



Flint Springs

Associates

**Review of Vermont
Receivership of Long Term
Care Facilities**

Presented to:
Camille George
Deputy Commissioner
Vermont Department of
Disabilities, Aging and
Independent Living

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Executive Summary

In April 2016 a Residential Care Home (RCH) was put into receivership by the Vermont Superior Court at the request of the Vermont Department of Disabilities, Aging and Independent Living (DAIL). While this was only the second time in DAIL's history that a RCH was put into receivership, the similarities of both situations resulted in the inability of the receiver to correct conditions, requiring that immediate steps be taken to find new housing options for residents.

In an effort to prevent future situations from unfolding in a similar manner in long-term care (LTC) facilities DAIL leadership issued a Request for Proposals to "review the most recent receivership, objectively examine the issues that led to the appointment of a receiver, the overall implementation of the receivership and to obtain recommendations regarding how to improve receivership of long-term care facilities in Vermont going forward."

1. Flint Springs Associates (FSA), in partnership with the Lewin Group, conducted the study to provide feedback and recommendations to DAIL in response to six questions. The research included interviews with key stakeholders identified by DAIL and a review of receivership models and legislation in seven states. Information gained from these inquiries led to detailed findings and recommendations. This Executive Summary outlines recommendations to each of the six questions.

1. How can receivership be prevented?
 - DAIL should identify the staff and information technology (IT) resources needed to develop and implement a formal procedure to annually monitor complaints to Adult Protective Services (APS) and Survey and Certification (S&C) for every RCH.

 - DAIL should create a pool of subject matter experts sourced from within DAIL Adult Services Division (ASD) and/or through a set of pre-qualified external consultants willing and able to serve as technical assistance providers to RCHs in trouble.

 - DAIL should coordinate needed technical assistance (TA) through training and mentoring, to owners, licensees and staff of LTCs on issues such as staff treatment of residents, overall clinical care, financial management, administration of the home and maintenance of the physical plant. TA could come from within DAIL or outside consultants.

 - In cases where corrective actions articulated have not been implemented adequately, DAIL should consider exercising its option to notify a non-compliant home that its license to operate will be revoked within 90 days. With that notification DAIL should identify a final set of conditions which, if met within that time frame, could lead to reconsideration of the home's license.

2. If conditions at a RCH/LTC facility warrant setting receivership into motion, what is needed to maintain continuity in staffing so that residents can safely remain in their current housing?
 - To assume management of a home under duress and implement a successful receivership process the following conditions must be in place:
 - A qualified receiver must bring a set of clinical, financial, legal, and administrative skill sets.
 - DAIL should have on hand a list of pre-qualified potential receivers.
 - The receiver should have access to needed information related to clinical records, financial records, legal issues, and administrative concerns.
 - The roles and responsibilities of all stakeholders involved in implementation of the receivership should be clearly defined.

3. If placing a RCH/LTC into receivership ultimately fails to stabilize conditions so that a home cannot be turned back to a licensed manager, what actions are needed and what protocols should be present to guide those actions?
 - DAIL should build and maintain an inventory of willing and pre-qualified residential care homes.

 - To ensure that resident needs, safety and program services can be addressed, DAIL should be ready to exercise, with the Vermont Division of Fire Safety approval, a waiver that would open additional beds.

 - DAIL should convene stakeholders for the purpose of developing a handbook to guide the receivership process.

4. What are the legal and financial ramifications associated with each of these recommendations?
 - DAIL should create a Residential Care Home Manager application process that includes application fees.

 - DAIL should implement a Vermont state model of civil monetary penalties, in which penalties reflect the size and budget of RCHs and take into consideration fines currently collected from RCHs.

 - DAIL could determine when to use new revenues from these two sources to assist:
 - Future Receiverships where the existing facility is financially insolvent and therefore unable to pay for the receiver.
 - Provide more DAIL staff to conduct surveys and proactively provide technical assistance to homes in jeopardy of receiverships provided through DAIL staff and/or other qualified entities.
 - Quality improvement efforts at Residential Care Homes, especially focusing on homes with an ongoing history of findings from Survey and Certification and/or ongoing APS complaints.

5. What models from other states can provide guidance for Vermont's efforts to implement an effective receivership process when and if needed in the future?

The following recommendations are based upon the most relevant findings from research on approaches to receivership in Maine, Massachusetts, Minnesota, Ohio, Rhode Island, Washington and Wisconsin.

- Require a team to fulfill the role of receivership or temporary management.
- Access to a variety of skilled staff.
- Payroll and reimbursement: Receivers or temporary managers need to be able to recreate payroll, as often there are security or proprietary concerns with the existing system used. This includes a focus on reinstating any existing insurances such as liability or worker's compensation policies.
- Access to money and capital: Receivers need to be able to immediately stabilize a very unstable and often historical pattern of financial mismanagement
- Financial management and accuracy: Receivers or management agencies that function as receivers need to be able to have "hit the ground running" capacity to address financial tracking, management of income and expenditures, support for cost reporting, and ensure background checks of staff.
- Information technology/management information systems: expectations and requirements for a minimal set of IT/MIS capabilities should be outlined when considering receivers or management of receiverships. This includes being able to replace existing systems in a seamless manner in order to secure the existing systems and prevent any meddling or interference of the former owner/operator.

