

## Proposed Filing - Coversheet

### **Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms and enclosures with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of Proposed Filing Coversheet will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record. Publication of notices will be charged back to the promulgating agency.

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**PLEASE REMOVE ANY COVERSHEET OR FORM NOT  
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

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**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**LICENSING AND OPERATING REGULATIONS FOR THERAPEUTIC  
COMMUNITY RESIDENCES**

/s/ Kristin L. McClure

, on 9/4/24

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

**Printed Name and Title:**

Kristin McClure, Interim Deputy Secretary, Agency of  
Human Services

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Filing Confirmed

1. TITLE OF RULE FILING:

**LICENSING AND OPERATING REGULATIONS FOR THERAPEUTIC  
COMMUNITY RESIDENCES**

2. ADOPTING AGENCY:

Agency of Human Services; Department of Disabilities,  
Aging, and Independent Living

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Pamela Cota

Agency: AHS/DAIL

Mailing Address: 280 State Drive, HC 2 South, Waterbury,  
VT, 05671

Telephone: 802-241-0480 Fax:

E-Mail: pamelacota@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dail.vermont.gov>

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY  
ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE  
PRIMARY CONTACT PERSON).*

Name: Stuart Schurr

Agency: AHS/DAIL

Mailing Address: 280 State Drive, HC 2 South, Waterbury,  
VT, 05671

Telephone: 802-241-0356 Fax:

E-Mail: stuart.schurr@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL;  
LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND  
COPYING?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. § 317 (c) (1); 33 V.S.A. § 7112

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

33 V.S.A. § 7112 provides that information received by  
the licensing agency that pertains to unsubstantiated  
complaints or the identity of residents is exempt from  
public disclosure.

**6. LEGAL AUTHORITY / ENABLING LEGISLATION:**

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

33 V.S.A. § 7117; 2012 Acts and Resolves No. 160; 2024 Acts and Resolves No. 137, Sec. 17

**7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

33 V.S.A. § 7117 authorizes the Secretary of Human Services to adopt reasonable rules for the operation of facilities licensed under this chapter, which include therapeutic community residences. 2012 Acts and Resolves No. 160 directs the Department of Disabilities, Aging, and Independent Living to adopt rules amending the licensing requirements for therapeutic community residences and to include specific requirements for the operation of a secure residential recovery facility. 2024 Acts and Resolves No. 137 directs the Commissioner of DAHL to file and adopt these permanent proposed rule amendments, authorizing the use and administration of emergency involuntary procedures, to the existing secure residential recovery facility section of the Licensing and Operating Regulations for Therapeutic Community Residences.

**8. CONCISE SUMMARY (150 WORDS OR LESS):**

As set forth in 2024 Acts and Resolves No. 137, Sec. 17, the Commissioner of DAHL, in consultation with the Commissioner of Mental Health, is directed to file and adopt permanent and emergency rules that authorize the use of emergency involuntary procedures, including the administration of involuntary medication, at a secure residential recovery facility "in a manner identical to that required in rules adopted by the Department of Mental Health governing the use of emergency involuntary procedures in psychiatric inpatient units." These proposed rules incorporate the provisions of the Department of Mental Health's Regulation Establishing Standards for Emergency Involuntary Procedures (EIPs), which was last adopted in 2016.

**9. EXPLANATION OF WHY THE RULE IS NECESSARY:**

2024 Acts and Resolves No. 137, Sec. 17 directs the Commissioner of DAIL to file and adopt these amended rules.

**10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED  
IN 3 V.S.A. § 801(b)(13)(A):**

DAIL is without discretion to decide whether to adopt this amendment. The Legislature has directed the Department to take this action and has identified the parameters of the amendment. DAIL's proposed rule is narrowly tailored to address the requirements of 2024 Acts and Resolves No. 137, Sec. 17.

**11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES  
AFFECTED BY THIS RULE:**

Those affected and potentially affected by this rule include DAIL, which will be required to ensure that the requirements of the revised regulations are met, the Department of Mental Health (DMH), the licensee and operator of the secure residential recovery facility, the individuals who reside or will reside in this facility, the Mental Health Law Project at Vermont Legal Aid, Inc., and Disability Rights Vermont, which serves as both the Mental Health Care Ombudsman and Vermont's protection and advocacy organization.

**12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

The incorporation of the provisions of DMH's existing EIP Rule into these proposed rules will enable DMH to utilize those procedures in its operation of the Secure Residential Recovery facility. There will be some, albeit negligible, enhanced administrative costs to DAIL, which regulates this facility through survey and inspection, in ensuring that these requirements are met. Allowing the use of Emergency Involuntary Procedures in the Secure Residential Recovery facility would enable patients to transfer from a hospital, when their clinical presentation allows, and could avoid delays in identifying an appropriate placement. When acute in-patient care is no longer required, residential placements may provide an appropriate and less expensive level of care.

**13. A HEARING WILL BE SCHEDULED.**

**IF A HEARING WILL NOT BE SCHEDULED, PLEASE EXPLAIN WHY.**

#### 14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 10/15/2024

Time: 11 AM

Street Address:

Zip Code:

URL for Virtual:

<https://www.zoomgov.com/j/1602491269?pwd=2tgoman2IuEbLujuZRYfsVdLXlOnvJ.1>

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 10/25/2024

**16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).**

therapeutic community residences  
secure residential recovery facility  
emergency involuntary procedures  
involuntary medication  
mental health

## Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

**LICENSING AND OPERATING REGULATIONS FOR THERAPEUTIC  
COMMUNITY RESIDENCES**

2. ADOPTING AGENCY:

Agency of Human Services; Department of Disabilities,  
Aging, and Independent Living

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU  
BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF  
THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log #22-007; Licensing and Operating Regulations  
for Therapeutic Community Residences, March 1, 2022.

## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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#### 2. ADOPTING AGENCY:

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Aging, and Independent Living

#### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY  
AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS  
ANTICIPATED:*

Those potentially affected by the adoption of this rule  
include:

The Department of Disabilities, Aging and Independent  
Living (DAAIL), and, more specifically, the Division of  
Licensing and Protection, which licenses and regulates



the secure residential recovery facility in which emergency involuntary procedures (EIPs) may be utilized, may experience an additional administrative burden in enforcing these requirements. No need for additional resources is anticipated.

As a result of these changes, the Department of Mental Health (DMH), which operates this secure residential recovery facility, will be authorized to use its previously adopted emergency involuntary procedures in this setting. When acute in-patient care is no longer required, placement in the secure residential recovery facility may provide an appropriate and less expensive level of care.

Others potentially affected by the adoption of this rule include: individuals who reside or will reside in this facility, who, with the availability of EIPs, may be able to transfer from the hospital to the secure residential recovery facility when their clinical presentation allows; the Mental Health Law Project at Vermont Legal Aid, Inc.; and Disability Rights Vermont, which serves as the Mental Health Care Ombudsman. Vermont Legal Aid and Disability Rights Vermont may experience an increased administrative burden in representing individuals living at the residential recovery facility who are subject to the administration of these emergency involuntary procedures. As these requirements are already in rule and currently apply to those in a hospital setting, however, any additional impact on these entities is anticipated to be negligible.

#### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

No impact on public education or schools from the changes to the regulations is anticipated.

#### 5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Not applicable, as no impact on local school districts from the changes to the regulations is anticipated.

**6. IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

No impact on small businesses from the changes to the regulations is anticipated.

**7. SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Not applicable, as no impact on small businesses from the changes to the regulations is anticipated.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

There are no alternatives to the adoption of the rule. Having no rule would violate the mandate in 2024 Acts and Resolves No. 137, which requires DAIL to amend these rules to authorize the use and administration of emergency involuntary procedures in the secure residential recovery facility in a manner identical to that required in rules governing the use and administration of such procedures in psychiatric inpatient units.

**9. SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.**

The Agency of Human Services has analyzed and evaluated the potential costs and benefits from the adoption of this rule and concludes that beyond the potentially minimal impact on DAIL and its staff in ensuring the additional regulatory requirements are met, the rule is anticipated to neither increase nor reduce an economic burden on any other person or entity.

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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2. ADOPTING AGENCY:

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Aging, and Independent Living

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF  
GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING  
INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*  
No impact is anticipated

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF  
POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY  
ETC.):*  
No impact is anticipated

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY,  
AGRICULTURE ETC.):*  
No impact is anticipated

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

No impact is anticipated

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

No impact is anticipated

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

No impact is anticipated

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Agency of Human Services has analyzed and evaluated the potential environmental impacts from the adoption of this rule and concludes that no environmental impact is anticipated.

## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

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1. TITLE OF RULE FILING:

**LICENSING AND OPERATING REGULATIONS FOR THERAPEUTIC  
COMMUNITY RESIDENCES**

2. ADOPTING AGENCY:

Agency of Human Services; Department of Disabilities,  
Aging, and Independent Living

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC  
INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE,  
LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO  
COMPLY WITH THAT STRATEGY:

The Department of Disabilities, Aging, and Independent Living (DAIL) will maximize public involvement by completing the public rulemaking process, including holding a public hearing and considering and responding to public comments that are received.

The proposed rule will be posted on the DAIL website for the public's review, and a public hearing will be held.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND  
ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE  
DEVELOPMENT OF THE PROPOSED RULE:

Agency of Human Services, the Department of Disabilities, Aging and Independent Living (DAIL) and the Department of Mental Health (DMH); DMH Adult State Standing Committee; Disability Rights Vermont (DRVT); and Vermont Legal Aid

LICENSING AND OPERATING  
REGULATIONS FOR  
THERAPEUTIC COMMUNITY  
RESIDENCES

Agency of Human Services  
Department of Disabilities, Aging and Independent  
Living  
Division of Licensing and Protection

Effective:

These materials will be made available in alternative formats upon  
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## **I. General Provisions**

### 1.1 Introduction

The concept of the therapeutic community residence evolved from a consensus that people are best helped and cared for within an environment that resembles the best aspects of life in the broader community. The establishment of standards is a matter of critical importance to ensure that the needs of people being served are met and that quality of treatment is maintained.

Therapeutic community residences tend to be small and characterized by a sharing of a common life. Their programs are based on the expectation that people with life adjustment issues can be given help that will lead to their being able to sustain themselves within the broader community. This intent to provide transitional, growth-enhancing care, rather than permanent or long-term maintenance, is reflected in a dynamic approach to programming.

Therapeutic community residences should seek to be flexible and sensitive to changing needs in order to influence the growth and change of the individuals whom they serve. Generally, therapeutic community residences are used by people who are experiencing problems in coping with such difficulties as substance abuse, psychiatric disabilities, traumatic brain injuries, cognitive and developmental disabilities, family dysfunctions and delinquency.

The complexity of these problems suggests the need for a variety of treatment approaches. For this reason, these rules, while suggesting a specific program model based on prevailing practices within therapeutic community residences, allow for alternative program standards that might better meet the needs of a given group of residents. Such proposed alternative standards are intended to ensure a comparable level of quality and accountability. Specific guidelines for proposing alternative treatment standards are set forth in subsection 4.18.

### 1.2 Statutory Authority

These rules are adopted pursuant to 18 VSA, Chapter 45 § 2003, 2014 33 V.S.A. § 7117; 2012 Acts and Resolves No. 79 and No. 160.

### 1.3 Statement of Intent

Upon the effective date of these regulations, all therapeutic community residences in Vermont must adhere to the regulations as adopted.

### 1.4 Exception and Severability

If any provision of these regulations, or the application of any provision of these regulations, is determined to be invalid, the determination of invalidity will not affect any other provision of these

regulations or the application of any other provision of these regulations.

#### 1.5 Taxes

The applicant and licensee must be in good standing with the Vermont Department of Taxes, pursuant to 32 V.S.A. §3113. Failure to do so will result in denial or revocation of license.

#### 1.6 Material Misstatements

Any applicant or licensee who makes a material misstatement relating to the law or these regulations may be subject to denial of license, monetary fine, suspension and revocation of license.

#### 1.7 Appeals

A person or entity aggrieved by a decision of the licensing agency may file a request for a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091 pursuant to subsections 4.15.a(8), 4.15.c, 4.15.d of these regulations.

### **II. Definitions**

#### 2.1 General Definitions

For the purposes of these regulations, words and phrases are given their normal meanings unless otherwise specifically defined.

#### 2.2 Specific Definitions

The following words and phrases, as used in these regulations, have the following meanings unless otherwise provided:

(a) "Activities of daily living (ADLs)" means dressing and undressing, bathing, toileting, taking medication, grooming, eating, transferring and ambulation.

(b) "Administration of medication" means the act of giving a resident the resident's prescribed medication when the resident is incapable of managing their medication.

(c) "Assistance with medication" means helping a resident, who is capable of self-administration, to use or ingest, store and monitor medications.

(d) "Capable of self-administration" means a resident is able to direct the administration of medication by being able to at least identify the resident's medication and describe how, why and when a medication is to be administered; choose whether to take the medication or not; and communicate to the staff if the medication has had the desired effect or unintended side effects.

(e) "Capable of self-preservation" means able to evacuate the residence in the event of an emergency. Resident capability is further described in the National Fire Protection Association Code.

(f) "Case management" means to assist residents in gaining access to needed medical, social and other services. In addition to the coordination of activities required in the resident's plan of care, it includes consultation with providers and support person(s).

(g) "Delegation of nursing tasks" means the formal process approved by the Vermont Board of Nursing which permits licensed nurses to assign nursing tasks to other individuals as long as the registered nurse provides proper training, supervision and monitoring, and for which the registered nurse retains responsibility.

(h) "Discharge" means movement of a resident out of the residence without expectation that the resident will return.

(i) "Health care provider" means an appropriately qualified individual that provides medical care including a physician, a physician's assistant and an advanced-practice registered nurse (APRN).

(j) "Home health agency" means a home health care business designated to provide part-time or intermittent skilled nursing services and at least one of the following other therapeutic services in a place of residence used as a resident's home: physical, speech or occupational therapy; medical social services; home health aide services. A home health agency may also provide or arrange for other non-nursing therapeutic services, including the services of nutritionists, dietitians, psychologists, and licensed mental health counselors.

(k) "Individualized treatment" means treatment oriented toward problem solving and personal growth appropriate to the needs of each resident.

(l) "Inspection" means an on-site visit to or survey of the residence by staff of the Division of Licensing and Protection or fire safety inspectors from the Department of Public Safety to evaluate care and services and determine if the residence is in compliance with the regulations.

(m) "Investigation" means any gathering of facts, in the residence or elsewhere, in response to a complaint that the residence is not in compliance with regulations in order to determine if a residence is in compliance with the regulations.

(n) "Legal representative" means an individual empowered under state or federal law or regulation to make decisions for or transact business for a resident of a residence. Legal representatives include, but are not limited to, a court-appointed guardian, an attorney in fact appointed pursuant to a power of attorney and a representative payee. A resident's legal representative may make only those decisions for a resident for which the legal representative has been given authority.

(o) "License certificate" means a document issued by the licensing agency which signifies that a residence is entitled to operate.

(p) "Licensed capacity" means the maximum number of residents which the therapeutic community residence is licensed to have at one time.

(q) "Licensed residence" means a therapeutic community residence possessing a valid license to operate from the licensing agency.

(r) "Licensee" means an individual, group of individuals, or corporation in whose name the license is issued and upon which rests the legal responsibility for maintaining compliance with the regulations. With regard to a secure residential recovery facility, licensee means the Commissioner of the Department of Mental Health.

(s) "Licensing agency" means the Department of Disabilities, Aging and Independent Living's Division of Licensing and Protection.

(t) "Life adjustment problem" means an obstacle to successful functioning or coping with stress encountered in the home, at work, in school, or in other interpersonal situations.

(u) "Manager" means the staff person who has been appointed by the residence's licensee or owner as responsible for the daily management of the residence, including supervision of employees and residents.

(v) "Medication management" means a formal process of (1) assisting residents to self-administer their medications or (2) administering medications, under the supervision and delegation by registered nurses, to designated residents by designated staff of the residence. It includes procuring and storing medications, assessing the effects of medications, documentation, and collaborating with the residents' personal health care providers.

(w) "Nurse" means a licensed practical nurse or registered nurse currently licensed by the Vermont Board of Nursing to practice nursing.

(x) "Nursing care" means the performance of services necessary to care for the sick or injured and which require specialized knowledge, judgment and skill and meets the standards of the nursing regimen or the medical regimen, or both.

(y) "Nursing overview" means a process in which a registered nurse ensures that the health and psychosocial needs of the resident are met. The process includes observation, assessment, goal setting, education of staff, and the development, implementation, and evaluation of a written, individualized treatment plan to maintain the resident's well-being.

(z) "Personal care" means assistance with meals, dressing, movement, bathing, grooming, medication, or other personal needs, and/or the general supervision of physical or mental well-being.

(aa) "Plan of care" means a written description of the steps that will be taken to meet the psychiatric, social, nursing and medical needs of a resident.

(bb) "Plan of correction" means a specific, time-limited plan of action, approved by the licensing agency, which states how and when a violation will be corrected.

(cc) "PRN medication" means medication ordered by the health care provider that is not to be administered routinely but is prescribed to be taken voluntarily only as needed and as indicated by the resident's condition.

(dd) "Psychoactive drug" means a drug that is used to alter mood or behavior, including antipsychotic, anti-anxiety agents and sedatives, as well as antidepressants or anticonvulsants when used for behavior control.

(ee) "Psychosocial care" means care necessary to address an identified psychiatric, psychological, behavioral or emotional problem, including problems related to adjustment to the therapeutic community residence, bereavement and conflict with other residents.

(ff) "Registered nurse" means an individual licensed as a registered nurse by the Vermont Board of Nursing.

(gg) "Residence" means a licensed therapeutic community residence.

(hh) "Resident" means any individual, unrelated to the operator, who is entitled to receive the full services of the residence and for whom a treatment plan has been or is being developed. For the purposes of these regulations, "resident" also means the individual's legal representative.

(ii) "Restraint" means any manual method, physical hold or mechanical device, material or equipment that immobilizes or reduces the ability of a resident to move their arms, legs, body or head freely, or a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment for the resident's condition.

(jj) "Seclusion" means the involuntary confinement of a resident alone in a room or area from which the resident is physically or otherwise prevented from leaving.

(kk) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria, that has resulted in functional impairment which substantially interferes with or limits one or more major life activities.

(ll) "Staff" means any individual other than a resident who is either the licensee or is an agent or employee of the licensee, and who performs any service or carries out any duties at the residence that are subject to these regulations, as are any individuals under contract to the licensee or residence.

(mm) "Supervision" means providing a structured environment to ensure the resident's needs for food, shelter, medical care, socialization and safety are met. If the residence, or staff of the residence, provide or are responsible for providing such structure, then the residence is providing supervision. Examples of such structure include, but are not limited to, arranging medical appointments, procuring medications, shopping, assigning rooms, providing transportation.

(nn) "Supportive living arrangement" means an environment providing an atmosphere of warmth and community concern to improve life adjustment, using such methods as counseling, group work, peer or family-oriented therapy, and psychiatric care.

(oo) "Therapeutic community residence" means a transitional facility (hereinafter called residence) providing individualized treatment to three or more residents in need of supportive living arrangement to assist them in their efforts to overcome a major life adjustment problem, such as alcoholism, drug abuse, mental illness and delinquency.

(pp) "Therapeutic diet" means a health care provider-ordered diet to manage problematic health conditions. Examples include calorie specific, low-salt, low-fat, no added sugar, supplements.

(qq) "Transitional facility" means a domicile designed to meet special treatment needs, as opposed to a long term or permanent residential facility such as a residential care home.

(rr) "Treatment" means a process of dynamic and planned intervention designed to enhance a resident's current strengths and skills, correct problems of living, and improve life adjustments, using such methods as counseling, peer and ally support, group work, individual or family-oriented therapy, and psychiatric care.

(ss) "Unlicensed residence" means a place, however named, which meets the definition of a therapeutic community residence, and which does not possess a license to operate.

(tt) "Unrelated to the operator" means anyone other than the licensee's spouse (including an individual who has entered into a civil union), mother, father, grandparent, child, grandchild, uncle, aunt, sibling, or mother-, father-, sister-, brother-in-law or domestic partner.

(uu) "Variance" means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily

and in limited, defined circumstances waives compliance with a specific regulation.

(vv) "Violation" means a condition or practice in the home which is out of compliance with the regulations.

### **III. Variances**

3.1 Variances from these regulations may be granted upon a determination by the licensing agency that:

(a) Strict compliance would impose a substantial hardship on the licensee or the resident;

(b) The request is based on extreme necessity rather than convenience, but any hardship alleged to be suffered by imposition of a rule from which a variance is sought must not be self-created.

(c) The licensee will otherwise meet the goal of the statutory provisions or rule and the variance does not conflict with other legal requirements;

(d) The variance will not adversely affect the programmatic needs of residents; and

(e) The variance, in the opinion of the licensing and regulating agencies, will not present a clear and distinct hazard to the residents' safety, health or well-being.

3.2 A variance will not be granted from a regulation pertaining to residents' rights without the consent of the resident.

3.3 A home requesting a variance must contact the licensing agency in writing describing how the variance request meets the criteria in 3.1 above.

3.4 Variances are subject to review and termination at any time.

### **IV. Licensing Procedures**

4.1 Application

(a) Any person desiring to operate or establish a therapeutic community residence must submit two copies of plans and specifications for review, prior to beginning construction or operation to the Department of Disabilities, Aging, & Independent Living, Division of Licensing and Protection.

(b) In addition, such person must:

(1) Provide written evidence to the licensing agency of compliance with local building and zoning codes, or a statement signed by the city, town or village clerk that such a code has not been adopted in

the community, as well as evidence of compliance with the Vermont Fire Code.

(2) Submit a license application to the licensing agency.

(3) At least ninety (90) days prior to the projected opening date, request inspections by all entities referenced in 4.2 (a), (b), and (c) below to which plans and specifications were submitted. Modifications must be made as required by these agencies to achieve full code compliance.

(4) Provide the licensing agency with at least three references from unrelated persons able to attest to the applicant's abilities to run a therapeutic community home and to the applicant's character.

#### 4.2 Review Process

The application will be reviewed by the following entities for compliance with applicable rules:

(a) The Division of Licensing and Protection requires the applicant to submit blueprints for new construction or floor plans to the licensing agency for review.

(b) The Department of Public Safety's Division of Fire Safety requires all building plans to be submitted to the Division of Fire Safety for compliance with the fire safety code and accessibility.

(c) The Department of Environmental Conservation requires applications to be reviewed with regard to water and sewage systems.

#### 4.3 Denial of Application

(a) An applicant may be denied a license for any of the following:

(1) Conviction of a crime, in Vermont or elsewhere, for conduct that demonstrates unfitness to operate a home;

(2) Substantiated complaint of abuse, neglect or exploitation;

(3) Conviction, in Vermont or elsewhere, for an offense related to bodily injury, theft or misuse of funds or property;

(4) Conduct, in Vermont or elsewhere, inimical to the public health, morals, welfare and safety;

(5) Financial incapacity, including capitalization, to provide adequate care and services; or



(6) An act or omission that would constitute a violation of any of these regulations.

(b) When an applicant is denied for any of the aforementioned reasons, the licensing agency may determine the applicant has overcome the prohibition if presented with evidence of expungement or suitability sufficient to ensure the safety of residents.

(c) Failure to provide complete, truthful and accurate information within the required time during the application or re-application process will be grounds for automatic denial or revocation of a license.

#### 4.4 Re-application

(a) Application forms will be mailed to the applicant approximately sixty (60) days before the end of the licensing year. The completed application form must be returned to the licensing agency not less than forty-five (45) days before the expiration date. Upon receipt of a properly completed application, a license will be renewed assuming all other conditions for licensure are met.

(b) Licenses will be issued for a period of one (1) year, unless the licensing agency determines that a home's lack of compliance with these regulations indicates the home should be given a license for a shorter period of time.

#### 4.5 Expiration

A license expires on the date indicated on the licensure certification. However, if the licensee has made a complete and accurate application to the licensing agency but the agency has failed to act on the license application, the current license remains in effect until the agency completes the renewal process.

#### 4.6 Change in Licensed Capacity

(a) A residence must not provide care to more residents than the capacity for which it is licensed. Requests for a change in licensed capacity must be made in writing to the licensing agency. A proper staffing pattern to cover an increase in capacity must be submitted when requested.

(b) A residence may provide other related services, such as acting as a senior meals program meal site or adult day program, provided the home:

(1) Has adequate space, staff, and equipment to appropriately provide the service;

(2) Has fully informed residents on admission, or upon addition of a new service, about the additional services;

(3) Ensures residents of the home will not be inconvenienced by the service; and

(4) Has received approval from the licensing agency in advance.

(c) The offered service must meet accepted standards of practice and general requirements for that service. For an adult day program, the provider must meet the standards for adult day programs adopted by the Department of Disabilities, Aging and Independent Living. For meal sites, the provider must meet the standards adopted for the senior meals program through the Department of Disabilities, Aging and Independent Living.

(d) If a therapeutic community residence becomes a senior meal site, the home cannot charge a resident of the home for a meal at the meal site unless that meal is in addition to the meal the home is required to provide to the resident. Similarly, if a home offers an adult day program, a resident who attends an adult day program cannot be charged for a meal unless that meal is in addition to the meal the home is required to provide to the resident.

(e) A therapeutic community residence cannot charge a resident or Medicaid for adult day services provided to a resident of any therapeutic community home.

#### 4.7 Temporary License

(a) A temporary license may be issued permitting operation for such period or periods, and subject to such express conditions, as the licensing agency deems proper. Such license may be issued for a period not to exceed one (1) year, and renewals of such license will not exceed thirty-six (36) months.

(b) If a residence does not meet all of the requirements of this rule at the time of application for licensure, the licensing agency may issue a temporary license.

(1) A temporary license will be issued only if, following program, fire safety, and sanitation inspection, the responsible state agencies determine that the particular areas of non-compliance do not constitute an immediate and distinct hazard to the health, safety or well-being of the residents.

(2) A temporary license will be issued for a length of time to be determined by the responsible state agencies, and issuance will be contingent upon the Residence's efforts to achieve full compliance with the standards established by these Rules.

(3) A temporary license will note the requirement(s) not fully met by the residence, and the dates established for achieving compliance, either directly on the license or on an accompanying attachment. This attachment must be displayed with the license.

#### 4.8 Change in Status

(a) When a change of ownership or location is planned, the licensee or prospective licensee is required to file a new application for license at least ninety (90) days prior to the proposed date of the change. The new licensee must provide each resident with a written agreement that describes all rates and charges as defined in 5.2(a).

(b) A licensee who intends to discontinue all or part of the operation, or to change the admission or retention policy, ownership, or location of the residence in such a way as to necessitate the discharge of residents must notify the licensing agency and residents at least ninety (90) days prior to the proposed date of change. The licensee is responsible for ensuring that all residents are discharged in a safe and orderly manner. When such change in status does not necessitate the discharge of residents, the licensee must give the licensing agency and residents at least thirty (30) days prior written notice.

