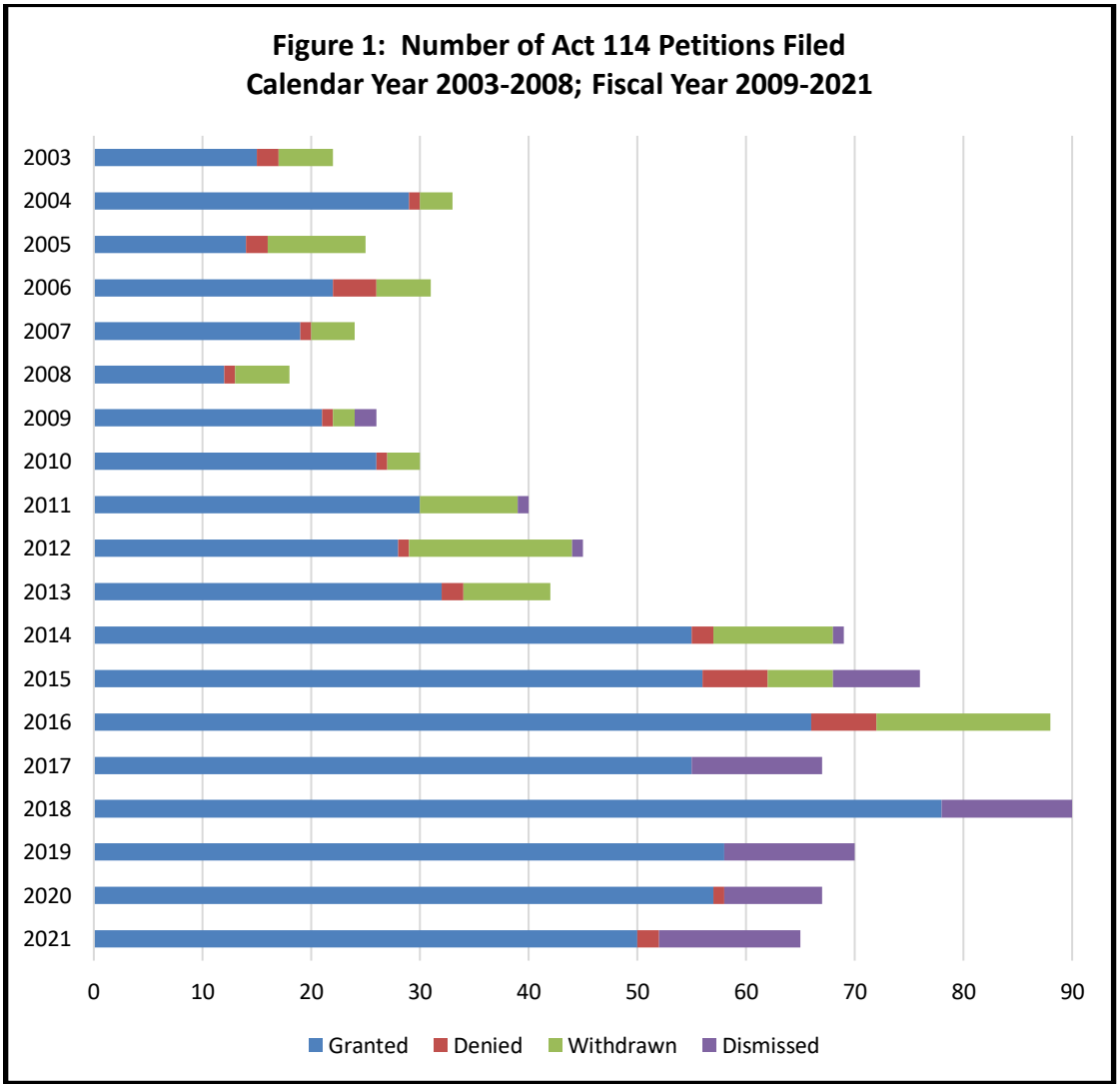
Flint Springs Associates (FSA), a Vermont-based firm advancing human-services policy and practice through research, planning and technical assistance, conducted this assessment. Flint Springs' Senior Partners, Joy Livingston, Ph.D., and Donna Reback, MSW, LICSW, gathered the required information, analyzed the data, and developed recommendations reported here.

Section 1: Performance Implementing Provisions of Act 114

During FY21, DMH reported that 65 petitions were filed requesting orders for nonemergency involuntary medication under the provisions of Act 114 for 56 different individuals. Petitions were sought by physicians at four of the hospitals designated to administer the medications and sent through the Attorney General's DMH office to the court. Of those 65 petitions, 50 (77%) were granted, 13 (20%) were dismissed, and two (3%) were denied. Hospitals involved included: Brattleboro Retreat, Rutland Regional Medical Center, University of Vermont Medical Center, and the Vermont Psychiatric Care Hospital.

Figure 1 provides information on the number of petitions for court orders that were granted, denied, withdrawn, or dismissed since the initial implementation of Act 114 through FY21. Courts have granted most petitions. The number of petitions filed increased through 2016, with a decrease in 2017, increase in 2018, and then decrease over the past three fiscal years.

Figure 1: Number of Act 114 Petitions Filed
Calendar Year 2003-2008; Fiscal Year 2009-2021



Updates on Hospitals' Structure and Policies Related to Act 114

In past years, FSA senior partners, Joy Livingston, and Donna Reback, conducted site visits at each of the designated hospitals responsible for and administering involuntary nonemergency psychiatric medication under Act 114. During those site visits, interviews were conducted with leaders to identify any changes in hospital facilities, staffing, and procedures relative to implementation of Act 114. For the FY20 assessment, interviews with leaders were conducted via Zoom meetings, due to COVID-19 restrictions.

Hospitals reported most changes that might impact on the administration of medication under Act 114 were due to COVID-19 restrictions.

- Brattleboro Retreat leaders noted that due to COVID continued to have an impact. In order to accommodate patient needs and address COVID safety, there was a dramatic decrease in patient census, as well as merging of units. Also, as result of COVID, the Retreat is experiencing a significant staff shortage.

- UVM Medical Center experienced downtime due to a cyberattack; the primary impact for Act 114 was to create new work flows to ensure educational documentation is available for nursing staff. UVMMC is also experiencing a staffing shortage, and therefore relying more heavily on traveling nurses. Traveling nurses generally do not have psychiatric training to administer medication under Act 114, thus limiting the staff available to administer medication.

- Vermont Psychiatric Care Hospital also reported staffing challenges meaning that not all units are currently open. Leaders did not attribute the staffing shortage to COVID alone. Due to COVID and use of remote meetings, community mental health and family members have been more involved in team meetings.

- Rutland Regional Medical Center also had a reduced census due to COVID and staffing shortages. Court hearings are happening virtually, and regularly without delays.

Staff Feedback on Implementing Act 114 Protocol

To gather input from a wider range of staff members, an online survey was developed in FY17 and has been used since; prior years we relied on interviews with staff which were often difficult to schedule and conduct. Each hospital was responsible for distributing the survey link to staff involved in administering medication under Act 114.

As shown in Table 1, 85 staff members responded to the survey. Nurses were most often represented, particularly at UVMMC.

Table 1: Act 114 Survey Respondents

Position at Hospital	All Respondents		By Hospital			
	Frequency	Percent	Retreat	RRMC	UVMMC	VPCH
Physician/Psychiatrist	5	6%	1	1	1	2
Nurse	50	59%	8	12	17	13
Social Worker	6	7%	1	2	1	2
Psychiatric technician/assistant	19	22%	1	10	0	8
Other	5	6%	0	1	0	4
Total	85	100%	11	26	19	29

Act 114 Implementation Training

About half of the survey respondents (n=41, 53%) reported that they had received formal training; particularly nurses (n=29). Informal training was reported by 20% (n=18) of the respondents. Past assessments found similar results, particularly as Act 114 is regularly included in annual training for nurses.

Table 2: Training Staff Receive on Protocols for Administering Medication under Act 114 By Position at Hospital

Training on Protocols for administering medication under Act 114	Position at hospital				Total
	Doctor	Nurse	SW	Psych Tech	
No training at all	0	4	1	1	6
Informal training through other staff members	2	10	2	4	18
Learn through completion of required forms	1	5	1	5	12
Formal training through orientation/other	2	29	2	8	41
Total	5	48	6	18	77

Patients' Rights

Staff were presented a list of steps taken to ensure that patients understand the process under Act 114 and are fully informed of their rights. These steps have been reported by staff in previous assessment interviews.