6. What changes, if any, should be made to the current legislative model and regulations that pertain to receivership?

- References to "person" in the legislative model should be modified to include "person or entity/entities."
- DAIL, the Assistant Attorney General (AAG) and the Superior Court should work together to create procedures that clarify the roles and responsibilities of the receiver vs. the court, AAG or DAIL.
- RCH/LTC owner funds should be exhausted first before turning to Civil Monetary Penalty funding (CMP) or other funding.
- DAIL's role in providing information to the Court Appointed Receiver should be articulated more clearly.

Introduction: In April 2016 a Residential Care Home (RCH) was put into receivership by the Vermont Superior Court at the request of the Vermont Department of Disabilities, Aging and Independent Living (DAIL) following a history of allegations and concerns with noncompliance, and because of a confluence of events ultimately threatened the health and safety of the residents leading to the decision to transfer all residents to new living situations. While this was only the second time in DAIL’s history that a RCH was put into receivership, the similarities of both situations resulted in the inability of the receiver to correct conditions, requiring that immediate steps be taken to find new housing options for residents.

In an effort to prevent future situations from unfolding in a similar manner in long-term care (LTC) facilities DAIL leadership issued a Request for Proposals to “review the most recent receivership, objectively examine the issues that led to the appointment of a receiver, the overall implementation of the receivership and to obtain recommendations regarding how to improve receivership of long-term care facilities in Vermont going forward.”

Flint Springs Associates (FSA) was awarded the contract and partnered, through a sub-contract, with The Lewin Group, Inc. to conduct this study.

The study focused on gaining feedback from key stakeholders identified by DAIL leadership, exploring detailed questions raised by DAIL and researching receivership legislative models in other states to identify findings and provide recommendations.

A detailed description of the approach used to produce the report is presented in Appendix A.

Findings and Recommendations: In preparing to conduct this study, FSA drafted a set of interview questions and presented them to DAIL leadership for review and comment. Feedback from DAIL’s review focused our efforts to identify findings and provide recommendations on the following questions:

1. How can receivership be prevented?
2. If conditions at a RCH/LTC facility warrant setting receivership into motion, what is needed to maintain continuity in staffing so that residents can safely remain in their current housing?
3. If placing a RCH/LTC into receivership ultimately fails to stabilize conditions so that a home cannot be turned back to a licensed administrator, what actions are needed and what protocols should be present to guide those actions?
4. What are the legal and financial ramifications associated with each of these recommendations?
5. What models from other states can provide guidance for Vermont’s efforts to implement an effective receivership process when and if needed in the future?
6. What changes, if any, should be made to the current legislative model and regulations that pertain to receivership?

1. How can receivership be prevented?

Findings: Feedback from interviews with a variety of stakeholders including DAIL staff and certain community partners noted that prior to the recent receivership multiple complaints had been lodged over a number of years with DAIL's Division of Licensing and Protection (DLP) about the Cota home. However, prior to this year follow-up to and investigation of those complaints by Survey and Certification (S&C) staff could not be substantiated as the individuals who complained backed down from providing information to S&C staff, fearing possible retribution by the owner. The most recent complaints reportedly were submitted by newer residents who were unhappy with certain conditions in the home, had more willingness to advocate for themselves and therefore were willing to back up their complaints by talking with S&C staff. In essence within DAIL and in the larger community of providers and advocates varying degrees of concern existed about both the physical conditions of the facility and importantly about how residents were treated by its owner.

Recommendations: When asked what measures could be put in place toward preventing the need for placing a residential care home in receivership several ideas were put forward. After careful review, the research team presents the following recommendations for DAIL to consider implementing. These recommendations have fiscal and information technology implications that are addressed in question #4, below.

- DAIL should identify the staff and information technology (IT) resources needed to develop and implement a formal procedure to monitor complaints to both Adult Protective Services (APS) and Survey and Certification (S&C) annually for every RCH. Using state surveys, S&C staff should prepare a list that documents all complaints within a given year. This list should be formally reviewed by DAIL and the Vermont Long-Term Care Ombudsman Program and be available for review upon request by public guardians and community providers. This documentation should lead to the identification of frequent and/or consistent conditions of concern that could benefit from proactive responses.
- Create a pool of technical assistance providers sourced from DAIL Adult Services Division (ASD) staff and/or through a set of pre-qualified subject matter experts willing and able to serve as technical assistance providers to homes in trouble.
- Provide various forms of technical assistance, as needed, including, but not limited to mentoring and training for owners, licensees and staff. Technical assistance available could focus on issues such as staff treatment of residents, overall clinical care, financial management, administration of the home and maintenance of the physical plant.
- In cases where corrective actions articulated have not been implemented adequately, DAIL should be willing to notify a non-compliant home that its license to operate will be revoked within 90 days. With that notification DAIL should identify a final set of conditions which, if met within that time frame, could lead to reconsideration of the home's license.

If the home is unable or unwilling to meet those conditions, the 90 day timeframe will allow DAIL to engage in meaningful planning with residents, families, community partners, and other RCH providers to identify appropriate placements. In this event DAIL should have a set of protocols in place that:

- Identify roles and responsibilities of DAIL staff, who is in charge overall, and articulate who reports to whom.
- Provide guidance and contact information for communications between DAIL staff and involved community partners, including what should be communicated to whom/by whom, and in what timeframe once this decision is implemented.

