



Vermont Developmental Disabilities Council

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TO: Green Mountain Care Board
RE: Hospital Transformation Report
FROM: Vermont Developmental Disabilities Council
Susan Aranoff, Senior Policy Analyst and Planner
DATE: August 29, 2024

Introduction

Thank you for the opportunity to comment on the Act 167 (2022) Hospital Transformation: Summary of State-Level Recommendations, (hereafter “Hospital Transformation Report”). The Vermont Developmental Disabilities Council, (hereafter “VTDDC”), is a statewide board created by the federal Developmental Disabilities Assistance and Bill of Rights Act (hereafter “the DD Act”), first adopted by Congress in 1970. An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving Medicaid-funded, home and community-based support services (HCBS). These services are provided by the Department of Disabilities, Aging and Independent Living (DAIL) through the Developmental Disabilities Services System or in some cases, the Choices for Care Program.

VTDDC is charged under federal law with engaging at the state level in “advocacy, capacity building and systems change activities that... contribute to the coordinated, consumer-and-family-centered, consumer-and-family directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families.”¹

¹ Developmental Disabilities Assistance and Bill of Rights Act of 2000. 42 USC 15001 et. seq.

In addition to our federal mandate, we are commenting in our unique role within the Agency of Human Services (AHS). As per our signed assurances with AHS, the VTDDC advises AHS on systemic reforms as they pertain to people with developmental disabilities.² We note that the Green Mountain care Board is sharing these comments with AHS, as AHS is the lead state agency responsible for acting on the Act 167 State-level Action recommendations.

Robust Public Process

VTDDC applauds the Green Mountain Care Board (hereafter “GMCB”) for providing robust opportunities for public engagement in the Act 167 hospital sustainability and transformation discussions. The GMCB engaged over 2000 Vermonters in two rounds of public discussions about their hospitals and health care providers. The GMCB public engagement sessions were regional, in person, and virtual. The public engagement process included sessions focused on the needs of specific subpopulations of Vermonters. One public engagement session centered the health care needs and experiences of people with disabilities in Vermont.

Recommendations for High Level State Actions

The VTDDC strongly endorses all the recommendations for high-level state actions that were presented to the Green Mountain Care Board on July 8, 2024³. The VTDDC wants to highlight two of the recommendations. First, the VTDDC strongly endorses the recommendation to develop housing for health care workers and people who need service-supported housing. The VTDDC has documented the need for more than 600 units of service -supported housing for Vermonters with an intellectual or developmental disability who receive Medicaid-funded home and community-based supports.⁴

² “Section M. The Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.” Signed by AHS Secretary Samuelson.

³https://gmcbboard.vermont.gov/sites/gmcb/files/documents/20240708%20GMCB%20Board_Hospital-level%20recommendations%20vPresent.pdf

⁴ https://ddc.vermont.gov/sites/ddc/files/2023-03/vtddc_housing%20brief_20230315.pdf

Vermont's community-based care system is in tatters and needs to be re-built. Through a network of contracted agencies, this system provides the services people need to stay healthy and out of the hospital. It also provides the Medicaid-funded support that allows people to be discharged from hospitals and return to their homes in a safe and timely manner. The VTDDC strongly endorses strengthening Vermont's community-based services.

The purpose of these comments is to offer a simple solution to strengthen Vermont's community-based system of care.

Simple Solution - Long Overdue

Vermont's community-based providers need to earn a living wage.

In Vermont, people with an intellectual or developmental disability are most likely to receive their home and community-based services⁵ from a Designated or Specialized Services Agency. Designated Agencies (DAs) and Specialized Services Agencies (SSAs) are funded almost exclusively by state and federal Medicaid dollars.