As shown in Table 3, nearly all staff report that most of these steps are utilized. Least often, patient advocates are asked to offer explanations.

Table 3: Steps Taken to Ensure that Patients Understand Process and Rights under Act 114

Steps taken	All Respondents		By Hospital			
	Frequency	Percent	Retreat (n=11	RRMC (n=26)	UVMMC (n=21)	VPCH (n=29)
Physician meets with patient to review all of the above	75	86%	9	26	15	25
Members of the treatment team review the above information with the patient	73	84%	9	24	16	24
Patients receive contact information for advocates, including attorneys	66	76%	7	24	13	22
Written information is provided to patients	66	76%	7	22	16	21
Patients are encouraged to contact their attorney	61	70%	6	22	13	20
Patient advocates are asked to explain the process, reasons, rights, and consequences	45	52%	5	19	8	13

Staff, in past years' interviews, have often identified several challenges that arise when they attempt to provide patients with information about the Act 114 process. Thus, the survey asked, "How do you, and the others on the treatment team, respond to challenges that arise when providing patients with information about their rights and the Act 114 process?"

Responses from physicians focused on repeating processes to engage patients as well as to engage legal representation, for example:

- *We complete as many steps of the aforementioned process as possible and continue offering steps that the patient was initially unable/unwilling to participate in.*
- *Clear communication, repeated over time, and frequent advocacy for using their attorney and available resources.*
- *Continual encouragement to contact their attorneys and providing written information.*
- *Encourage them to speak with their assigned legal counsel.*

Social workers primarily focused on connecting patients with legal representation, for example:

- *Encourage them to contact attorney, disability rights.*
- *Refer patients to Legal Aid to discuss their legal rights. Talk openly with patients regarding the*

process and decisions.

- *Encourage them to reach out to the appropriate party to have their questions answered.*
- *We try to balance clinical needs with advocacy and basic education about the process. We frequently encourage them to contact their VT Legal Aid attorney for concerns or discussion of more complicated aspects of the process.*
- *Seek supervision, contact disability rights Vermont, the patients attorney/advocate*

Nurses identified several strategies for responding to challenges. Most often (n=16), these approaches focused on providing information about medication as well as the legal process. Some example comments

- *Provide any and all information that may be requested.*
- *The treatment team continues to attempt to provide education about the court order process and makes sure by the end of the meeting that the patient is aware that the physician (with the team's support) is applying for PO court ordered medications typically with an IM back-up.*
- *Provide education to them and their family. Remain objective and supportive.*
- *We are gentle about giving information. Usually, the patients are so sick that they do not want to listen to the information or discuss the need.*
- *It can sometimes be difficult to provide information and be sure of understanding when patients are in dissociative states or catatonic. Taking it slow and providing information sheets along with verbal explanation can be helpful.*
- *Choose moments when we believed the patient will be most receptive to receiving the information, make multiple attempts, provide the information in different formats, and presented by different team members.*
- *Continue to work to build a therapeutic relationship with patient to foster trust. Provide education and encourage contact with attorney.*
- *We try as much as we can to continue to work collaboratively with the patient. We continue providing education and encourage the patient to look up their own information and compare it to what we have provided.*
- *We read them their rights.*

Nurses also spoke to the importance of the treatment team's communication and problem solving (n=7), for example:

- *Reviewing the line of communication with the treatment team is vital so that correct and consistent information is provided to the patient.*
- *Ask for assistance from another treatment team member, the provider ordering the medications and admin as needed.*
- *Team meeting help work through concerns.*
- *Collaborate with the team including the supports to patient.*

Five nurses identified referral sources:

- *We contact internal and external resources, patient experience staff, peer advocates, compliance officers, Vermont disability, outside care teams, collaborate with families.*
- *I also make sure they have phone numbers to their lawyer or lawyers' office, if they have any questions.*
- *Also, encourage patient to speak with Vermont Legal Aid to address concerns.*

One nurse identified individualized solutions:

- *This is really dependent on the individual and the challenges that present. For example, one individual did not want to engage with providers and so written communication was utilized to provide essential communication about treatment options opening avenues for productive communication that may have not otherwise occurred. The care and options provided are always tailored to meet the individuals' expressed goals and identified individual needs.*

Psychiatric technicians spoke to the support they provided to patients to negotiate the process (n=5), for example:

- *I try to be empathetic and alleviate fear.*
- *Time, patience, support and understanding*
- *This processed in a Human Respectful manner. Great time and care must be taken to ensure the patient is as prepared as they can be to be able to advocate on their own behalf.*
- *Frequently the patients aren't in a state that they are able to process the information. It takes time and compassion to help them through this very stressful event.*

In addition, psych techs identified strategies for sharing information (n=5):

- *Give patient information on who to contact and the numbers to contact the various organizations that help psychiatric patients. The numbers for the various programs that advocate for the rights of the mentally ill are also posted for their convenience throughout the units. Staff makes sure that the patients are aware of the help available to them to help with answering serious questions regarding court ordered meds and involuntary commitment.*
- *Make any and all effort to explain the legal process and the reality of the situation. Encourage them to reach out to legal aid.*
- *Validate them and encourage them to advocate for themselves and reach out to other supports if needed.*

Additionally, one psych tech noted:
Most of the time that involuntary medication is given, especially to a particularly assaultive patient, a "show of force" is brought to the room by having extra staff available to go in and stand while nurses administer medications. Sometimes it has a positive effect of discouraging violent behavior, but it also has the adverse effects of intimidating a patient that is already in a powerless situation or causing them to become agitated on its own.

Alternatives to Medication

The survey asked respondents to "describe any alternatives to involuntary psychiatric medication offered to patients." The following summarizes responses by hospital.

Brattleboro Retreat: Of 11 responses, six said referred to offering opportunities for patients to take medication voluntarily. Five responses focused on a variety of other therapeutic approaches, for example:

- *The hospital also offers group and individual therapeutic activities; however, medications are the standard of care for treatment of bipolar disorder and schizophrenia which are the most common presenting diagnoses.*
- *Continuous support and engagement is offered to help the patient in their treatment process.*
- *Therapeutic groups, individual exercises to promote independence and safety.*
- *Verbal de-escalation*

Rutland Regional Medical Center: Of 22 responses, eight spoke to voluntarily taking medication, including the choice to take medications orally. A range of modalities and approaches were mentioned by 15 respondents. For example:

- *Therapeutic activities /interactions*
- *Emotional support, participate with activities, encourage verbalization of feelings*
- *Provide education, support, build relationships. we also try numerous alternatives that may be helpful to the patient such as sensory cart, atrium, activities, encourage patient to talk to available supports*

- *Staff attempt to deescalate, offer other activities/talking/support, etc.*
- *Group and milieu therapy, safety planning, compromise with medication doses*
- *Coloring, group therapy, pet therapy, redirection*
- *Groups, sensory cart items, arts*

Two respondents noted there were no alternatives, for example, "*Usually when involuntary medication is required, the patient is past any other alternatives currently offered."*

UVM Medical Center: Four of 15 responses identified voluntarily taking medications as an alternative. Multiple therapeutic approaches were identified by nine respondents, including:

- *Coping tools like stress balls, exercise, music, relaxation.*
- *We try many things prior to going this route. Multiple trials with medications that may or may not work. ECT, psychotherapy, group therapy, light box therapy, exercise, medical workups to make sure that other issues aren't going on.*
- *Therapeutic environment, food, drinks, exercise, fresh air, therapeutic listening. Groups*
- *Offer 1:1 time with staff to walk or talk, offer quiet room or seclusion room (unlocked).*
- *We offer groups, exercise, and music room for comfort.*
- *a variety of other therapies*
- *Return to room, PO meds, music room, porch time, 1:1 attention with RN, singing, screaming,*

Two respondents said there were not alternatives:

- *I could not find any alternative, but if there's any evidence based intervention for a holistic approach, I would advocate to try it.*
- *When patients are at the point of needing involuntary medications, they are either too psychotic/disorganized to engage in alternatives.*

Vermont Psychiatric Care Hospital: Six of 22 respondents said the alternative to involuntary medication was voluntarily taking medication, including choosing to take the medication orally. Most of the responses (n=14) outlined a range of alternatives, for example:

- *1:1 psychotherapy (CBT, MBT, DBT, interpersonal, psychodynamic), group therapy, behavior analysis and modification, sensory modulation, family therapy, skills-building instruction (communication, emotion management, psychosocial functioning, etc.).*
- *Alternative treatment courses are always explored, these alternatives look different person to person as no two individuals have the same plan of care.*
- *Groups- actually talking, collaborative network approach.*
- *Walking in courtyard, time alone*
- *Quiet spaces, people to talk to. Someone to walk and talk with, outside time to spend energy.*
- *Quiet room, talking with staff, playing cards or other games to help redirect. Television, tablets, zoom with family and or their lawyer. Taking a walk outside of available or through the recovery hallway. Breathing exercises, calming mediations.*
- *Music, time alone, coloring, groups, yard, meeting one on one. Television and tablets*

Three responses noted there are no alternatives, for example: "*If they have come to us and the team thinks it's the only way to move forward for treatment, then I don't think there is an alternative."*

The survey asked a forced-choice question: What would be needed to provide more extensive alternatives to involuntary psychiatric medication? As shown in Table 4, about half of the respondents endorsed a range of needs, particularly more programs/activities.