Importantly, DAIL should identify resources necessary to maintain a current census of empty beds in each facility and identify those beds by program. This would require additional staff and development of IT capacity within DAIL as well as cooperation from providers who would be responsible for reporting census information on an ongoing basis.

The 90-day notification period will help address anxiety and reduce the potential trauma to residents by providing time to prepare residents, answer their questions, consider their needs, and importantly, include their ideas and desires for new housing as a central consideration in finding a new residence.

2. If conditions at a Residential Care Home (RCH) warrant setting receivership into motion, what is needed to maintain continuity in staffing so that residents can safely remain in their current housing?

Findings: In the rare but critical time when DAIL determines the need to petition the court to place a licensed facility under receivership a significant degree of preparedness is required that should help the appointed receiver “right the ship” and return the facility to an acceptable level of functioning.

First, DAIL needs to help the court by identifying at least three potential people or entities willing and able to assume receivership. The role of receiver is not a simple one. Feedback from the majority of stakeholders interviewed noted that a multitude of skill sets are required that one individual likely does not possess. A successful receiver should bring competence in clinical, legal, financial and administrative areas.

In the event of the most recent receivership, interviews with stakeholders indicated the following:

- DAIL was able to identify only a limited number of individuals willing to consider serving as the receiver.
- The person who accepted the position had no previous experience as a receiver but was identified because of her experience managing another facility in the southern part of the state.
- DAIL indicated that assuming receivership would not require a 40 hour per week (i.e., full time) responsibility.

- By her own admission, the receiver had not fully apprised herself of the responsibilities of receiver as laid out in statute prior to accepting the court appointment.
- In advance of the receiver accepting the position, the receiver did not ask about any detailed information about the home in terms of:
 - current residents and their care needs
 - the APS and survey history of the home
 - the physical plant condition of the home
 - staffing levels

Once on site the receiver encountered significant challenges in the form of:

- Anger and manipulation of facility staff by the owner and a staff person who was also the owner's girlfriend resulting in the abandonment of clinical and direct care staff.
- Resistance and outright hostility from the owner leading to safety concerns for the residents, receiver and temporary contract staff and resulting in an inability to keep the home staffed.
- Resident and family member anxiety, concern and desire for clear information about what the receivership would mean for their housing stability.
- Inadequate time to create a team of staff needed to address clinical, financial, legal and administrative responsibilities.

During her time on-site the receiver had daily conversations with DAIL legal staff and staff from S&C. And while she was able to engage part-time onsite assistance from another individual with prior receivership experience, the inability to find and retain nursing staff and therefore provide the necessary clinical care resulted in the decision to relocate residents, all within a two-week period.

Recommendations: In order for a receiver to walk into a home under duress and implement a successful receivership process a set of conditions should be met which are related to: the receiver's skill sets; the preparedness of DAIL to identify qualified entities; the provision of needed information to the receiver; and, the articulation of roles and responsibilities of all stakeholders.

Receiver Skill Sets - Feedback from both DAIL staff and many Community Partners acknowledged that a receiver must bring to the job of "righting the ship" multiple skills including clinical, financial, legal and administrative. Finding all these in one individual is probably unrealistic and suggests that the appointed receiver comes with the ability to bring a team of persons who possess these skills. The question of whether receivership should be put in the hands of an individual or a company is probably not an either/or proposition. The form of the structure is less important than the content of the structure. Therefore, if an individual receiver can put together a team with needed skills sets in a timely manner and manage that team so that the clinical needs of residents are addressed, the finances and financial obligations of the home are dealt with, and the legal issues are attended to, that structure would be equally adequate to hiring a company/entity to provide the same skills. As long as the appointed receiver brings the skills needed to uphold the responsibilities laid out in the statute and regulation, the structure alone may not be an issue. The cost-benefit analysis may play a keener role in landing that decision.

Preparedness of DAIL to Identify Qualified Entities - DAIL should develop a process for having a cadre of pre-qualified individuals and entities available to implement a receivership if and when needed. DAIL should consider sending out a Request for Qualifications (RFQ) in which it describes in detail the positions, roles and responsibilities, skill sets and need for an immediate response. The RFQ should include references to the statute and regulations and describe how the receiver will be compensated. The RFQ should additionally lay out DAIL's responsibilities in interacting with the receiver and identify what information DAIL should ensure the receiver can access. Any respondent to the RFQ should be required to attest that they have read and understood the responsibilities of being a receiver. The list should be updated annually so that existing pre-qualified entities should be contacted to confirm their interest and demonstrate their capacity to stay on the list. Additionally, DAIL annually may issue a new RFQ to identify new talent, and (hopefully) expand the list.

Provision of Needed Information - Once a receiver accepts an appointment by the court, DAIL will be responsible for ensuring that available information is provided regarding the following:

- Residents (history, clinical needs, program services, any other relevant information).
 - family contact information
 - involved community partners
- Survey and certification history of the home.
- Aggregate data of APS history with the home as permitted by law.
- Condition of the building.
- Staffing levels (needed/existing).
- Financial status (stability, debt).
- Legal status (any legal action pending).