(c) If, due to an emergency situation, a therapeutic community residence must cease operation on an immediate or emergency basis, whether due to a disaster involving the physical plant or to some other situation rendering the licensee unable to provide safe care to residents, it may cease operation with the permission of the licensing agency. In such cases, the licensee is not required to provide residents with a 90-day notice. The licensee must ensure that all residents are discharged to a safe and appropriate alternative care setting.

#### 4.9 Separate License

A separate license is required for each residence that is owned and operated by the same management.

#### 4.10 Transfer Prohibited

A license will be issued only for the applicant(s) and premises named in the application and is not transferable or assignable.

#### 4.11 License Certificate

The residence's current license certificate must be protected and appropriately displayed in such a place and manner as to be readily viewable by persons entering the residence. Any conditions which affect the license in any way must be posted adjacent to the license certificate.

#### 4.12 Responsibility and Authority

(a) Each residence must be organized and administered under one authority, which may be an individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. That individual or entity, which must be the licensee, will have ultimate authority and responsibility for the overall operation of

the program.

(b) Whenever the authority is vested in the governing board of a firm, partnership, corporation, company, association or joint stock association, there must be appointed a duly authorized qualified manager, however named, who will be in charge of the daily management and business affairs of the residence, who must be fully authorized and empowered to carry out the provisions of these regulations, and who must be charged with the responsibility of doing so. The manager of the residence must be present in the residence an average of twenty-two (22) hours per week. The twenty-two (22) hours must include time providing services, such as transporting, or attendance at educational seminars. Vacations and sick time must be taken into account for the twenty-two (22) hour requirement. In the event of extended absences, a qualified interim manager must be appointed.

(c) The manager must not leave the premises without delegating necessary authority to a competent staff person who is at least eighteen (18) years of age. Staff left in charge must be qualified by experience to carry out the day-to-day responsibilities of the manager, including being sufficiently familiar with the needs of the residents to ensure that their care and personal needs are met in a safe environment. Staff left in charge must be fully authorized to take necessary action to meet those needs or must be able to contact the manager immediately if necessary.

(d) The qualifications for the manager of a therapeutic community residence are, at a minimum, one of the following:

(1) At least an associate's degree in the area of human services; or

(2) Three (3) years of general experience in a human services-related field.

The licensing agency will evaluate the education, employment history and experience of the manager to determine whether he or she has the necessary qualifications.

#### 4.13 Survey/Investigation

(a) The licensing agency will inspect a residence prior to issuing a license and may inspect a residence any other time it considers an inspection necessary to determine if a residence is in compliance with these regulations.

(1) Authorized staff of the licensing agency shall have access to the residence at all times, with or without notice.

(2) The living quarters of the manager of a residence may be subject to inspection only where the inspector has reason to believe the licensed capacity of the residence has been exceeded and only for the purpose of determining if such a

violation exists. The inspector will permit the manager to accompany them on such an inspection.

(3) If an authorized inspector is refused access to a residence or the living quarters of the manager, the licensing agency may seek a search warrant authorizing the inspection of such premises.

(4) If, as a result of an investigation or survey, the licensing agency determines that a residence is unlicensed and meets the definition of a therapeutic community residence, written notice of the violation will be prepared pursuant to 33 V.S.A. §7110 and §4.15 of these regulations.

(b) The licensing agency will investigate whenever it has reason to believe a violation of the law or regulations has occurred. Investigations may be conducted by the licensing agency or its agents and may be conducted at any place or include any person the licensing agency believes possesses information relevant to its regulatory responsibility and authority.

(c) After each inspection, survey or investigation, an exit conference will be held with the manager or designee. The exit conference will include an oral summary of the licensing agency's findings and if regulatory violations were found, notice that the residence must develop and submit an acceptable plan of correction. Residents who wish to participate in the exit conference have the right to do so. Representatives of the state's designated protection and advocacy organization also may attend the exit conference.

(d) A written report will be submitted to the licensee at the conclusion of an investigation. The report will contain the results of the investigation, any conclusions reached, and any final determinations made by the licensing agency.

(e) The licensing agency may, within the limits of the resources available to it, provide technical assistance to the residence to enable it to comply with the law and the regulations. The licensing agency will respond in writing to reasonable written requests for clarification of the regulations.

(f) The residence must make current written reports resulting from inspections readily available to residents and to the public in a place readily accessible to residents where individuals wishing to examine the results do not have to ask to see them. The residence must post a notice of the availability of all other written reports in a prominent place. If a copy is requested and the residence does not have a copy machine, the residence must inform the resident or member of the public that they may request a copy from the licensing agency and must provide the address and telephone number of the licensing agency.

#### 4.14 Violations: Notice Procedure

(a) If, as a result of survey or investigation, the licensing agency finds a violation of a law or regulation, it will provide a written notice of violation to the residence within ten (10) days. The notice will include the following:

- (1) A description of each condition that constitutes a violation;
- (2) Each rule or statutory provision alleged to have been violated;
- (3) The date by which the residence must return a plan of correction for the alleged violation(s);
- (4) The date by which each violation must be corrected;
- (5) Sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;
- (6) The right to apply for a variance as provided for in Section III of these regulations;
- (7) The right to an informal review by the licensing agency; and
- (8) The right to appeal the licensing agency determination of violation, with said appeal being made to the Commissioner of Disabilities, Aging and Independent Living within fifteen (15) days of the mailing of the notice of violation.

(b) If the licensee fails either to return a plan of corrective action or to correct any violation in accordance with the notice of violation, the licensing agency will provide written notice to the licensee of its intention to impose specific sanctions, and the right of the licensee to appeal.

(c) The licensing agency will mail its decision to the licensee within ten (10) days of the conclusion of the review or, if no review was requested, within twenty-five (25) days of the mailing of the notice of proposed sanctions. The written notice will include the licensee's right to appeal the decision to the Commissioner of Disabilities, Aging and Independent Living within fifteen (15) days of the mailing of the decision by the licensing agency.

(d) Nothing in these regulations precludes the licensing agency from taking immediate enforcement action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff. If the licensing agency takes immediate enforcement action, it will explain the actions and the reasons for it in the notice of violation. At the time immediate enforcement action is proposed, the licensee will be given an opportunity to request an appeal

to the Commissioner. If immediate enforcement action is taken, the licensee also will be informed of the right to appeal the Department's action to the Human Services Board.

#### 4.15 Enforcement

The purpose of enforcement actions is to protect residents. Enforcement actions by the licensing agency against a residence may include the following:

(a) Administrative penalties against a residence for failure to correct a violation or failure to comply with a plan of corrective action for such violation as follows:

(1) Up to \$5.00 per resident or \$50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

(2) Up to \$8.00 per resident or \$80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents;

(3) Up to \$10.00 per resident or \$100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents; and—

(4) For purposes of imposing administrative penalties under this subsection, a violation will be deemed to have first occurred as of the date of the notice of violation.

(b) Suspension, revocation, modification or refusal to renew a license upon any of the following grounds:

(1) Violation by the licensee of any of the provisions of the law or regulations;

(2) Conviction of a crime for conduct which demonstrates that the licensee or the principal owner is unfit to operate a residence;

(3) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) Financial incapacity of the licensee to provide adequate care and services; or

(5) Failure to comply with a final decision or action of the licensing agency.

(c) Suspension of admissions to a residence, or discharge of residents from a residence to an alternative placement, for a violation that may directly impair the health, safety or rights of residents, or for operating without a license.

(d) The licensing agency, the attorney general, or a resident may bring an action for injunctive relief against a residence in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of the law or regulation.

(e) The licensing agency, the attorney general, or a resident may bring an action in accordance with 33 V.S.A. § 7201 *et seq.* for appointment of a receiver for a residence, if one or more of the circumstances set forth in 33 V.S.A. § 7202 are present or imminent.

(f) The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the residence is located, or in Washington Superior Court.

(g) The remedies provided for violations of the law or regulations are cumulative.

(h) The licensing agency may require a therapeutic community residence to refund payment to a resident who has left the residence early having given the appropriate notice or who has paid or been charged more than was due to the residence.

#### 4.16 Identification of Unlicensed Residences

With regard to therapeutic community residences operating without a license, but required by law to be licensed, the following requirements will apply:

(a) No physician, surgeon, osteopath, chiropractor, physician's assistant, advanced-practice registered nurse (licensed, certified or registered under the provisions of Title 26), resident physician, intern, hospital administrator in any hospital in this state, registered nurse, licensed practical nurse, medical examiner, psychologist, mental health professional, social worker, probation officer, police officer, nursing home administrator or employee, or owner, manager, or employee of a residence must knowingly place, refer or recommend placement of a person to such a residence if that residence is operating without a license.

(b) Any individual listed in 4.16(a) who is licensed or certified by the State of Vermont or who is employed by the state or a municipality and who knows or has reason to believe that a residence is operating without the license required under this chapter must report the residence and address of the residence to the licensing agency.

(c) Violation of the above sections may result in a criminal penalty of up to \$500 and a prison sentence of up to six (6) months pursuant to 33 V. S. A. §7116.



(d) The licensing agency will investigate any report filed by an individual listed above.

(e) The licensing agency also will investigate any report filed by any person other than one listed in 4.16(a), unless it reasonably believes that the complaint is without merit.

(f) For purposes of determining if a residence is operating without a license, the provision of room and board and personal care means that any individual in the residence receives or requires such care and services.

(g) The residence operating without a license referred to in this chapter may be operating for profit or not for profit and may occupy one or multiple dwellings.

(h) Upon notice from the licensing agency, the unlicensed residence must cease operation immediately until such time as a license has been issued and permission to operate has been obtained. No residents may remain in the residence pending the receipt of the license unless granted a variance by the Department.

#### 4.17 Additional Required Program Components

(a) In addition to obtaining a license, a residence must obtain approval from the licensing agency prior to establishing, advertising or operating as a therapeutic community residence. Approval will be based on a demonstration that the program will provide specialized therapeutic services to a specific population.

(b) A request for approval must include all of the following:

(1) A statement outlining the philosophy, purpose and scope of services to be provided;

(2) A definition of the characteristics of residents to be served;

(3) A description of the organizational structure of the unit consistent with the unit's philosophy, purpose and scope of services;

(4) A description and identification of the physical environment;

(5) The criteria for admission, continued stay and discharge; and

(6) A description of unit staffing, to include:

i. Staff qualifications;

ii. Orientation;

iii. In-service education and specialized training; and

iv. Medical management and credentialing as necessary.

(c) All therapeutic community residences must either:

(1) Comply with the current regulations for the licensing and operation of a therapeutic community residence set forth herein; or

(2) Subject to initial licensure approval (see Section IV), comply with alternative proposed program conditions that must include the following components:

i. Structural Components:

Governing Authority  
Direction or Supervision  
Staff  
Fiscal Management

ii. Treatment Components

Philosophy  
Process  
Intake  
Identification of Problems and Areas of  
    Successful Life Function  
Treatment Plan  
Progress Notes  
Supervision and Review  
Resident Records  
Resident Services  
Discharge and Aftercare

(d) A residence that has received approval to operate as a therapeutic community residence must comply with the regulations or the specifications contained in the request for approval. The residence will be surveyed to determine if the program is providing the services, staffing, training, and physical environment that was outlined in the request for approval.

(e) The requirements of sections 5.2 and 5.3 below apply to all residents.

## **V. Resident Care and Services**

### **5.1 Eligibility**

(a) The licensee must not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the residence is able to safely and appropriately provide, unless prior approval has been obtained from the licensing agency.

(b) A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital must not be admitted to or retained as a resident in a therapeutic community residence.

(c) A person under eighteen (18) years of age must not be admitted to a therapeutic community residence except by permission of the licensing agency.

## 5.2 Admission Agreements

The residence must have clearly stated written criteria for determining the eligibility of individuals for admission.

(a) Prior to or at the time of admission, each resident, and the resident's legal representative if any, must be provided with a written admission agreement which describes the daily, weekly, or monthly rate to be charged, the services that are covered in the rate, and all other applicable financial issues, including an explanation of the residence's policy regarding discharge or transfer when a resident's financial status changes from privately paying to paying with SSI benefits. The agreement must be written in a format that is accessible, linguistically appropriate, and available in large font.

(b) The admission agreement must specify, at least, how the following services will be provided and what additional charges there will be, if any: all personal care services; nursing services; medication management; laundry; transportation; toiletries; and any additional services provided under a Medicaid program.

(c) If applicable, the agreement must specify the amount and purpose of any deposit. This agreement must also specify the resident's transfer and discharge rights, including provisions for refunds, and must include a description of the residence's personal needs allowance policy. Any change of rate or services must be preceded by a thirty (30) day written notice to the resident and the resident's legal representative, if any.

(d) On admission, the residence must also determine if the resident has any form of advance directive and explain the resident's right under state law to formulate, or not to formulate, an advance directive. The admission agreement must include a space for the resident to sign and date to indicate that the residence has met this requirement.

(e) The residence must provide each resident with written information regarding how to contact the designated Vermont protection and advocacy organization, the patient representative, as applicable, and the Disability Law Project or the Mental Health Law Project, as applicable. The residence must inform residents that these organizations are available also to assist with formulating an advance directive, if the resident wishes to do so.

(f) The residence must include a copy of its grievance policy in the admissions agreement.

(g) When an applicant is found to be ineligible for admission, the reason must be recorded in writing and referral to an appropriate agency or organization must be attempted. Such referral must be made, if possible, in conjunction with the agency or organization originally referring applicant to the residence. The record of the decision must be retained by the residence for a period of at least one year.

(h) If applicable, an applicant can be requested to consent to the waiver of certain resident rights, including those related to visitors, mail, and the use of telephones and cell phones, provided such waiver is explained in detail in the written admission agreement.

### 5.3 Intake

(a) The residence must have clearly stated written criteria for determining the eligibility of individuals for admission.

(b) The intake process must be completed no later than seven (7) days from the date of admission and must include a comprehensive assessment focusing on the following:

(1) Early history in brief summary;

(2) Review and written summary of current adjustment in major areas of life function - personal, social, familial, educational and vocational with an identification of major dysfunctions leading to the need for residential treatment.

(3) As recent a medical report as possible, to include orders for medications, cautions on adverse reactions and symptoms to watch for.

(4) Review of specific substance abuse if applicable.

(5) Appropriate abstracts from agencies, institutions, and programs previously used by the individual.

(c) A written summary of the basic data must be retained by the residence for the record.

(d) Sufficient information must be gathered during the intake process to permit the identification of specific areas of function/dysfunction such as unemployment, marital discord or economic crisis, as possible collateral elements contributing to the presenting problems of substance abuse or mental illness.

(e) Sufficient information must be gathered during the intake process to permit the identification of specific areas of successful life function, achievement and specific skills, strengths and supports.

(f) The identified problems, achievements and specific skills, strengths and supports must be used as a basis for the development of a treatment plan and goals for each resident.

#### 5.4 Discharge Requirements

(a) A residence must provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the residence if the residence has decided that discharge is appropriate. The details of the discharge plan must be in writing and must include the reasons for discharge. A copy must be given to the resident and one must be placed in the resident's chart.

(b) Where a residence provides aftercare services, a written plan must be developed, in partnership with the resident. The aftercare plan must include: the resident's goal for a reasonable period following discharge; a description of the services to be provided by the residence and outside services during the aftercare period; the procedure the resident is to follow in maintaining contact with the residence in times of crisis; and the frequency with which the residence will attempt to contact the resident for purposes of follow-up.

(c) A summary of the resident's stay at the facility must be added to the resident record within two weeks of their leaving. The summary must include the reason for leaving, areas in which progress, no progress, or regression was observed, and the medication the resident was prescribed at the time of leaving. If a resident is receiving treatment for a serious mental illness, the facility must follow up with that resident within seventy-two (72) hours of discharge from the facility. This must be done using the most effective means possible, including email, text messaging, or phone.

#### 5.5 General Care

(a) Upon a resident's admission to a therapeutic community residence, necessary services must be provided or arranged to meet the resident's personal, psychosocial, nursing and medical care needs. The home's manager must provide every resident with the personal care and supervision appropriate to their individual needs.

(b) Staff must provide care that respects each resident's dignity and each resident's accomplishments and abilities. Residents must be encouraged to participate in their own activities of daily living. Families must be encouraged to participate in care and care planning according to their ability and interest and with the permission of the resident.

(c) Each resident's medication, treatment, and dietary services must be consistent with the physician's orders.

#### 5.6 Health Care Provider Services

(a) All residents must be under the continuing general care of a licensed health care provider and must receive assistance, if needed, in scheduling medical appointments.

(b) Except for medical care that has been specifically ordered by a

court, a resident has the right to refuse all medical care for religious reasons or other reasons of conviction. In such cases, the residence must assess its ability to properly care for the resident and document the refusal and the reasons for it in the resident's record.

(c) The resident's health care provider must be notified whenever the resident has refused medical care.

(d) All health care providers' orders obtained via telephone must be countersigned by the health care provider within fifteen (15) days of the date the order was given.

(e) Physical examinations must be provided for all residents whose residency exceeds 45 days unless the resident has available the report of a physical examination completed within 90 days prior to admission. Arrangements must be made to treat and follow up medical problems identified in the physical examination.

## 5.7 Treatment Plan

(a) The residence must set forth in writing its treatment goals, approach, orientation, and methods for achieving goals.

(b) The residence must ensure that the treatment plan reflects steps to be taken to solve identified problems, either by direct service at the residence or indirectly by referral to a community resource. The treatment plan must be completed within fourteen (14) days of admission.

(c) The treatment plan must contain clear and concise statements of at least the short-term goals the resident will be attempting to achieve, along with a realistic time schedule for their fulfillment or reassessment.

(d) Treatment goals must be set by the resident and, upon request, a support person, with the participation and guidance of appropriate staff members.

## 5.8 Medication Management

(a) Each therapeutic community residence must have written policies and procedures describing the residence's medication practices. The policies must cover at least the following:

(1) If a therapeutic community residence provides medication management, it must be done under the supervision of a registered nurse.

(2) Who will provide the professional nursing delegation if the residence administers medications to residents unable to self-administer and how the process of delegation is to be carried out in the residence.

(3) Qualifications of the staff who will be managing medications or administering medications and the residence's

process for nursing supervision of the staff.

(4) How medications will be obtained for residents including choices of pharmacies.

(5) Procedures for documentation of medication administration.

(6) Procedures for disposing of outdated or unused medication, including designation of a person or persons with responsibility for disposal.

(7) Procedures for monitoring side effects of psychoactive medications.

(8) Procedures for assessing a resident's ability to self-administer and documentation of the assessment in the medical record.

(b) The manager of the residence is responsible for ensuring that all medications are handled according to the residence's policies and that designated staff are fully trained in the policies and procedures. The manager must assure that all medications and drugs are used only as prescribed by the resident's physician, properly labeled and kept in a locked cabinet at all times or, when a program of self-medication is in effect, otherwise safely secured.

(c) Staff must not assist with or administer any medication, prescription or over-the-counter medications for which there is not a physician's or other licensed health care provider's written, signed order and supporting diagnosis or problem statement in the resident's record.

(d) If a resident requires medication administration, unlicensed staff may administer medications under the following conditions:

(1) A registered nurse must conduct an assessment of the resident's care needs consistent with the physician's or other health care provider's diagnosis and orders.

(2) A registered nurse must delegate the responsibility for the administration of specific medications to designated staff for designated residents.

(3) The registered nurse must accept responsibility for the proper administration of medications, and is responsible for:

*i.* Teaching designated staff proper techniques for medication administration and providing appropriate information about the resident's condition, relevant medications, and potential side effects;

*ii.* Establishing a process for routine communication with designated staff about the resident's condition and the effect of medications, as well as changes in medications;

*iii.* Assessing the resident's condition and the need for any changes in medications; and

*iv.* Monitoring and evaluating the designated staff performance in carrying out the nurse's instructions.

(4) All medications must be administered by the person who prepared the doses unless the nurse responsible for delegation approves of an alternative method of preparation and administration of the medications.

(5) Staff other than a nurse may administer PRN psychoactive medications only when the residence has a written plan for the use of the PRN medication which: describes the specific behaviors the medication is intended to correct or address; specifies the circumstances that indicate the use of the medication; educates the staff about what desired effects or undesired side effects the staff must monitor for; and documents the time of, reason for and specific results of the medication use.

(6) Insulin. Staff other than a nurse may administer insulin injections only when:

*i.* The diabetic resident's condition and medication regimen is considered stable by the registered nurse who is responsible for delegating the administration;

*ii.* The designated staff to administer insulin to the resident have received additional training in the administration of insulin, including return demonstration, and the registered nurse has deemed them competent and documented that assessment; and

*iii.* The registered nurse monitors the resident's condition regularly and is available when changes in condition or medication might occur.

(e) Staff responsible for assisting residents with medications must receive training in all of the following areas before assisting with any medications from the registered nurse:

(1) The basis for determining "assistance" versus "administration".

(2) The resident's right to direct the resident's own care, including the right to refuse medications.

(3) Proper techniques for assisting with medications, including hand washing and checking the medication for the right resident, medication, dose, time, and route.

(4) Signs, symptoms and likely side effects to be aware of for



any medication a resident receives.

(5) The residence's policies and procedures for assistance with medications.

(f) Residents who are capable of self-administration have the right to purchase and self-administer over-the-counter medications. However, the residence must make every reasonable effort to be aware of such medications in order to monitor for and educate the residents about possible adverse reactions or interactions with other medications without violating the resident's rights to direct the resident's own care. If a resident's use of over-the-counter medications poses a significant threat to the resident's health, staff must notify the physician or other health care provider.

(g) Residences must establish procedures for documentation sufficient to indicate to the health care provider, registered nurse, certified manager or representatives of the licensing agency that the medication regimen as ordered is appropriate and effective. At a minimum, this must include:

(1) Documentation that medications were administered as ordered;

(2) All instances of refusal of medications, including the reason why and the actions taken by the residence;

(3) All PRN medications administered, including the date, time, reason for giving the medication, and the effect;

(4) A current list of who is administering medications to residents, including staff to whom a nurse has delegated administration;

(5) For residents receiving psychoactive medications, a record of monitoring for side effects; and

(6) All incidents of medication errors.

(h) All medicines and chemicals used in the residence must be labeled in accordance with currently accepted professional standards of practice. Medication must be used only for the resident identified on the pharmacy label.

(1) Resident medications that the residence manages must be stored in double-locked compartments under proper temperature controls. Only authorized personnel may have access to the keys.

(2) Medications requiring refrigeration must be stored in a separate, locked container impervious to water and air if kept in the same refrigerator used for storage of food.

(3) Residents who are capable of self-administration may choose

to store their own medications provided that the residence is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the residence is able to provide such a secured space must be explained to the resident on or before admission.

(4) Medications left after the death or discharge of a resident, or outdated medications, must be promptly disposed of in accordance with the residence's policy and applicable standards of practice and regulations.

(5) Narcotics and other controlled drugs must be kept in a locked cabinet in a locked room. Narcotics must be accounted for on a daily basis. Other controlled drugs must be accounted for on at least a weekly basis.

#### 5.9 Staff Services

(a) There must be sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to ensure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

(b) The residence must ensure that staff demonstrate competency in the skills and techniques they are expected to perform before providing any direct care to residents. There must be at least twelve (12) hours of training each year for each staff person providing direct care to residents. The training must include, but is not limited to, the following:

- (1) Resident rights;
- (2) Fire safety and emergency evacuation;
- (3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;
- (4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;
- (5) Respectful and effective interaction with residents;

(6) Infection control measures, including but not limited to, hand washing, handling of linens, maintaining clean environments, blood borne pathogens and universal precautions; and

(7) General supervision and care of residents.

(c) All training to meet the requirements of 5.10(b) must be documented. Training in direct care skills by a residence's nurse may meet this requirement, provided the nurse documents the content and amount of training.

(d) The licensee must not have on staff a person who has had a charge of abuse, neglect or exploitation substantiated against him or her, as defined in 33 V.S.A. Chapters 49 and 69, or one who has been convicted of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction whether within or outside of the State of Vermont. This provision applies to the manager of the residence as well, regardless of whether the manager is the licensee. The licensee must take all reasonable steps to comply with this requirement, including, but not limited to, obtaining and checking personal and work references and contacting the Division of Licensing and Protection and the Department for Children and Families in accordance with 33 V.S.A. §6911 and 33 V.S.A. §4919 to see if prospective employees are on the abuse registry or have a record of convictions.

(e) Staff persons must not perform any duties when their judgment or physical ability is impaired to the extent that they cannot perform duties adequately or be held accountable for their duties.

(f) There must be at least one (1) staff member on duty and in charge at all times. There must be a record of the staff on duty, including names, titles, dates and hours on duty. Such records must be retained for at least a year. In those instances in which an issue or complaint has arisen that might involve the records, the records must be retained until the issue or complaint can be resolved.

(g) The licensing agency may require a residence to have specified staffing levels in order to meet the needs of residents.

(h) The licensee is responsible for coordinating all treatment both in and outside residence.

#### 5.10 Records/Reports

(a) The licensee is responsible for maintaining, filing, and submitting all records required by the licensing agency. Such records must be kept current and available on site at the licensed facility for review at any time by authorized representatives of the licensing agency.

(b) The following records must be maintained and kept on file:

(1) A resident register including all admissions to and discharges out of the residence.

(2) A record for each resident which includes:

*i.* The resident's name, emergency notification numbers, the name, address and telephone number of any legal representative or, if there is none, the next of kin;

*ii.* The health care provider's name, address and telephone number;

*iii.* Instructions in case of resident's death;

*iv.* The resident's intake assessment summary, identification of problems and areas of successful life function;

*v.* Data from other agencies;

*vi.* Treatment plans and goal, regular progress notes; supervisory and review conclusions, aftercare plan and discharge summary, appropriate medical information, and a resident information release form;

*vii.* A signed admission agreement;

*viii.* A recent photograph of the resident (but a resident may decline to have their picture taken. Any such refusal must be documented in the resident's record);

*ix.* A copy of the resident's advance directives, if any were completed, and a copy of the document giving legal authority to another, if any.

(3) Progress notes that document a resident's progress and current status in meeting the goals set by the treatment plan, as well as efforts by staff members to help the resident achieve these stated goals, must be made a part of the resident record.

*i.* All entries that involve subjective interpretation of a resident's progress should be supplemented with a description of actual behavioral observations supporting the interpretation.

*ii.* If a resident is receiving services at an outside resource, the residence must attempt to secure a written copy of progress notes and resident records from that source. These must be attached to the resident record.

*iii.* Summary progress reports must be written regularly and made part of the resident record.

*iv.* Whenever possible residents should be encouraged to

contribute to their own progress notes.

(4) The results of the criminal record and abuse registry checks for all staff.

(c) The residence must ensure that resident records are safeguarded and protected against loss, tampering or unauthorized disclosure of information, that the content and format of resident records are kept uniform and that all entries in resident records are signed and dated.

