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Agency of Human Services

April 7, 2025

To: House Committee on Corrections and Institutions
From: David Herlihy, Executive Director

Re: Written Testimony on H.32 - *An act relating to treatment for opioid use disorder in correctional facilities*

1. This is to memorialize my anticipated testimony on H.32. I was provided with a version marked as Draft No. 1.1 and dated 2/24/2025. These comments are based on the understanding that the Committee is interested in hearing about scope of practice questions that may arise related to provisions about prescribing controlled substances. The request for input arrived the day after the Board's monthly meeting, thus this reflects my best estimate of how the Board would view the draft bill.

2. First, it would be fair to say that bill presents an effort to improve continuity of care for some patients who receive care while in the custody of the Department of Corrections. Continuity of care is desirable in health care. Accordingly, suggestions for changes to the draft should in no way be taken as disagreement with the concept of the bill. My comments are intended to help the committee to avoid wording that might conflict with Vermont or federal standards for health care in general, and specifically those relating to prescription drugs, including medications for opioid use disorder.

3. One issue is the use of the phrase "licensed to prescribe the medication," which appears several times in the draft bill. The medication in issue is a drug prescribed for medication-assisted opioid use disorder treatment, such as buprenorphine. That phrase is inadequate to accomplish what would appear to be intended. A better option might be "licensed, qualified, and authorized to prescribe the medication." This change is recommended because licensure is not the only prerequisite for prescribing. In addition to licensure, the professional prescribing a drug for medication-assisted opioid use disorder treatment must meet other conditions:

- The individual must possess a DEA registration to prescribe controlled substances.
- Prescribing the drug must be within the professional's scope of practice. This turns on not only whether the profession may prescribe the drug, but also whether it is within scope of practice based on the reason for the prescription. For instance, podiatrists may prescribe drugs, including controlled substances. However, their scope of practice is

limited to treatment related to the foot and lower leg. 26 V.S.A. § 321(3). A podiatrist can prescribe an antibiotic for an infection in the foot or ankle but cannot prescribe an antibiotic for an infection in a patient's arm. A podiatrist can even prescribe buprenorphine, but only as an analgesic for pain associated with a problem in the foot or lower leg, and not for opioid use disorder treatment. Another example of a profession with this kind of limitation would be a dentist.

- For a professional such as a physician assistant who practices pursuant to a practice agreement with a participating physician, the care must be authorized under the terms provided by the practice agreement.

4. The definition of "Health care practitioner' at page 4 seems unclear. It is difficult to suggest different wording without understanding the intent behind the change from listing the health care professions in question, as seen in 28 V.S.A. § 801(e)(1) at page 2 of the draft bill.

5. Some of the amendments in the draft bill would make changes to 28 V.S.A. § 801(e) and 28 V.S.A. § 801b(b). 28 V.S.A. § 801(e) currently includes language about the continuation of medication for inmates being admitted "pending an evaluation" by a health care professional. 28 V.S.A. § 801b(b) would be amended to add similar language about continuation of medication "pending an evaluation." Those two sections are brought up only to note my understanding that there would need to be a valid prescription issued for that medication. I am not aware of any legal authority that would allow drugs to be administered to or dispensed for an inmate or detainee without a prescription, even if it were to be confirmed that the inmate had been on the medication by checking with a pharmacy, primary care provider, or prescription monitoring system. A prescription could be transferred from a pharmacy that had the inmate's prescription, but otherwise a prescription would need to be written.

6. Thank you for the opportunity to provide input on H.32.