Stakeholder Roles and Responsibilities - The success of a receivership can be influenced by the degree to which involved parties understand their own, and each other's roles and responsibilities. Toward that end, within DAIL one person should be identified as having the lead position in dealing with a receivership. Staff in the divisions should understand who is overseeing the work to identify and have a receiver appointed who has the final say when DAIL needs to be involved in decisions, what each division is responsible for and who in that division has what responsibility. DAIL also needs to clarify who is responsible for communicating and coordinating with the chosen receiver, the court and the individual community partners as well as define what should be communicated to whom and in what time frame different communications should take place.

The receiver (an entity or an individual) once appointed should bring in and oversee a team possessing the needed skill sets identified above. The team will be responsible for assessing and acting on all information (listed above) provided by DAIL, including the records of the home with the goal of taking actions intended to turn the facility back to a licensed administrator. Specific to their work will be examination of, in the aggregate or individually as allowed by law, the history of complaints to APS and S&C and responses by the home with an eye toward correcting those complaints, securing financial and physical stability of the home, resolving any pending legal issues, and ensuring that clinical operations relating to medication and care plans are in place.

In addition, the receiver should ensure that the following occurs:

- Residents, staff and the receivership team are safe. Toward that end the receiver should hire 24/7 security minimally during the initial phase of operations. Findings from interviews with individuals involved in the two prior receiverships point out that emotions of the owner and staff can be unpredictable at best and volatile at worst. The immediate, ongoing presence of a paid security detail should be a required safety precaution both for everyone on-site as well as community partners, family members, DAIL staff and anyone else who may come into the facility.
- The receiver should meet immediately and in an ongoing manner with residents, family members and community partners. Residents and family members will have questions. In order to address anxiety and prevent trauma, ongoing communication and provision of information is needed. The receiver should hold group meetings as well as be sure that individual residents and family members have ongoing access to members of the receivership team. Additionally, the receiver should ensure that residents and family members are given an ongoing opportunity to provide input and know their concerns and ideas have been heard.
- The receiver should likewise meet immediately with existing staff in the home, likewise to respond to questions and concerns, provide information and answers where they are known, and to gather input when appropriate from staff. Staff that remain during the receivership have knowledge about residents, the physical plant and other conditions that can be helpful to bringing the home back to optimal working status.

3. If placing a RCH into receivership ultimately fails to correct conditions so that a home cannot be turned back to a licensed administrator, what actions are needed and what protocols should be present to guide those actions?

Findings: The decision to transfer residents from the Cota home to other licensed Residential Care Homes was brought about within nearly two weeks from the initiation of its receivership. The immediate and precipitating reason was the inability to secure and retain licensed nursing staff. Cota's own staff left soon after the receivership was implemented. Another nurse was hired but quickly withdrew. In a final attempt to stabilize medical care, the receiver contacted TLC for temporary nursing staff. TLC said they would provide that, but no staff from that agency reported for duty. According to the receiver TLC did not contact her to explain what was happening.

At that point the receiver contacted DAIL and a decision was made to transfer residents to other homes. Within twenty-four hours all residents had been placed elsewhere. While interviews verify that extraordinary efforts were made by DAIL staff and certain community partners, everyone admits there was no coordinated, well-defined plan for dealing with this situation. Good will, good relationships between DAIL and most community partners, and an overriding concern for the well-being of the residents seem to have mobilized efforts to find homes and willing residential home operators to take in residents.

We received different perspectives from stakeholders interviewed regarding the process to transfer and move residents. While everyone agreed on the commitment of those involved to work through the night, if needed, several of the community partners had significant complaints to lodge.

In a couple of cases, receiving RCHs were told that the placement was temporary and would last for the weekend only. In one situation, a resident would not accept available placements offered. As a result, both the receiving home and the community provider worked for over a month to accommodate the resident's needs and desires. The situation was extremely trying for the home operator and left the community provider and operator angry with DAIL for providing inaccurate information about the probable length of the resident's stay. The situation was further exacerbated by the resident's program status and funding stream which required a lengthy reapplication for funding.

More than one receiving home noted that residents came with no medication charts or medical records, or with incomplete information - and in one case, the wrong medication was delivered with the resident, requiring that DAIL staff return to Cota's to get the correct medication and bring it to the receiving home.

Other community partners described the rather chaotic nature of moving residents and the expectations they felt were made of them to personally transport individuals with their possessions to new homes. In some cases partners were uncomfortable with this expectation but agreed to participate with their client's well-being in mind. Some also noted that DAIL could have provided transportation for clients with all their possessions by using vans - instead of relying on staff with cars. In some cases, clients had more possessions than could be transferred in one car, leaving some possessions to be found later on.

There was a general response that no one understood who was in charge - at DAIL, within DAIL and this was disconcerting. Most community partners who were on-site while efforts were made to find homes had positive impressions of how DAIL staff from Adult Services Division (ASD), S&C, and APS worked in a dedicated manner to find homes.

Community partners reported they'd heard about the evacuation in different ways. One receiving facility said they'd heard about it through the RCH grapevine and went over to Cota's to offer beds and assistance. Another RCH manager received a call from DAIL at 9:00 pm when he was two hours away on a family outing. In response, he concluded family business and drove to Cota's where he accepted and took two residents to his home.