⁵ "Home- and community-based services" means long-term services and supports provided to older adults and adults with physical disabilities in a home or community setting other than a nursing home, including enhanced residential care services, pursuant to the Choices for Care component of Vermont's Global Commitment to Health Section 1115 Medicaid demonstration or a successor program. "Home- and community-based services" also includes non-Choices for Care home health and hospice services, adult day rehabilitation services, assistive community care services, and services for individuals with traumatic brain injury. DAIL service definitions

HCBS includes Home Supports. Home support means services, supports, and supervision provided for individuals in and around their residences up to 24 hours a day, seven days a week (24/7). Services include support for individuals to acquire and retain life skills and improve and maintain opportunities and experiences for individuals to be as independent as possible in their home and community. Services include maintaining health and safety and home modifications required for accessibility related to an individual's disability, including cost-effective technology that promotes safety and independence in lieu of paid direct support. DAIL service definitions

Vermont Care Partners (VCP) is an umbrella organization that serves most of the Designated and Specialized Services Agencies providing services in Vermont. According to data available from VCP,⁶ Vermont's designated and specialized agencies (DA/SSAs) are not financially sustainable. The Covid pandemic greatly increased demand for mental health, developmental disability, and substance use disorder services. The number of Vermonters seeking services, and the level of acuity and complexity of their presenting conditions, are at historic highs. At the same time the workforce shortage keeps growing. On July 1, 2023, 928 out of 5,867 (15.8%) staff positions were vacant with some Developmental Disability programs having vacancy rates up to 38%⁷.

What is the problem we need to solve?

The DA/SSAs receive almost all their funding from state and federal funds, specifically Medicaid. There is no opportunity to cost shift to other revenue streams, and fund-raising capacity is very limited. According to data Vermont Care Partners, since 2006 Medicaid rates for network agencies have lagged 15% behind inflation (CPI).⁸

Current payment rates for the home and community-based system are not adequate to sustain the workforce necessary to meet the needs of Vermonters.

How do we set Medicaid Rates now?

Payment rates for the community-based workforce that serves Vermonters with disabilities are set annually in contracts between the Secretary of Human Services and the trade associations

⁶ <https://vermontcarepartners.org/wp-content/uploads/2023/01/Vermont-Care-Partners-Advocacy-Fact-Sheet-.pdf>

⁷ <https://vermontcarepartners.org/wp-content/uploads/2024/01/VCP-Fact-Sheet-2024-1.pdf>

⁸ <https://vermontcarepartners.org/wp-content/uploads/2023/01/Vermont-Care-Partners-Advocacy-Fact-Sheet-.pdf>

representing Medicaid-funded services providers. The contract negotiating process is the opposite of open and transparent.

The budgets proposed to the legislature rarely include rate increases for the DA/SSAs. Instead, advocates petition the Legislature to increase the payment rates for Medicaid-funded services. In turn, the Vermont Legislature provides rate increases to community-based providers on an unpredictable and irrational basis. The rate increases provided by the Legislature frequently come with confusing caveats regarding which employees are the intended beneficiaries in any given legislative session.

According to Vermont Care Partners, Vermont's Designated Agencies are funded between 75% and 91% by Medicaid and the Specialized Services Agencies are funded between 93% and 98% by Medicaid. Medicaid rates have not kept up with inflation. It is simply not possible for the DAs and SSAs to compete with other employers in the health care sector whose employees receive annual cost of living raises.

One simple solution would be to review Medicaid-funded provider rates annually. And to reset the rates annually to account for inflation and other factors.

Legislation to study and reset rates passed the Vermont House of Representative in 2022.⁹ The GMCB and AHS should support a rational rate-setting process for Medicaid-funded service providers. The rate-setting process must adjust to the labor market in a timely way to enable providers to recruit and retain a qualified workforce.

Conclusion

The recommendations for high-level state actions to support hospital transformation include the need for more upstream home and community-based services to effectively reduce the

⁹ See proposed legislation in attachment 1.

demand for hospital emergency and inpatient care. We concur with the Report's authors on the importance of appropriate community care. A viable community-based system of care is necessary to sustain Vermont's hospitals and health care system.

