CONFIDENTIAL

AHS LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number:___H.241_____ **Name of Bill:___** An act relating to rulemaking on emergency involuntary procedures

Agency/ Dept:__AHS/DMH_____ **Author of Bill Review:_____Nick Nichols/Dena Monahan/Frank Reed_____**

Date of Bill Review:_5/11/15_____ **Related Bills and Key Players _____**

Status of Bill: (check one): _____Upon Introduction _____ As passed by 1st body _X____As passed by both

Recommended Position:

_X____Support _____Oppose _____Remain Neutral _____Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill will amend language from Act 79 of 2012, Sec. 33a, to now require the Department of Mental Health to adopt rules regarding the use and reporting of emergency involuntary procedures (i.e. seclusion, restraint and *emergency* involuntary medication). The language originally passed in Act 79 required DMH to initiate a rule-making process, which DMH did do, but the draft rule developed by DMH was not accepted by LCAR. This bill also establishes specific requirements that must be included in the rule.

The bill was introduced as a way to respond to the request in 2013 from LCAR for the committees of jurisdiction to indicate what was meant by the principle stated in Sec. 33a that individuals in the custody of the Commissioner "be afforded at least the same rights and protections as those individuals cared for at the former Vermont State Hospital."

Section 1 modifies existing Act 79 language to require DMH to adopt state-specific rules on Emergency Involuntary Procedures (EIP's) for adults and children in the custody or temporary custody of the Commissioner who are admitted to a psychiatric inpatient unit. This section also includes requirements for the DMH rule, which include:

- Standards established by the rule must meet or exceed and be consistent with standards set by the Centers for Medicare and Medicaid Services.
- Standards established by rule must be consistent with the policies set forth in DMH's final proposed rule, with the following exceptions:
    - EIPs now may be ordered by a psychiatrist, an advanced practice registered nurse (APRN) licensed by the Vermont Board of Nursing in psychiatric nursing, or a certified physician assistant (PA) licensed by the State Board of Medical Practice and supervised by a psychiatrist,

- If a PA is ordering the EIP, he or she must make a personal observation of the patient prior to the order. If a physician or APRN is making the order, personal observation must be performed by the physician, the APRN, or a registered nurse trained to observe individuals for this purpose or a PA.

- Standards that pertain to children shall be consistent with the standards listed above, but may also reflect best practices that apply to children where those best practices differ from those that apply to adults.

Section 2 modifies language from Act 79 regarding the rights and protections of individuals who are in DMH custody or temporary DMH custody and receiving treatment in an acute inpatient hospital unit, intensive residential recovery facility, or a secure residential recovery facility. The original language stated that these individuals would be afforded at least the same rights and protections as those individuals cared for at the former Vermont State Hospital. The modified language removes any reference to VSH and states that these individuals will be afforded rights that reflect evidence-based best practices that are aimed at reducing the use of coercion.

2. Is there a need for this bill? *Please explain why or why not.*

DMH had taken that position that federal (CMS) rules for EIP were a sufficient standard for Vermont to follow, but we are amenable to the rule as outlined in this version of the bill.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

If passed as written, DMH would be required to adopt the EIP rules (with a few changes) that it attempted to develop in 2012—2013 (the proposed rules were objected to by LCAR).

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (f*or example, public, municipalities, organizations, business, regulated entities, etc)*

The rules adopted as a result of this bill will affect RRMC, BR, and other hospitals that provide involuntary psychiatric care. While these hospitals feel CMS EIP rules are sufficient, they feel they can operate under these new rules without any additional significant burden

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Disability Rights Vermont, Legal Aid, DMH and VAHHS have all agreed to support this version of the bill. All parties feel it represents a reasonable compromise for protecting individual rights, ensuring staff and patient safety, and operating within the staffing and resources that are available.

6.2 Who else is likely to oppose the proposal and why?

7. Rationale for recommendation: *Justify recommendation stated above.*

Please return this bill review as a Microsoft Word document to Monica Hutt and Katie Whitney in the AHS Secretary's Office.

As stated above, this bill represents a compromise between advocates, the hospitals, and DMH. All parties are in support of this version of the bill.

8. **Specific modifications that would be needed to recommend support of this bill***: Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

None

9. **Gubernatorial appointments to board or commission?**

Secretary/Commissioner has reviewed this document: _____ Date: _____

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