Washington County Mental Health sent two nurses to cover the medication needs during the day and overnight of the move and sent an additional nurse the next morning, at which point all residents had been moved.

In the end, good will and concern for the residents resulted in the majority of the seventeen residents being placed in permanent settings within less than twenty-four hours.

Recommendations: DAIL should have a well-articulated process and set of protocols in place for moving residents into new homes which includes the following elements:

- Build and maintain an inventory of willing and pre-qualified residential care homes. To be prepared for the occurrence in which residents would have to be moved in short notice, DAIL should initiate a process of pre-qualifying homes interested in being ready, willing and able to accept residents. Toward that end, an earlier recommendation that suggested DAIL develop and maintain a current census of empty beds in each facility and identify those beds by program would be relevant to this situation as well. Again, DAIL would need to update the pre-qualification status of homes at least annually, and maintain a current consensus of empty beds in any pre-qualified home. This recommendation will require additional staff and/or investments in Information Technology and data collection efforts. Data collection would include ongoing updates of information, such as full or empty bed data by local RCH providers.
- To ensure that specific resident needs and program services can be addressed, DAIL should be ready to exercise, when needed, a waiver that would open additional beds (e.g., receiving home is licensed for 18 beds but DAIL can grant them a temporary waiver when needed and appropriate to accept more people temporarily). Granting a waiver would require approval from the Vermont Division of Fire Safety.
- Develop a guide book for the receiver and DAIL that outlines:
 - Roles and responsibilities for DAIL, Community Partners and receiving facilities regarding who should be responsible for identifying and contacting potential receiving homes.
 - Communications and notifications that are required, by whom, to whom, in what time frame, detailing what information should be transmitted. This would include notifications to residents and family members, the court, specific staff within divisions at DAIL, and specific community partners providing services to residents.
 - Detailed, concrete steps to be taken in moving residents including what information and records should go with the resident.
 - Structures and resources that should be engaged for moving residents that address how his/her possessions will be transferred, what modes of transportation should be used to transport residents and who can be responsible for transport.
 - The importance of providing information and clarity about the length of time for which a placement is being requested.

DAIL may want to engage a work group made up of former receivers, RCH/LTC operators, community partners, DAIL staff from DLP/S&C, DLP/APS, ASD, Legal, Finance and Commissioners office, interested residents and/or family members to develop a handbook to guide this (hopefully) rare occurrence.

4. What are the legal and financial ramifications associated with each of these recommendations?

Findings: DAIL will need to follow-up and coordinate efforts to implement the above recommendations. Those which carry significant financial and resource implications follow:

- To prevent a receivership in the future will require additional intensive reviews of Residential Care Facilities by DLP Survey and Certification as well as earlier intervention if an RCH/LTC facility appears to be on the brink of failing based on a combination of survey results and/or APS reports. DLP has limited state funding to conduct Residential Care Facility survey work. However, DLP receives federal funding to fulfill its requirements to survey Skilled Nursing Facilities (SNF) and other federally required surveys.

- The Receiver, whether it is an individual or an entity, will likely require additional staff with the requisite skills to carry out the responsibilities of being a receiver. These skills include:
 - Residential Care Home Management
 - Legal
 - Financial management
 - Clinical care
 - Facility management

Recommendations: In order to address the financial constraints additional funding needs to be considered to implement these recommendations.

- Implement Residential Care Home Manager application process with application fees

The Secretary of State licenses Nursing Home Administrators, not Nursing Homes. To become a licensed Nursing Home Administrator one must pay an initial application fee of \$100 with a renewal fee every two years of \$200.

Given the size, staffing and requirements for Skilled Nursing Facilities versus Residential Care Facilities, we suggest that the state implement a Residential Care Home Manager application process with the following fee schedule: \$50 for initial application and a renewal fee for every two years of \$100.

Data provided by DLP demonstrates that the facilities subject to this new Manager application fee would include the 4 categories of licensure that are subject to only state surveys; Residential Care Homes (RCH), Assisted Living Residences (ALR), Therapeutic Community Residences (TCR) and one Home for the Terminally Ill. The totals are as follows:

RCH: 118

ALR: 12

TCR: 38

Home for Terminally Ill: 1

Total number of facilities is: 169

Should the state move forward on this recommendation, in its first year the state would collect \$8450.

- Implement a State version of the federal civil monetary penalty (CMP) process

Findings: The federal government imposes civil monetary penalties on facilities that are subject to federally required surveys such as Skilled Nursing Facilities. The number and amount of penalties sent by the federal government to DAIL in the last three fiscal years follow:

Federal Fiscal Year 14 – 8 CMP's imposed - \$210,535.00 total (5 facilities total)

Federal Fiscal Year 15 – 6 CMP's imposed - \$170,907.50 total (5 facilities total)

Federal Fiscal Year 16 – 7 CMP's imposed - \$147,739.25 total (5 facilities total)

For a three year total of \$529,181.75

Requirements for imposing and collecting CMPs are fully outlined in Appendix C. They are based on the following amounts:

(1) The penalties are within the following ranges, set at \$50 increments:

(i) Upper range - \$3,050-\$10,000. Penalties in the range of \$3,050-\$10,000 per day are imposed for deficiencies constituting immediate jeopardy, and as specified in paragraph (d)(2) of this section.