(d) A residence must file the following reports with the licensing agency:

(1) When a fire occurs in the residence, regardless of size or damage, the licensing agency and the Department of Public Safety's Division of Fire Safety must be notified within twenty-four (24) hours. A written report must be submitted to both departments within seventy-two (72) hours. A copy of the report must be kept on file.

(2) A written report of any reports or incidents of abuse, neglect or exploitation reported to the licensing agency.

(3) A written report of any deaths. When a resident dies, in addition to notifying the medical examiner, the licensee must send a report to the licensing agency and to the designated Vermont protection and advocacy organization with the following information:

*i.* The name of resident;

*ii.* The circumstances of the death;

*iii.* The circumstances of any recent injuries or falls;

*iv.* A list of all medications and treatments received by the resident during the two (2) weeks prior to the death; and

*v.* When and by whom the police were notified.

(e) Reports and records must be filed and stored by the residence in an orderly manner so that they are readily available for reference. Resident records must be kept on file at least seven (7) years after the date of either the discharge or death of the resident.

#### 5.11 First Aid Equipment and Supplies

Equipment and such supplies as are necessary for universal precautions, to meet resident needs and for care of minor cuts, wounds, abrasions, contusions, and similar sudden accidental injuries must be readily available, in good repair and the location clearly marked.

## 5.12 Resident Services

The residence must have the capability for the provision, either on site or by referral, of the following services whenever they are identified in the treatment plan as needed:

- (a) Family counseling services;
- (b) Educational services;
- (c) Legal services;
- (d) Employment services;
- (e) Vocational rehabilitation services; and
- (f) Medical or psychiatric services, or both.

## 5.13 Policies and Procedures

Each residence must have written policies and procedures that govern all services provided by the residence. A copy must be available for review at the residence upon request.

## 5.14 Transportation

(a) Each residence must have a written policy about what transportation is available to residents of the residence. The policy must be explained at the time of admission and included in the admission agreement.

(b) The residence must provide or arrange transportation to medical services as needed by residents.

(c) The residence must provide or arrange transportation for residents to a practical number of appropriate community functions and must have a written policy that states the number and duration of such transports that will be considered reasonable.

(d) The residence must acquire and maintain adequate liability insurance coverage for vehicles used to transport residents.

## 5.15 Death of a Resident

(a) The manager must report any death of a resident to the licensing agency, the regional medical examiner and the appropriate law enforcement agency, including the state's attorney's office.

(b) The facility must complete an incident report regarding the death of a resident and send the report to the licensing agency and to the designated protection and advocacy organization. A copy of the report also must be kept on the premises.

## 5.16 Reporting of Abuse, Neglect or Exploitation

(a) The licensee and staff must report any case of suspected abuse, neglect or exploitation to Adult Protective Services (APS) as required by 33 V.S.A. §6903. APS may be contacted by calling toll-free 1-800-564-1612. Reports must be made to APS within forty-eight (48) hours of learning of the suspected, reported or alleged incident.

(b) The licensee and staff are required to report suspected or reported incidents of abuse, neglect or exploitation. It is not the licensee's or staff's responsibility to determine if the alleged incident did occur or not; that is the responsibility of the licensing agency. A residence may, and should, conduct its own investigation. However, that must not delay reporting of the alleged or suspected incident to APS.

(c) Incidents involving resident-to-resident abuse must be reported to the licensing agency if a resident alleges abuse, sexual abuse, or if an injury requiring medical intervention results, or if there is a pattern of abusive behavior. All resident-to-resident incidents, even minor ones, must be recorded in the resident's record. Families or legal representatives must be notified and a plan must be developed to deal with the behaviors.

## 5.17 Access by Advocacy System.

(a) The residence must permit representatives of Adult Protective Services, the Mental Health Ombudsman, as applicable, the patient representative, as applicable, and the designated Vermont protection and advocacy organization to have access to the residence and its residents in order to: visit; talk with; make personal, social and legal services available to all residents; inform residents of their rights and entitlement; and assist residents in resolving problems and grievances.

(b) Any designated representative of the designated Vermont protection and advocacy organization, the Mental Health Ombudsman, as applicable, and the patient representative, as applicable, must have access to the residence at any time in accordance with that program's state and federal mandates and requirements. Those representatives must also have access to the resident's records with the permission of the resident or as otherwise provided by state or federal law.

(c) Individual residents have the complete right to deny or terminate any visits by persons having access pursuant to this section.

(d) If a resident's room does not permit private consultation to occur, the resident may request, and the residence must provide, an appropriate place for a private meeting.

## **VI. Residents' Rights**

6.1 Every resident must be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. A residence may not ask a resident to waive the resident's rights. A

resident has the right to exercise any rights without reprisal.

6.2 Each residence must establish and adhere to a written policy, consistent with these regulations, regarding the rights and responsibilities of residents, which must be explained to residents at the time of admission. Receipt of the rights by the resident must be indicated by a signature and date by the resident on a line for that purpose on the admission agreement.

6.3 Residents may retain personal clothing and possessions as space permits, unless doing so would infringe on the rights of others, would create a danger to others, would create a security risk or would create a fire, health or safety hazard.

6.4 A resident must not be required to perform work for the licensee. If a resident chooses to perform specific tasks for the licensee the resident must receive reasonable compensation which must be specified in a written agreement with the resident.

6.5 Each resident must be allowed to associate, communicate and meet privately with persons of the resident's own choice, including family members, unless such access has been restricted by a court. Residences must allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours must be posted in a prominent public place.

6.6 Each resident may send and receive personal mail unopened, unless such access has been restricted by a court.

6.7 Residents have the right to reasonable access to a telephone for private conversations unless such access has been restricted by a court. Residents must have reasonable access to the residence's telephone except when restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use must be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or other electronic equipment in their own room, unless such access has been restricted by a court.

6.8 A resident may file a complaint or voice a grievance without interference, coercion or reprisal. Each residence must establish an accessible written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission and posted in a prominent, public place on each floor of the residence. The grievance procedure must include at a minimum, time frames, a process for responding to residents in writing within ten (10) days, and a method by which each resident filing a complaint or grievance will be made aware of the designated Vermont protection and advocacy organization as an alternative or in addition to the residence's grievance mechanism.

6.9 Residents may manage their own personal finances unless a representative payee or financial guardian has been appointed. The residence or licensee must not manage a resident's finances unless requested in writing by the resident and then in accordance with the resident's wishes. The residence or licensee must keep a record of all transactions and make the record available, upon request, to the resident



or legal representative, and must provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the residence.

6.10 The resident's right to privacy extends to all records and personal information. Personal information about a resident must not be discussed with anyone not directly involved in the resident's care, treatment or supervision. Release of any record or excerpts from, or information contained in, such records, is subject to the resident's written approval, except as requested by representatives of the licensing agency to carry out its responsibilities or as otherwise provided by law.

6.11 The resident has the right to review the resident's medical or financial records upon request. The resident has the right to provide written comments about the medical or financial record and the comments must be made part of the resident's record at the request of the resident.

6.12 Residents must be free from mental, verbal or physical abuse, neglect, exploitation, and corporal punishment. Except in emergency situations, pursuant to the restrictions set forth in section 12.9 *et seq.* below, residents must be free from seclusion or restraints of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Psychoactive drugs must not be administered involuntarily absent an emergency or pursuant to court order, as set forth in sections 12.7(g) and 12.9 *et seq.* below.

6.13 When a resident is adjudicated mentally disabled, such powers as have been delegated by the Probate or Family Court to the resident's guardian will be exercised by the guardian.

6.14 Residents notified about a pending discharge from the residence under Section 5.4 of these regulations, absent an emergency, must:

(a) Be allowed to participate in the decision-making process of the residence concerning the selection of an alternative placement; and

(b) Receive adequate notice of a pending transfer.

6.15 Residents have the right to refuse care to the extent allowed by law.

(a) Except for residents who are prohibited from doing so by a court order, this right includes the right to discharge himself or herself from the residence.

(b) The residence must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the residence must respect that decision and is absolved of further responsibility, unless the resident is in a secure residential recovery facility and has been court-ordered to take medication or receive care.

(c) If the refusal of care will result in a resident's needs increasing beyond what the residence is licensed to provide or will result in the residence being in violation of these regulations, the residence may issue the resident notice of discharge.

6.16 Residents have the right to fill out a document called an "advance directive" in accordance with Title 18, chapter 231 and to have the residence follow the residents' wishes, unless such wishes are contrary to a court order. The residence must provide residents with information about advance directives and, upon request, may support a resident's efforts to complete the documents.

6.17 Residents must have help in assuming as much responsibility for themselves and others as possible, and in participating in residence activities.

6.18 Residents must have explained to them the reasons and risks associated with the use of any prescribed medication they are taking.

6.19 Residents must be free to terminate their relationship to the residence.

6.20 The enumeration of residents' rights must not be construed to limit, modify, abridge, restrict or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen, unless those rights have been limited by a court.

6.21 The obligations of the residence to its residents must be written in clear language, large print, given to residents on admission, and posted in an accessible, prominent and public place on each floor of the residence. Such notice must also state the residence's grievance procedure and directions for contacting the designated Vermont protection and advocacy organization.

6.22 If a resident has a chronic condition, he or she has the right to receive competent and compassionate medical assistance to manage the physical and emotional symptoms of that condition.

6.23 Residents have the right to have a family member or another person of the resident's choice be notified of the admission to the residence. Residents also have the right to decline to have anyone notified of the admission. A facility may not disclose information about a resident's admission without obtaining the resident's authorization. The decision by the resident regarding notice must be documented at the time of admission to the residence.

6.24 Residents have the right to obtain the opinion of a consultant at the resident's own expense.

6.25 Residents have the right to vote.

6.26 Residents with limited English proficiency have the right to have oral or written translation or interpretive services and cannot be

required to pay for such services.

6.27 Residents have the right to have accommodations made to a disability (or disabilities) to ensure that there are no barriers to their receipt of services and that they understand the care and treatment being provided. Such accommodations must include, but are not limited to, sign language interpretation and having documents provided in accessible formats, as applicable. The resident must not be required to pay for these services.

6.28 Residents have the right to receive services without discrimination based on race, religion, color, gender (including pregnancy), sexual orientation, gender identity, national origin, disability or age.

## **VII. Nutrition and Food Services**

### **7.1 Food Services**

#### **(a) Menus and Nutritional Standards**

(1) Menus for regular and therapeutic diets must be planned and written at least one (1) week in advance.

(2) The meals served each day must provide 100% of the Dietary Reference Intakes (DRIs) and comply with the current Dietary Guidelines for Americans. DRIs are a set of nutrient-based reference values that expand upon and replace the former Recommended Dietary Allowances (RDAs) in the United States. They include acceptable macronutrient distribution range (AMDR); adequate intake (AI); estimated average requirement (EAR); recommended dietary allowance (RDA) and tolerable upper intake level (UI). Dietary Guidelines for Americans were developed by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.

(3) The current week's regular and therapeutic menu must be posted in a prominent public place for residents and other interested parties.

(4) The residence must follow the written, posted menus. If a substitution must be made, the substitution must be recorded on the written menu.

(5) The residence must keep menus, including any substitutions, for the previous month on file and available for examination by the licensing agency.

(6) There must be a written order in the resident's record for all therapeutic diets.

(7) The residence must maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus as well as for unseen emergencies.

(8) No more than fourteen (14) hours may elapse between the end of an evening meal and the morning meal unless a resident specifically requests an alternative meal schedule.

(b) Meal Planning Guidelines

(1) The residence must follow the current U.S. Department of Agriculture (USDA) Food Patterns.

(2) The residence must consider each resident's dietary needs with respect health status, age, gender and activity level, particularly with regard to portion sizes and frequency of meals and snacks. In taking these factors into consideration, overall nutrient intake must not be compromised.

(c) Meal Service

(1) Each residence must offer meals three times a day in accordance with the guide (above). Meals must be served at appropriate temperature and at normal meal hours. Texture modifications will be accommodated as needed.

(2) Meals must be attractively served, family style wherever possible, and must be appropriate to individual needs as determined by age, activity, physical condition and personal preference.

(3) A range of drinks and snacks must be available to residents at all times to meet individual needs.

(4) Meal times must be relaxed, unhurried and flexible to suit resident activities and schedules.

(5) Residents must be provided with alternatives to the planned meal upon request.

## 7.2 Food Safety and Sanitation

(a) Each residence must procure food from sources that comply with all laws relating to food and food labeling. Food must be safe for human consumption, free of spoilage, filth or other contamination. All milk products served and used in food preparation must be pasteurized. Cans with dents, swelling, rust, missing labels or leaks must be rejected and kept separate until returned to the supplier.

(b) All perishable food and drink must be labeled, dated and held at proper temperatures. Hot foods must be kept hot at 135° F and cold foods must be kept cold at 41° F or cooler.

(c) All work surfaces must be cleaned and sanitized after each use. Equipment and utensils must be cleaned and sanitized after each use and stored properly.

(d) The residence must ensure that food handling and storage techniques are consistent with the Food Safety Principles and Guidance for Consumers in the current Dietary Guidelines for Americans.

(e) The use of outdated, unlabeled or damaged canned goods is prohibited and such goods must not be maintained on the premises.

(f) The residence and premises must be maintained in a sanitary condition.

(g) All garbage, trash, and other waste materials must be removed from the premises and disposed of in an acceptable manner at least once per week, preferably daily.

### 7.3 Food Storage and Equipment

(a) All food and drink must be stored so as to protect from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.

(b) Areas of the residence used for storage of food, drink, equipment or utensils must be constructed to be easily cleaned and must be kept clean.

(c) All food service equipment must be kept clean, sanitized and maintained according to manufacturer's guidelines.

(d) All equipment, utensils and dinnerware must be in good repair. Cracked or badly chipped dishes and glassware must not be used.

(e) Single service items, such as paper cups, plates and straws, must be used only once. They must be purchased and stored in sanitary packages or containers in a clean dry place and handled in a sanitary manner.

(f) Food service areas must not be used to empty bed pans or urinals or as access to toilet and utility rooms. If soiled linen is transported through food service areas, the linen must be in an impervious container.

(g) Doors, windows and other openings to the outdoors must be screened against insects, as required by seasonal conditions.

(h) All garbage must be collected and stored to prevent the transmission of contagious diseases, creation of a nuisance, or the breeding of insects and rodents, and must be disposed of at least weekly. Garbage or trash in the kitchen area must be placed in lined containers with covers. Garbage containers must be kept clean and sanitized.

(i) Poisonous compounds (such as cleaning products and insecticides) must be labeled for easy identification and must not be stored in the food storage area unless they are stored in a separate,

locked compartment within the food storage area.

### **VIII. Laundry Services**

8.1 The residence must provide laundered bed and bath linens at least once a week.

8.2 The residence must provide adequate opportunity to residents to do their laundry.

8.3 The residence must make alternate arrangements for the personal laundry of a resident if the resident is incapable of doing their own laundry.

### **IX. Physical Plant**

#### 9.1 Environment

(a) The residence must provide and maintain a safe, functional, sanitary, homelike and comfortable environment.

(b) All residences must comply with all current applicable state and local rules, regulations, codes and ordinances. Where there is a difference between codes, the code with the higher standard will apply.

(c) A residence may not install a door security system that prevents residents from readily exiting the building without prior approval of the licensing agency.

(d) A residence must ensure that residents have access to the outdoors.

#### 9.2 Residents' Rooms

(a) Each bedroom must provide a minimum of 100 square feet per bed.

(b) Rooms must be of dimensions that allow for the potential of not less than three (3) feet between beds.

(c) Each bedroom must have an outside window.

(1) Windows must be able to be opened and screened except in construction containing approved mechanical air circulation and ventilation equipment.

(2) Window shades, venetian blinds or curtains must be provided to control natural light and offer privacy.

(d) The door opening of each bedroom must be fitted with a full-size door of solid core construction.

(e) Resident bedrooms must be used only as the personal sleeping and living quarters of the residents assigned to them.

Halls, storerooms or unfinished attic rooms must not be used as bedrooms, except in emergency situations on a temporary basis, not to exceed 72 hours.

(f) A resident must not have to pass through another bedroom or bathroom to reach the resident's own bedroom.

(g) Each resident must be provided with their own bed which must be a standard-size full or twin bed. Roll away beds, cots and folding beds must not be used. A resident who wishes to bring their own bed or other furniture may do so, as space permits, if the furniture is in safe and sanitary condition.

(h) Each bed must be in good repair, with a clean, comfortable mattress that is at least six (6) inches thick, and standard in size for the particular bed, a pillow, bed covering, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.

(i) Each resident must be provided adequate space to accommodate their clothing and personal needs.

### 9.3 Toilet, Bathing and Lavatory Facilities

(a) Toilet, lavatories and bathing areas must be equipped with grab bars for the safety of the residents. There must be at least one (1) full bathroom that meets the requirements of the Americans with Disabilities Act of 1990, as amended, and state building accessibility requirements as enforced by the Department of Public Safety.

(b) There must be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities are not included in this ratio.

(c) Each lavatory sink must be at least of standard size and must be equipped with hot and cold running water, soap, and, if used by multiple residents, paper towels.

(d) Each bathtub and shower must be constructed and enclosed so as to ensure adequate space and privacy while in use.

(e) Resident lavatories and toilets must not be used as utility rooms.

### 9.4 Recreation and Dining Rooms

(a) All residences must provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.

(b) Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.

(c) Dining rooms must be of sufficient size to seat and serve all

residents of the residence at the same time.

(d) Smoking must not be permitted inside the building.

#### 9.5 Residence Requirements for Persons with Physical Disabilities

(a) Each residence must be accessible to and functional for residents, personnel and members of the public with physical disabilities in compliance with the Americans with Disabilities Act of 1990, as amended.

(b) Residents who are blind or have mobility impairments must not be housed above the first floor unless the residence is in compliance with all applicable codes, regulations and laws as required by the Department of Public Safety.

#### 9.6 Plumbing

(a) All plumbing must operate in such a manner as to prevent back-siphonage and cross-connections between potable and non-potable water. All plumbing fixtures and any part of the water distribution or sewage disposal system must operate properly and be maintained in good repair.

(b) Plumbing and drainage for the disposal of sewage, infectious discharge, household and institutional wastes must comply with all State and Federal regulations.

(c) All plumbing fixtures must be clean and free from cracks, breaks and leaks.

(d) Hot water temperatures must not exceed 120 degrees Fahrenheit in resident areas.

#### 9.7 Water Supply

(a) Each residence must be connected to an approved public water supply when available and where said supply is in compliance with the Department of Health's public water system regulations.

(b) If a residence uses a private water supply, said supply must conform to the construction, operation and sanitation standards published by the Department of Health. Private water supplies must be tested annually for contamination, and copies of results must be kept on premises.

(c) Water must be distributed to conveniently located taps and fixtures throughout the building and must be adequate in temperature, volume and pressure for all purposes, including firefighting if there is a residential sprinkler system.

(d) In no case may water from lead pipes be used for drinking or cooking.



(e) The sewage system must provide sufficient capacity to meet the sanitary needs of the residence at all times.

#### 9.8 Heating

(a) Each residence must be equipped with a heating system which is of sufficient size and capability to maintain all areas of the residence used by residents and which complies with applicable fire and safety regulations.

(b) The minimum temperature must be maintained at an ambient temperature of 70 degrees Fahrenheit in all areas of the residence utilized by residents and staff during all weather conditions.

#### 9.9 Ventilation

(a) Residences must be adequately ventilated to provide fresh air and must be kept free from smoke and objectionable odors. The residence must provide good ventilation for comfort and safety.

(b) Kitchens, laundries, toilet rooms, bathrooms, and utility rooms must be ventilated to the outside by window or by ventilating duct and fan of sufficient size.

#### 9.10 Life Safety/Building Construction

All residences must meet all of the applicable fire safety and building requirements of the Department of Public Safety, Division of Fire Safety.

#### 9.11 Disaster and Emergency Preparedness

(a) The licensee or manager of each residence must maintain a written disaster preparedness plan. The plan must outline procedures to be followed in the event of any emergency potentially necessitating the evacuation of residents, including but not limited to: fire, flood, loss of heat or power, or threat to the residence.

(b) If the residence is located within ten (10) miles of a nuclear power plant, the plan must include specific measures for the protection, treatment and removal of residents in the event of a nuclear disaster.

(c) Each residence must have in effect, and available to staff and residents, written copies of a plan for the protection of all persons in the event of fire and for the evacuation of the building when necessary. All staff must be instructed periodically and kept informed of their duties under the plan. Fire drills must be conducted on at least a quarterly basis and must rotate times of day among morning, afternoon, evening, and night. The date and time of each drill and the names of participating staff members must be documented.

(d) There must be an operable telephone on each floor of the residence, at all times. A list of emergency telephone numbers must be posted by each telephone.

(e) The residence must arrange appropriate medical or psychiatric care for residents in emergency situations.

(f) The residence must ensure that adequate staff is available at all times to assist residents to evacuate in an emergency situation.

9.12 When necessary to ensure resident safety, modifications must be made to the physical plant requirements set forth in this section, with the prior written approval of the licensing agency.

## **X. Pets**

10.1 A residence may permit pets to visit the residence providing the following conditions are met:

(a) The pet owner must provide evidence of current vaccinations.

(b) The pet must be clean, properly groomed and healthy.

(c) The pet owner is responsible for the pet's behavior and must maintain control of the pet at all times.

10.2 Pets, owned by a resident or the residence, may reside in the residence providing the following conditions are met:

(a) The residence must ensure that the presence of a pet causes no discomfort to any resident.

(b) The residence must ensure that pet behavior poses no risk to residents, staff or visitors.

(c) The residence must have procedures to ensure that pets are kept under control, fed, watered, exercised and kept clean and well-groomed and that they are cleaned up after.

(d) Pets must be free from disease including leukemia, heartworm, hepatitis, leptos psoriasis, parvo, worms, fleas, ticks, ear mites, and skin disorders, and must be current at all times with rabies and distemper vaccinations.

(e) Pet health records must be maintained by the residence and made available to the public.

(f) The residence must maintain a separate area for feeding cats and dogs other than the kitchen or resident dining areas.

## **XI. Resident Funds and Property**

11.1 A resident's money and other valuables must be in the control of the resident, except where there is a guardian, attorney in fact (power of attorney), a representative payee who requests otherwise, or where the resident is in a secure residential recovery facility. The residence may manage the resident's finances only upon the written request of the

resident. There must be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.

11.2 If the residence manages the resident's finances, the residence must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the residence or licensee's funds.

11.3 The residence must have policies in place to protect residents' personal property when not in use.

11.4 The resident must not be solicited for gifts or other consideration by persons connected with the residence, in any way.

11.5 If it becomes apparent that a resident is no longer capable of managing funds or property, the licensee must contact the resident's legal representative if any, or the next of kin. If there is no legal representative or next of kin, the licensee must contact the licensing agency.

11.6 When a resident is absent without explanation for a period of thirty-one (31) days and there is no responsible person, the licensee must hold the property for three (3) months. At the conclusion of this period, the property must be transferred to the governing body of the city or town.

11.7 Each residence must develop and implement a written policy regarding residents' personal needs. The policy must be explained to the resident upon admission, with a copy provided to the resident at that time.

(a) The policy must include a provision that recipients of Supplemental Security Income (SSI) will retain from their monthly income an amount adequate to meet their personal needs exclusive of all other rates, fees or charges by the residence. The amount must be sufficient to meet such personal needs as clothing and incidental items, reading matter, small gifts, toiletries, occasional foods not provided by the residence and other such items.

11.8 The licensee, the licensee's relative or any staff member must not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the residence is permitted to act as the resident's representative payee according to Social Security regulations provided the resident or the resident's legal representative agrees in writing to this arrangement and all other provisions of these regulations related to money management are met.

11.9 No licensee, staff or other employee of the residence may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible.

## **XII. Secure Residential Recovery Facility**

The Legislature has authorized the Commissioner of Mental Health to establish and oversee a secure residential recovery facility owned and operated by the state for individuals who do not require acute inpatient care, but need treatment within a secure setting for an extended period of time. The program must be the least restrictive and most integrated setting for each of the individual residents.

12.1 To obtain and maintain a license to operate a secure residential recovery facility, an applicant or licensee must meet all of the requirements of the Therapeutic Community Residence Licensing Regulations.

12.2 The Department of Mental Health must obtain approval from the licensing agency prior to operating a secure residential recovery facility, which will be licensed as a therapeutic community residence.

12.3 Subject to prior approval by the licensing agency, certain modifications to the licensing requirements may be made in order to ensure the safety of the resident or residents. Safety modifications may be made in the physical plant as noted in 9.12. In addition, the modifications may limit the resident's right to:

- (a) Bring personal furniture to the residence;
- (b) Terminate the relationship with the residence;
- (c) Purchase and self-administer over-the-counter or other medications;
- (d) Refuse to have a photo on file;
- (e) Have visitors; however, a resident's clergy or attorney at law must be admitted to visit at all reasonable times; and
- (f) Have or use electronic equipment, including telephones, cell phones and computers.

12.4 The residence must be inspected by the licensing agency to determine if the facility is providing the services, staffing, training and physical environment that were outlined in the request for approval.

- (a) A residence may not install a door security system which prevents residents from readily exiting the building without prior approval of the licensing agency.

12.5 A request for approval to operate a secure residential recovery facility must include all of the following:

- (a) A statement outlining the purpose and scope of services to be provided;

- (b) A definition of the characteristics of residents to be served;
- (c) A description and identification of the physical environment;
- (d) The criteria for admission, continued stay and discharge; and
- (e) A description of unit staffing, which must include:
  - (1) Staff qualifications and credentials, if applicable;
  - (2) Orientation;
  - (3) In-service education and specialized training; and
  - (4) Medical management as necessary.

12.6 In addition to the definitions set forth in Section II, above, the following definitions will apply in a secure residential recovery facility:

(a) "Secure" means, when describing a residential facility, that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(b) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S. A. § 7102 (11), for an individual who does not require acute inpatient care but is in need of treatment as set forth at 18 V.S.A. § 7101 within a secure setting for an extended period of time.

12.7 In addition to the rights set forth in Section VI. above, residents in a secure residential recovery facility will have the following rights:

(a) The right to receive care in a safe setting and to be free from all forms of abuse.

(b) The right to an attending physician, who will be responsible for coordinating the resident's care and explaining the diagnosis, possible treatment, expected outcomes, and continuing health care needs to the resident or their legal representative. The right to know the identity and professional status of individuals participating in the resident's care, including the right to know of the existence of any professional relationship among individuals who are providing treatment, as well as the relationship to any other health care or educational institutions involved in the resident's care.

(c) The right to make informed decisions about care without coercion and to be provided with an explanation of health status and prognosis, the objectives of treatment, the nature and significant possible adverse effects of recommended treatments and the reasons why a particular treatment is appropriate.

(d) The right to take part in the development and implementation of the plan of care and the right to request treatment; however, the treatment will not be provided if it is unnecessary or inappropriate.