Table 4: Needed to Provide more Extensive Alternatives to Involuntary Medication

	Frequency	Percent
More programs and activities	55	63%
More staff	49	56%
More private quiet spaces	48	55%
More sensory equipment	46	53%
Outdoor spaces	36	41%

Benefits of Act 114

The survey presented a list of four possible benefits of Act 114 – drawn from staff responses in previous years. Staff most often felt the benefit of Act 114 was that patients not willing to take medications received them (see Table 5).

Table 5: Benefits of Act 114

Benefits of Act 114	Strongly agree	Somewhat agree	Not sure	Somewhat disagree	Strongly disagree	Total
It provides a consistent process across all hospitals	30 37%	26 32%	22 27%	4 5%	0 0%	82 100%
Patients not willing to take medication receive medication	39 48%	30 37%	8 10%	2 2%	2 2%	81 100%
It provides a check on decision for involuntary medication	33 41%	32 40%	9 11%	6 7%	1 1%	81 100%
It protects the legal rights of patients	36 45%	26 33%	12 15%	5 6%	1 1%	80 100%

Additional comments were offered as follows:

- *It gets the patients help that they so desperately need.* (Nurse)
- *I agree with all of the above statements but the length of time to treatment is suboptimal and considerably longer than all other New England states and neighboring New York state. There is growing evidence that delays in pharmacologic interventions leads to poorer outcomes overall. This process then which is supposed to protect the rights of patients with severe psychiatric illness actually end up curtailing the rights of these individuals as they needlessly stay more dysfunctional for longer periods of time than otherwise. This is a major problem!* (Physician)
- *I am a strong advocate for Act 114, but it doesn't make any sense why a judge (who has no medical or Psychiatric training) to assess the need and make the financial decisions of whether or not to medicate a person.* (Psychiatric technician)

Challenges Posed by Act 114

The survey also asked about challenges posed by Act 114, again using a forced-choice list developed from previous staff interviews. The primary challenge identified by staff in this survey, and in every previous assessment, was the delay between admission and receipt of medication (see Table 6).

Table 6: Challenges posed by Act 114

Challenges	Strongly agree	Somewhat agree	Not sure	Somewhat disagree	Strongly disagree	Total
Results in long delays before patients receive psychiatric meds	55 68%	19 23%	4 5%	3 4%	0 0%	81 100%
Oversight is provided by judges not trained in psychiatry	43 52%	15 18%	21 26%	2 2%	1 1%	82 100%
It creates adversarial relationship between providers and patients	16 20%	31 38%	17 21%	12 15%	6 7%	82 100%
Court orders are too restrictive to allow adjusting medications	20 24%	25 30%	24 29%	12 15%	1 1%	82 100%

Additional comments offered by respondents are outlined below:

- *In comparison to other states, I have worked in, court orders in Vermont do tend to be more restrictive (in California for example, court orders do not restrict the choice of medications unless the patient has a known allergy, and it is possible to obtain orders to administer mood stabilizers involuntarily). Mood stabilizers in particular SUBSTANTIALLY increase the scope of treatment, and there are many instances where not giving mood stabilizers results in much longer hospital stays and/or inadequate treatment (e.g., using antipsychotics alone to treat bipolar disorder in patients who have a better response and fewer side effects on mood stabilizers).* (Physician)
- *I have heard that some judges were making decisions that had direct bearing on how much, the medication being ordered, and if patient required injectable medications if patient refuses oral medication. If all this was true, in my mind these judges are practicing medicine without a license. (*Nurse*)*
- *The longevity of the stay further divides staff and patients, and even worse, causes further mental deterioration before patients are given the meds they need. They are staying longer and longer without getting meds they refuse, and that is in turn causing them to become angrier, and further traumatize and institutionalize them. In many cases "state level" it is readily apparent that medication would vastly improve the lives of our patients and waiting multiple months for those medications actually harms the patient more than "protecting their rights" helps them. (*Psych tech*)*
- *While I don't have many strong opinions on Act 114, I do find it very frustrating when I hear that a psychiatrist's well-reasoned and researched arguments for a particular medication are denied on the basis of a judge's opinion. Some judges have strong opinions about medications, while others do not. This type of variability in the system is actually pretty disturbing, especially since the system is designed to minimize variability (or so I would assume). Perhaps one solution is to have medically-trained, independent "expert witnesses" who have the training to evaluate a psychiatrist's request and advise the judge on whether there are significant risks or if it's a medically reasonable plan/request?* (Psychologist)

The survey asked staff if recent legislation that allows the courts to hold one hearing for both commitment and involuntary non-emergency medication for some patients has reduced the time it takes for many patients to receive medication under Act 114. As shown in Table 7, about half of the staff felt that the option had reduced time for many patients, while one-quarter were not sure if the option had an impact.

Table 7: The Option for Hearing on Commitment and Act 114 Simultaneously Has Reduced Time for Many Patients to receive Medication

	Frequency	Percent
Strongly agree	14	17%
Somewhat agree	31	37%
Not sure	21	25%
Somewhat disagree	9	11%
Strongly disagree	8	10%
Total	83	100%

In addition, 20 staff added comments noting that even with the combined hearings, the process "still takes too long." Examples of these comments include:

- *The wait time for a hospitalization hearing is so disproportionately long that even if med hearings are held at the same time, there is still an unconscionable delay in providing treatment. However, I agree the delay would be even longer if med hearings could NOT be held at the same time as hospitalization hearings.* (Physician)
- *It takes significant time to schedule the necessary hearing and requires extensive evidence for the need of court ordered meds even if patient has been to hospital before and has not taken meds until they were court ordered.* (Nurse)
- *Hearings for both don't happen very often.* (Nurse)

Staff Recommendations

The primary recommendation offered by hospital staff was to speed up the legal process so that it takes much less time to obtain an Act 114 order. Comments ranged from general (e.g., "quicken the process") to specific strategies ("it should happen within two days"). The following are quotes are representative of broader suggestions:

- *If involuntary medications could be given within 2 weeks of arrival patients would leave the hospital much more quickly.…The same applies to being able to give mood stabilizing medications involuntarily...Creating a longer-term position for judges assigned to mental health cases would help to ensure the judge is more familiar with psychiatric treatment. From what I have observed, inexperienced judges take longer (sometimes up to 2 weeks) to make a ruling, which is very unfair to the patient. Designating more judges per county to focus on mental health cases would decrease delays.* (Physician)
- *The decision to administer involuntary medications is a clinical decision. It is based on whether the patient, based on symptoms and ability to maintain safety, needs medications…I understand the need to preserve the patient's legal right to refuse medications and I am completely in support of having laws to ensure that. However, the way act 114 operates in the state of Vermont often results in significant delays in treatment for patients, often while still keeping them locked up in hospitals either because it takes so long to even get to the point of having a hearing, OR because a judge decides in favor of hospitalization but against medications.* (Physician)