(ii) Lower range - \$50-\$3,000. Penalties in the range of \$50-\$3,000 per day are imposed for deficiencies that do not constitute immediate jeopardy, but either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm.

(2) Per instance penalty. When penalties are imposed for an instance of noncompliance, the penalties will be in the range of \$1,000-\$10,000 per instance.

Recommendations:

- Implement a Residential Care Home Manager application process with application fees.
- Implement a Vermont state model of civil monetary penalties, in which penalties reflect the size and budget of RCHs and take into consideration fines currently collected from RCHs.
- Use the new revenues from these two sources to assist:
 - Future Receiverships where the existing facility is financially insolvent and therefore unable to pay for the receiver.
 - Provide more DAIL staff to conduct surveys and proactively provide technical assistance to homes in jeopardy of receiverships provided through DAIL staff and/or other qualified entities.
 - Quality improvement efforts at Residential Care Homes, especially focusing on homes with an ongoing history of findings from Survey and Certification and/or ongoing APS complaints.

5. What models from other states can provide guidance for Vermont's efforts to implement an effective receivership process when and if needed in the future?

The recommendations offered above are aligned with findings drawn from our research of Receivership Management practices in the following states: Maine, Massachusetts, Minnesota, Ohio, Rhode Island, Washington and Wisconsin. These states have similar statutory requirements to ours with Maine's requirements almost identical to Vermont's. In our review and summary of methods from other states we found consistency with and validation for our recommendations as described below.

Research on Receivership Management Recommendations: There were limited findings related to studies or reports of receivership management best practices. Use of multiple search terms yielded few results. However, a landmark report written in 2002 - *Termination and Closure of Poor Quality Nursing Homes: What Are the Options?*¹ - offers the most comprehensive, current and relevant research and recommendations on this topic.

The report differentiates between temporary managers and receivership, describing temporary management as a federal remedy whereas receiverships are a legal remedy through the court, including continual judicial oversight.

Based on the extensive research this report conducted, including in-depth study of seven facilities that were involuntarily terminated from participation in the Medicare/Medicaid program as well as research into other state experiences, the following recommendations are offered.

Recommendations:

The selected recommendations below offer the most available and useful information and detail for DAIL's consideration in modifying and refining their approach to receivership, or in consideration of how best to build expectations for receivership or temporary receivership.

- *Require a team:* to fulfill the role of receivership or temporary management. It was reported that the scope and responsibilities of a receiver are too much for one individual to address. This includes a team of consultants covering a broad range of responsibilities such as nursing and personal care, nutrition, information system, and management. Since this report, national receivership management companies have been started which offer a full spectrum of services to support states (as well as facilities) in the receivership process.
- *Access to a variety of skilled staff:* In support of the above recommendation, receivers are often impeded in their ability to affect change if they do not have access to trained staff to stabilize the situation at hand. When reviewing hiring of management firms or management agencies and receivers, this should be added as a consideration in selecting receivers or managing agents/temporary managers.
- *Payroll and reimbursement:* Receivers or temporary managers need to be able to recreate payroll, as often there are security or proprietary concerns with the existing system. This includes a focus on reinstating any existing insurances such as liability or worker's compensation policies.

¹ Wood, Erica F. (2002). *Termination and Closure of Poor Quality Nursing Homes: What Are the Options?*

- *Access to money and capital:* Often the reason for receivership is precipitated by long-term or compounding financial challenges. Receivers need to be able to immediately stabilize a very unstable and often historical pattern of financial mismanagement. In selecting a receiver, there should be an expectation that receivers focus on collecting resources from a variety of payers, cleaning up records, and mitigating and rectifying estranged relationships with vendors.
- *Financial management and accuracy:* Receivers or management agencies that function as receivers need to be able to have “hit the ground running” capacity to address financial tracking, management of income and expenditures, support for cost reporting, and ensure background checks of staff.
- *Information technology/management information systems:* expectations and requirements for a minimal set of IT/MIS capabilities should be outlined when considering receivers or management of receiverships. This includes being able to replace existing systems in a seamless manner in order to secure the existing systems and prevent any meddling or interference of the former owner/operator.

Appendix C provides a detailed summary of findings from research in these seven states.

6. What changes, if any, should be made to the current legislative model and regulations that pertain to receivership?

Findings: The current Vermont legislative model should be changed based on the analysis conducted for this report. The changes are outlined in the recommendations section below.

Recommendations:

- References to “person” in the legislative model should be modified to include “person or entity/entities”
- DAIL, the Assistant Attorney General (AAG) and the Superior Court should work together to create procedures that clarify the roles and responsibilities of the receiver vs. the court, AAG or DAIL
- RCH/LTC owner funds should be exhausted first before turning to Civil Monetary Penalty funding (CMP) or other funding.
- DAIL’s role in providing information to the Court Appointed Receiver should be articulated more clearly.

Based upon our review of existing state regulations, we don’t recommend changes to the regulations.