(e) The right to be informed of all evidence-based options for care and treatment, including palliative care, in order to make a fully informed resident choice. If the resident has a terminal illness, they have the right to be informed by a clinician of all available options related to terminal care, to be able to request any, all, or none of the options, and to expect to receive supportive care for the specific option or options available.

(f) The right, except as otherwise allowed by law, to expect that information relating to treatment as well as treatment records will be kept private and confidential. Treatment information and related records may, however, be used without a resident's permission in any court hearings concerning involuntary treatment. For additional details about potential limitations to confidentiality of medical records, residents should refer to the Notice of Privacy Rights.

(g) The right to refuse medications and specific treatments unless pursuant to a valid court order for involuntary psychiatric medications notwithstanding the provisions of the Rules for the Administration of Nonemergency Involuntary Psychiatric Medications. In the absence of a valid court order, psychiatric drugs may not be administered involuntarily absent an emergency, in which case the procedures outlined in 12.9 *et seq.* will apply.

(h) The right to a judicial review of the placement in the facility and to be represented at the hearing by a court-appointed lawyer, free of charge. The lawyer or legal representative, as defined at 2.2 (n), above, must have reasonable access to the resident and the facility.

(i) The right to complain or file a grievance about any aspect of the resident's care and treatment. In addition to the rights in section 6.8 above, complaints may be made orally or in writing to any member of the resident's treatment team. If the resident needs help filing a complaint, he or she may request assistance from a staff member. The resident also can seek free and confidential assistance from the designated Vermont protection and advocacy organization by calling (800)834-7890. If the resident is not satisfied with the decision, he or she may appeal, as described in the facility's Complaint Policy.

(1) A resident has a right to lodge a complaint directly with the Department of Mental Health by contacting:

Commissioner, Vermont Department of Mental Health  
166 Horseshoe Drive  
Waterbury, Vermont 05671-2010 (802) 241-0701

(2) A resident may file a complaint with the following entities:

Medical Practice & Hospital Licensing Board  
Vermont Department of Health  
108 Cherry Street  
Burlington, Vermont 05402  
(802) 863-7200, (800) 464-4343.

Department of Disabilities, Aging and Independent Living,  
Division of Licensing & Protection  
280 State Drive - HC 2 South  
Waterbury, Vermont 05671-2060 (mailing address)  
or  
Adult Protective Services  
280 State Drive - HC 2 South  
Waterbury, Vermont 05671-2060 (mailing address)  
802-241-0342 or toll-free at 1-800-564-1612

*The Department of Disabilities, Aging, and Independent Living is the state agency responsible for licensing and regulating therapeutic community residences and for investigating complaints about abuse, neglect or exploitation.*

(3) A resident may file a complaint with the designated patient representative;

(4) A resident may file a complaint with the designated Vermont protection and advocacy organization; and

(5) A resident may file a complaint with the Mental Health Ombudsman.

(j) The right to request a hearing before a judge to determine whether the involuntary commitment is legal. This is called a right of habeas corpus.

(k) The resident has the right to withdraw their consent to receive visitors. The facility's Resident Handbook and Visitors' Policy must contain the specifics of resident visitation rights.

(l) The right to treatment under conditions that are most supportive of the resident's personal privacy and the right to talk with others privately. The resident's doctor may limit these rights only if necessary to protect the resident's safety or the safety of others.

(m) The right to sell or otherwise dispose of property, and to carry out business dealings.

(n) The right to refuse to participate in any research project or clinical training program.

(o) The right to receive an itemized, detailed, and understandable explanation of the charges incurred in treatment, regardless of the source of payment.

(p) The right to receive professional assessment of pain and professional pain management.

(q) The right to be informed in writing of the availability of hospice services and the eligibility criteria for those services. Whenever possible, agents, guardians, reciprocal beneficiaries, or immediate family members have the right to stay with terminally ill residents 24 hours a day.

(r) The right to expect that within its capacity, the facility will respond reasonably to a resident's request for services. The right includes, if physically possible, a transfer to another room or place if another person in that room or place is disturbing the resident. When medically permissible, a resident may be transferred to another facility only after receiving complete information and explanation concerning the needs for and alternatives to such a transfer. The institution to which a resident is transferred must first have accepted the resident for transfer.

(s) The right to expect reasonable continuity of care and to be informed of any continuing health care requirements following discharge.

(t) The right to know the maximum resident census and the full-time equivalent numbers of registered nurses, licensed practical nurses, and psychiatric technicians who provide direct care for each shift on the unit where the resident is receiving care.

12.8 A variance will not be granted from a regulation pertaining to residents' rights without the consent of the resident of the secure residential recovery facility, and will not be effective unless a patient representative, an ombudsman, a recognized member of the clergy, an attorney licensed to practice in Vermont, or a legal guardian appointed by a probate division of the superior court signs a statement affirming that they have explained the nature and effect of the variance to the resident and that the resident has understood and consented to the variance without pressure or coercion.

#### 12.9 General Provisions for Emergency Involuntary Procedures

(a) The State of Vermont is committed to establishing and maintaining a treatment environment in a secure residential recovery facility that is safe, clinically effective and non-violent. Facility staff providing treatment for residents must be trained in non-physical, non-coercive skills and attitudes that emphasize the prevention of emergencies.

(b) The secure residential recovery facility must continuously explore ways to prevent, reduce and strive to eliminate restraint, seclusion, and emergency involuntary medications through education, training, and effective performance initiatives.

(c) The facility must ensure that emergency involuntary procedures are used only in emergency situations in accordance with generally accepted professional standards of care and the standards



established herein. The facility also must ensure that emergency involuntary procedures are used as safety measures of last resort. The standards for the use of emergency involuntary procedures are being implemented with the intention of preventing or minimizing violence in a manner consistent with the principles of recovery and cognizant of the impact of trauma in the lives of many committed individuals. The standards are designed to protect and promote each resident's rights while at the same time protecting residents and others from harm.

(d) The State of Vermont has established standards, as well as rights and protections that reflect evidence-based best practices, aimed at reducing the use of emergency involuntary procedures of seclusion, restraint or emergency involuntary medication on individuals in the custody or temporary custody of the Commissioner of the Department of Mental Health. In addition, the standards require the personnel performing emergency involuntary procedures to receive training and demonstrate competency in the use of these procedures.

(e) The rules in this section regarding emergency involuntary procedures apply to adults and children in the custody or temporary custody of the Commissioner of Mental Health who are admitted to a secure residential recovery facility. The rules are adopted pursuant to the 2012 Acts and Resolves No. 79, Sec. 33a, as amended by the 2015 Acts and Resolves No. 21, as well as the 2018 Acts and Resolves No. 200.

(f) For the purposes of this and the following subsections, these specific definitions will apply:

1. "Advanced Practice Registered Nurse" means a licensed registered nurse authorized to practice in Vermont who, because of specialized education and experience, is authorized to perform acts of medical diagnosis and to prescribe medical, therapeutic or corrective measures under administrative rules adopted by the Vermont Board of Nursing.

2. "Depot medication" means a chemical form of certain anti-psychotic medication that is injected intra-muscularly and allows the active medication to be released over an extended time frame.

3. "Emergency" means an imminent risk of serious bodily harm to the patient or others.

4. "Emergency Involuntary Medication" means one or more medications administered against a patient's wishes without a court order. See also restraint, below.

5. "Emergency Involuntary Procedures (EIP)" means restraint, seclusion, or emergency involuntary medication.

6. "Emergency Involuntary Procedures Review Committee" means the committee appointed by the Commissioner of the Department of Mental Health to review emergency involuntary procedures involving individuals in the custody of the Commissioner of the Department of Mental Health in Vermont.

7. "Licensed Independent Practitioner" means a physician, an advance practice registered nurse licensed by the Vermont Board of Nursing, or a physician assistant licensed by the Vermont Board of Medical Practice.

8. "Non-Physical Intervention Skills" mean strategies and techniques of communication that do not involve physical contact, such as active listening, conversation and recognition of an individual's personal, physical space and that include a willingness to make adjustments for the individual's needs.

9. "Physician Assistant" means an individual qualified by education and training and licensed by the Vermont Board of medical practice to whom a physician can delegate medical care. A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician.

10. "PRN Order" means a standing order, an abbreviation of the Latin term pro re nata, which means "as needed" or "as circumstances require."

11. "Restraint means any manual method, physical hold or mechanical device, material or equipment that immobilizes or reduces the ability of a resident to move their arms, legs, body or head freely, or a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the resident's freedom of movement and is not a standard treatment for the resident's condition.

12. "Seclusion" means the involuntary confinement of a resident alone in a room or area from which the resident is physically or otherwise prevented from leaving.

13. "Specially-Trained Registered Nurse" means a registered nurse (RN) who has been trained to conduct an assessment of a resident for whom one or more emergency involuntary procedures have been ordered in accordance with the requirements specified in 12.10 below.

#### 12.10 Emergency Involuntary Procedures

(a) General Policy. All residents have the right to be free from physical or mental abuse, including corporal punishment. All residents have the right to be free from restraint, seclusion, or involuntary medication imposed as a means of coercion, discipline, convenience or retaliation by staff or used as part of a behavioral intervention, and the right to have their care be trauma-informed.

1. Upon admission or at the earliest reasonable time, with the resident's permission, staff must work with the resident and their family, caregivers, and the health care agents (if any) to identify strategies that might minimize or avoid the use of emergency involuntary procedures.

i. Staff must obtain written permission from the resident to contact the resident's family. The permission sheet must

state that the resident may refuse to give staff permission to speak with family members.

ii. Staff must also discuss the resident's preferences regarding the use of such procedures should they become necessary. Although the facility is not obligated to follow the resident's preferences, resident preference must be considered when determining the least intrusive and least restrictive emergency involuntary procedure to use to address the imminent risk of harm. The information about the patient's preferences must be made accessible to direct care staff to refer to when a patient is exhibiting signs of escalation.

iii. Staff must inquire about the existence of an advanced directive with the resident or their legal guardian and also must check the Advanced Directive Registry. If an advanced directive exists, a copy must be placed in the resident's medical record and staff must be made aware of it and must refer to it with regard to emergency involuntary procedures, if applicable.

2. Emergency involuntary procedures may only be used to prevent the imminent risk of serious bodily harm to the resident, a staff member, or others and must be discontinued at the earliest possible time based on an individualized resident assessment and re-evaluation. Whenever feasible, a resident must be offered an opportunity to cooperate before and during an emergency involuntary procedure.

3. The decision to use emergency involuntary procedures is not driven by diagnosis, but by an individual resident assessment.

4. Emergency involuntary procedures may be used only when other interventions have been attempted and been unsuccessful or when they have been considered and determined to be ineffective, or when a resident is attempting to cause serious bodily harm to him or herself or to others and immediate action is necessary.

5. The use of seclusion or restraint may be initiated by a trained registered nurse or a licensed independent practitioner who has personally observed the emergency. An individual who is not licensed to prescribe medication may not initiate emergency involuntary medication. Staff members trained in accordance with section 12.13 (below) may initiate a manual restraint if a resident is attempting to cause serious bodily harm to self or others and immediate action is necessary.

6. The use of emergency involuntary procedures must be documented. The documentation must include a description of specific behaviors justifying the use of the procedures.

7. Residents must be specifically informed that they have a right to have an attorney, other designee, or specified individual notified when emergency involuntary procedures are used.

8. Every effort must be made not to use uniformed security guards when implementing emergency involuntary procedures. When

security guards are used, documentation must substantiate the need for such response after initial response by staff is assessed as not being sufficient to prevent the imminent risk of serious bodily harm to residents and staff.

9. There must be no protocol, written or unwritten, that requires a resident to ingest oral PRN medications as a condition of release from seclusion or restraint.

10. The facility must not use law enforcement officers to implement emergency involuntary procedures. Firearms, electronic devices, pepper spray, mace, batons and other similar law enforcement implements must not be used to implement emergency involuntary procedures. The only permissible use of such devices is for the purpose of law enforcement.

(b) Use of Emergency Involuntary Procedures

The use of emergency involuntary procedures must be:

1. In accordance with a written modification to the resident's plan of care; and
2. Implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by facility policy in accordance with this rule.

(c) Orders for Emergency Involuntary Procedures

1. The use of emergency involuntary procedures must be in accordance with the order of a licensed independent practitioner as defined in this rule who is responsible for the care of the resident and authorized to order seclusion, restraint, or emergency involuntary medication by facility policy.

2. If, on the basis of person observation, any trained staff member believes an emergency exists, a licensed independent practitioner or specially trained registered nurse must be consulted immediately.

3. A protocol cannot serve as a substitute for obtaining a licensed independent practitioner's order for each episode of emergency involuntary procedure use.

4. Orders for the use of emergency involuntary procedures must never be written as a standing order or on an as-needed (PRN) basis.

(d) Timeframes for Emergency Involuntary Procedures

1. The order for restraint or seclusion must be obtained either during the emergency application of the restraint or seclusion or immediately after the restraint or seclusion has been applied.

2. The attending licensed health care provider who is

responsible for the management and care of the resident must be notified as soon as possible if the attending physician did not order the emergency involuntary procedure. The notification may occur via telephone.

3. When an order for emergency involuntary procedure has been obtained pursuant to (c) above, the resident must be seen face-to-face within one (1) hour after the initiation of the intervention by a licensed independent practitioner or a specially trained registered nurse. The specially trained registered nurse must consult the licensed independent practitioner who is responsible for the care of the patient as soon as possible after completing the face-to-face assessment. The assessment must evaluate:

- i. The resident's immediate situation;
- ii. The resident's reaction to the intervention;
- iii. The resident's medical and behavioral condition;

and

iv. The need to continue or terminate the emergency involuntary procedure.

4. If the continued use of restraint or seclusion is deemed necessary based on an individualized patient assessment, another order is required. No order for restraint or seclusion may exceed two (2) hours for adults and for children and adolescents older than nine (9) years of age or one (1) hour for children under nine (9) years of age.

5. The licensed independent practitioner who is responsible for the care of the resident must see and assess the resident before writing a new order for the use of restraint or seclusion if the resident has been in seclusion or restraint for twelve (12) hours.

(e) Observation and Assessment

1. The condition of the resident who is restrained or secluded must be observed by staff who is trained and competent to perform this task at an interval determined by the licensed independent practitioner but no less often than every fifteen (15) minutes.

2. The resident must be monitored by a licensed independent practitioner or by a specially trained registered nurse to determine the continued need for the emergency involuntary procedure.

3. Facility policies are expected to guide staff in determining appropriate intervals for assessment and monitoring based on the individual needs of the resident, the resident's condition, and the type of restraint or seclusion used, but no less often than every fifteen (15) minutes. Any such policy must be reviewed as part of the facility approval process.

4. Depending on the resident's needs and situational factors

the use of restraint or seclusion may require either periodic or continual monitoring and assessment.

5. The facility must debrief staff following every incident involving the use of emergency involuntary procedures. The facility must also give residents reasonable opportunities to debrief within twenty-four (24) hours of the resolution of every such incident. The debriefing must include, at a minimum, those elements that have been required by the Department of Mental Health for hospitals.

(f) Documentation of Emergency Involuntary Procedures

1. The use of all emergency involuntary procedures, including any determination made in accordance with (g) below, must be documented in the resident's medical record.

2. The facility must use a form provided by the Department of Mental Health that specifies the elements the facility must document for each emergency involuntary procedure order for residents in the custody of the Commissioner for the purposes of oversight and review.

3. The facility must submit the documentation on at least a monthly basis to the Commissioner of the Department of Mental Health.

4. The documentation must describe, at a minimum, the following:

i. The necessity for the action taken to control the emergency;

ii. The expected or desired result of the action on the resident's behavior or condition;

iii. Whether alternatives were considered or used, and why they were ineffective to prevent the imminent risk of serious bodily harm;

iv. The risks of adverse side effects; and

v. When used in combination, the basis for the determination by the licensed independent practitioner that the use of a single emergency involuntary procedure would not have been effective to prevent the imminent risk of serious bodily harm.

(g) Use of Emergency Involuntary Procedures in Combination

Emergency involuntary procedures may be used in combination only when, in the clinical judgment of the licensed independent practitioner, a single emergency involuntary procedure has been determined to be ineffective to protect the resident, a staff member, or others from the imminent risk of serious bodily harm.

1. An assessment of the resident must determine that the risks associated with the use of a combination of emergency involuntary

procedures are outweighed by the risk of not using a combination of emergency involuntary procedures.

2. Other interventions do not always need to be tried, but they must be considered by the practitioner to be ineffective to protect the patient or others from the imminent risk of serious bodily harm.

3. The use of restrain only for the purpose of administering a court-ordered involuntary medication is not considered the use of a combination of emergency involuntary procedures.

## 12.11 Additional Requirements for Emergency Involuntary Procedures

### (a) Emergency Involuntary Medication

1. Emergency involuntary medication may only be ordered by a psychiatrist, an advanced practice registered nurse licensed by the Vermont Board of Nursing in psychiatric nursing, or a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist.

2. Personal observation of an individual prior to ordering emergency involuntary medication:

i. Must be conducted by a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist if the physician assistant is issuing the order.

ii. May be conducted by a psychiatrist or an advanced practice registered nurse licensed by the Vermont Board of Nursing in psychiatric nursing if the psychiatrist or advanced practice registered nurse is issuing the order. If a psychiatrist or advanced practice registered nurse does not personally observe the individual prior to ordering emergency involuntary medication, the individual must be observed by a registered nurse trained to observe individuals for this purpose or by a physician assistant.

3. Emergency involuntary medication may be used on a time-limited, short-term basis and not as a substitute for adequate treatment of the underlying cause of the resident's distress.

4. When necessary to administer involuntary medication by injection in emergency situations, a non-depot medication that is consistent with current American Psychiatric Association practice guidelines must be used.

5. When the use of emergency involuntary medication has been ordered, the resident must be offered oral medication prior to the implementation of the order.

6. If possible and where clinically appropriate the facility must give the resident a choice of injection sites and must follow that preference if medically safe.

7. A resident who has received emergency involuntary medication must be monitored for adverse effects at least every fifteen (15) minutes for as long as clinically indicated following the administration of emergency involuntary medication. Each observation must be documented.

(b) Seclusion

1. The placement of a resident in seclusion and the duration of its use must be kept to a minimum, consistent with the safe and effective care of residents. The use of seclusion must adequately accommodate a resident's physical and environmental needs without undue violation of their personal dignity.

2. Seclusion is not just confining a resident to an area, but involuntarily confining the resident alone in a room or area where the resident is physically prevented from leaving. If a resident is restricted to a room alone and staff are physically intervening to prevent the resident from leaving the room or giving the perception that threatens the resident with physical intervention if the patient attempts to leave the room, the room is considered locked, whether the door is actually locked or not.

3. Only a licensed independent practitioner may order seclusion of a resident.

4. Within one (1) hour of the initiation of the procedure, individuals placed in seclusion must be assessed by a licensed independent practitioner or specially trained registered nurse. If assessed by a specially trained registered nurse, that individual must consult the licensed independent practitioner who is responsible for the care of the resident as soon as possible after completing the assessment. This assessment must occur face-to-face and must include, but not be limited to, as assessment of:

- i. The individual's physical and psychological status;
- ii. The individual's behavior;
- iii. The appropriateness of the intervention measures;
- iv. Any complications resulting from the intervention; and
- v. Whether the individual is aware of what is required to be released from seclusion.

5. A resident in seclusion must be observed continuously by a staff member who has successfully completed competency-based training on the monitoring of persons in seclusion and the observation must be documented no less often than every fifteen (15) minutes.



6. At least hourly, a specially trained registered nurse must assess the continued need for the emergency seclusion intervention and document the assessment and ongoing need for the intervention.

7. The seclusion must be ended at the earliest possible time that the resident no longer is considered an imminent risk of serious bodily harm.

(c) Restraint

1. The involuntary placement of a resident in restraints may occur only in emergency circumstances and in the least intrusive and least restrictive manner.

2. Restraints are to be applied in the least intrusive and least restrictive manner, providing for padding and protection of all parts of the body where pressure areas might occur by friction from mechanical restraints.

3. Residents in restraints must be encouraged to take liquids, must be allowed reasonable opportunity for toileting, and must be provided appropriate food, lighting, ventilation and clothing or covering.

4. Mechanical restraints must not be used when the resident is in a prone position.

5. Only a licensed independent practitioner may order the restraint of a resident.

6. A licensed independent practitioner or specially trained registered nurse must assess the resident within one (1) hour of the application of the restraints. If assessed by a specially trained registered nurse, that individual must consult the licensed independent practitioner who is responsible for the care of the resident as soon as possible after completing the assessment. This assessment must occur face-to-face and must include, but not be limited to, an assessment of:

i. The individual's physical and psychological status;

ii. The individual's behavior;

iii. The appropriateness of the intervention measures;

iv. Any complications resulting from the intervention; and

v. Whether the individual is aware of what is required to be released from restraint.

7. A resident in restraints must be observed continuously by a staff member who has successfully completed competency-based training

on the monitoring of persons in restraint. The observation must be documented no less often than every fifteen (15) minutes.

8. The restraint must be ended at the earliest possible time that the resident no longer is considered an imminent risk of serious bodily harm.

#### 12.12 Notice Requirements

##### (a) Medical Record

The facility medical record must include documentation about the use of emergency involuntary procedures. The record must include all of the elements specified by the Department of Mental Health. Reports of the use of emergency involuntary procedures must be sent to the Department of Mental Health on a monthly basis.

##### (b) Guardian or Agent

The court-appointed guardian of the resident and any health care agent of the resident under an advance directive that is in effect must be notified of every emergency involuntary procedure(s) as soon as practicable but not later than twenty-four (24) hours from each application.

##### (c) Other Notice

The facility must inform residents about their right to have someone notified whenever an emergency involuntary procedure is applied to them. With the resident's consent, any person identified by the resident, including a health care agent, must be notified of the use of emergency involuntary procedure(s) as soon as practicable but not later than twenty-four (24) hours from each application.

#### 12.13 Staff Training

##### (a) General

The resident has the right to safe implementation of emergency involuntary procedures by trained staff.

##### (b) Specific Training Requirements

1. Any staff members who participate in emergency involuntary procedures must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment (if applicable) and providing care for a resident in restraint or seclusion before performing any of the actions specified in this paragraph, as part of orientation and subsequently on a periodic basis consistent with the facility policy based upon the chosen seclusion and restraint methodology. Only staff members trained in seclusion and restraint procedures may perform them.

2. The facility must require staff who may implement

emergency involuntary procedures to have education, training (both initial and on-going), and demonstrated knowledge based on the specific needs of the resident population in at least the following:

- i. The use of non-physical intervention skills;
- ii. Choosing an intervention based on an individualized assessment of the resident's medical or behavioral status or condition;
- iii. The safe application and use of all types of restraint or seclusion used in the facility, including training in how to recognize and respond to signs of physical and psychological distress;
- iv. Clinical identification of specific behavioral changes that indicate that emergency involuntary procedures are no longer necessary;
- v. Monitoring the physical and psychological well-being of the resident who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by facility policy associated with the one-hour face-to-face evaluation;
- vi. Individuals providing staff training must be qualified as evidenced by education, training, and experience in interventions used to address residents' behaviors;
- vii. The facility must document in the staff personnel records that the training and demonstration of competency were successfully completed; and
- vii. The recognition of a resident's history in the provision of trauma-informed care and in a culturally sensitive manner, including, but not limited to, a history of sexual or physical assault or incest.

3. Training for a registered nurse (RN) or physician assistant (PA) to conduct the one-hour face-to-face evaluation must include all of the training requirements in this section as well as an evaluation of the resident's immediate situation, the resident's reaction to the intervention, the resident's medical and behavioral condition, and the need to continue or terminate the seclusion or restraint.

4. The facility must provide trauma-informed training to staff who may implement emergency involuntary procedures.

(c) The facility must maintain the competency and training records of the facility.

#### 12.14 Oversight and Performance Improvement

(a) Facility leadership is responsible for creating a culture

that supports a resident's right to be free from restraint and seclusion.

1. The facility must ensure that systems and processes are developed, implemented, and evaluated that support residents' rights and that eliminate the inappropriate use of emergency involuntary procedures.

2. The facility must report each instance of the use of emergency involuntary procedures to the Emergency Involuntary Procedures Committee created by the Department of Mental Health, using the measurement specifications and format approved by the Department of Mental Health.

3. The facility must identify an internal performance improvement process for regularly meeting and reviewing its training, the adequacy of the documentation, and practice trends pertaining to emergency involuntary procedures. Such meetings should occur at regular intervals. Information generated must be provided to the Department of Mental Health's Emergency Involuntary Procedures Review Committee for use at its quarterly meetings.

4. As part of its quality assurance performance improvement program, the facility must review and assess its use of emergency involuntary procedures to ensure that:

i. Residents are cared for as individuals;

ii. Each resident's condition, needs, strengths, weaknesses and preferences are considered;

iii. Emergency involuntary procedures are used only to address the imminent risk of serious bodily injury to the resident, staff, and others;

iv. Involuntary emergency procedures are discontinued at the earliest possible time, regardless of the length of the order; and

v. When emergency involuntary procedures are used, de-escalation interventions were ineffective to protect the patient, a staff member, or others from harm.

(b) Medical Director Review

1. As soon as practicable but not later than two (2) working days following an order for an involuntary emergency procedure, the facility's Medical Director, or their designee, must review the incident.

2. The facility's Medical Director must report any incident involving the use of involuntary emergency procedures to the Medical Director of the Department of Mental Health, or to their designee.

(c) Death Reporting

1. The facility must report deaths associated with the use of emergency involuntary procedures as required in 5.15, above. The death may also be reported to the Commissioner of Mental Health and the Division of Licensing and Protection.

2. Staff must document in the resident's medical record the date and time the death was reported.

3. The facility must report the following information:

i. Each death that occurs while a resident is in restraint or seclusion;

ii. Each death that occurs within twenty-four (24) hours after the resident has been removed from restraint or seclusion;

iii. Each death known to the facility that occurs within one (1) week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a resident's death.

LICENSING AND OPERATING  
REGULATIONS FOR  
THERAPEUTIC COMMUNITY  
RESIDENCES

Agency of Human Services  
Department of Disabilities, Aging and Independent  
Living  
Division of Licensing and Protection

Effective: ~~March 1, 2022~~

These materials will be made available in alternative formats upon  
request.

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## I. General Provisions

### 1.1 Introduction

The concept of the therapeutic community residence evolved from a consensus that people are best helped and cared for within an environment that resembles the best aspects of life in the broader community. The establishment of standards is a matter of critical importance to ~~en~~ensure that the needs of people being served are met and that quality of treatment is maintained.

Therapeutic community residences tend to be small and characterized by a sharing of a common life. Their programs are based on the expectation that people with life adjustment issues can be given help that will lead to their being able to sustain themselves within the broader community. This intent to provide transitional, growth-enhancing care, rather than permanent or long-term maintenance, is reflected in a dynamic approach to programming.