- *Many staff and other patients get hurt while waiting for the sick to get better. Please remember that schizophrenia tells the patient NOT to take the medicine. That's part of the disease...Many staff are afraid to work with this population because they are too violent.* (Nurse)
- *Expedite court ordered medications for patients with a significant psychiatric history that have previously benefited from court ordered intervention. I believe it is immoral to delay the treatment of an individual who has previously benefited from our intervention. I believe we need a community (including corrections) task force to see that court ordered medications are implemented in the community. This would aide in eliminating the need for hospitalizations.* (Nurse)
- *Act 114 should not be upheld in inpatient settings alone. There is opportunity to provide stability and better long-term health outcomes. Perpetual acute relapse and remit cycles can have lasting physiological and physical impact and make it all the more difficult for individuals to have sustained success and safety in community settings…this might allow individuals to hold regular employment, maintain stable housing and/or relationships with their external support systems, etc. It also may result in reduced need for invasive/involuntary measures i.e., incarceration, involuntary hospitalization, emergency medication administration, etc.* (Nurse)
- *I wish you could work alongside me and see some of the most vulnerable people you'll ever meet during one the hardest times of their lives, sometimes because of this system they are left to suffer for months and months. My job is very rewarding when we do help and it's almost unbearable when the system fails.* (Psychiatric Technician)
- *Being restricted to the hospital settings and allowing patients to decompensate and not address medical needs and ADL's due to their illness seems more of a rights violation than medications. Focus should be placed on outside community supports to ensure ONH are being honored, that way hospitalization stays can be shorter.* (Psychiatric Technician)
- *Develop and maintain infrastructure for court ordered involuntary medication in the community! I believe that it would cut involuntary admissions to VPCH in half.* (Psychologist)
- *More uniform and comprehensive training about the process for staff and providers, expedite the process so that patients are not left untreated for long periods, more communication about the process with patients so they understand what is happening earlier in the process and have some clarity about their situations.* (Social Worker)

Input from Legal Services and the Judiciary

This year, following precedents set during studies, FSA reached out to gain feedback from Vermont Legal Aid Mental Health Law Project (MHLP), the judiciary and patient representatives from Vermont Psychiatric Survivors (VPS). MHLP provides legal representation to the vast majority of patients on whom applications to the court for Act 114 medication are filed. Judges sitting in Family Court hold hearings and rule on applications submitted by the four hospitals (Brattleboro Retreat, RRMC, UVMMC and VPCH) that administer Act 114 medication. VPS, until recently, assigned Patient Representatives, who are persons with lived experience, to work in each of the four hospitals mentioned above.

A phone call with a VPS Patient Representative revealed that as a result of COVID-19, during FY21 (and continuing into the present) VPS staff have not had a presence in the hospitals that administer Act 114 medication orders and therefore are not able to provide input to this year's study.

Therefore, input from MHLP and a representative of the judiciary was gained through interviews conducted by phone and zoom.

The interviews aimed to understand, from each stakeholder's perspective, the following:

- What is going well in relation to implementation of Act 114?
- What challenges exist in relation to implementation of Act 114?
- What could be done to improve the implementation of Act 114?

Legal Services Input

MHLP notes that even though the number of Act 114 cases filed in their records is not as high as in recent years, filings by the state for Act 114 medication surpass numbers from previous decades. However, what may be seen as a new trend is that the state seems willing to allow more time to pass from filing for admission to filing for Act 114 medication orders. This can be positive in the sense that hospitalized clients may have a longer time before they are involuntarily medicated. Whether this leads to an increased probability that patients and the hospitals will come to a mutual agreement on the course of treatment is unclear.

Over the years in which this study has been conducted, MHLP has pointed to the absence of meaningful community resources for people with mental illness. As a result, they believe that hospitalization and forced medication are being imposed on people who, given a wider range of community alternatives for treatment, would not need hospitalization. Furthermore, and even prior to COVID-19, hospital emergency departments (ED) in the state have experienced an increased demand to hold people in need of in-patient services until beds on psychiatric units become available. The expansion of community options for treatment and intervention would, MHLP believes, reduce backlogs in the ED, open up beds to individuals who need in-patient psychiatric care, and allow increased numbers of individuals to gain effective support while remaining in their communities.

MHLP cited a more recent concern which is focused on the state's use of Clozaril, an anti-psychotic medication which requires regular blood draws from patients to ensure that white blood cell counts remain at normal levels. While the medication is regarded as very effective in its alleviation of certain symptoms, it can cause one's white cell count to crash, making a person unable to resist infections. MHLP thinks that the involuntary blood draws are not authorized by the statute and as currently conducted, are highly intrusive. They would like DMH to access and use equipment that gains adequate blood for monitoring white cells levels from a fingerstick, thus utilizing the least intrusive means possible.

Judicial Input

This study gained feedback from a representative of the judiciary who, during the study year, held hearings on Act 114 applications. Responding to the question of what is going well, there is satisfaction with the applications submitted by the State (i.e., Department of Mental Health) for Act 114 orders. Information provided in applications provides a good sense of what is being claimed and the rationale for requesting the court to order medication under Act 114.

A number of recommendations, intended to improve the legal process surrounding Act 114 applications and decisions were made. First, it was noted that DMH lawyers need training to help them understand what's needed to make the case for medication, to better prepare for the hearing and to present evidence, both in commitment and medication hearings. In some cases, the judiciary has had to deny applications just because the evidence presented does not support the application.

It was recommended that thought be given to amending the statute to say expressly that the doctor's testimony regarding medication can be submitted in writing, i.e., pre-filed with the court and the patient's attorney, prior to the hearing. This information could be pre-filed within the affidavit, or in something separate. An amendment to the statute would enact this option permanently, and eliminate the requirement that judges "stipulate" that testimony can be pre-filed on a case-by-case basis. The benefits of allowing pre-filed testimony from the physician would:

- Provide the patient's attorney, in advance of the hearing, an opportunity to review the application and come into the hearing ready to question the witness.
- Reduce what is valuable time spent in court hearings listening to testimony regarding medication that is familiar to the legal stakeholders – in order to shift the focus of the actual hearing on what is being disputed.

Finally, as these hearings take place in Family Court, it was recommended that the rules should give a judge the discretion to allow family members into the court hearing. In many instances, the inability to allow family members to be present, makes the hearing a secret process that locks them out. Steps should be taken to make families feel supported, including explaining the Act 114 process and providing information (e.g., through an ombudsperson) that gives the public more faith in this process.

Review of Documentation

The Act 114 statute requires the Department of Mental Health to "develop and adopt by rule a strict protocol to ensure the health, safety, dignity and respect of patients subjected to administration of involuntary medications." VSH had in place a protocol and set of forms intended to guide its personnel in adhering to the protocol, including written, specific, step-by- step instructions that detailed what forms must be completed, by whom and when, and to whom copies were to be distributed. As other hospitals took on responsibility for administering medication under Act 114, they utilized the forms VSH had developed. Forms included:

1. Patient Information: Implementation of Nonemergency Involuntary Medication – completed once – includes information on the medication, potential side effects and whether patient wishes to have support person present.
2. Implementation of Court-Ordered Involuntary Medication – completed each time involuntary medication is administered in nonemergency situations – includes whether support person was requested and present, type and dosage of medication, and preferences for administration of injectable medications.
3. 7-Day Review of Nonemergency Involuntary Medications by Treating Physician – completed at 7-day intervals – includes information on dose and administration of current medication, effects and benefits, side effects, and whether continued implementation of the court order is needed.
4. Certificate of Need (CON) packet – completed anytime emergency Involuntary procedures (EIP), i.e., seclusion or restraint, are used. This form provides detailed guidelines for assessing and reporting the need for use of emergency involuntary procedures.
5. Support Person Letter – completed if a patient requests a support person be present at administration of medication.

As part of the VSH protocol discussed above, there was a requirement that each patient on court-ordered medication have a separate file folder maintained in Quality Management including:

1. Copy of court order.
2. Copy of Patient Information Form.
3. Copies of every Implementation of Court-Ordered Medication Form.
4. Copy of reviews.
5. Copies of Support Person Letter, if used.
6. Copies of CON, if needed.
7. Summary of medications based on court order.
8. Specific timeline of court order based on language of court order.

To assess the implementation of the Act 114 protocol, FSA reviewed each hospital's documentation for patients with Act 114 orders for whom the petition had been filed during FY21. Hospitals all use electronic records; staff from four hospitals (Retreat, RRMC, UVMMC and VPCH) provided electronic, redacted copies of Patient Information Forms, Implementation of Court-Ordered Medication Forms, and 7-Day Review Forms (or Progress Notes if review forms were not used), along with any CON documentation for review.

