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TO: Senator Virginia Lyons, Chair; Members of the Senate Committee on Health and Welfare

FROM: Mike Fisher, Chief Health Care Advocate

RE: S.36 Testimony Follow Up

DATE: February 28, 2023

The challenge with S.36 is balancing the right of health care workers to be safe from workplace violence with the needs of Vermonters who are challenging to treat. It is important to assure that even Vermonters with challenging behaviors have access the health care services that they need. On the one hand, granting health care workers the ability to trigger warrantless arrests for certain disruptive behaviors is one tool that could be used to help them maintain a safe workplace. On the other hand, some people displaying escalated behaviors in a health care setting may have a real and urgent need for health care services whose condition may only get worse without treatment.

One broad concern with S.36 overall is that it could have a disparate impact on Vermonters of color. Though we are not suggesting that health care workers will intentionally use the availability of warrantless arrests against people of color, it must be acknowledged that people of color are disproportionately impacted by our criminal justice system. Vermonters with disabilities would also be at risk of being disparately impacted by the expansion of warrantless arrests.

These risks could be mitigated by narrowing the scope of the bill. The HCA recommends the following changes:

The definition of "health care facilities" should be limited to hospital emergency departments and first responder settings only. The broad application of warrantless arrests to all health care facilities concerns us due to variations of de-escalation training and variations of appropriate supervision of those making the decision to call the police.

The HCA has no objections to the sections on assault and criminal threatening. However, we find the expansion of warrantless arrests to disorderly conduct in health care settings to be problematic. The definition of disorderly includes vague and subjective behaviors, two of which seem not even to be applicable to a health care setting.

The HCA supports either removal of the disorderly conduct from this bill altogether or narrowing the definition of disorderly conduct in this bill to 13 V.S.A § 1026 (a) (1) only.

- **§ 1026. Disorderly conduct**

(a) A person is guilty of disorderly conduct if he or she, with intent to cause public inconvenience or annoyance, or recklessly creates a risk thereof:

(1) engages in fighting or in violent, tumultuous, or threatening behavior;

~~(2) makes unreasonable noise;~~

~~(3) in a public place, uses abusive or obscene language;~~

~~(4) without lawful authority, disturbs any lawful assembly or meeting of persons;~~

~~or~~

~~(5) obstructs vehicular or pedestrian traffic.~~

(b) A person who is convicted of disorderly conduct shall be imprisoned for not more than 60 days or fined not more than \$500.00, or both. A person who is convicted of a second or subsequent offense under this section shall be imprisoned for not more than 120 days or fined not more than \$1,000.00, or both. (Amended 1971, No. 222 (Adj. Sess.), § 5, eff. April 5, 1972; 2013, No. 150 (Adj. Sess.), § 3.)

We further suggest that the legislature call on the Vermont Program for Quality in Health Care to evaluate the best practices for health care providers who work in settings where a warrantless arrest is allowed to support those providers with appropriate training.

Lastly, if there is a particular concern about hate speech being used against health care providers, we would welcome a discussion about inclusion of a provision in this bill targeting speech that attacks or disparages a marginalized social group or a member of such a group.

Thank you.

Mike Fisher
Chief Health Care Advocate
Office of the Health Care Advocate