Therapeutic community residences should seek to be flexible and sensitive to changing needs in order to influence the growth and change of the individuals whom they serve. Generally, therapeutic community residences are used by people who are experiencing problems in coping with such difficulties as substance abuse, psychiatric disabilities, traumatic brain injuries, cognitive and developmental disabilities, family dysfunctions and delinquency.

The complexity of these problems suggests the need for a variety of treatment approaches. For this reason, these rules, while suggesting a specific program model based on prevailing practices within therapeutic community residences, allow for alternative program standards that might better meet the needs of a given group of residents. Such proposed alternative standards are intended to ensure a comparable level of quality and accountability. Specific guidelines for proposing alternative treatment standards are set forth in subsection 4.18.

### 1.2 Statutory Authority

These rules are adopted pursuant to 18 VSA, Chapter 45 § 2003, 2014 33 V.S.A. § 7117; 2012 Acts and Resolves No. 79 and No. 160.

### 1.3 Statement of Intent

Upon the effective date of these regulations, all therapeutic community residences in Vermont ~~shall be required to~~must adhere to the regulations as adopted.

### 1.4 Exception and Severability

If any provision of these regulations, or the application of any provision of these regulations, is determined to be invalid, the determination of invalidity will not affect any other provision of these

regulations or the application of any other provision of these regulations.

#### 1.5 Taxes

The applicant and licensee ~~shall~~must be in good standing with the Vermont Department of Taxes, pursuant to 32 V.S.A. §3113. Failure to do so ~~shall~~will result in denial or revocation of license.

#### 1.6 Material Misstatements

Any applicant or licensee who makes a material misstatement relating to the law or these regulations may be subject to denial of license, monetary fine, suspension and revocation of license.

#### 1.7 Appeals

A person or entity aggrieved by a decision of the licensing agency may file a request for a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091 pursuant to subsections 4.15.a(8), 4.15.c, 4.15.d of these regulations.

### **II. Definitions**

#### 2.1 General Definitions

For the purposes of these regulations, words and phrases are given their normal meanings unless otherwise specifically defined.

#### 2.2 Specific Definitions

The following words and phrases, as used in these regulations, have the following meanings unless otherwise provided:

(a) "Activities of daily living (ADLs)" means dressing and undressing, bathing, toileting, taking medication, grooming, eating, transferring and ambulation.

(b) "Administration of medication" means the act of giving a resident the resident's prescribed medication when the resident is incapable of managing ~~his or her~~their medication.

(c) "Assistance with medication" means helping a resident, who is capable of self-administration, to use or ingest, store and monitor medications.

(d) "Capable of self-administration" means a resident is able to direct the administration of medication by being able to at least identify the resident's medication and describe how, why and when a medication is to be administered; choose whether to take the medication or not; and communicate to the staff if the medication has had the desired effect or unintended side effects.

(e) "Capable of self-preservation" means able to evacuate the residence in the event of an emergency. Resident capability is further described in the National Fire Protection Association Code.

(f) "Case management" means to assist residents in gaining access to needed medical, social and other services. In addition to the coordination of activities required in the resident's plan of care, it includes consultation with providers and support person(s).

(g) "Delegation of nursing tasks" means the formal process approved by the Vermont Board of Nursing which permits licensed nurses to assign nursing tasks to other individuals as long as the registered nurse provides proper training, supervision and monitoring, and for which the registered nurse retains responsibility.

(h) "Discharge" means movement of a resident out of the residence without expectation that the resident will return.

(i) "Health care provider" means an appropriately qualified individual that provides medical care including a physician, a physician's assistant and an advanced-practice registered nurse (APRN).

(j) "Home health agency" means a home health care business designated to provide part-time or intermittent skilled nursing services and at least one of the following other therapeutic services in a place of residence used as a resident's home: physical, speech or occupational therapy; medical social services; home health aide services. A home health agency may also provide or arrange for other non-nursing therapeutic services, including the services of nutritionists, dietitians, psychologists, and licensed mental health counselors.

(k) "Individualized treatment" means treatment oriented toward problem solving and personal growth appropriate to the needs of each resident.

(l) "Inspection" means an on-site visit to or survey of the residence by staff of the Division of Licensing and Protection or fire safety inspectors from the Department of Public Safety to evaluate care and services and determine if the residence is in compliance with the regulations.

(m) "Investigation" means any gathering of facts, in the residence or elsewhere, in response to a complaint that the residence is not in compliance with regulations in order to determine if a residence is in compliance with the regulations.

(n) "Legal representative" means an individual empowered under state or federal law or regulation to make decisions for or transact business for a resident of a residence. Legal representatives include, but are not limited to, a court-appointed guardian, an attorney in fact appointed pursuant to a power of attorney and a representative payee. A resident's legal representative may make only those decisions for a resident for which the legal representative has been given authority.

(o) "License certificate" means a document issued by the licensing agency which signifies that a residence is entitled to operate.

(p) "Licensed capacity" means the maximum number of residents which the therapeutic community residence is licensed to have at one time.

(q) "Licensed residence" means a therapeutic community residence possessing a valid license to operate from the licensing agency.

(r) "Licensee" means an individual, group of individuals, or corporation in whose name the license is issued and upon which rests the legal responsibility for maintaining compliance with the regulations. With regard to a secure residential recovery facility, licensee means the Commissioner of the Department of Mental Health.

(s) "Licensing agency" means the Department of Disabilities, Aging and Independent Living's Division of Licensing and Protection.

(t) "Life adjustment problem" means an obstacle to successful functioning or coping with stress encountered in the home, at work, in school, or in other interpersonal situations.

(u) "Manager" means the staff person who has been appointed by the residence's licensee or owner as responsible for the daily management of the residence, including supervision of employees and residents.

(v) "Medication management" means a formal process of (1) assisting residents to self-administer their medications or (2) administering medications, under the supervision and delegation by registered nurses, to designated residents by designated staff of the residence. It includes procuring and storing medications, assessing the effects of medications, documentation, and collaborating with the residents' personal health care providers.

(w) "Nurse" means a licensed practical nurse or registered nurse currently licensed by the Vermont Board of Nursing to practice nursing.

(x) "Nursing care" means the performance of services necessary to care for the sick or injured and which require specialized knowledge, judgment and skill and meets the standards of the nursing regimen or the medical regimen, or both.

(y) "Nursing overview" means a process in which a registered nurse ensures that the health and psychosocial needs of the resident are met. The process includes observation, assessment, goal setting, education of staff, and the development, implementation, and evaluation of a written, individualized treatment plan to maintain the resident's well-being.

(z) "Personal care" means assistance with meals, dressing, movement, bathing, grooming, medication, or other personal needs, and/or the general supervision of physical or mental well-being.

(aa) "Plan of care" means a written description of the steps that will be taken to meet the psychiatric, social, nursing and medical needs of a resident.

(bb) "Plan of correction" means a specific, time-limited plan of action, approved by the licensing agency, which states how and when a violation will be corrected.

(cc) "PRN medication" means medication ordered by the health care provider that is not to be administered routinely but is prescribed to be taken voluntarily only as needed and as indicated by the resident's condition.

(dd) "Psychoactive drug" means a drug that is used to alter mood or behavior, including antipsychotic, anti-anxiety agents and sedatives, as well as antidepressants or anticonvulsants when used for behavior control.

(ee) "Psychosocial care" means care necessary to address an identified psychiatric, psychological, behavioral or emotional problem, including problems related to adjustment to the therapeutic community residence, bereavement and conflict with other residents.

(ff) "Registered nurse" means an individual licensed as a registered nurse by the Vermont Board of Nursing.

(gg) "Residence" means a licensed therapeutic community residence.

(hh) "Resident" means any individual, unrelated to the operator, who is entitled to receive the full services of the residence and for whom a treatment plan has been or is being developed. For the purposes of these regulations, "resident" also means the individual's legal representative.

(ii) "Restraint" means any manual method, physical hold or mechanical device, material or equipment that immobilizes or reduces the ability of a resident to move ~~his or her~~their arms, legs, body or head freely, or a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment for the resident's condition.

(jj) "Seclusion" means the involuntary confinement of a resident alone in a room or area from which the resident is physically or otherwise prevented from leaving.

(kk) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria, that has resulted in functional impairment which substantially interferes with or limits one or more major life activities.

(ll) "Staff" means any individual other than a resident who is either the licensee or is an agent or employee of the licensee, and who performs any service or carries out any duties at the residence that are subject to these regulations, as are any individuals under contract to the licensee or residence.

(mm) "Supervision" means providing a structured environment to ensure the resident's needs for food, shelter, medical care, socialization and safety are met. If the residence, or staff of the residence, provide or are responsible for providing such structure, then the residence is providing supervision. Examples of such structure include, but are not limited to, arranging medical appointments, procuring medications, shopping, assigning rooms, providing transportation.

(nn) "Supportive living arrangement" means an environment providing an atmosphere of warmth and community concern to improve life adjustment, using such methods as counseling, group work, peer or family-oriented therapy, and psychiatric care.

(oo) "Therapeutic community residence" means a transitional facility (hereinafter called residence) providing individualized treatment to three or more residents in need of supportive living arrangement to assist them in their efforts to overcome a major life adjustment problem, such as alcoholism, drug abuse, mental illness and delinquency.

(pp) "Therapeutic diet" means a health care provider-ordered diet to manage problematic health conditions. Examples include: calorie specific, low-salt, low-fat, no added sugar, supplements.

(qq) "Transitional facility" means a domicile designed to meet special treatment needs, as opposed to a long term or permanent residential facility such as a residential care home.

(rr) "Treatment" means a process of dynamic and planned intervention designed to enhance a resident's current strengths and skills, correct problems of living, and improve life adjustments, using such methods as counseling, peer and ally support, group work, individual or family-oriented therapy, and psychiatric care.

(ss) "Unlicensed residence" means a place, however named, which meets the definition of a therapeutic community residence, and which does not possess a license to operate.

(tt) "Unrelated to the operator" means anyone other than the licensee's spouse (including an individual who has entered into a civil union), mother, father, grandparent, child, grandchild, uncle, aunt, sibling, or mother-, father-, sister-, brother-in-law or domestic partner.

(uu) "Variance" means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily

and in limited, defined circumstances waives compliance with a specific regulation.

(vv) "Violation" means a condition or practice in the home which is out of compliance with the regulations.

### **III. Variances**

3.1 Variances from these regulations may be granted upon a determination by the licensing agency that:

(a) Strict compliance would impose a substantial hardship on the licensee or the resident;

(b) The request is based on extreme necessity rather than convenience, but any hardship alleged to be suffered by imposition of a rule from which a variance is sought ~~shall~~must not be self-created.

(c) The licensee will otherwise meet the goal of the statutory provisions or rule and the variance does not conflict with other legal requirements;

(d) The variance will not adversely affect the programmatic needs of residents; and

(e) The variance, in the opinion of the licensing and regulating agencies, will not present a clear and distinct hazard to the residents' safety, health or well-being.

3.2 A variance ~~shall~~will not be granted from a regulation pertaining to residents' rights without the consent of the resident.

3.3 A home requesting a variance must contact the licensing agency in writing describing how the variance request meets the criteria in 3.1 above.

3.4 Variances are subject to review and termination at any time.

### **IV. Licensing Procedures**

4.1 Application

(a) Any person desiring to operate or establish a therapeutic community residence ~~shall~~must submit two copies of plans and specifications for review, prior to beginning construction or operation to the Department of Disabilities, Aging, & Independent Living, Division of Licensing and Protection.

(b) In addition, such person ~~shall~~must:

(1) Provide written evidence to the licensing agency of compliance with local building and zoning codes, or a statement signed by the city, town or village clerk that such a code has not been adopted in

the community, as well as evidence of compliance with the Vermont Fire Code.

(2) Submit a license application to the licensing agency.

(3) At least ninety (90) days prior to the projected opening date, request inspections by all entities referenced in 4.2 (a), (b), and (c) below to which plans and specifications were submitted. Modifications ~~shall~~must be made as required by these agencies to achieve full code compliance.

(4) Provide the licensing agency with at least three references from unrelated persons able to attest to the applicant's abilities to run a therapeutic community home and to the applicant's character.

#### 4.2 Review Process

The application will be reviewed by the following entities for compliance with applicable rules:

(a) The Division of Licensing and Protection requires the applicant to submit blueprints for new construction or floor plans to the licensing agency for review.

(b) The Department of Public Safety's Division of Fire Safety requires all building plans to be submitted to the Division of Fire Safety for compliance with the fire safety code and accessibility.

(c) The Department of Environmental Conservation requires applications to be reviewed with regard to water and sewage systems.

#### 4.3 Denial of Application

(a) An applicant may be denied a license for any ~~one (1)~~ of the following:

(1) Conviction of a crime, in Vermont or elsewhere, for conduct that demonstrates unfitness to operate a home;

(2) Substantiated complaint of abuse, neglect or exploitation;

(3) Conviction, in Vermont or elsewhere, for an offense related to bodily injury, theft or misuse of funds or property;

(4) Conduct, in Vermont or elsewhere, inimical to the public health, morals, welfare and safety;

(5) Financial incapacity, including capitalization, to provide adequate care and services; or



(6) An act or omission that would constitute a violation of any of these regulations.

(b) When an applicant is denied for any of the aforementioned reasons, the licensing agency may determine the applicant has overcome the prohibition if presented with evidence of expungement or suitability sufficient to ensure the safety of residents.

(c) Failure to provide complete, truthful and accurate information within the required time during the application or re-application process ~~shall~~will be grounds for automatic denial or revocation of a license.

#### 4.4 Re-application

(a) Application forms will be mailed to the applicant approximately sixty (60) days before the end of the licensing year. The completed application form must be returned to the licensing agency not less than forty-five (45) days before the expiration date. Upon receipt of a properly completed application, a license will be renewed assuming all other conditions for licensure are met.

(b) Licenses ~~shall~~will be issued for a period of one (1) year, unless the licensing agency determines that a home's lack of compliance with these regulations indicates the home should be given a license for a shorter period of time.

#### 4.5 Expiration

A license expires on the date indicated on the licensure certification. However, if the licensee has made a complete and accurate application to the licensing agency but the agency has failed to act on the license application, the current license remains in effect until the agency completes the renewal process.

#### 4.6 Change in Licensed Capacity

(a) A residence ~~shall~~must not provide care to more residents than the capacity for which it is licensed. Requests for a change in licensed capacity ~~shall~~must be made in writing to the licensing agency. A proper staffing pattern to cover an increase in capacity ~~shall~~must be submitted when requested.

(b) A residence may provide other related services, such as acting as a senior meals program meal site or adult day program, provided the home:

(1) Has adequate space, staff, and equipment to appropriately provide the service;

(2) Has fully informed residents on admission, or upon addition of a new service, about the additional services;

(3) Ensures residents of the home will not be inconvenienced by the service; and

(4) Has received approval from the licensing agency in advance.

(c) The offered service must meet accepted standards of practice and general requirements for that service. For an adult day program, the provider must meet the standards for adult day programs adopted by the Department of Disabilities, Aging and Independent Living. For meal sites, the provider must meet the standards adopted for the senior meals program through the Department of Disabilities, Aging and Independent Living.

(d) If a therapeutic community residence becomes a senior meal site, the home cannot charge a resident of the home for a meal at the meal site unless that meal is in addition to the meal the home is required to provide to the resident. Similarly, if a home offers an adult day program, a resident who attends an adult day program cannot be charged for a meal unless that meal is in addition to the meal the home is required to provide to the resident.

(e) A therapeutic community residence cannot charge a resident or Medicaid for adult day services provided to a resident of any therapeutic community home.

#### 4.7 Temporary License

(a) A temporary license may be issued permitting operation for such period or periods, and subject to such express conditions, as the licensing agency deems proper. Such license may be issued for a period not to exceed one (1) year, and renewals of such license ~~shall~~will not exceed thirty-six (36) months.

(b) If a residence does not meet all of the requirements of this rule at the time of application for licensure, the licensing agency may issue a temporary license.

(1) A temporary license ~~shall~~will be issued only if, following program, fire safety, and sanitation inspection, the responsible state agencies determine that the particular areas of non-compliance do not constitute an immediate and distinct hazard to the health, safety or well-being of the residents.

(2) A temporary license ~~shall~~will be issued for a length of time to be determined by the responsible state agencies, and issuance ~~shall~~will be contingent upon the Residence's efforts to achieve full compliance with the standards established by these Rules.

(3) A temporary license ~~shall~~will note the requirement(s) not fully met by the residence, and the dates established for achieving compliance, either directly on the license or on an accompanying attachment. This attachment ~~shall~~must be displayed with the license.

#### 4.8 Change in Status

(a) When a change of ownership or location is planned, the licensee or prospective licensee is required to file a new application for license at least ninety (90) days prior to the proposed date of the change. The new licensee ~~shall~~must provide each resident with a written agreement that describes all rates and charges as defined in 5.2(a).

(b) A licensee who intends to discontinue all or part of the operation, or to change the admission or retention policy, ownership, or location of the residence in such a way as to necessitate the discharge of residents ~~shall~~must notify the licensing agency and residents at least ninety (90) days prior to the proposed date of change. The licensee is responsible for ensuring that all residents are discharged in a safe and orderly manner. When such change in status does not necessitate the discharge of residents, the licensee ~~shall~~must give the licensing agency and residents at least thirty (30) days prior written notice.

(c) If, due to an emergency situation, a therapeutic community residence must cease operation on an immediate or emergency basis, whether due to a disaster involving the physical plant or to some other situation rendering the licensee unable to provide safe care to residents, it may cease operation with the permission of the licensing agency. In such cases, the licensee is not required to provide residents with a 90-day notice. The licensee ~~shall~~must ensure that all residents are discharged to a safe and appropriate alternative care setting.

#### 4.9 Separate License

A separate license is required for each residence that is owned and operated by the same management.

#### 4.10 Transfer Prohibited

A license ~~shall~~will be issued only for the applicant(s) and premises named in the application and is not transferable or assignable.

#### 4.11 License Certificate

The residence's current license certificate ~~shall~~must be protected and appropriately displayed in such a place and manner as to be readily viewable by persons entering the residence. Any conditions which affect the license in any way ~~shall~~must be posted adjacent to the license certificate.

#### 4.12 Responsibility and Authority

(a) Each residence ~~shall~~must be organized and administered under one authority, which may be an individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. That individual or entity, which ~~shall~~must be the licensee,

~~shall~~will have ultimate authority and responsibility for the overall operation of the program.

(b) Whenever the authority is vested in the governing board of a firm, partnership, corporation, company, association or joint stock association, there ~~shall~~must be appointed a duly authorized qualified manager, however named, who will be in charge of the daily management and business affairs of the residence, who ~~shall~~must be fully authorized and empowered to carry out the provisions of these regulations, and who ~~shall~~must be charged with the responsibility of doing so. The manager of the residence ~~shall~~must be present in the residence an average of twenty-two (22) hours per week. The twenty-two (22) hours ~~shall~~must include time providing services, such as transporting, or attendance at educational seminars. Vacations and sick time ~~shall~~must be taken into account for the twenty-two (22) hour requirement. In the event of extended absences, a qualified interim manager must be appointed.

(c) The manager ~~shall~~must not leave the premises without delegating necessary authority to a competent staff person who is at least eighteen\_ (18) years of age. Staff left in charge ~~shall~~must be qualified by experience to carry out the day--to--day responsibilities of the manager, including being sufficiently familiar with the needs of the residents to ensure that their care and personal needs are met in a safe environment. Staff left in charge ~~shall~~must be fully authorized to take necessary action to meet those needs or ~~shall~~must be able to contact the manager immediately if necessary.

(d) The qualifications for the manager of a therapeutic community residence are, at a minimum, one of the following:

(1) At least an ~~A~~associate's ~~D~~degree in the area of human services; or

(2) Three (3) years of general experience in a human services-related field.

The licensing agency ~~shall~~will evaluate the education, employment history and experience of the manager to determine whether he or she has the necessary qualifications.

#### 4.13 Survey/Investigation

(a) The licensing agency ~~shall~~will inspect a residence prior to issuing a license and may inspect a residence any other time it considers an inspection necessary to determine if a residence is in compliance with these regulations.

(1) Authorized staff of the licensing agency shall have access to the residence at all times, with or without notice.

(2) The living quarters of the manager of a residence may be subject to inspection only where the inspector has reason to believe the licensed capacity of the residence has been exceeded and only for the purpose of determining if such a

violation exists. The inspector ~~shall~~will permit the manager to accompany ~~him or her~~them on such an inspection.

(3) If an authorized inspector is refused access to a residence or the living quarters of the manager, the licensing agency may seek a search warrant authorizing the inspection of such premises.

(4) If, as a result of an investigation or survey, the licensing agency determines that a residence is unlicensed and meets the definition of a therapeutic community residence, written notice of the violation ~~shall~~will be prepared pursuant to 33 V.S.A. §7110 and §4.15 of these regulations.

(b) The licensing agency ~~shall~~will investigate whenever it has reason to believe a violation of the law or regulations has occurred. Investigations may be conducted by the licensing agency or its agents and may be conducted at any place or include any person the licensing agency believes possesses information relevant to its regulatory responsibility and authority.

(c) After each inspection, survey or investigation, an exit conference will be held with the manager or designee. The exit conference ~~shall~~will include an oral summary of the licensing agency's findings and if regulatory violations were found, notice that the residence must develop and submit an acceptable plan of correction. Residents who wish to participate in the exit conference have the right to do so. Representatives of the state's designated protection and advocacy organization also may attend the exit conference.

(d) A written report ~~shall~~will be submitted to the licensee at the conclusion of an investigation. The report will contain the results of the investigation, any conclusions reached, and any final determinations made by the licensing agency.

(e) The licensing agency may, within the limits of the resources available to it, provide technical assistance to the residence to enable it to comply with the law and the regulations. The licensing agency ~~shall~~will respond in writing to reasonable written requests for clarification of the regulations.

(f) The residence ~~shall~~must make current written reports resulting from inspections readily available to residents and to the public in a place readily accessible to residents where individuals wishing to examine the results do not have to ask to see them. The residence ~~shall~~must post a notice of the availability of all other written reports in a prominent place. If a copy is requested and the residence does not have a copy machine, the residence ~~shall~~must inform the resident or member of the public that they may request a copy from the licensing agency and ~~shall~~must provide the address and telephone number of the licensing agency.

#### 4.14 Violations: Notice Procedure

(a) If, as a result of survey or investigation, the licensing agency finds a violation of a law or regulation, it ~~shall~~will provide a written notice of violation to the residence within ten (10) days. The notice ~~shall~~will include the following:

- (1) A description of each condition that constitutes a violation;
- (2) Each rule or statutory provision alleged to have been violated;
- (3) The date by which the residence must return a plan of correction for the alleged violation(s);
- (4) The date by which each violation must be corrected;
- (5) Sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;
- (6) The right to apply for a variance as provided for in Section III of these regulations;
- (7) The right to an informal review by the licensing agency; and
- (8) The right to appeal the licensing agency determination of violation, with said appeal being made to the Commissioner ~~of the Department~~ of Disabilities, Aging and Independent Living within fifteen (15) days of the mailing of the notice of violation.

(b) If the licensee fails either to return a plan of corrective action or to correct any violation in accordance with the notice of violation, the licensing agency ~~shall~~will provide written notice to the licensee of its intention to impose specific sanctions, and the right of the licensee to appeal.

(c) The licensing agency ~~shall~~will mail its decision to the licensee within ten (10) days of the conclusion of the review or, if no review was requested, within twenty-five (25) days of the mailing of the notice of proposed sanctions. The written notice ~~shall~~will include the licensee's right to appeal the decision to the Commissioner ~~of the Department~~ of Disabilities, Aging and Independent Living within fifteen (15) days of the mailing of the decision by the licensing agency.

(d) Nothing in these regulations ~~shall~~precludes the licensing agency from taking immediate enforcement action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff. If the licensing agency takes

immediate enforcement action, it ~~shall~~will explain the actions and the reasons for it in the notice of violation. At the time immediate enforcement action is proposed, the licensee ~~shall~~will be given an opportunity to request an appeal to the Commissioner. If immediate enforcement action is taken, the licensee also ~~shall~~will be informed of the right to appeal the Department's action to the Human Services Board.

#### 4.15 Enforcement

The purpose of enforcement actions is to protect residents. Enforcement actions by the licensing agency against a residence may include the following:

(a) Administrative penalties against a residence for failure to correct a violation or failure to comply with a plan of corrective action for such violation as follows:

- (1) Up to \$5.00 per resident or \$50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;
- (2) Up to \$8.00 per resident or \$80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents;
- (3) Up to \$10.00 per resident or \$100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents; and—
- (4) For purposes of imposing administrative penalties under this subsection, a violation ~~shall~~will be deemed to have first occurred as of the date of the notice of violation.

(b) Suspension, revocation, modification or refusal to renew a license upon any of the following grounds:

- (1) Violation by the licensee of any of the provisions of the law or regulations;
- (2) Conviction of a crime for conduct which demonstrates that the licensee or the principal owner is unfit to operate a residence;
- (3) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Vermont in the maintenance and operation of the premises for which a license is issued;
- (4) Financial incapacity of the licensee to provide adequate care and services; or
- (5) Failure to comply with a final decision or action of the

licensing agency.

(c) Suspension of admissions to a residence, or discharge of residents from a residence to an alternative placement, for a violation that may directly impair the health, safety or rights of residents, or for operating without a license.

(d) The licensing agency, the attorney general, or a resident may bring an action for injunctive relief against a residence in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of the law or regulation.

(e) The licensing agency, the attorney general, or a resident may bring an action in accordance with 33 V.S.A. § 7201 *et seq.* for appointment of a receiver for a residence, if one or more of the circumstances set forth in 33 V.S.A. § 7202 are present or imminent.

(f) The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the residence is located, or in Washington Superior Court.

(g) The remedies provided for violations of the law or regulations are cumulative.

(h) The licensing agency may require a therapeutic community residence to refund payment to a resident who has left the residence early having given the appropriate notice or who has paid or been charged more than was due to the residence.

#### 4.16 Identification of Unlicensed Residences

With regard to therapeutic community residences operating without a license, but required by law to be licensed, the following requirements ~~shall~~will apply:

(a) No physician, surgeon, osteopath, chiropractor, physician's assistant, advanced-practice registered nurse (licensed, certified or registered under the provisions of Title 26), resident physician, intern, hospital administrator in any hospital in this state, registered nurse, licensed practical nurse, medical examiner, psychologist, mental health professional, social worker, probation officer, police officer, nursing home administrator or employee, or owner, manager, or employee of a residence ~~shall~~must knowingly place, refer or recommend placement of a person to such a residence if that residence is operating without a license.

(b) Any individual listed in 4.16(a) who is licensed or certified by the State of Vermont or who is employed by the state or a municipality and who knows or has reason to believe that a residence is operating without the license required under this chapter ~~shall~~must report the residence and address of the residence to the licensing agency.