State regulations, policies or procedures,

- <http://www.dail.vermont.gov/dail-statutes/statutes-dlp-documents/rch-licensing-regulations>,
- <http://www.dail.vermont.gov/dail-statutes/statutes-dlp-documents/assisted-living-regs-final>,
- <http://www.dail.vermont.gov/dail-statutes/statutes-dlp-documents/nursing-home-regulations>,
- <http://www.dail.vermont.gov/dail-statutes/statutes-dlp-documents/licensing-reg-homes-terminally-ill>,
- <http://www.dlp.vermont.gov/regs/adopted-rule-with-effective-date-01-06-14.pdf>.

We understand that adding financial funding options at the state level can be challenging. We believe that the following steps will allow DAIL to pursue these opportunities.

1. RCH/LTC Manager License

DAIL should discuss this option with the following state entities: Department of Vermont Health Access (DVHA), Agency of Human Services (AHS), Agency of Administration (AoA) and the Secretary of State's Office (SOS).

This discussion should review the pros and cons of pursuing a license fee for a new provider which would be administered by the Secretary of State's office. One of the most significant benefits to doing this is it would potentially be a mechanism to allow DAIL/DLP to pursue the state CMP as the RCH/LTC entity would be licensed similar to the state licensing process for skilled nursing facilities (SNF). The rationale for taking this step first is to allow the state to have a mechanism to tie the State CMP to a state licensed facility. Timing of when discussions would happen for this process would be important. State government is going through transition with a new administration so it may take time to pursue this approach. Suggested additional steps:

- DAIL to talk to DVHA and AHS first about this approach.
- DAIL to talk with Secretary of State's Office about steps necessary to pursue this approach.
- DAIL to talk with stakeholders and legislators about this approach.
- DAIL will make a decision about moving forward or not with RCH/LTC administrator license.

2. State Civil Monetary Penalty funding

DAIL should have similar discussions with DVHA, AHS and AoA about establishing state CMP funding. These discussions should also include stakeholders and the legislature. The pros and cons should be reviewed and discussed as well as the uses for the funding. In both prior instances of receivership, the expenses were not significant and DAIL was able to find resources to pay for the receivership. However, the funding could be used for: receiverships, hiring DAIL staff to provide technical assistance in advance of a receivership or for quality assurance efforts in RCH/LTC facilities.

Part of the analyses for CMP includes how much projected income would be provided by a State CMP fund. This could be estimated based on the number of RCH/LTC facilities in Vermont that have had survey findings within the last three years. The analysis should determine how best to adjust federal CMP language into a state statutory framework. Therefore, steps are needed to address both legislative and fiscal processes. DAIL would need to work with state agencies listed previously, if supported by AHS and AoA, then speak with Joint Fiscal Office and Legislative committees of Jurisdiction to discuss this moving forward.

Appendix A: Approach Used to Produce the Report

The FSA research team members met with DAIL leadership in a “kick-off meeting” at the start of the study to agree on the scope of work, specific sources of information for the research, and methods of gathering information.

Sources of Information

DAIL proposed a list of stakeholders who, based on their direct involvement in the receivership of the COTA home should be interviewed for this study. Stakeholders fell into the following categories:

- DAIL leadership
- ASD staff
- DLP S&C staff
- DLP APS staff
- DAIL and DHVA Legal and Finance
- Community partners
- Receiver
- Residents and Family members
- Cota owner and former staff

DAIL sent letters to each of these stakeholders describing the purpose of the study, notifying each that they had been identified to the research team as persons to be interviewed and requesting their willingness to be interviewed.

During the kick-off meeting DAIL and the research team discussed which states outside of Vermont should be looked to for legislative models overseeing the management of receiverships. DAIL identified the following five states as potentially modelling relevant legislation on this topic: Maine, Massachusetts, Ohio, Oregon and Washington. However, it was understood that the research team was not limited to reviewing legislation in these state only.

Methods for Gaining Information

FSA drafted a set of structured interview questions to be administered through group and individual interviews with each of the stakeholder groups which were submitted to DAIL for review. DAIL leadership gathered input from key staff across divisions and provided edits and additions which FSA incorporated into their structured interview protocols. In-person and phone interviews were conducted with stakeholders. In-person interviews were conducted with groups of stakeholders and phone interviews in all but one case were conducted with individual stakeholders. Two members of the research team attended all in-person interviews and conducted several of the individual phone interviews together. However, some individual phone interviews were conducted by one member of the research team in order to accommodate the availability of the interviewee. The interviewers took detailed written notes of responses to questions. A review of these notes revealed key themes and findings described in the body of the report. Final structured interview questions asked of each stakeholder group are included in this Appendix.

The research team identified and reviewed legislative models regarding the managements of receiverships in seven states including Maine, Massachusetts, Ohio, Oregon, Rhode Island, Washington and Wisconsin. A summary of findings and recommendations is included in the body of the report. Appendix B provides a detailed description of the research from each state.