FSA reviewed forms completed by hospital staff for 37 persons with Act 114 applications filed and granted in FY21 (July 1, 2020, to June 30, 2021). This included patients from the Retreat (n = 9), RRMC (n = 12), UVMMC (n = 6), and VPCH (n = 9).

Patient Information Form

Patient Information forms were present for 33 of the 37 files (89%) reviewed. Files with missing Patient Information forms were at the Retreat (n=2) and UVMMC (n=2).

All Patient Information forms present (n=33) were complete in terms of medication type and dose, possible side effects, and options for taking the medication. About one-third of the forms (n=14, 42%) included information on whether the patient wanted a support person present when receiving medication; 13 patients refused to or were not able to discuss having a support person. Eight forms did not include any information about support persons (RRMC, n=1 Retreat, n=2, UVMMC, n=1, VPCH, n=1). Patients signed three forms and refused to sign 13. Fourteen forms did not have patient signatures or an explanation (Retreat, n=1, RRMC n=4, and VPCH, n=9). VPCH electronic form did not provide a place for patient signature.

The Patient Information Forms should be completed prior to the first administration of court-ordered nonemergency involuntary medication. This is indicated by the Patient Information form completion date at least one day prior to the date of the first Implementation of Court- Ordered Medication form. Patient Information Forms had been completed on the day of the order for 12 (40%) patients, one to three days later for 16 (53%), or longer for two patients. Each hospital completed Information Forms on the same day or prior to administration of medication at the same rate.

Form for Implementation of Court-Ordered Medication

FSA examined the forms documenting the first three administrations of involuntary medication following the court order, and then the same forms documenting administration of medications at 30-day intervals following the court order. Of the 137 Implementation Forms reviewed, 126 (92%) were complete (see Table 8). The incomplete Retreat forms were missing information indicating whether the patient wanted a support person; four incomplete forms were for the same patient. The incomplete VPCJ forms did not indicate the sex of the person administering IM medication.

Table 8: Number and Percent of Complete/Incomplete Implementation Forms

Hospital	Complete Forms		Incomplete Forms		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Retreat	32	78%	9	22%	41	100%
RRMC	39	100%	0	0%	39	100%
UVM MC	18	100%	0	0%	18	100%
VPCH	37	95%	2	5%	39	100%
Total	126	92%	11	9%	137	100%

Certificate of Need (CON) Form

Forms also recorded whether a CON was needed for administration of medications. There were three cases indicating that a CON was needed. The required CON was provided for the one case at RRMC. There were no CONs for the two VPCH cases thought it wasn't clear if the forms were in the files but not present in the redacted copies used for this review.

7 Day Review of Nonemergency Involuntary Medications by Treating Physicians

A total of 118 Seven Day Review forms were examined. Of these, 113 (96%) were complete. The five incomplete forms were Progress Notes, not Review Forms, from RRMC; these forms were missing information about the side effects of medication patients might be experiencing.

Perspective of Persons Receiving Involuntary Medication

Gaining Input

The FY 2021 annual independent study invited feedback, as legislatively mandated, from persons:

- to whom medication had been administered under an Act 114 court order during FY 2021
- on whom applications to the court for 114 medication were either dismissed or denied during FY 2021.

To encourage voluntary input from individuals fitting the above criteria, Mental Health Law Project has supported this assessment by mailing invitational materials both to:

- Individuals for whom an Act 114 application was filed and granted in the study year.
- Individuals for whom an Act 114 application was filed but not granted in the study year.

The following steps were used to engage individuals in this study:

- FSA designed a questionnaire and consent form for distribution to individuals who received Act 114 medication orders *during* FY 2021. The questionnaire/consent form gave individuals the option of participating in a phone interview OR providing feedback on the questionnaire. The Vermont Legal Aid Mental Health Law Project (MHLP) mailed the questionnaire/consent form with a letter about the study to all persons who received Act 114 medication *during* FY 2021.

- FSA designed a questionnaire and consent form for distribution to individuals on whom applications submitted for Act 114 medication during FY 21 were not granted by the court. Similarly, the questionnaire/consent form gave individuals the option of participating in a phone interview with FSA OR providing feedback on the questionnaire and MHLP mailed the questionnaire with a letter, explaining the project and encouraging participation.

- A self-addressed, stamped envelope addressed to FSA was included in both mailings from MHLP, allowing individuals either to:

    - mail a completed the consent form and questionnaire, OR
    - mail a completed consent form, checking their preference for a phone interview and providing contact information for them to be reached by FSA.

Compensation of fifty dollars ($50.00) was offered and paid to those individuals who received a mailing from MHLP and chose to participate either by phone interview or completion of the questionnaire.

Focus of Input Desired

Following legislative guidance, the assessment pursued two lines of questioning: one for persons hospitalized and receiving an Act 114 medication order at some point between July 1, 2020 and June 30, 2021, at either the Brattleboro Retreat, RRMC, VPCH or UVM Medical Center and one for individuals whose applications for 114 medication from any of the above hospitals were either dismissed or denied by the courts.

The questions asked of persons who had been hospitalized and had received Act 114 medication orders during FY 2021 sought to understand:

- How the event of receiving court-ordered, nonemergency medication was experienced.
- To what extent the protocols identified in the statute were followed, and

- What recommendations they might have for improving the experience of receiving Act 114 medication.

Specific questions focused on understanding the extent to which the following provisions of Act 114 had been implemented examined:

- Conditions and events leading up to the involuntary medication.
- How well individuals were informed regarding how and why they would be receiving involuntary medication.
- Whether and how individuals were apprised of their rights to have a support person present and to file a grievance
- Conditions and events related to the actual experience of receiving involuntary medication.

Additionally, people who received Act 114 orders during the FY 2021 were asked to comment on:

- Their opinion, looking back, on the state's decision to order Act 114 medication.
- The most and least helpful aspects surrounding the experience of receiving court-ordered, non-emergency, involuntary medication.
- How the administration of Act 114 medication could be improved

Persons on whom a submitted application was not accepted by the court were asked to:

- Describe what information they'd received, from whom, regarding the filed application
- Provide their opinion about why the hospital had filed an application and why it had been denied or dismissed
- Make recommendations for improving the process leading to administration of court-ordered, non-emergency, involuntary medication at the UVM Medical Center, Rutland Regional Medical Center, the Brattleboro Retreat, and the Vermont Psychiatric Care Hospital.

Number of Individuals Who Received Invitation Letters and Numbers Who Provided Feedback

During FY 2021, MHLP records indicate that Act 114 applications were submitted to the courts for 56 individuals[i]. Of those:

- 42 applications were granted. MHLP sent letters and questionnaires to each of these individuals but 7 were returned through the mail.
- 14 applications were dismissed or denied. MHLP sent 13 letters and questionnaires, as one individual in this group had a note in the file requesting that a 114 letter not be sent to him/her.

Table 9: Participants Providing Input as Proportion of All Persons with Act 114 Orders by Study Year

Year of Court Order	Persons Who Received 114 Court Orders		
	Number with Orders Issued in Designated Study Period	Number Providing Feedback Who Received Order in Study Period	Response Rate of Feedback
2003	14	1	1%
2004	27	6	22%
2005	13	4	31%
2006	22	4	18%
2007	18	2	1%
2008(1/1/08–11/30/09)	12	4	33%
2009 (7/1/08 -6/30/09)	19	3	16%
2010 (7/1/09 -6/30/10)	26	4	15%
2011 (7/1/10 – 6/30/11)	28	4	14%
2012 (7/1/11 – 6/30/12)	28	6	21%
2013 (7/1/12 – 6/30/13	32	4	13%
2014 (7/1/13 - 6/30/14	55	6	11%
2015 (7/1/14 - 6/30/15)	50	6	12%
2016 (7/1/15 - 6/30/16)	62	6	10%
2017 (7/1/16 - 6/30/17)	52	8	15%
2018 (7/1/17 - 6/30/18	67	7	10%[1]
2019 (7/1/18 - 6/30/19)	50	8	16%[2]
2020 (7/1/19 – 6/30/2020	44	4	9%[3]
2021 (7/1/20 – 6/30/2021)	42	4	10%[4]

[1] Although 67 individuals received Act 114 orders during FY 18, 12 letters/questionnaires sent by MHLP were returned unopened. Of the fifty-five individuals who received the materials from MHLP, the seven who provided feedback represent a 13% response rate.

[2] Although 50 individuals received Act 114 orders during FY 19, only 44 individuals received letters (6 were returned to MHLP), raising the response rate amongst recipients to 18%.