(c) Violation of the above sections may result in a criminal



penalty of up to \$500 and a prison sentence of up to six (6) months pursuant to 33 V. S. A. §7116.

(d) The licensing agency ~~shall~~will investigate any report filed by an individual listed above.

(e) The licensing agency also ~~shall~~will investigate any report filed by any person other than one listed in 4.16(a), unless it reasonably believes that the complaint is without merit.

(f) For purposes of determining if a residence is operating without a license, the provision of room and board and personal care means that any individual in the residence receives or requires such care and services.

(g) The residence operating without a license referred to in this chapter may be operating for profit or not for profit and may occupy one or multiple dwellings.

(h) Upon notice from the licensing agency, the unlicensed residence ~~shall~~must cease operation immediately until such time as a license has been issued and permission to operate has been obtained. No residents may remain in the residence pending the receipt of the license unless granted a variance by the Department.

#### 4.17 Additional Required Program Components

(a) In addition to obtaining a license, a residence must obtain approval from the licensing agency prior to establishing, advertising or operating as a therapeutic community residence. Approval will be based on a demonstration that the program will provide specialized therapeutic services to a specific population.

(b) A request for approval must include all of the following:

(1) A statement outlining the philosophy, purpose and scope of services to be provided;

(2) A definition of the characteristics of residents to be served;

(3) A description of the organizational structure of the unit consistent with the unit's philosophy, purpose and scope of services;

(4) A description and identification of the physical environment;

(5) The criteria for admission, continued stay and discharge; and

(6) A description of unit staffing, to include:

- i. Staff qualifications;
- ii. Orientation;
- iii. In-service education and specialized training; and
- iv. Medical management and credentialing as necessary.

(c) All therapeutic community residences ~~shall~~must either:

(1) Comply with the current regulations for the licensing and operation of a therapeutic community residence set forth herein; or

(2) Subject to initial licensure approval (see Section IV), comply with alternative proposed program conditions that ~~shall~~must include the following components:

*i.* Structural Components:

- Governing Authority
- Direction or Supervision
- Staff
- Fiscal Management

*ii.* Treatment Components

- Philosophy
- Process
- Intake
- Identification of Problems and Areas of Successful Life Function
- Treatment Plan
- Progress Notes
- Supervision and Review
- Resident Records
- Resident Services
- Discharge and Aftercare

(d) A residence that has received approval to operate as a therapeutic community residence must comply with the regulations or the specifications contained in the request for approval. The residence will be surveyed to determine if the program is providing the services, staffing, training, and physical environment that was outlined in the request for approval.

(e) The requirements of sections 5.2 and 5.3 below ~~shall~~ apply to all residents.

**V. Resident Care and Services**

5.1 Eligibility

(a) The licensee ~~shall~~must not accept or retain as a resident any

individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the residence is able to safely and appropriately provide, unless prior approval has been obtained from the licensing agency.

(b) A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital ~~shall~~must not be admitted to or retained as a resident in a therapeutic community residence.

(c) A person under eighteen (18) years of age ~~shall~~must not be admitted to a therapeutic community residence except by permission of the licensing agency.

## 5.2 Admission Agreements

The residence ~~shall~~must have clearly stated written criteria for determining the eligibility of individuals for admission.

(a) Prior to or at the time of admission, each resident, and the resident's legal representative if any, ~~shall~~must be provided with a written admission agreement which describes the daily, weekly, or monthly rate to be charged, the services that are covered in the rate, and all other applicable financial issues, including an explanation of the residence's policy regarding discharge or transfer when a resident's financial status changes from privately paying to paying with SSI benefits. The agreement must be written in a format that is accessible, linguistically appropriate, and available in large font.

(b) The admission agreement ~~shall~~must specify, at least, how the following services will be provided and what additional charges there will be, if any: all personal care services; nursing services; medication management; laundry; transportation; toiletries; and any additional services provided under a Medicaid program.

(c) If applicable, the agreement must specify the amount and purpose of any deposit. This agreement must also specify the resident's transfer and discharge rights, including provisions for refunds, and must include a description of the residence's personal needs allowance policy. Any change of rate or services ~~shall~~must be preceded by a thirty (30) day written notice to the resident and the resident's legal representative, if any.

(d) On admission, the residence must also determine if the resident has any form of advance directive and explain the resident's right under state law to formulate, or not to formulate, an advance directive. The admission agreement ~~shall~~must include a space for the resident to sign and date to indicate that the residence has met this requirement.

(e) The residence must provide each resident with written information regarding how to contact the designated Vermont protection and advocacy organization, the patient representative, as applicable, and the Disability Law Project or the Mental Health Law Project, as applicable. The residence ~~shall~~must inform residents that these

organizations are available also to assist with formulating an advance directive, if the resident wishes to do so.

(f) The residence ~~shall~~must include a copy of its grievance policy in the admissions agreement.

(g) When an applicant is found to be ineligible for admission, the reason ~~shall~~must be recorded in writing and referral to an appropriate agency or organization ~~shall~~must be attempted. Such referral ~~shall~~must be made, if possible, in conjunction with the agency or organization originally referring applicant to the residence. The record of the decision ~~shall~~must be retained by the residence for a period of at least one year.

(h) If applicable, an applicant can be requested to consent to the waiver of certain resident rights, including those related to visitors, mail, and the use of telephones and cell phones, provided such waiver is explained in detail in the written admission agreement.

### 5.3 Intake

(a) The residence ~~shall~~must have clearly stated written criteria for determining the eligibility of individuals for admission.

(b) The intake process ~~shall~~must be completed no later than seven (7) days from the date of admission and ~~shall~~must include a comprehensive assessment focusing on the following:

(1) Early history in brief summary;

(2) Review and written summary of current adjustment in major areas of life function - personal, social, familial, educational and vocational with an identification of major dysfunctions leading to the need for residential treatment.

(3) As recent a medical report as possible, to include orders for medications, cautions on adverse reactions and symptoms to watch for.

(4) Review of specific substance abuse if applicable.

(5) Appropriate abstracts from agencies, institutions, and programs previously used by the individual.

(c) A written summary of the basic data ~~shall~~must be retained by the residence for the record.

(d) Sufficient information ~~shall~~must be gathered during the intake process to permit the identification of specific areas of function/dysfunction such as unemployment, marital discord or economic crisis, as possible collateral elements contributing to the presenting problems of substance abuse or mental illness.

(e) Sufficient information ~~shall~~must be gathered during the intake process to permit the identification of specific areas of successful life function, achievement and specific skills, strengths and supports.

(f) The identified problems, achievements and specific skills, strengths and supports ~~shall~~must be used as a basis for the development of a treatment plan and goals for each resident.

#### 5.4 Discharge Requirements

(a) A residence must provide sufficient preparation and orientation to residents to ensure a safe and orderly discharge from the residence if the residence has decided that discharge is appropriate. The details of the discharge plan ~~shall~~must be in writing and ~~shall~~must include the reasons for discharge. A copy ~~shall~~must be given to the resident and one ~~shall~~must be placed in the resident's chart.

(b) Where a residence provides aftercare services, a written plan ~~shall~~must be developed, in partnership with the resident. The aftercare plan ~~shall~~must include: the resident's goal for a reasonable period following discharge; a description of the services to be provided by the residence and outside services during the aftercare period; the procedure the resident is to follow in maintaining contact with the residence in times of crisis; and the frequency with which the residence will attempt to contact the resident for purposes of follow-up.

(c) A summary of the resident's stay at the facility ~~shall~~must be added to the resident record within two weeks of ~~his or her~~their leaving. The summary ~~shall~~must include the reason for leaving, areas in which progress, no progress, or regression was observed, and the medication the resident was prescribed at the time of leaving. If a resident is receiving treatment for a serious mental illness, the facility ~~shall~~must follow up with that resident within seventy-two (72) hours of discharge from the facility. This ~~shall~~must be done using the most effective means possible, including email, text messaging, or phone.

#### 5.5 General Care

(a) Upon a resident's admission to a therapeutic community residence, necessary services ~~shall~~must be provided or arranged to meet the resident's personal, psychosocial, nursing and medical care needs. The home's manager ~~shall~~must provide every resident with the personal care and supervision appropriate to ~~his or her~~their individual needs.

(b) Staff ~~shall~~must provide care that respects each resident's dignity and each resident's accomplishments and abilities. Residents ~~shall~~must be encouraged to participate in their own activities of daily living. Families ~~shall~~must be encouraged to participate in care and care planning according to their ability and interest and with the permission of the resident.

(c) Each resident's medication, treatment, and dietary services ~~shall~~must be consistent with the physician's orders.

## 5.6 Health Care Provider Services

(a) All residents ~~shall~~must be under the continuing general care of a licensed health care provider and ~~shall~~must receive assistance, if needed, in scheduling medical appointments.

(b) Except for medical care that has been specifically ordered by a court, a resident has the right to refuse all medical care for religious reasons or other reasons of conviction. In such cases, the residence must assess its ability to properly care for the resident and document the refusal and the reasons for it in the resident's record.

(c) The resident's health care provider ~~shall~~must be notified whenever the resident has refused medical care.

(d) All health care providers' orders obtained via telephone ~~shall~~must be countersigned by the health care provider within fifteen (15) days of the date the order was given.

(e) Physical examinations must be provided for all residents whose residency exceeds 45 days unless the resident has available the report of a physical examination completed within 90 days prior to admission. Arrangements ~~shall~~must be made to treat and follow up medical problems identified in the physical examination.

## 5.7 Treatment Plan

(a) The residence ~~shall~~must set forth in writing its treatment goals, approach, orientation, and methods for achieving goals.

(b) The residence ~~shall~~must ensure that the treatment plan reflects steps to be taken to solve identified problems, either by direct service at the residence or indirectly by referral to a community resource. The treatment plan ~~shall~~must be completed within fourteen (14) days of admission.

(c) The treatment plan ~~shall~~must contain clear and concise statements of at least the short-term goals the resident will be attempting to achieve, along with a realistic time schedule for their fulfillment or reassessment.

(d) Treatment goals ~~shall~~must be set by the resident and, upon request, a support person, with the participation and guidance of appropriate staff members.

## 5.8 Medication Management

(a) Each therapeutic community residence must have written policies and procedures describing the residence's medication practices. The policies must cover at least the following:

(1) If a therapeutic community residence provides medication management, it ~~shall~~must be done under the supervision of a registered nurse.

(2) Who will provide the professional nursing delegation if the residence administers medications to residents unable to self-administer and how the process of delegation is to be carried out in the residence.

(3) Qualifications of the staff who will be managing medications or administering medications and the residence's process for nursing supervision of the staff.

(4) How medications ~~shall~~will be obtained for residents including choices of pharmacies.

(5) Procedures for documentation of medication administration.

(6) Procedures for disposing of outdated or unused medication, including designation of a person or persons with responsibility for disposal.

(7) Procedures for monitoring side effects of psychoactive medications.

(8) Procedures for assessing a resident's ability to self-administer and documentation of the assessment in the medical record.

(b) The manager of the residence is responsible for ensuring that all medications are handled according to the residence's policies and that designated staff are fully trained in the policies and procedures. The manager ~~shall~~must assure that all medications and drugs are used only as prescribed by the resident's physician, properly labeled and kept in a locked cabinet at all times or, when a program of self-medication is in effect, otherwise safely secured.

(c) Staff ~~shall~~must not assist with or administer any medication, prescription or over-the-counter medications for which there is not a physician's or other licensed health care provider's written, signed order and supporting diagnosis or problem statement in the resident's record.

(d) If a resident requires medication administration, unlicensed staff may administer medications under the following conditions:

(1) A registered nurse must conduct an assessment of the resident's care needs consistent with the physician's or other health care provider's diagnosis and orders.

(2) A registered nurse must delegate the responsibility for the administration of specific medications to designated staff for designated residents.

(3) The registered nurse must accept responsibility for the proper administration of medications, and is responsible for:

*i.* Teaching designated staff proper techniques for medication administration and providing appropriate information about the resident's condition, relevant medications, and potential side effects;

*ii.* Establishing a process for routine communication with designated staff about the resident's condition and the effect of medications, as well as changes in medications;

*iii.* Assessing the resident's condition and the need for any changes in medications; and

*iv.* Monitoring and evaluating the designated staff performance in carrying out the nurse's instructions.

(4) All medications must be administered by the person who prepared the doses unless the nurse responsible for delegation approves of an alternative method of preparation and administration of the medications.

(5) Staff other than a nurse may administer PRN psychoactive medications only when the residence has a written plan for the use of the PRN medication which: describes the specific behaviors the medication is intended to correct or address; specifies the circumstances that indicate the use of the medication; educates the staff about what desired effects or undesired side effects the staff must monitor for; and documents the time of, reason for and specific results of the medication use.

(6) Insulin. Staff other than a nurse may administer insulin injections only when:

*i.* The diabetic resident's condition and medication regimen is considered stable by the registered nurse who is responsible for delegating the administration;

*ii.* The designated staff to administer insulin to the resident have received additional training in the administration of insulin, including return demonstration, and the registered nurse has deemed them competent and documented that assessment; and

*iii.* The registered nurse monitors the resident's condition regularly and is available when changes in condition or medication might occur.

(e) Staff responsible for assisting residents with medications must receive training in all of the following areas before assisting with any medications from the registered nurse:



(1) The basis for determining "assistance" versus "administration".

(2) The resident's right to direct the resident's own care, including the right to refuse medications.

(3) Proper techniques for assisting with medications, including hand washing and checking the medication for the right resident, medication, dose, time, and route.

(4) Signs, symptoms and likely side effects to be aware of for any medication a resident receives.

(5) The residence's policies and procedures for assistance with medications.

(f) Residents who are capable of self-administration have the right to purchase and self-administer over-the-counter medications. However, the residence must make every reasonable effort to be aware of such medications in order to monitor for and educate the residents about possible adverse reactions or interactions with other medications without violating the resident's rights to direct the resident's own care. If a resident's use of over-the-counter medications poses a significant threat to the resident's health, staff must notify the physician or other health care provider.

(g) Residences must establish procedures for documentation sufficient to indicate to the health care provider, registered nurse, certified manager or representatives of the licensing agency that the medication regimen as ordered is appropriate and effective. At a minimum, this ~~shall~~must include:

(1) Documentation that medications were administered as ordered;

(2) All instances of refusal of medications, including the reason why and the actions taken by the residence;

(3) All PRN medications administered, including the date, time, reason for giving the medication, and the effect;

(4) A current list of who is administering medications to residents, including staff to whom a nurse has delegated administration;

(5) For residents receiving psychoactive medications, a record of monitoring for side effects; and

(6) All incidents of medication errors.

(h) All medicines and chemicals used in the residence must be labeled in accordance with currently accepted professional standards of practice. Medication ~~shall~~must be used only for the resident

identified on the pharmacy label.

(1) Resident medications that the residence manages must be stored in double-locked compartments under proper temperature controls. Only authorized personnel ~~shall~~may have access to the keys.

(2) Medications requiring refrigeration ~~shall~~must be stored in a separate, locked container impervious to water and air if kept in the same refrigerator used for storage of food.

(3) Residents who are capable of self-administration may choose to store their own medications provided that the residence is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the residence is able to provide such a secured space must be explained to the resident on or before admission.

(4) Medications left after the death or discharge of a resident, or outdated medications, ~~shall~~must be promptly disposed of in accordance with the residence's policy and applicable standards of practice and regulations.

(5) Narcotics and other controlled drugs must be kept in a locked cabinet in a locked room. Narcotics must be accounted for on a daily basis. Other controlled drugs ~~shall~~must be accounted for on at least a weekly basis.

## 5.9 Staff Services

(a) There ~~shall~~must be sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to ensure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

(b) The residence must ensure that staff demonstrate competency in the skills and techniques they are expected to perform before providing any direct care to residents. There ~~shall~~must be at least twelve (12) hours of training each year for each staff person providing direct care to residents. The training must include, but is not limited to, the following:

(1) Resident rights;

(2) Fire safety and emergency evacuation;

(3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;

(4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;

(5) Respectful and effective interaction with residents;

(6) Infection control measures, including but not limited to, hand washing, handling of linens, maintaining clean environments, blood borne pathogens and universal precautions; and

(7) General supervision and care of residents.

(c) All training to meet the requirements of 5.10(b) ~~shall~~must be documented. Training in direct care skills by a residence's nurse may meet this requirement, provided the nurse documents the content and amount of training.

(d) The licensee ~~shall~~must not have on staff a person who has had a charge of abuse, neglect or exploitation substantiated against him or her, as defined in 33 V.S.A. Chapters 49 and 69, or one who has been convicted of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction whether within or outside of the State of Vermont. This provision ~~shall~~applies to the manager of the residence as well, regardless of whether the manager is the licensee ~~or not~~. The licensee ~~shall~~must take all reasonable steps to comply with this requirement, including, but not limited to, obtaining and checking personal and work references and contacting the Division of Licensing and Protection and the Department for Children and Families in accordance with 33 V.S.A. §6911 and 33 V.S.A. §4919 to see if prospective employees are on the abuse registry or have a record of convictions.

(e) Staff persons ~~shall~~must not perform any duties when their judgment or physical ability is impaired to the extent that they cannot perform duties adequately or be held accountable for their duties.

(f) There ~~shall~~must be at least one (1) staff member on duty and in charge at all times. There ~~shall~~must be a record of the staff on duty, including names, titles, dates and hours on duty. Such records ~~shall~~must be retained for at least a year. In those instances in which an issue or complaint has arisen that might involve the records, the records ~~shall~~must be retained until the issue or complaint can be resolved.

(g) The licensing agency may require a residence to have specified staffing levels in order to meet the needs of residents.

(h) The licensee ~~shall~~beis responsible for coordinating all treatment both in and outside residence.

#### 5.10 Records/Reports

(a) The licensee ~~shall~~beis responsible for maintaining, filing, and submitting all records required by the licensing agency. Such records ~~shall~~must be kept current and available on site at the licensed facility for review at any time by authorized representatives of the licensing agency.

(b) The following records ~~shall~~must be maintained and kept on file:

(1) A resident register including all admissions to and discharges out of the residence.

(2) A record for each resident which includes:

*i.* The resident's name, emergency notification numbers, the name, address and telephone number of any legal representative or, if there is none, the next of kin;

*ii.* The health care provider's name, address and telephone number;

*iii.* Instructions in case of resident's death;

*iv.* The resident's intake assessment summary, identification of problems and areas of successful life function;

*v.* Data from other agencies;

*vi.* Treatment plans and goal, regular progress notes; supervisory and review conclusions, aftercare plan and discharge summary, appropriate medical information, and a resident information release form;

*vii.* A signed admission agreement;

*viii.* A recent photograph of the resident (but a resident may decline to have ~~his or her~~their picture taken. Any such refusal ~~shall~~must be documented in the resident's record);

*ix.* A copy of the resident's advance directives, if any were completed, and a copy of the document giving legal authority to another, if any.

(3) Progress notes that document a resident's progress and current status in meeting the goals set by the treatment plan, as well as efforts by staff members to help the resident achieve these stated goals, ~~shall~~must be made a part of the resident record.

*i.* All entries that involve subjective interpretation of a resident's progress should be supplemented with a description of actual behavioral observations supporting the interpretation.

*ii.* If a resident is receiving services at an outside resource, the residence ~~shall~~must attempt to secure a written copy of progress notes and resident records from that source. These ~~shall~~must be attached to the resident record.

iii. Summary progress reports ~~shall~~must be written regularly and made part of the resident record.

iv. Whenever possible residents should be encouraged to contribute to their own progress notes.

(4) The results of the criminal record and abuse registry checks for all staff.

(c) The residence ~~shall~~must ensure that resident records are safeguarded and protected against loss, tampering or unauthorized disclosure of information, that the content and format of resident records are kept uniform and that all entries in resident records are signed and dated.

(d) A residence must file the following reports with the licensing agency:

(1) When a fire occurs in the residence, regardless of size or damage, the licensing agency and the Department of Public Safety's Division of Fire Safety must be notified within twenty-four (24) hours. A written report must be submitted to both departments within seventy-two (72) hours. A copy of the report ~~shall~~must be kept on file.

(2) A written report of any reports or incidents of abuse, neglect or exploitation reported to the licensing agency.

(3) A written report of any deaths. When a resident dies, in addition to notifying the medical examiner, the licensee ~~shall~~must send a report to the licensing agency and to the designated Vermont protection and advocacy organization with the following information:

i. The name of resident;

ii. The circumstances of the death;

iii. The circumstances of any recent injuries or falls;

iv. A list of all medications and treatments received by the resident during the two (2) weeks prior to the death; and

v. When and by whom the police were notified.

(e) Reports and records ~~shall~~must be filed and stored by the residence in an orderly manner so that they are readily available for reference. Resident records ~~shall~~must be kept on file at least seven (7) years after the date of either the discharge or death of the resident.

#### 5.11 First Aid Equipment and Supplies

Equipment and such supplies as are necessary for universal precautions,

to meet resident needs and for care of minor cuts, wounds, abrasions, contusions, and similar sudden accidental injuries ~~shall~~must be readily available, in good repair and the location clearly marked.

#### 5.12 Resident Services

The residence ~~shall~~must have the capability for the provision, either on site or by referral, of the following services whenever they are identified in the treatment plan as needed:

- (a) Family counseling services;
- (b) Educational services;
- (c) Legal services;
- (d) Employment services;
- (e) Vocational rehabilitation services; and
- (f) Medical or psychiatric services, or both.

#### 5.13 Policies and Procedures

Each residence must have written policies and procedures that govern all services provided by the residence. A copy ~~shall~~must be available for review at the residence upon request.

#### 5.14 Transportation

(a) Each residence must have a written policy about what transportation is available to residents of the residence. The policy must be explained at the time of admission and included in the admission agreement.

(b) The residence ~~shall~~must provide or arrange transportation to medical services as needed by residents.

(c) The residence ~~shall~~must provide or arrange transportation for residents to a practical number of appropriate community functions and ~~shall~~must have a written policy that states the number and duration of such transports that will be considered reasonable.

(d) The residence ~~shall~~must acquire and maintain adequate liability insurance coverage for vehicles used to transport residents.

#### 5.15 Death of a Resident

(a) The manager ~~shall~~must report any death of a resident to the licensing agency, the regional medical examiner and the appropriate law enforcement agency, including the state's attorney's office.

(b) The facility ~~shall~~must complete an incident report regarding the death of a resident and send the report to the licensing agency and to the designated protection and advocacy organization. A copy of the report also ~~shall~~must be kept on the premises.

#### 5.16 Reporting of Abuse, Neglect or Exploitation

(a) The licensee and staff ~~shall~~must report any case of suspected abuse, neglect or exploitation to Adult Protective Services (APS) as required by 33 V.S.A. §6903. APS may be contacted by calling toll-free 1-800-564-1612. Reports must be made to APS within forty-eight (48) hours of learning of the suspected, reported or alleged incident.

(b) The licensee and staff are required to report suspected or reported incidents of abuse, neglect or exploitation. It is not the licensee's or staff's responsibility to determine if the alleged incident did occur or not; that is the responsibility of the licensing agency. A residence may, and should, conduct its own investigation. However, that must not delay reporting of the alleged or suspected incident to APS.

(c) Incidents involving resident-to-resident abuse must be reported to the licensing agency if a resident alleges abuse, sexual abuse, or if an injury requiring medical intervention results, or if there is a pattern of abusive behavior. All resident-to-resident incidents, even minor ones, must be recorded in the resident's record. Families or legal representatives must be notified and a plan must be developed to deal with the behaviors.

#### 5.17 Access by Advocacy System.

(a) The residence ~~shall~~must permit representatives of Adult Protective Services, the Mental Health Ombudsman, as applicable, the patient representative, as applicable, and the designated Vermont protection and advocacy organization to have access to the residence and its residents in order to: visit; talk with; make personal, social and legal services available to all residents; inform residents of their rights and entitlement; and assist residents in resolving problems and grievances.

(b) Any designated representative of the designated Vermont protection and advocacy organization, the Mental Health Ombudsman, as applicable, and the patient representative, as applicable, ~~shall~~must have access to the residence at any time in accordance with that program's state and federal mandates and requirements. Those representatives ~~shall~~must also have access to the resident's records with the permission of the resident or as otherwise provided by state or federal law.

(c) Individual residents have the complete right to deny or terminate any visits by persons having access pursuant to this section.

(d) If a resident's room does not permit private consultation to

occur, the resident may request, and the residence must provide, an appropriate place for a private meeting.

## **VI. Residents' Rights**

6.1 Every resident ~~shall~~must be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. A residence may not ask a resident to waive the resident's rights. A resident has the right to exercise any rights without reprisal.

6.2 Each residence ~~shall~~must establish and adhere to a written policy, consistent with these regulations, regarding the rights and responsibilities of residents, which ~~shall~~must be explained to residents at the time of admission. Receipt of the rights by the resident ~~shall~~must be indicated by a signature and date by the resident on a line for that purpose on the admission agreement.

6.3 Residents may retain personal clothing and possessions as space permits, unless ~~to do so~~ would infringe on the rights of others, would create a danger to others, would create a security risk or would create a fire, health or safety hazard.

6.4 A resident ~~shall~~must not be required to perform work for the licensee. If a resident chooses to perform specific tasks for the licensee the resident ~~shall~~must receive reasonable compensation which ~~shall~~must be specified in a written agreement with the resident.

6.5 Each resident ~~shall~~must be allowed to associate, communicate and meet privately with persons of the resident's own choice, including family members, unless such access has been restricted by a court. Residences ~~shall~~must allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours ~~shall~~must be posted in a prominent public place.

6.6 Each resident may send and receive personal mail unopened, unless such access has been restricted by a court.

6.7 Residents have the right to reasonable access to a telephone for private conversations unless such access has been restricted by a court. Residents ~~shall~~must have reasonable access to the residence's telephone except when restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use ~~shall~~must be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or other electronic equipment in ~~his or her~~their own room, unless such access has been restricted by a court.

6.8 A resident may file a complaint or voice a grievance without interference, coercion or reprisal. Each residence ~~shall~~must establish an accessible written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission and posted in a prominent, public place on each floor of the residence. The grievance procedure ~~shall~~must include at a minimum, time frames, a process for responding to residents in writing within ten (10)



days, and a method by which each resident filing a complaint or grievance will be made aware of the designated Vermont protection and advocacy organization as an alternative or in addition to the residence's grievance mechanism.

6.9 Residents may manage their own personal finances unless a representative payee or financial guardian has been appointed. The residence or licensee ~~shall~~must not manage a resident's finances unless requested in writing by the resident and then in accordance with the resident's wishes. The residence or licensee ~~shall~~must keep a record of all transactions and make the record available, upon request, to the resident or legal representative, and ~~shall~~must provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the residence.

6.10 The resident's right to privacy extends to all records and personal information. Personal information about a resident ~~shall~~must not be discussed with anyone not directly involved in the resident's care, treatment or supervision. Release of any record, ~~or~~ excerpts from, or information contained in, such records, ~~shall be~~is subject to the resident's written approval, except as requested by representatives of the licensing agency to carry out its responsibilities or as otherwise provided by law.