Vermont needs a viable and sustainable system of community-based care. Such a system needs a sustainable workforce that is paid a livable wage. New federal regulations will require Vermont to assure the Center for Medicare and Medicaid Services (CMS) that Medicaid payment rates are adequate to ensure a sufficient direct care workforce to meet the needs of beneficiaries. The VTDDC recommends that AHS, at a minimum:

- (1) Establish an annual inflationary factor to apply to Medicaid rates for DAs/SSAs.
- (2) Study Medicaid reimbursement rates, their adequacy and methodologies underlying the rates for DAs/SSAs.

ATTACHMENT 1

Proposed Legislation for Payment Rates and Rate Study for HCBS Providers

- a) The Secretary of Human Services shall establish payment rates for providers of home- and community-based services that are reasonable and adequate to achieve the required outcomes for the populations they serve. When establishing payment rates for home- and community-based service providers, the Secretary shall adjust the rates to take into account factors that include:
 - 1) the reasonable cost of any governmental mandate that has been
 - 2) enacted, adopted, or imposed by any State or federal authority; and a cost adjustment factor to reflect changes in reasonable costs of goods to and services of providers of home- and community-based services, including those attributed to inflation and labor market dynamics.
- b) When establishing rates of payment for providers of home- and community-based services, the Secretary may consider geographic differences in wages, benefits, housing, and real estate costs in each region of the State.
- c) The Secretary shall adopt rules setting forth the methodology for establishing payment rates for providers of home- and community-based services in accordance with this section. The rules shall include a process for determining an annual inflationary rate adjustment, shall set forth a predictable timeline for redetermination of base rates, and shall use Vermont labor market rates and Vermont costs of operation.

RATES OF PAYMENTS TO DESIGNATED AND SPECIALIZED SERVICE AGENCIES

- a) The Secretary shall adopt rules setting forth the methodology for establishing payment rates for services provided by designated and specialized service agencies to individuals with mental conditions, individuals with substance use disorders, and individuals with developmental or intellectual disabilities in accordance with this section. The rules shall include a process for determining an annual inflationary rate adjustment, shall set forth a

predictable timeline for redetermination of base rates, and shall use Vermont labor market rates and Vermont costs of operation.

HOME- AND COMMUNITY-BASED SERVICE PROVIDER RATE STUDY; REPORT

- a) The Department of Vermont Health Access, in collaboration with the Departments of Disabilities, Aging, and Independent Living, of Health, and of Mental Health, shall conduct a rate study of the Medicaid reimbursement rates paid to providers of home- and community-based services, as defined in 33 V.S.A. § 900, and providers of substance use disorder treatment services, including their adequacy and the methodologies underlying the rates. As part of the rate study, the Department of Vermont Health Access shall:
- 1) delineate a reasonable and predictable schedule for Medicaid rates and rate updates;
 - 2) identify ways to align Medicaid reimbursement methodologies and rates for providers of home- and community-based services with those of other payers, to the extent such other methodologies and rates exist; and
 - 3) determine ways to limit the number of methodological exceptions.

PAYMENT RATES FOR PROVIDERS OF HOME- AND COMMUNITY-BASED SERVICES

(a) The Secretary of Human Services shall determine payment rates for providers of home- and community-based services that are reasonable and adequate to achieve the required outcomes for the populations they serve. When determining these payment rates, the Secretary shall adjust the rate amounts to take into account factors that include:

- 1) the reasonable cost of any governmental mandate that has been enacted, adopted, or imposed by any State or federal authority; and
- 2) a cost adjustment factor to reflect changes in reasonable costs of goods to and services of providers of home- and community-based services, including those attributed to inflation and labor market dynamics.

(b) When determining reasonable and adequate rates of payment for

providers of home- and community-based services, the Secretary may consider geographic differences in wages, benefits, housing, and real estate costs in each region of the State.

- 1) The Secretary shall adopt rules setting forth the methodology for determining payment rates for providers of home- and community-based services in accordance with this section. The rules shall include a process for determining an annual inflationary rate adjustment, shall set forth a predictable timeline for redetermination of base rates, and shall use Vermont labor market rates and Vermont costs of operation.
- 2) The Secretary shall redetermine the payment rates for providers of home- and community-based services in accordance with this section at least annually and shall include those rates, and the amounts necessary to fund them in the governor's proposed budget.