[3] Although MHLP sent invitations to the 44 individuals in their records who had received at least 1 Act 114 order during FY 2020, 4 letters were returned raising the response rate amongst recipients to 10%.

[4] Although 42 individuals received Act 114 orders during FY 21, 7 letters/questionnaires sent by MHLP were returned unopened, and FSA received information that an additional letter was not received by a family member. Thus 34 individuals presumably received a letter and questionnaire inviting feedback, raising the response rate amongst actual recipients to 12%.

Of the four persons who provided input regarding their medication experience during FY 2021:

- two received the medication order at the Rutland Regional Medical Center
- one received the medication order at the Vermont Psychiatric Care Hospital (VPCH)
- one received the medication order at the Brattleboro Retreat

Feedback provided by the four persons who received Act 114 medications in FY21

Three individuals provided responses by completing the questionnaire while a fourth participated in a phone interview. In all cases, respondents took the liberty to not only answer the forced choice questions but also to provide narrative responses to the open-ended questions. A selection of quotes from responses - as either written or spoken - are provided below.

<u>The reason for refusing to take medication.</u>

In response to the question "why did you choose to not take medication voluntarily?" Two individuals noted the negative impact of side effects associated with the medication. Another said s/he had taken the medication. Another person offered the following:

"I am skeptical, basically a deep skeptic of the medical model of mental illness. If I'm in a hospital, then I should be able to retain control about what goes into my body...let me figure out my episode on my own terms at my own speed. The strategy of modern psychiatry is to medicate emotion and agitation rather than address the problem in therapy session. People are still upset but now they are sedated. And it's harmful physically – after 20 years of taking those drugs I was diagnosed with diabetes."

<u>Information about the court hearing, the court order, the Act 114 protocols, and the right to file a grievance.</u>

Act 114 protocols stipulate that individuals be given information about the upcoming court hearing and the subsequent court order. Only one individual said that s/he was told the date and time of the court hearing, while two other respondents said they were given no information about the hearing and one person could not remember what, if any information s/he received. None of the four attended the court hearing and only one individual said that both the doctor and lawyer informed him/her about the hearing outcome. More specifically, one person believed that s/he was taking the medication voluntarily, stating:

"I never was told that it was court ordered" and providing answers throughout the questionnaire indicating a belief that s/he had always taken the medication voluntarily. Congruent with this belief, many of the questions posed did not make sense to this individual."

Act 114 requires that individuals be given information about the prescribed medication being ordered, including its name, the dosage and frequency with which it would be administered, whether it would be given orally or by injection, the intended effect and the potential side effects and risks associated with taking it. Three people said they were told what medication was ordered, two individuals said they were told the dosage ordered, another two understood whether the medication would be administered orally or by injection and what the potential side effects could be, while one person responded being told how frequently the medication would have to be administered.

Finally, people were asked if they knew about the Act 114 protocols that guide the administration of court-ordered involuntary medication and whether they were aware of their right to file a grievance. One individual reported knowing both about the protocol that directs how DMH should use involuntary medication ordered under Act 114, and his/her right right to file a grievance if the protocol was violated, elaborating as follows:

"That whole system of grievances – people just paying lip service to complaints. Twenty days for a response, another twenty days if you wanted to push back. I don't think the system is there for real, viable change…Disability Rights VT used to send in [to the hospital] a paralegal and that was more effective in getting attention for concerns than filing grievances which were often ignored."

Treatment by staff during and after administration of involuntary medication
People were asked to comment on:

- What happened if they receive medication through injection?
- How they felt they were treated in general by staff around, during and after the administration of court-ordered medication.
- Concern that staff showed for a patient's interest in being afforded privacy when medication was being administered.
- Whether they were asked if they wanted a support person present when receiving medication, as stipulated in the protocols.
- Whether they were offered emotional support.
- Whether staff offered to help debrief them after administration of court-ordered medication.

Only one respondent reported receiving medication through injection, noting that staff asked about and administered the injection on the part of the body s/he preferred. Additionally, the injection was given by a person of the gender s/he requested.

Individuals were asked how they would rate the privacy of the location in the hospital where medication was given to them. Each of three people who responded gave different answers. One was satisfied with the level of privacy, one was not and the third said that privacy didn't matter because:

"*At the point when you are in a facility that opens your door throughout the day, privacy goes out the window. That lack of privacy wasn't traumatizing but it was annoying for sleep purposes."*

Responses regarding how people were treated by staff in relation to the administration of the court-ordered medication again revealed mixed reactions. Answering the question about the extent to which people felt their health, safety and dignity were respected throughout the experience of receiving Act 114 medication:

- One individual reported feeling fully respected
- One reported feeling somewhat respected.
- A third felt not at all respected.
- A fourth did not respond.

Patients receiving Act 114 medication should be asked by staff if they would like a support person present when receiving medication. One person simply checked that YES, s/he was asked about this but did not want a support person. The second individual provided a more in-depth response:

"*It was asked, it certainly wasn't stressed - and because of COVID I don't know what could have been done [if I'd wanted a support person]. I don't think the hospital does a good job of explaining or supporting, stressing [one's right to having a support person]".*

The protocol also states that patients should receive offers from staff to debrief the experience of receiving involuntary medication and to receive emotional support. No one said that emotional support was offered but one individual said that hospital staff had debriefed after receiving medication, elaborating that:

"Everyone at the Retreat was respectful and kind and knowledgeable"

Regarding the extent of force used to get people to take medication:
The questionnaire asked people to describe any ways in which they felt they had some control over the process of receiving court-ordered medication. Again, three of the four respondents provided an answer. For one, s/he was given a choice of medication. Two others provided the following:

"*I was only granted the decision to choose between the form of the administration of the medication."*

"Yes, I was able to request what time I took night meds but not day meds at first."

What was most difficult and who or what was most helpful about the experience of receiving involuntary, court-ordered, non-emergency medication?
The question about what was most difficult led two people to comment on the effects of the medication.

"The refusal of medical staff to look at the situation wholistically. I gained 50 lbs in 6 months [yet] drugging me took precedence over my overall health. This borders on malpractice."

"Drowsy [from the] medication on the day after"

Another individual reflected on events leading up to the hospitalization and involuntary medication noting:

"[I] was assaulted by a state trooper with a taser gun for forced removal from the privacy and rightful property of my residence."

In response to the question of what or who as most helpful during the experience of receiving Act 114 medication the following comments came from three respondents:

"I have to give credit to the facility [VPCH] itself. Having your own bedroom, bathroom, shower is a major bonus. Not having to deal with others' BS – having hot water. All this in comparison to [conditions a] VSH. BUT if you don't staff it with the right people and the right philosophy, it's a shame. There is no sense of central leadership [at VPCH]… and lacks a vision for cohesive recovery for the people who are there."

"My sister for advocating on my behalf against mistreatment and for raising concerns about the lack of regard to my health and rights pursuant to advocacy of disabled people".

"Everyone was helpful at the Retreat."

People were asked their opinion about whether the State had made the right decision in seeking an order for, and giving the court-ordered, involuntary medication. No one stated that receiving 114 medication had been the right decision for them. For one person, his "*concerns and complaints of side effects were not considered or treated with an evaluation".*

Another person simply noted that in receiving 114 medication his/her preference for oral medication was addressed.

A third individual responded by noting that whether the state's decision was right or wrong was really not the issue. Instead, s/he noted:

"Medication should be available to people who need it and want it. There certainly are people who want it but if someone is adamantly against taking these highly volatile, powerful substances, once you're already locked up….and get to the hospital those options [to take or not] are not available. You've already taken away someone's liberty by committing them to a hospital."

Those who gave input were asked for their ideas on what would things better for people who are under court order to receive involuntary, non-emergency medication. Responses came from each of the four persons. One referenced the experience of not understanding s/he was taking medication that was court ordered and said, simply, that people should be informed. Another felt that the hospital should provide patients with: *"a second opinion in the form of a social worker, medical practitioner and legal counsel" before seeking a court order.*

A third individual stated that patients should have the option of taking medication orally, equating this option with *"giving people choice and having a voice. I think drugging people with injections is awful. So I'm glad I got the choice because I'm really on a medicine I like".*

A fourth respondent believes that the current law should be challenged as unconstitutional, believing that a case can be made that once a person is committed to a psychiatric setting, s/he *"cannot be further force, violated"* by being subjected to a physically invasive medical procedure.