6.11 The resident has the right to review the resident's medical or financial records upon request. The resident has the right to provide written comments about the medical or financial record and the comments ~~shall~~must be made part of the resident's record at the request of the resident.

6.12 Residents ~~shall~~must be free from mental, verbal or physical abuse, neglect, ~~and~~ exploitation, ~~and corporal punishment~~. Except in emergency situations, pursuant to the restrictions set forth in section 12.9 et seq. below, Residents ~~shall~~must also be free from seclusion or restraints. ~~All residents have the right to be free from corporal punishment. All residents have the right to be free from restraint or seclusion,~~ of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Psychoactive drugs ~~shall~~must not be administered involuntarily absent an emergency or pursuant to court order, as set forth in sections 12.7(g) and 12.9 et seq. below.

6.13 When a resident is adjudicated mentally disabled, such powers as have been delegated by the Probate or Family Court to the resident's guardian ~~shall~~will be exercised by the guardian.

6.14 Residents notified about a pending discharge from the residence under Section 5.4 of these regulations, absent an emergency, ~~shall~~must:

(a) Be allowed to participate in the decision-making process of the residence concerning the selection of an alternative placement; and

(b) Receive adequate notice of a pending transfer.

6.15 Residents have the right to refuse care to the extent allowed by law.

(a) Except for residents who are prohibited from doing so by a court order, this right includes the right to discharge himself or herself from the residence.

(b) The residence must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the residence must respect that decision and is absolved of further responsibility, unless the resident is in a secure residential recovery facility and has been court-ordered to take medication or receive care.

(c) If the refusal of care will result in a resident's needs increasing beyond what the residence is licensed to provide, or will result in the residence being in violation of these regulations, the residence may issue the resident notice of discharge.

6.16 Residents have the right to fill out a document called an "advance directive" in accordance with Title 18, chapter 231 and to have the residence follow the residents' wishes, unless such wishes are contrary to a court order. The residence ~~shall~~must provide residents with information about advance directives and, upon request, may support a resident's efforts to complete the documents.

6.17 Residents ~~shall~~must have help in assuming as much responsibility for themselves and others as possible, and in participating in residence activities.

6.18 Residents ~~shall~~must have explained to them the reasons and risks associated with the use of any prescribed medication they are taking.

6.19 Residents ~~shall~~must be free to terminate their relationship to the residence.

6.20 The enumeration of residents' rights ~~shall~~must not be construed to limit, modify, abridge, restrict or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen, unless those rights have been limited by a court.

6.21 The obligations of the residence to its residents ~~shall~~must be written in clear language, large print, given to residents on admission, and posted in an accessible, prominent and public place on each floor of the residence. Such notice ~~shall~~must also state the residence's grievance procedure and directions for contacting the designated Vermont protection and advocacy organization.

6.22 If a resident has a chronic condition, he or she has the right to receive competent and compassionate medical assistance to manage the

physical and emotional symptoms of that condition.

6.23 Residents have the right to have a family member or another person of the resident's choice be notified of the admission to the residence. Residents also have the right to decline to have anyone notified of the admission. A facility may not disclose information about a resident's admission without obtaining the resident's authorization. The decision by the resident regarding notice ~~shall~~must be documented at the time of admission to the residence.

6.24 Residents have the right to obtain the opinion of a consultant at the resident's own expense.

6.25 Residents have the right to vote.

6.26 Residents with limited English proficiency have the right to have oral or written translation or interpretive services and cannot be required to pay for such services.

6.27 Residents have the right to have accommodations made to a disability (or disabilities) to ensure that there are no barriers to their receipt of services and that they understand the care and treatment being provided. Such accommodations ~~shall~~must include, but are not limited to, sign language interpretation and having documents provided in accessible formats, as applicable. The resident ~~shall~~must not be required to pay for these services.

6.28 Residents have the right to receive services without discrimination based on race, religion, color, gender (including pregnancy), sexual orientation, gender identity, national origin, disability or age.

## **VII. Nutrition and Food Services**

### **7.1 Food Services**

#### **(a) Menus and Nutritional Standards**

(1) Menus for regular and therapeutic diets ~~shall~~must be planned and written at least one (1) week in advance.

(2) The meals served each day must provide 100% of the Dietary Reference Intakes (DRIs) and comply with the current Dietary Guidelines for Americans. DRIs are a set of nutrient-based reference values that expand upon and replace the former Recommended Dietary Allowances (RDAs) in the United States. They include+ acceptable macronutrient distribution range (AMDR); adequate intake (AI); estimated average requirement (EAR); recommended dietary allowance (RDA) and tolerable upper intake level (UI). Dietary Guidelines for Americans were developed by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.

(3) The current week's regular and therapeutic menu ~~shall~~

must be posted in a prominent public place for residents and other interested parties.

(4) The residence must follow the written, posted menus. If a substitution must be made, the substitution ~~shall~~must be recorded on the written menu.

(5) The residence ~~shall~~must keep menus, including any substitutions, for the previous month on file and available for examination by the licensing agency.

(6) There ~~shall~~must be a written order in the resident's record for all therapeutic diets.

(7) The residence ~~shall~~must maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus as well as for unseen emergencies.

(8) No more than fourteen (14) hours ~~shall~~may elapse between the end of an evening meal and the morning meal unless a resident specifically requests an alternative meal schedule.

(b) Meal Planning Guidelines

(1) The residence ~~shall~~must follow the current U.S. Department of Agriculture (USDA) Food Patterns.

(2) The residence ~~shall~~must consider each resident's dietary needs with respect health status, age, gender and activity level, particularly with regard to portion sizes and frequency of meals and snacks. In taking these factors into consideration, overall nutrient intake ~~shall~~must not be compromised.

(c) Meal Service

(1) Each residence ~~shall~~must offer meals three times a day in accordance with the guide (above). Meals ~~shall~~must be served at appropriate temperature and at normal meal hours. Texture modifications will be accommodated as needed.

(2) Meals ~~shall~~must be attractively served, family style wherever possible, and ~~shall~~must be appropriate to individual needs as determined by age, activity, physical condition and personal preference.

(3) A range of drinks and snacks ~~shall~~must be available to residents at all times to meet individual needs.

(4) Meal times ~~shall~~must be relaxed, unhurried and flexible to suit resident activities and schedules.

(5) Residents ~~shall~~must be provided with alternatives

to the planned meal upon request.

## 7.2 Food Safety and Sanitation

(a) Each residence must procure food from sources that comply with all laws relating to food and food labeling. Food must be safe for human consumption, free of spoilage, filth or other contamination. All milk products served and used in food preparation must be pasteurized. Cans with dents, swelling, rust, missing labels or leaks ~~shall~~must be rejected and kept separate until returned to the supplier.

(b) All perishable food and drink ~~shall~~must be labeled, dated and held at proper temperatures. Hot foods ~~shall~~must be kept hot at 135° F and cold foods ~~shall~~must be kept cold at 41° F or cooler.

(c) All work surfaces must be cleaned and sanitized after each use. Equipment and utensils must be cleaned and sanitized after each use and stored properly.

(d) The residence ~~shall~~must ensure that food handling and storage techniques are consistent with the Food Safety Principles and Guidance for Consumers in the current Dietary Guidelines for Americans.

(e) The use of outdated, unlabeled or damaged canned goods is prohibited and such goods ~~shall~~must not be maintained on the premises.

(f) The residence and premises ~~shall~~must be maintained in a sanitary condition.

(g) All garbage, trash, and other waste materials ~~shall~~must be removed from the premises and disposed of in an acceptable manner at least once per week, preferably daily.

## 7.3 Food Storage and Equipment

(a) All food and drink ~~shall~~must be stored so as to protect from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.

(b) Areas of the residence used for storage of food, drink, equipment or utensils ~~shall~~must be constructed to be easily cleaned and ~~shall~~must be kept clean.

(c) All food service equipment ~~shall~~must be kept clean, sanitized and maintained according to manufacturer's guidelines.

(d) All equipment, utensils and dinnerware ~~shall~~must be in good repair. Cracked or badly chipped dishes and glassware ~~shall~~must not be used.

(e) Single service items, such as paper cups, plates and straws,

~~shall-must~~ be used only once. They ~~shall-must~~ be purchased and stored in sanitary packages or containers in a clean dry place and handled in a sanitary manner.

(f) Food service areas ~~shall-must~~ not be used to empty bed pans or urinals or as access to toilet and utility rooms. If soiled linen is transported through food service areas, the linen must be in an impervious container.

(g) Doors, windows and other openings to the outdoors ~~shall-~~  
~~must~~ be screened against insects, as required by seasonal conditions.

(h) All garbage ~~shall-must~~ be collected and stored to prevent the transmission of contagious diseases, creation of a nuisance, or the breeding of insects and rodents, and ~~shall-must~~ be disposed of at least weekly. Garbage or trash in the kitchen area must be placed in lined containers with covers. Garbage containers ~~shall-must~~ be kept clean and sanitized.

(i) Poisonous compounds (such as cleaning products and insecticides) ~~shall-must~~ be labeled for easy identification and ~~shall-~~  
~~must~~ not be stored in the food storage area unless they are stored in a separate, locked compartment within the food storage area.

## **VIII. Laundry Services**

8.1 The residence ~~shall-must~~ provide laundered bed and bath linens at least once a week.

8.2 The residence ~~shall-must~~ provide adequate opportunity to residents to do their laundry.

8.3 The residence ~~shall-must~~ make alternate arrangements for the personal laundry of a resident if the resident is incapable of doing ~~his or her~~their own laundry.

## **IX. Physical Plant**

### 9.1 Environment

(a) The residence must provide and maintain a safe, functional, sanitary, homelike and comfortable environment.

(b) All residences ~~shall-must~~ comply with all current applicable state and local rules, regulations, codes and ordinances. Where there is a difference between codes, the code with the higher standard ~~shall-~~  
~~will~~ apply.

(c) A residence may not install a door security system that prevents residents from readily exiting the building without prior approval of the licensing agency.

(d) A residence ~~shall~~must ensure that residents have access to the outdoors.

## 9.2 Residents' Rooms

(a) Each bedroom ~~shall~~must provide a minimum of 100 square feet per bed.

(b) Rooms ~~shall~~must be of dimensions that allow for the potential of not less than three (3) feet between beds.

(c) Each bedroom ~~shall~~must have an outside window.

(1) Windows ~~shall~~must be able to be opened and screened except in construction containing approved mechanical air circulation and ventilation equipment.

(2) Window shades, venetian blinds or curtains ~~shall~~must be provided to control natural light and offer privacy.

(d) The door opening of each bedroom ~~shall~~must be fitted with a full- size door of solid core construction.

(e) Resident bedrooms ~~shall~~must be used only as the personal sleeping and living quarters of the residents assigned to them. Halls, storerooms or unfinished attic rooms ~~shall~~must not be used as bedrooms, except in emergency situations on a temporary basis, not to exceed 72 hours.

(f) A resident ~~shall~~must not have to pass through another bedroom or bathroom to reach the resident's own bedroom.

(g) Each resident ~~shall~~must be provided with ~~his or her~~their own bed which ~~shall~~must be a standard-size full or twin bed. Roll away beds, cots and folding beds ~~shall~~must not be used. A resident who wishes to bring ~~his or her~~their own bed or other furniture may do so, as space permits, if the furniture is in safe and sanitary condition.

(h) Each bed ~~shall~~must be in good repair, with a clean, comfortable mattress that is at least six (6) inches thick, and standard in size for the particular bed, a pillow, bed covering, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.

(i) Each resident ~~shall~~must be provided adequate space to accommodate ~~his or her~~their clothing and personal needs.

## 9.3 Toilet, Bathing and Lavatory Facilities

(a) Toilet, lavatories and bathing areas ~~shall~~must be equipped with grab bars for the safety of the residents. There ~~shall~~must be at least one (1) full bathroom that meets the requirements of the Americans with Disabilities Act of 1990, as amended, and state building

accessibility requirements as enforced by the Department of Public Safety.

(b) There ~~shall~~must be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities are not included in this ratio.

(c) Each lavatory sink ~~shall~~must be at least of standard size and ~~shall~~must be equipped with hot and cold running water, soap, and, if used by multiple residents, paper towels.

(d) Each bathtub and shower ~~shall~~must be constructed and enclosed so as to ensure adequate space and privacy while in use.

(e) Resident lavatories and toilets ~~shall~~must not be used as utility rooms.

#### 9.4 Recreation and Dining Rooms

(a) All residences ~~shall~~must provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.

(b) Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.

(c) Dining rooms ~~shall~~must be of sufficient size to seat and serve all residents of the residence at the same time.

(d) Smoking ~~shall~~must not be permitted inside the building.

#### 9.5 Residence Requirements for Persons with Physical Disabilities

(a) Each residence ~~shall~~must be accessible to and functional for residents, personnel and members of the public with physical disabilities in compliance with the Americans with Disabilities Act of 1990, as amended.

(b) Residents who are blind or have mobility impairments ~~shall~~must not be housed above the first floor unless the residence is in compliance with all applicable codes, regulations and laws as required by the Department of Public Safety.

#### 9.6 Plumbing

(a) All plumbing ~~shall~~must operate in such a manner as to prevent back-siphonage and cross-connections between potable and non-potable water. All plumbing fixtures and any part of the water distribution or sewage disposal system ~~shall~~must operate properly and be maintained in good repair.

(b) Plumbing and drainage for the disposal of sewage, infectious discharge, household and institutional wastes ~~shall~~must comply with all



State and Federal regulations.

(c) All plumbing fixtures ~~shall~~must be clean and free from cracks, breaks and leaks.

(d) Hot water temperatures ~~shall~~must not exceed 120 degrees Fahrenheit in resident areas.

#### 9.7 Water Supply

(a) Each residence ~~shall~~must be connected to an approved public water supply when available and where said supply is in compliance with the Department of Health's public water system regulations.

(b) If a residence uses a private water supply, said supply ~~shall~~must conform to the construction, operation and sanitation standards published by the Department of Health. Private water supplies ~~shall~~must be tested annually for contamination, and copies of results ~~shall~~must be kept on premises.

(c) Water ~~shall~~must be distributed to conveniently located taps and fixtures throughout the building and ~~shall~~must be adequate in temperature, volume and pressure for all purposes, including firefighting if there is a residential sprinkler system.

(d) In no case ~~shall~~may water from lead pipes be used for drinking or cooking.

(e) The sewage system ~~shall~~must provide sufficient capacity to meet the sanitary needs of the residence at all times.

#### 9.8 Heating

(a) Each residence ~~shall~~must be equipped with a heating system which is of sufficient size and capability to maintain all areas of the residence used by residents and which complies with applicable fire and safety regulations.

(b) The minimum temperature ~~shall~~must be maintained at an ambient temperature of 70 degrees Fahrenheit in all areas of the residence utilized by residents and staff during all weather conditions.

#### 9.9 Ventilation

(a) Residences ~~shall~~must be adequately ventilated to provide fresh air and ~~shall~~must be kept free from smoke and objectionable odors. The residence ~~shall~~must provide good ventilation for comfort and safety.

(b) Kitchens, laundries, toilet rooms, bathrooms, and utility rooms ~~shall~~must be ventilated to the outside by window or by ventilating duct and fan of sufficient size.

## 9.10 Life Safety/Building Construction

All residences ~~shall~~must meet all of the applicable fire safety and building requirements of the Department of Public Safety, Division of Fire Safety.

## 9.11 Disaster and Emergency Preparedness

(a) The licensee or manager of each residence ~~shall~~must maintain a written disaster preparedness plan. The plan ~~shall~~must outline procedures to be followed in the event of any emergency potentially necessitating the evacuation of residents, including but not limited to: fire, flood, loss of heat or power, or threat to the residence.

(b) If the residence is located within ten (10) miles of a nuclear power plant, the plan ~~shall~~must include specific measures for the protection, treatment and removal of residents in the event of a nuclear disaster.

(c) Each residence ~~shall~~must have in effect, and available to staff and residents, written copies of a plan for the protection of all persons in the event of fire and for the evacuation of the building when necessary. All staff ~~shall~~must be instructed periodically and kept informed of their duties under the plan. Fire drills ~~shall~~must be conducted on at least a quarterly basis and ~~shall~~must rotate times of day among morning, afternoon, evening, and night. The date and time of each drill and the names of participating staff members ~~shall~~must be documented.

(d) There ~~shall~~must be an operable telephone on each floor of the residence, at all times. A list of emergency telephone numbers ~~shall~~must be posted by each telephone.

(e) The residence ~~shall~~must arrange appropriate medical or psychiatric care for residents in emergency situations.

(f) The residence ~~shall~~must ensure that adequate staff is available at all times to assist residents to evacuate in an emergency situation.

9.12 When necessary to ensure resident safety, modifications ~~shall~~must be made to the physical plant requirements set forth in this section, with the prior written approval of the licensing agency.

## X. Pets

10.1 A residence may permit pets to visit the residence providing the following conditions are met:

- (a) The pet owner must provide evidence of current vaccinations.
- (b) The pet must be clean, properly groomed and healthy.

(c) The pet owner is responsible for the pet's behavior and ~~shall~~must maintain control of the pet at all times.

10.2 Pets, owned by a resident or the residence, may reside in the residence providing the following conditions are met:

(a) The residence ~~shall~~must ensure that the presence of a pet causes no discomfort to any resident.

(b) The residence ~~shall~~must ensure that pet behavior poses no risk to residents, staff or visitors.

(c) The residence must have procedures to ensure that pets are kept under control, fed, watered, exercised and kept clean and well-groomed and that they are cleaned up after.

(d) Pets must be free from disease including leukemia, heartworm, hepatitis, leptos psoriasis, parvo, worms, fleas, ticks, ear mites, and skin disorders, and must be current at all times with rabies and distemper vaccinations.

(e) Pet health records ~~shall~~must be maintained by the residence and made available to the public.

(f) The residence ~~shall~~must maintain a separate area for feeding cats and dogs other than the kitchen or resident dining areas.

## **XI. Resident Funds and Property**

11.1 A resident's money and other valuables ~~shall~~must be in the control of the resident, except where there is a guardian, attorney in fact (power of attorney), a representative payee who requests otherwise, or where the resident is in a secure residential recovery facility. The residence may manage the resident's finances only upon the written request of the resident. There ~~shall~~must be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.

11.2 If the residence manages the resident's finances, the residence must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the residence or licensee's funds.

11.3 The residence ~~shall~~must have policies in place to protect residents' personal property when not in use.

11.4 The resident ~~shall~~must not be solicited for gifts or other consideration by persons connected with the residence, in any way.

11.5 If it becomes apparent that a resident is no longer capable of managing funds or property, the licensee ~~shall~~must contact the resident's legal representative if any, or the next of kin. If there is no legal representative or next of kin, the licensee ~~shall~~must

contact the licensing agency.

11.6 When a resident is absent without explanation for a period of thirty-one (31) days and there is no responsible person, the licensee ~~shall~~must hold the property for three (3) months. At the conclusion of this period, the property ~~shall~~must be transferred to the governing body of the city or town.

11.7 Each residence ~~shall~~must develop and implement a written policy regarding residents' personal needs. The policy ~~shall~~must be explained to the resident upon admission, with a copy provided to the resident at that time.

(a) The policy ~~shall~~must include a provision that recipients of Supplemental Security Income (SSI) ~~shall~~will retain from their monthly income an amount adequate to meet their personal needs exclusive of all other rates, fees or charges by the residence. The amount ~~shall~~must be sufficient to meet such personal needs as clothing and incidental items, reading matter, small gifts, toiletries, occasional foods not provided by the residence and other such items.

11.8 The licensee, the licensee's relative or any staff member ~~shall~~must not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the residence is permitted to act as the resident's representative payee according to Social Security regulations provided the resident or the resident's legal representative agrees in writing to this arrangement and all other provisions of these regulations related to money management are met.

11.9 No licensee, staff or other employee of the residence may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible.

## **XII. Secure Residential Recovery Facility**

The ~~L~~Legislature has authorized the Commissioner of Mental Health to establish and oversee a secure residential recovery facility owned and operated by the state for individuals who ~~no longer~~ do not require acute inpatient care, but ~~who remain in~~ need ~~of~~ treatment within a secure setting for an extended period of time. The program ~~shall~~must be the least restrictive and most integrated setting for each of the individual residents.

12.1 To obtain and maintain a license to operate a secure residential recovery facility, an applicant or licensee must meet all of the requirements of the Therapeutic Community Residence Licensing Regulations.

12.2 The Department of Mental Health ~~shall~~must obtain approval from the licensing agency prior to operating a secure residential recovery facility, which ~~shall~~will be licensed as a therapeutic community

residence.

12.3 Subject to prior approval by the licensing agency, certain modifications to the licensing requirements may be made in order to ensure the safety of the resident or residents. Safety modifications may be made in the physical plant as noted in 9.12. In addition, the modifications may limit the resident's right to:

- (a) Bring personal furniture to the residence;
- (b) Terminate the relationship with the residence;
- (c) Purchase and self-administer over-the-counter or other medications;
- (d) Refuse to have a photo on file;
- (e) Have visitors; however, a resident's clergy or attorney at law ~~shall~~ must be admitted to visit at all reasonable times; and
- (f) Have or use electronic equipment, including telephones, cell phones and computers.

12.4 The residence ~~shall~~ must be inspected by the licensing agency to determine if the facility is providing the services, staffing, training and physical environment that were outlined in the request for approval.

- (a) A residence may not install a door security system which prevents residents from readily exiting the building without prior approval of the licensing agency.

12.5 A request for approval to operate a secure residential recovery facility ~~as described in 2012 Acts and Resolves No. 160~~ ~~shall~~ must include all of the following:

- (a) A statement outlining the purpose and scope of services to be provided;
- (b) A definition of the characteristics of residents to be served;
- (c) A description and identification of the physical environment;
- (d) The criteria for admission, continued stay and discharge; and
- (e) A description of unit staffing, which ~~shall~~ must include:
  - (1) Staff qualifications and credentials, if applicable;
  - (2) Orientation;
  - (3) In-service education and specialized training; and

(4) Medical management as necessary.

12.6 In addition to the definitions set forth in Section II, above, the following definitions ~~shall~~will apply in a secure residential recovery facility:

(a) "Secure" means, when describing a residential facility, that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(b) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S. A. § 7102 (11), for an individual who ~~has reached a level of psychiatric stability and no longer does not~~ requires acute inpatient care but ~~who does remain~~is in need of treatment as set forth at 18 V.S.A. § 7101 within a secure setting for an extended period of time.

12.7 In addition to the rights set forth in Section VI. above, residents in a secure residential recovery facility ~~shall~~will have the following rights:

(a) The right to receive care in a safe setting and to be free from all forms of abuse.

(b) The right to an attending physician, who ~~shall~~will be responsible for coordinating the resident's care and explaining the diagnosis, possible treatment, expected outcomes, and continuing health care needs to the resident or ~~his or her~~their legal representative. The right to know the identity and professional status of individuals participating in the resident's care, including the right to know of the existence of any professional relationship among individuals who are providing treatment, as well as the relationship to any other health care or educational institutions involved in the resident's care.

(c) The right to make informed decisions about care without coercion and to be provided with an explanation of health status and prognosis, the objectives of treatment, the nature and significant possible adverse effects of recommended treatments and the reasons why a particular treatment is appropriate.

(d) The right to take part in the development and implementation of the plan of care and the right to request treatment; however, the treatment will not be provided if it is unnecessary or inappropriate.

(e) The right to be informed of all evidence-based options for care and treatment, including palliative care, in order to make a fully informed resident choice. If the resident has a terminal illness, ~~he or she has~~they have the right to be informed by a clinician of all available options related to terminal care, to be able to request any, all, or none of the options, and to expect to receive supportive care for the specific option or options available.

(f) The right, except as otherwise allowed by law, to expect that

information relating to treatment as well as treatment records will be kept private and confidential. Treatment information and related records may, however, be used without a resident's permission in any court hearings concerning involuntary treatment. For additional details about potential limitations to confidentiality of medical records, residents should refer to the Notice of Privacy Rights.

(g) The right to refuse medications and specific treatments unless pursuant to a valid court order for involuntary psychiatric medications notwithstanding the provisions of the Rules for the Administration of Nonemergency Involuntary Psychiatric Medications.; ~~however, refusal of court ordered medications or treatments may terminate a resident's right to receive services at a secure residential recovery facility. Psychoactive drugs shall not be administered involuntarily. In the absence of a valid court order, psychiatric drugs may not be administered involuntarily absent an emergency, in which case the procedures outlined in 12.9 et seq. shall will apply.~~

(h) The right to a judicial review of the placement in the facility and to be represented at the hearing by a court-appointed lawyer, free of charge. The lawyer or legal representative, as defined at 2.2 (n), above, ~~shall~~ must have reasonable access to the resident and the facility.

(i) The right to complain or file a grievance about any aspect of the resident's care and treatment. In addition to the rights in section 6.8 above, complaints may be made orally or in writing to any member of the resident's treatment team. If the resident needs help filing a complaint, he or she may request assistance from a staff member. The resident also can seek free and confidential assistance from the designated Vermont protection and advocacy organization by calling (800)834-7890. If the resident is not satisfied with the decision, he or she may appeal, as described in the facility's Complaint Policy.

(1) A resident has a right to lodge a complaint directly with the Department of Mental Health by contacting:

Commissioner, Vermont Department of Mental Health  
~~280 State Drive~~ 166 Horseshoe Drive  
Waterbury, Vermont 05671-~~0701-2010~~ (802) 241-0701

(2) A resident may file a complaint with the following entities:

Medical Practice & Hospital Licensing Board  
Vermont Department of Health  
108 Cherry Street  
Burlington, Vermont 05402  
(802) 863-7200, (800) 464-4343.

Department of Disabilities, Aging and Independent Living, Division of Licensing & Protection  
280 State Drive - HC 2 South

Waterbury, Vermont 05671-2060 (mailing address)  
or  
Adult Protective Services  
280 State Drive - HC 2 South  
Waterbury, Vermont 05671-2060 (mailing address)  
802-241-0342 or toll-free at 1-800-564-1612

*The Department of Disabilities, Aging, and Independent Living is the state agency responsible for licensing and regulating therapeutic community residences and for investigating complaints about abuse, neglect or exploitation.*

(3) A resident may file a complaint with the designated patient representative;

(4) A resident may file a complaint with the designated Vermont protection and advocacy organization; and

(5) A resident may file a complaint with the Mental Health Ombudsman.

(j) The right to request a hearing before a judge to determine whether the involuntary commitment is legal. This is called a right of habeas corpus.

(k) The resident has the right to withdraw ~~his or her~~ their consent to receive visitors. The facility's Resident Handbook and Visitors' Policy ~~shall~~ must contain the specifics of resident visitation rights.

(l) The right to treatment under conditions that are most supportive of the resident's personal privacy and the right to talk with others privately. The resident's doctor may limit these rights only if necessary to protect the resident's safety or the safety of others.

(m) The right to sell or otherwise dispose of property, and to carry out business dealings.

(n) The right to refuse to participate in any research project or clinical training program.

(o) The right to receive an itemized, detailed, and understandable explanation of the charges incurred in treatment, regardless of the source of payment.

(p) The right to receive professional assessment of pain and professional pain management.

(q) The right to be informed in writing of the availability of hospice services and the eligibility criteria for those services. Whenever possible, agents, guardians, reciprocal beneficiaries, or immediate family members have the right to stay with terminally ill residents 24 hours a day.



(r) The right to expect that within its capacity, the facility ~~shall~~ will respond reasonably to a resident's request for services. The right ~~shall~~ includes, if physically possible, a transfer to another room or place if another person in that room or place is disturbing the resident. When medically permissible, a resident may be transferred to another facility only after receiving complete information and explanation concerning the needs for and alternatives to such a transfer. The institution to which a resident is transferred must first have accepted the resident for transfer.

(s) The right to expect reasonable continuity of care and to be informed of any continuing health care requirements following discharge.

(t) The right to know the maximum resident census and the full-time equivalent numbers of registered nurses, licensed practical nurses, and psychiatric technicians who provide direct care for each shift on the unit where the resident is receiving care.

12.8 A variance ~~shall~~ will not be granted from a regulation pertaining to residents' rights without the consent of the resident of the secure residential recovery facility, and ~~shall~~ will not be effective unless a patient representative, an ombudsman, a recognized member of the clergy, an attorney licensed to practice in Vermont, or a legal guardian appointed by a probate division of the superior court signs a statement affirming that ~~he or she has~~ they have explained the nature and effect of the variance to the resident and that the resident has understood and consented to the variance without pressure or coercion.

## 12.9 General Provisions for Emergency Involuntary Procedures

(a) The State of Vermont is committed to establishing and maintaining a treatment environment in a secure residential recovery facility that is safe, clinically effective and non-violent. Facility staff providing treatment for residents must be trained in non-physical, non-coercive skills and attitudes that emphasize the prevention of emergencies.

(b) The secure residential recovery facility shall must continuously explore ways to prevent, reduce and strive to eliminate restraint, seclusion, and emergency involuntary medications through education, training, and effective performance initiatives.

(c) The facility shall must ensure that emergency involuntary procedures are used only in emergency situations in accordance with generally accepted professional standards of care and the standards established herein. The facility also shall must ensure that emergency involuntary procedures are used as safety measures of last resort. The standards for the use of emergency involuntary procedures are being implemented with the intention of preventing or minimizing violence in a manner consistent with the principles of recovery and cognizant of the impact of trauma in the lives of many committed individuals. The standards are designed to protect and promote each resident's rights while at the same time protecting residents and others from harm.

(d) The State of Vermont has established standards, as well as rights and protections that reflect evidence-based best practices, aimed at reducing the use of emergency involuntary procedures of seclusion, restraint or emergency involuntary medication on individuals in the custody or temporary custody of the Commissioner of the Department of Mental Health. In addition, the standards require the personnel performing emergency involuntary procedures to receive training and demonstrate competency in the use of these procedures.

(e) The rules in this section regarding emergency involuntary procedures apply to adults and children in the custody or temporary custody of the Commissioner of Mental Health who are admitted to a secure residential recovery facility. The rules are adopted pursuant to the 2012 Acts and Resolves No. 79, Sec. 33a, as amended by the 2015 Acts and Resolves No. 21, as well as the 2018 Acts and Resolves No. 200.

(f) For the purposes of this and the following subsections, these specific definitions ~~shall~~will apply:

1. "Advanced Practice Registered Nurse" means a licensed registered nurse authorized to practice in Vermont who, because of specialized education and experience, is authorized to perform acts of medical diagnosis and to prescribe medical, therapeutic or corrective measures under administrative rules adopted by the Vermont Board of Nursing.

2. "Depot medication" means a chemical form of certain anti-psychotic medication that is injected intra-muscularly and allows the active medication to be released over an extended time frame.

3. "Emergency" means an imminent risk of serious bodily harm to the patient or others.

4. "Emergency Involuntary Medication" means one or more medications administered against a patient's wishes without a court order. See also restraint, below.

5. "Emergency Involuntary Procedures (EIP)" means restraint, seclusion, or emergency involuntary medication.

6. "Emergency Involuntary Procedures Review Committee" means the committee appointed by the Commissioner of the Department of Mental Health to review emergency involuntary procedures involving individuals in the custody of the Commissioner of the Department of Mental Health in Vermont.

7. "Licensed Independent Practitioner" means a physician, an advance practice registered nurse licensed by the Vermont Board of Nursing, or a physician assistant licensed by the Vermont Board of Medical Practice.

8. "Non-Physical Intervention Skills" mean strategies and techniques of communication that do not involve physical contact, such as active listening, conversation and recognition of an

individual's personal, physical space and that include a willingness to make adjustments for the individual's needs.

9. "Physician Assistant" means an individual qualified by education and training and licensed by the Vermont Board of medical practice to whom a physician can delegate medical care. A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician.

10. "PRN Order" means a standing order, an abbreviation of the Latin term pro re nata, which means "as needed" or "as circumstances require."

11. "Restraint means any manual method, physical hold or mechanical device, material or equipment that immobilizes or reduces the ability of a resident to move their arms, legs, body or head freely, or a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the resident's freedom of movement and is not a standard treatment for the resident's condition.

12. "Seclusion" means the involuntary confinement of a resident alone in a room or area from which the resident is physically or otherwise prevented from leaving.

13. "Specially-Trained Registered Nurse" means a registered nurse (RN) who has been trained to conduct an assessment of a resident for whom one or more emergency involuntary procedures have been ordered in accordance with the requirements specified in 12.10 below.

#### 12.10 Emergency Involuntary Procedures

(a) General Policy. All residents have the right to be free from physical or mental abuse, including corporal punishment. All residents have the right to be free from restraint, seclusion, or involuntary medication imposed as a means of coercion, discipline, convenience or retaliation by staff or used as part of a behavioral intervention, and the right to have their care be trauma-informed.

1. Upon admission or at the earliest reasonable time, with the resident's permission, staff ~~shall~~must work with the resident and their family, caregivers, and the health care agents (if any) to identify strategies that might minimize or avoid the use of emergency involuntary procedures.

i. Staff ~~shall~~must obtain written permission from the resident to contact the resident's family. The permission sheet ~~shall~~must state that the resident may refuse to give staff permission to speak with family members.

ii. Staff ~~shall~~must also discuss the resident's preferences regarding the use of such procedures should they become necessary. Although the facility is not obligated to follow the resident's preferences, resident preference ~~shall~~must be considered when determining the least intrusive and least restrictive emergency

involuntary procedure to use to address the imminent risk of harm. The information about the patient's preferences shallmust be made accessible to direct care staff to refer to when a patient is exhibiting signs of escalation.

iii. Staff shallmust inquire about the existence of an advanced directive with the resident or their legal guardian and also shallmust check the Advanced Directive Registry. If an advanced directive exists, a copy shallmust be placed in the resident's medical record and staff shallmust be made aware of it and shallmust refer to it with regard to emergency involuntary procedures, if applicable.

2. Emergency involuntary procedures may only be used to prevent the imminent risk of serious bodily harm to the resident, a staff member, or others and must be discontinued at the earliest possible time based on an individualized resident assessment and re-evaluation. Whenever feasible, a resident shallmust be offered an opportunity to cooperate before and during an emergency involuntary procedure.

3. The decision to use emergency involuntary procedures is not driven by diagnosis, but by an individual resident assessment.

4. Emergency involuntary procedures may be used only when other interventions have been attempted and been unsuccessful or when they have been considered and determined to be ineffective, or when a resident is attempting to cause serious bodily harm to him or herself or to others and immediate action is necessary.

5. The use of seclusion or restraint may be initiated by a trained registered nurse or a licensed independent practitioner who has personally observed the emergency. An individual who is not licensed to prescribe medication may not initiate emergency involuntary medication. Staff members trained in accordance with section 12.13 (below) may initiate a manual restraint if a resident is attempting to cause serious bodily harm to self or others and immediate action is necessary.

6. The use of emergency involuntary procedures shallmust be documented. The documentation shallmust include a description of specific behaviors justifying the use of the procedures.

7. Residents shallmust be specifically informed that they have a right to have an attorney, other designee, or specified individual notified when emergency involuntary procedures are used.

8. Every effort shallmust be made not to use uniformed security guards when implementing emergency involuntary procedures. When security guards are used, documentation shallmust substantiate the need for such response after initial response by staff is assessed as not being sufficient to prevent the imminent risk of serious bodily harm to residents and staff.

9. There shallmust be no protocol, written or unwritten, that requires a resident to ingest oral PRN medications as a condition of

release from seclusion or restraint.

10. The facility shallmust not use law enforcement officers to implement emergency involuntary procedures. Firearms, electronic devices, pepper spray, mace, batons and other similar law enforcement implements shallmust not be used to implement emergency involuntary procedures. The only permissible use of such devices is for the purpose of law enforcement.

(b) Use of Emergency Involuntary Procedures

The use of emergency involuntary procedures must be:

1. In accordance with a written modification to the resident's plan of care; and

2. Implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by facility policy in accordance with this rule.

(c) Orders for Emergency Involuntary Procedures

1. The use of emergency involuntary procedures must be in accordance with the order of a licensed independent practitioner as defined in this rule who is responsible for the care of the resident and authorized to order seclusion, restraint, or emergency involuntary medication by facility policy.

2. If, on the basis of person observation, any trained staff member believes an emergency exists, a licensed independent practitioner or specially trained registered nurse shallmust be consulted immediately.

3. A protocol cannot serve as a substitute for obtaining a licensed independent practitioner's order for each episode of emergency involuntary procedure use.

4. Orders for the use of emergency involuntary procedures must never be written as a standing order or on an as-needed (PRN) basis.

(d) Timeframes for Emergency Involuntary Procedures

1. The order for restraint or seclusion must be obtained either during the emergency application of the restraint or seclusion or immediately after the restraint or seclusion has been applied.

2. The attending licensed health care provider who is responsible for the management and care of the resident must be notified as soon as possible if the attending physician did not order the emergency involuntary procedure. The notification may occur via telephone.

3. When an order for emergency involuntary procedure has been

obtained pursuant to (c) above, the resident must be seen face-to-face within one (1) hour after the initiation of the intervention by a licensed independent practitioner or a specially trained registered nurse. The specially trained registered nurse must consult the licensed independent practitioner who is responsible for the care of the patient as soon as possible after completing the face-to-face assessment. The assessment must evaluate:

- i. The resident's immediate situation;
  - ii. The resident's reaction to the intervention;
  - iii. The resident's medical and behavioral condition;
- and
- iv. The need to continue or terminate the emergency involuntary procedure.

4. If the continued use of restraint or seclusion is deemed necessary based on an individualized patient assessment, another order is required. No order for restraint or seclusion shallmay exceed two (2) hours for adults and for children and adolescents older than nine (9) years of age or one (1) hour for children under nine (9) years of age.

5. The licensed independent practitioner who is responsible for the care of the resident must see and assess the resident before writing a new order for the use of restrain or seclusion if the resident has been in seclusion or restraint for twelve (12) hours.

(e) Observation and Assessment

1. The condition of the resident who is restrained or secluded must be observed by staff who is trained and competent to perform this task at an interval determined by the licensed independent practitioner but no less often than every fifteen (15) minutes.

2. The resident shallmust be monitored by a licensed independent practitioner or by a specially trained registered nurse to determine the continued need for the emergency involuntary procedure.

3. Facility policies are expected to guide staff in determining appropriate intervals for assessment and monitoring based on the individual needs of the resident, the resident's condition, and the type of restraint or seclusion used, but no less often than every fifteen (15) minutes. Any such policy shallmust be reviewed as part of the facility approval process.

4. Depending on the resident's needs and situational factors the use of restraint or seclusion may require either periodic or continual monitoring and assessment.

5. The facility shallmust debrief staff following every incident involving the use of emergency involuntary procedures. The

facility shallmust also give residents reasonable opportunities to debrief within twenty-four (24) hours of the resolution of every such incident. The debriefing shallmust include, at a minimum, those elements that have been required by the Department of Mental Health for hospitals.

(f) Documentation of Emergency Involuntary Procedures

1. The use of all emergency involuntary procedures, including any determination made in accordance with (g) below, must be documented in the resident's medical record.

2. The facility shallmust use a form provided by the Department of Mental Health that specifies the elements the facility must document for each emergency involuntary procedure order for residents in the custody of the Commissioner for the purposes of oversight and review.

3. The facility shallmust submit the documentation on at least a monthly basis to the Commissioner of the Department of Mental Health.

4. The documentation shallmust describe, at a minimum, the following:

i. The necessity for the action taken to control the emergency;

ii. The expected or desired result of the action on the resident's behavior or condition;

iii. Whether alternatives were considered or used, and why they were ineffective to prevent the imminent risk of serious bodily harm;

iv. The risks of adverse side effects; and

v. When used in combination, the basis for the determination by the licensed independent practitioner that the use of a single emergency involuntary procedure would not have been effective to prevent the imminent risk of serious bodily harm.

(g) Use of Emergency Involuntary Procedures in Combination

Emergency involuntary procedures may be used in combination only when, in the clinical judgment of the licensed independent practitioner, a single emergency involuntary procedure has been determined to be ineffective to protect the resident, a staff member, or others from the imminent risk of serious bodily harm.

1. An assessment of the resident must determine that the risks associated with the use of a combination of emergency involuntary procedures are outweighed by the risk of not using a combination of emergency involuntary procedures.

2. Other interventions do not always need to be tried, but they must be considered by the practitioner to be ineffective to protect the patient or others from the imminent risk of serious bodily harm.

3. The use of restrain only for the purpose of administering a court-ordered involuntary medication is not considered the use of a combination of emergency involuntary procedures.

#### 12.11 Additional Requirements for Emergency Involuntary Procedures

##### (a) Emergency Involuntary Medication

1. Emergency involuntary medication shallmay only be ordered by a psychiatrist, an advanced practice registered nurse licensed by the Vermont Board of Nursing in psychiatric nursing, or a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist.

2. Personal observation of an individual prior to ordering emergency involuntary medication:

i. ShallMust be conducted by a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist if the physician assistant is issuing the order.

ii. May be conducted by a psychiatrist or an advanced practice registered nurse licensed by the Vermont Board of Nursing in psychiatric nursing if the psychiatrist or advanced practice registered nurse is issuing the order. If a psychiatrist or advanced practice registered nurse does not personally observe the individual prior to ordering emergency involuntary medication, the individual shallmust be observed by a registered nurse trained to observe individuals for this purpose or by a physician assistant.

3. Emergency involuntary medication shallmay be used on a time-limited, short-term basis and not as a substitute for adequate treatment of the underlying cause of the resident's distress.

4. When necessary to administer involuntary medication by injection in emergency situations, a non-depot medication that is consistent with current American Psychiatric Association practice guidelines shallmust be used.

5. When the use of emergency involuntary medication has been ordered, the resident shallmust be offered oral medication prior to the implementation of the order.

6. If possible and where clinically appropriate the facility shallmust give the resident a choice of injection sites and shallmust follow that preference if medically safe.

7. A resident who has received emergency involuntary medication shallmust be monitored for adverse effects at least every fifteen (15) minutes for as long as clinically indicated following the



administration of emergency involuntary medication. Each observation shallmust be documented.

(b) Seclusion

1. The placement of a resident in seclusion and the duration of its use shallmust be kept to a minimum, consistent with the safe and effective care of residents. The use of seclusion shallmust adequately accommodate a resident's physical and environmental needs without undue violation of their personal dignity.

2. Seclusion is not just confining a resident to an area, but involuntarily confining the resident alone in a room or area where the resident is physically prevented from leaving. If a resident is restricted to a room alone and staff are physically intervening to prevent the resident from leaving the room or giving the perception that threatens the resident with physical intervention if the patient attempts to leave the room, the room is considered locked, whether the door is actually locked or not.

3. Only a licensed independent practitioner may order seclusion of a resident.

4. Within one (1) hour of the initiation of the procedure, individuals placed in seclusion shallmust be assessed by a licensed independent practitioner or specially trained registered nurse. If assessed by a specially trained registered nurse, that individual must consult the licensed independent practitioner who is responsible for the care of the resident as soon as possible after completing the assessment. This assessment must occur face-to-face and shallmust include, but not be limited to, as assessment of:

i. The individual's physical and psychological status;

ii. The individual's behavior;

iii. The appropriateness of the intervention measures;

iv. Any complications resulting from the intervention; and

v. Whether the individual is aware of what is required to be released from seclusion.

5. A resident in seclusion shallmust be observed continuously by a staff member who has successfully completed competency-based training on the monitoring of persons in seclusion and the observation shallmust be documented no less often than every fifteen (15) minutes.

6. At least hourly, a specially trained registered nurse must assess the continued need for the emergency seclusion intervention and document the assessment and ongoing need for the intervention.

7. The seclusion shallmust be ended at the earliest possible time that the resident no longer is considered an imminent risk of serious bodily harm.

(c) Restraint

1. The involuntary placement of a resident in restraints shallmay occur only in emergency circumstances and in the least intrusive and least restrictive manner.

2. Restraints are to be applied in the least intrusive and least restrictive manner, providing for padding and protection of all parts of the body where pressure areas might occur by friction from mechanical restraints.

3. Residents in restraints shallmust be encouraged to take liquids, shallmust be allowed reasonable opportunity for toileting, and shallmust be provided appropriate food, lighting, ventilation and clothing or covering.

4. Mechanical restraints shallmust not be used when the resident is in a prone position.

5. Only a licensed independent practitioner may order the restraint of a resident.

6. A licensed independent practitioner or specially trained registered nurse shallmust assess the resident within one (1) hour of the application of the restraints. If assessed by a specially trained registered nurse, that individual must consult the licensed independent practitioner who is responsible for the care of the resident as soon as possible after completing the assessment. This assessment must occur face-to-face and shallmust include, but not be limited to, an assessment of:

i. The individual's physical and psychological status;

ii. The individual's behavior;

iii. The appropriateness of the intervention measures;

iv. Any complications resulting from the intervention; and

v. Whether the individual is aware of what is required to be released from restraint.

7. A resident in restraints shallmust be observed continuously by a staff member who has successfully completed competency-based training on the monitoring of persons in restraint. The observation shallmust be documented no less often than every fifteen (15) minutes.

8. The restraint shallmust be ended at the earliest possible time that the resident no longer is considered an imminent risk of serious bodily harm.

#### 12.12 Notice Requirements

##### (a) Medical Record

The facility medical record shallmust include documentation about the use of emergency involuntary procedures. The record shallmust include all of the elements specified by the Department of Mental Health. Reports of the use of emergency involuntary procedures shallmust be sent to the Department of Mental Health on a monthly basis.

##### (b) Guardian or Agent

The court-appointed guardian of the resident and any health care agent of the resident under an advance directive that is in effect shallmust be notified of every emergency involuntary procedure(s) as soon as practicable but not later than twenty-four (24) hours from each application.

##### (c) Other Notice

The facility shallmust inform residents about their right to have someone notified whenever an emergency involuntary procedure is applied to them. With the resident's consent, any person identified by the resident, including a health care agent, shallmust be notified of the use of emergency involuntary procedure(s) as soon as practicable but not later than twenty-four (24) hours from each application.

#### 12.13 Staff Training

##### (a) General

The resident has the right to safe implementation of emergency involuntary procedures by trained staff.

##### (b) Specific Training Requirements

1. Any staff members who participate in emergency involuntary procedures must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment (if applicable) and providing care for a resident in restraint or seclusion before performing any of the actions specified in this paragraph, as part of orientation and subsequently on a periodic basis consistent with the facility policy based upon the chosen seclusion and restraint methodology. Only staff members trained in seclusion and restraint procedures shallmay perform them.

2. The facility shallmust require staff who may implement emergency involuntary procedures to have education, training (both initial and on-going), and demonstrated knowledge based on the specific needs of the resident population in at least the following:

- i. The use of non-physical intervention skills;
- ii. Choosing an intervention based on an individualized assessment of the resident's medical or behavioral status or condition;
- iii. The safe application and use of all types of restraint or seclusion used in the facility, including training in how to recognize and respond to signs of physical and psychological distress;
- iv. Clinical identification of specific behavioral changes that indicate that emergency involuntary procedures are no longer necessary;
- v. Monitoring the physical and psychological well-being of the resident who is restrained or secluded, including but not limited to respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by facility policy associated with the one-hour face-to-face evaluation;
- vi. Individuals providing staff training must be qualified as evidenced by education, training, and experience in interventions used to address residents' behaviors;
- vii. The facility must document in the staff personnel records that the training and demonstration of competency were successfully completed; and
- vii. The recognition of a resident's history in the provision of trauma-informed care and in a culturally sensitive manner, including, but not limited to, a history of sexual or physical assault or incest.

3. Training for a registered nurse (RN) or physician assistant (PA) to conduct the one-hour face-to-face evaluation ~~shall~~ must include all of the training requirements in this section as well as an evaluation of the resident's immediate situation, the resident's reaction to the intervention, the resident's medical and behavioral condition, and the need to continue or terminate the seclusion or restraint.

4. The facility ~~shall~~ must provide trauma-informed training to staff who may implement emergency involuntary procedures.

(c) The facility ~~shall~~ must maintain the competency and training records of the facility.

#### 12.14 Oversight and Performance Improvement

(a) Facility leadership is responsible for creating a culture that supports a resident's right to be free from restraint and seclusion.

1. The facility must ensure that systems and processes are

developed, implemented, and evaluated that support residents' rights and that eliminate the inappropriate use of emergency involuntary procedures.

2. The facility ~~shall~~must report each instance of the use of emergency involuntary procedures to the Emergency Involuntary Procedures Committee created by the Department of Mental Health, using the measurement specifications and format approved by the Department of Mental Health.

3. The facility ~~shall~~must identify an internal performance improvement process for regularly meeting and reviewing its training, the adequacy of the documentation, and practice trends pertaining to emergency involuntary procedures. Such meetings should occur at regular intervals. Information generated ~~shall~~must be provided to the Department of Mental Health's Emergency Involuntary Procedures Review Committee for use at its quarterly meetings.

4. As part of its quality assurance performance improvement program, the facility ~~shall~~must review and assess its use of emergency involuntary procedures to ensure that:

i. Residents are cared for as individuals;

ii. Each resident's condition, needs, strengths, weaknesses and preferences are considered;

iii. Emergency involuntary procedures are used only to address the imminent risk of serious bodily injury to the resident, staff, and others;

iv. Involuntary emergency procedures are discontinued at the earliest possible time, regardless of the length of the order; and

v. When emergency involuntary procedures are used, de-escalation interventions were ineffective to protect the patient, a staff member, or others from harm.

(b) Medical Director Review

1. As soon as practicable but not later than two (2) working days following an order for an involuntary emergency procedure, the facility's Medical Director, or their designee, ~~shall~~must review the incident.

2. The facility's Medical Director ~~shall~~must report any incident involving the use of involuntary emergency procedures to the Medical Director of the Department of Mental Health, or to their designee.

(c) Death Reporting

1. The facility ~~shall~~must report deaths associated with the

use of emergency involuntary procedures as required in 5.15, above. The death may also be reported to the Commissioner of Mental Health and the Division of Licensing and Protection.

2. Staff ~~shall~~must document in the resident's medical record the date and time the death was reported.

3. The facility must report the following information:

i. Each death that occurs while a resident is in restraint or seclusion;

ii. Each death that occurs within twenty-four (24) hours after the resident has been removed from restraint or seclusion;

iii. Each death known to the facility that occurs within one (1) week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a resident's death.



## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** August 12, 2024, virtually via Microsoft Teams

**Members Present:** Chair Sean Brown, Diane Sherman, Jared Adler, Jennifer Mojo, John Kessler, Michael Obuchowski, Natalie Weill, and Nicole Dubuque

**Members Absent:**

**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Approval of [minutes](#) from the July 8, 2024 meeting.
- No additions/deletions to agenda. Agenda approved as drafted, noting that proposed rules #2-5 and proposed rules #8-11 will be taken up together when presented.
- No public comments made.
- Presentation of Proposed Rules on pages 2-13 to follow.
  1. General Assistance Emergency Housing Assistance Rules, Department for Children and Families, page 2
  2. Health Benefits Eligibility and Enrollment Rule, Eligibility Standards (Part 2), Agency of Human Services, page 3
  3. Health Benefits Eligibility and Enrollment Rule, Nonfinancial Eligibility Requirements (Part 3), Agency of Human Services, page 4
  4. Health Benefits Eligibility and Enrollment Rule, Eligibility-and-Enrollment Procedures (Part 7), Agency of Human Services, page 5
  5. Administrative Rules for Notaries Public, Secretary of State, Office of Professional Regulation, page 6
  6. Licensing and Operating Rules for Therapeutic Community Residences, Department of Disabilities, Aging and Independent Living, page 7
  7. Administrative Rules for Peer Support Provider Certification and Peer Recovery Support Specialist Certification, Secretary of State, Office of Professional Regulation, page 8
  8. Dental Services, Agency of Human Services, page 9
  9. Dental Services for Beneficiaries Under Age 21, and Pregnant and Postpartum Women, Agency of Human Services, page 10
  10. Orthodontic Treatment, Agency of Human Services, page 11
  11. Medical and Surgical Services of a Dentist, Agency of Human Services, page 12
  12. Chiropractic Services, Agency of Human Services, page 13
- Next scheduled meeting is September 9, 2024, at 2:00 p.m.
- 3:26 p.m. meeting adjourned.

**Proposed Rule: Licensing and Operating Rules for Therapeutic Community Residences, Department of Disabilities, Aging and Independent Living**

**Presented By: Stuart Schurr**

Motion made to accept the rule by Sean Brown, seconded by Mike Obuchowski, and passed unanimously except for Natalie Weill who abstained, with the following recommendations:

1. Proposed Filing – Coversheet:
  - a. #8: Include that the rules were already adopted and when.
  - b. #12: Identify the changes to add more clarity.
2. Economic Impact Analysis, #3: Identify or clarify the estimated costs and benefits for all categories.

DRAFT



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JENNEY SAMUELSON  
SECRETARY

TODD W. DALOZ  
DEPUTY SECRETARY

STATE OF VERMONT  
AGENCY OF HUMAN SERVICES

MEMORANDUM

**TO:** Sarah Copeland Hanzas, Secretary of State

**FROM:** Jenney Samuelson, Secretary, Agency of Human Services

A blue ink handwritten signature, appearing to be 'Jenney Samuelson', written over the 'FROM:' line.

**DATE:** August 6, 2024

**SUBJECT:** Signatory Authority for Purposes of Authorizing Administrative Rules

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I hereby designate Kristin McClure, Interim Deputy Secretary, Agency of Human Services as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedures Act, 3. V.S.A § 801 et seq.

CC: KristinMcClure@vermont.gov