Finally, people were given an opportunity to provide additional thoughts beyond their responses to questions. Two individuals were positive in their closing comments. In one instance a person reported s/he is now happy that the medications being taken work and have little side effects and gave kudos to the staff at the Brattleboro Retreat, who were credited with being kind and making it *"a nice place to be involuntarily"*.

The other positive response came from a person who received 114 medication at RRMC. *"Thank you for your services and helping people."*

A third respondent continued to profess his/her rights as a non-violent individual with a disability who feels that these circumstances were not considered and led to unjust treatment.

The fourth individual critiqued the overall approach to treating mental illness through involuntary medication orders. "*I think that the way in which mental illness and psychotic disorders in particular – clearly are not an easy problem to deal with. I really think people should weigh the physical damage that these drugs due to people, especially over long-term use – and if someone tells you that they don't want to take a drug, respect that person's autonomy. That people don't have agency over their own bodies – and that you are injected with chemicals, and you lose consciousness – if that's not a death sentence I don't know what is. It's incredibly terrifying and disconcerting – in the name of health."*

This person noted, in his/her opinion, that current psychiatric facilities in Vermont *"aren't structured for long-term care. The amount of time [patients committed t VSH spent] was important for helping people stabilize. Time is a serious component in recovery. Your mind needs time to recover. The goal these days is to get people out as quickly as possible and that is how they are rationalizing these forced medications"*

Input from 1 individual on whom an application for 114 medication was not approved.
Of the 13 individuals who received letters and questionnaires mailed from MHLP inviting them to provide feedback, only 1 person responded to this request. As medication was not ordered, our line of questioning sought to understand the extent to which protocols for informing patients of the application process and hearing were followed, the person's understanding of why the application was not approved, as recommendations from the individual about how to improve the experience for

individuals on whom applications for 114 medication orders are filed, regardless of outcome.

The individual was admitted to the Brattleboro Retreat. S/he reports being informed that an application for Act 114 medication was file by his/her lawyer, doctor and other hospital staff, as well as being provided the date and time of the court hearing, which s/he attended virtually.

The respondent noted that s/he had refused to take medication recommended by the hospital voluntarily, believed the recommended medication was not appropriate and would lead to undesired side effects and noted that a different medication and dosage would be more beneficial. Specifically the individual noted having other physical conditions that were not being addressed:

"*I think I was misdiagnosed. I was also being denied medical marijuana which had already been ordered and dental care, in addition to having digestive issues that made me concerned about taking digestible/oral medication. Plus, I brought up the medication side effects that were listed…I did feel they could care for my physical illness correctly, let alone my mental health care…I didn't like being asked to take medications when my physical medical care was a flop in there."*

The patient's doctor and other hospital staff let him/her know that the application was not accepted by the court. In this person's opinion, it became clear to the hospital doctor that " *I didn't need all those medicines. I had already been there 6 weeks."*

Finally, when asked in what ways a person's experience awaiting a court decision on an application for Act 114 medication could be improved, s/he commented on the court experience as follows:
"I didn't even get to speak in court and after 4 hours in zoom my hearing was rescheduled to continue a week later. I don't think court should be like that for patients. I would have at least changed those things."

Key Findings Emerging from Interviews

It is important to offer the following information about the interviews. First, the people who volunteered to participate in the interviews were self-selected. Second, this year's response numbers were very small so that one cannot view the findings as representative of all individuals who received Act 114 medication in FY 2021 (n=42) or whose applications were denied (n=14).

Responses from the four individuals who were hospitalized and received involuntary medication through an Act 114 order at some point between July 1, 2020, and June 30, 2021, were mixed on the majority of questions. For example, reasons people did not want to voluntarily take medication included a:

- belief that medication was not needed because the person had been misdiagnosed
- concern over the possible (or previously experienced) side effects brought on by the medication
- belief that the medical model of mental illness leaves little room for an individual to exercise control over his/her body and life.

As another example, there were variations in what information people reported getting from hospital and legal staff about the hearing date and time, the medication, the Act 114 Protocols, the ability to file a grievance.

The only point on which respondents agreed was their belief that the state did not make the right decision in ordering Act 114 medication for them.

Section 2: Outcomes from Implementation of Act 114

As part of earlier assessments, stakeholder input was used to identify a set of outcomes that would be expected with successful implementation of Act 114. These outcomes include:

- Hospital staff awareness of Act 114 provisions.
- Decreased length of time between hospital admission and filing petition for involuntary medication.
- Decreased length of stay at hospital for persons receiving involuntary medication.
- Reduced readmission rates and increased length of community stay for persons receiving involuntary medication.

In addition, persons currently living in the community were asked to describe the impact that receiving nonemergency involuntary medication had on their current lives and their engagement in treatment.

For FY21, achievement of outcomes was as follows:

- Staff awareness of Act 114: Documentation indicates that staff administering medications under Act 114 in FY21 were generally aware of the provisions as shown by documentation of adherence to most Act 114 provisions. Consistent with past reviews, documentation of whether the patient wanted a support person was the most common piece of information missing on the Implementation Form.
- Time between admission and petition: In FY21, 61% of Act 114 petitions were filed within 30 days of the date of hospital admission; 21% were filed 30-60 days after admission (see Table 10). This finding demonstrates that petitions continued to be filed in approximately the same period as in the past two years.

Table 10: Time (in days) Between Admission to Hospital and Filing Act 114 Petition

Time from Admission to Petition	**FY of petition filing (7/1 to 6/30)**							
	FY18		FY19		FY20		**FY21**	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
<30 days	44	56%	34	52%	28	52%	34	61%
30-60 days	19	24%	20	31%	18	33%	12	21%
61 - 180 days	14	18%	7	11%	7	13%	7	13%
181 - 365 days	1	1%	2	3%	1	2%	1	2%
>365 days	1	1%	2	3%	0	0%	2	4%
Total	79	100%	65	100%	54	100%	56	100%

In FY21, it took on average 34 days from admission to filing the Act 114 petition (see Table 11). Overall, it took about 46 days from admission to the Act 114 order. This represents a decrease in time from previous years in admission to filing the petition. It took on average 13 days from the date the petition was filed to the date an order was issued. This is within the increase/decrease of the past few years.

Table 11: Mean Time Delays between Steps in Act 114 Process
(Excluding cases in which petition filed more than 1 year after admission)

FY of Petition (7/1 t0 6/30)	Time (in days) from:					
	Admission to Filing Petition		Petition to Order		Admission to Order	
	Mean	*Std. Dev.*	Mean	*Std. Dev.*	Mean	*Std. Dev.*
2012	50.2	*35.1*	14.4	*6.8*	65.7	*35.0*
2013	57.6	*40.9*	13.4	*9.6*	66.7	*39.7*
2014	93.2	*107.4*	16.2	*8.1*	109.3	*109.4*
2015	64.9	*55.9*	15.9	*9.7*	81.1	*61.0*
2016	67.6	*61.4*	12.2	*6.9*	79.6	*63.0*
2017	51.2	*56.2*	11.0	*6.9*	62.1	*57.7*
2018	43.2	*49.5*	12.1	*11.9*	55.3	*50.3*
2019	40.7	*44.9*	15.3	*22.5*	55.9	*53.4*
2020	37.6	*39.0*	13.1	*14.0*	50.7	*44.8*
2021	33.8	*24.7*	12.5	*9.3*	46.3	*28.4*

In past assessments, and again this year, hospital staff reported that time delays in the Act 114 process were often due to legal procedures. The first of these is separation of the commitment and Act 114 hearings. As shown in Table 12, in FY 21, 75% of Act 114 petitions had been filed prior to the commitment orders.

Table 12: Time between Date of Commitment and Act 114 Petition Filing Date
(Excludes cases in which time was 1 year or more)

Petition filed:	FY18		FY19		FY20		FY21	
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent
Before commitment	52	75%	16	30%	47	92%	30	75%
Same day as commitment	0	0%	0	0%	0	0%	0	0%
Within 7 days of commitment	5	7%	20	37%	1	2%	3	8%
8 - 30 days following commitment	9	13%	15	28%	1	2%	1	3%
30+ days after commitment	3	4%	3	6%	2	4%	6	15%
Total	69	100%	54	100%	51	100%	40	100%

- Length of stay: Of the 56 individuals with Act 114 petition filed in FY21, 52 (93%) were discharged from psychiatric inpatient care, on average, 91 days (approximately 3 months) after admission, and 46 days (about 6.5 weeks) after the Act 114 order was issued (see Table 13). This represents a continued decrease in length of stay over the past two years.

Table 13: Length of Stay for Patients under Act 114 Orders Who Were Discharged from Hospital
(Excludes cases in which time was 1 year or more)

FY Petition Filing (7/1 t0 6/30)	**Average Length of Stay (in days) from:**			
	Admission to Discharge		**Order to Discharge**	
	Mean	*Std. Dev.*	Mean	*Std. Dev.*
2012 (n=23)	128.1	*67.4*	63.5	*40.5*
2013 (n=21)	123.4	*41.3*	71.0	*38.9*
2014 (n=35)	154.7	*125.9*	85.8	*63.0*
2015 (n=45)	149.6	*87.9*	97.1	*69.6*
2016 (n=41)	152.8	*121.0*	58.9	*49.0*
2017 (n= 46)	122.4	*75.4*	68.9	*47.8*
2018 (n=65)	116.2	*80.7*	65.4	*63.2*
2019 (n=62)	126.0	*105.1*	66.2	*61.0*
2020 (n=48)	95.5	*55.3*	48.3	*41.7*
2021 (n=54)	91.4	*51.6*	45.6	*43.8*

- Readmission Rates: Of the 52 patients who were discharged in FY21, 18 individuals (35%) had been readmitted at least once after the order by the time of this review.

Section 3: Steps to Achieve a Noncoercive Mental Health System

The Department of Mental Health (DMH) leadership team, five individuals, met with Flint Springs Associates (FSA) to review steps DMH took during FY21 toward achieving a noncoercive mental health system. These include:

1. On January 1, 2019, Whole Person Care was implemented. This payment reform initiative focuses on person-centered care by guaranteeing the Designated Agencies (DA) a set monthly fee to provide more flexibility in the services. During FY21, DMH continued to track and monitor service volume to ensure that persons with greater needs are served. Quarterly, the data are entered into a scorecard and reviewed by DMH program staff. When questions arise, the appropriate person will reach out to the Agency for better understanding or to fix data issues. The scorecard is also shared with the Designated Agencies for their review.

2. As part of Act 82 implementation, during FY21 DMH has been reviewing persons with duplicate 114 orders and hospitalizations FY17 – FY19. This included 26 separate individuals, primarily patients with a thought disorder (24) including schizophrenia, schizoaffective disorder, and psychosis. Six of the twenty-six patients were hospitalized related to criminal proceedings. Fifteen of the patients were rated as "doing well" and "stable" by providers familiar with their treatment, while six were thought to not be doing well, one was deceased and the stability status of four other patients was unknown. Twenty-three patients were clients known to be affiliated with a specific Designated Agency.

3. As per legislation, DMH created the Mental Health Integration Council "for the purposes of helping to ensure that all sectors of the health care system actively participate in the State's principles for mental health integration established pursuant to statute and as envisioned in the Department of Mental Health's 2020 report "Vision 2030: A 10-Year Plan for an Integrated and Holistic System of Care." The guiding language includes integrating the mental health into the overall health care system and ensuring equal access to mental health care. During Fiscal Year 21, the COVID-19 pandemic led to twice postponing convening the Mental Health Integration Council, with approval of the legislature. In the interim, the Department of Mental Health designed the meetings and prepared for convening the council on July 13th. That meeting was held, and work is underway for the upcoming meeting in September.

4. DMH secured legislative funding for the new 16-bed secure recovery residence in FY21. This project is a keystone in the mental health system of care continuum, critical to ensuring that all Vermonters can access the care they need, when they need it. The current eight-bed secure recovery residence, MTCR in Middlesex, operates consistently at or near capacity. While the overall number of people needing this level of care is relatively low, these individuals account for much longer lengths of stay in hospital beds due to inadequate aftercare support options. This new larger facility will provide an intermediate stepdown care option for persons who would otherwise not be eligible to discharge from an inpatient level of care. This timely transfer of persons to the right level of care when they need it supports the most efficient use of existing healthcare capacities and allows expenditures to accurately reflect the costs of services and care delivered. It also allows persons to be treated more consistently at the lowest appropriate level of care.

5. In April 2020, DMH and ADAP partnered to receive a SAMHSA grant that provides $2M in funding over 16 months to enhance services during the pandemic. These funds have been used for the provision of crisis intervention services, mental and substance use disorder

treatment, and other related recovery supports for Vermonters impacted by the COVID-19 pandemic. In May 2021 Vermont received a no cost extension allowing the funds to continue until August 2022. DMH activities funded through this original award include Direct Service/Outreach, Mental Health Peer Supports, Mobile Crisis (Vans, Sensory Materials, and Go Bags, Renovations, and Technology). Through constant oversight, DMH determined that the need for Technology was less than expected and transferred that funding to provide more opportunity within the Direct Service/Outreach activity.

Also in May 2021, DMH and ADAP received notification from SAMHSA regarding eligibility for a supplemental COVID-19 grant and were subsequently awarded an additional $2.8M in funding. This supplemental award expires in May 2022. Following similar activities, this grant is funding Direct Service/Outreach (supporting such programs as Emergency Department Navigators/Urgent Care Specialists, Clinical Care Managers, Street Outreach, Housing Supports, and various positions targeted individuals with high utilization/risk), Mental Health Peer Supports (supporting peer outreach and support to individuals experiencing homelessness or sheltering in motels, weekly support groups for WRAP facilitators, interactive workgroup "Creating Connections", public information and outreach, expand recovery support groups, add part time, temporary peer position as Community Outreach Coordinator, weekly wellness check-ins via Zoom, and to strengthen existing support groups and expand to new locations) and, new to the supplemental grants, client incentives to participate in required federal reporting and support funds for grantees to administer this reporting.

6. Since the beginning of the pandemic, Department of Mental Health (DMH) contracted with Windham Center which is a 10-bed inpatient unit to serve adults that need inpatient treatment and tested positive for COVID. However, from April 1, 2021, DMH contracted with Springfield Emergency Department for two beds to treat COVID+ adults needing psychiatric inpatient treatment. This change in contract was due to the high percentage of vaccinated Vermonters, low positivity rate and low occupancy rate of the inpatient unit. The contract with Springfield Emergency Department ended on June 20, 2021, for the use of the two beds due to no occupancy for over the last two months of the contract.

   DMH continues to work with Vermont Association of Hospital and Hospitalist Services (VAHHS) to support any Hospital Emergency Department if there happens to be an individual testing positive and in need of psychiatric inpatient treatment. DMH is also working with Vermont Department of Health to ensure that all the inpatient units have adequate PPE to ensure everyone's safety. All inpatient units continue to require a negative COVID test prior to admissions or vaccination with low exposure to high-risk areas.

7. The Brattleboro Retreat completed construction on 12 additional adult inpatient beds and the certificate of occupancy was granted on February 21, 2021. Staffing issues have prevented the beds from coming online, however, the Retreat is working towards opening six of the beds by October 1, 2021.

8. Expanding CVHHS capacity by 25 beds to provide voluntary, low acuity patients with in-patient care. The project was placed on hold due to COVID, although discussions are starting again. DHM has asked CVHHS to consider designating one of these for the treatment of youth, given the emergency department wait times for children as well as the current concentration of youth beds at the Brattleboro Retreat.

Section 4: Recommendations

Flint Springs Associates offers the following recommendations:

Hospital Practices

FSA recommends that staff at hospitals administering Act 114 medication continue efforts to help patients understand the reasoning behind the decision to seek an order for involuntary medication and to invest time in talking with patients about the process and available options.

To maintain clear records for documenting implementation of Act 114 in accordance with provisions of the statute, all hospitals have followed past FSA recommendations that each hospital maintain an electronic file or section within the electronic file for persons receiving medication under Act 114. This practice should continue.

Annual Act 114 Assessment

FSA recommends that the following steps continue to be used in future assessments of Act 114:

- Provide a financial incentive for the participation of individuals who have received court-ordered medication in the independent assessment of Act 114.
- Ask persons interviewed if they would like any family members to be interviewed and pursue these as permitted.
- Given the similar content to assess the implementation of Act 114 protocols required by the legislature through two reports, one generated by DMH and the other by an external entity, the legislature should clarify the purpose of having an internal and external, independent report.