1. List of Key Stakeholders Identified

- a. DAIL
 - i. Leadership
 - ii. DLP/APS
 - iii. ASD
 - iv. DLP/S&C
 - v. Finance and Legal
 - vi. Public Guardian - asked same questions as a Community Partner
- b. DVHA Finance and Legal
- c. Community Partners
 - i. DMH
 - ii. WCMH
 - iii. DOC
 - iv. CVCOA
 - v. Ombudsman
 - vi. VHCA
 - vii. Receiving RCH administrators
- d. Receiver and Assistant Receiver
- e. Cota owner
- f. Cota former staff
- g. Residents and Family Members

2. **Structured Interview Questions by Stakeholder Group**

DAIL Structured Interview Questions: Leadership *Introduction* - Provide a *brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.*

1. What were the steps you went through to decide that a receivership was needed?
 - a. Who was involved in the decision-making process?
 - b. Ultimately, what led to the decision?
 - c. Once decided, what were your next steps?
2. How did the court process proceed and who was involved in the process at Court?
3. How was the receiver selected?
 - a. Funding availability/resources
 - b. In-state or out-of-state? (factors at play: experience in VT, expense?)
 - c. Skill sets and qualifications needed?
 - i. to come in and manage business that is failing
 - d. What were the resources to keep the facility operating during the receivership?
 - e. What were the Pros/cons of individual vs company to serve as receiver?
4. In what ways did DAIL work with the receiver to come up with a plan for instituting and implementing the receivership?
 - a. How did the plan evolve/change over time?
 - b. What were the key challenges and conflicts that emerged in implementing the receivership plan?
 - c. How were the challenges and conflicts resolved?
5. In what ways did DAIL support the receiver?
 - a. How did the state assist the receiver in staffing the facility during receivership?
 - b. What challenges did receiver face in working with the facility owners and staff? How did DAIL provide support to meet those challenges?
6. How did DAIL decide which Community Partners to involve?
 - a. How did you reach out to those partners?
 - b. What ongoing communications strategies were used?
7. How well did the state staff across various departments coordinate/work together?
8. What led to the decision to move residents out of the facility?
9. What was the process to find placements for the residents?
 - a. Who was involved/who should have been involved?
 - b. What considerations had to be addressed? Location, size of facility, layout, potential regulatory changes, etc.
10. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility?
11. Regarding the current Legislative Model for Receivership what in it is adequate and what, if anything needs to change?
12. What do you think about adding statutory/regulatory language to allow for the state to charge licensing fees for all Residential Care Homes/TCRs and ALRs?

13. What do you think about new statutory/regulatory language to allow the state to charge a state version of the civil monetary penalties that are charged for Nursing Homes/facilities that violate federal requirements?
14. If fees and penalties were established do you think DAIL and DVHA should keep the money in a fund that could be used for any or all of the following purposes:
 - a. Training for Residential Care Home managers and staff
 - b. Supporting the costs of paying for APS and Survey and Certification Staff
 - c. Supporting programs to improve quality of care and quality of life at Residential Care Homes/TCRs and ALRs
 - d. Setting it aside for any future receiverships
 - e. Other purposes
15. We've talked about key challenges - are there any other challenges or conflicts not identified that emerged in implementing the receivership plan?
16. What important lessons did you learn that we may not be asking about?

DAIL Structured Interview: DLP/Survey & Certification

Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. What did you know about the conditions at the COTA's residential care home?
 - a. How many different complaints of Adult Abuse were filed before and after the receivership at Cota's? And by residents, caregivers, staff, others?
 - b. Were all of the complaints substantiated and was the abuse - verbal, physical, financial or a combination of different types of abuse?
 - c. Did you have any other information about conditions beyond the complaints?
2. How many different inspections/surveys were conducted at Cota's before the receivership process at Cota's?
3. What were the findings for the inspections/surveys that were conducted at Cota's before the receivership process was initiated?
 - a. What was the corrective action plan?
 - b. To what extent was it implemented, what was the time period for the plan?
 - c. What ultimately led to the decision to implement receivership?
4. What was your involvement after it was decided to move into the receivership process?
 - a. Did you work with the receiver to develop a plan?
 - b. How did the plan evolve/change over time?
 - c. Did you provide the receiver with support or assistance? If so, in what ways?
 - d. Did you know who was in charge at all times?
 - e. Were you asked to perform duties that were unclear or you felt were not appropriate to your skill set?
5. How did you select the receiver?
 - a. Funding availability/resources
 - b. In-state or out-of-state? (factors at play: experience in VT, expense?)
 - c. Skill set and qualifications needed?
 - d. What were the resources to keep the facility operating during the receivership?
 - e. What were the Pros/cons of individual vs company to serve as receiver?
6. How did you work with the receiver to come up with a plan for instituting and implementing the receivership?
 - a. How did the plan evolve/change over time?
 - b. What were the key challenges and conflicts that emerged in implementing the receivership plan?
 - c. How were the challenges and conflicts resolved?
7. In what ways did DAIL support the receiver?
 - a. How did the state assist the receiver in staffing the facility during receivership?
 - b. What challenges did receiver face in working with the facility owners and staff? How did DAIL provide support to meet those challenges?
8. How frequently did APS and DLP go on site before and during receivership?
9. What led to the decision to move residents out of the facility?
10. What was the process to find placements for the residents?
 - a. Who was involved/who should have been involved?
 - b. What considerations had to be addressed? Location, size of facility, layout, potential regulatory changes, etc.

11. RE: Community Partners
 - a. How did DAIL decide which Community Partners to involve?
 - b. How were you involved in reaching out to those partners?
 - c. What ongoing communications strategies were used?
12. How well did the state staff across various departments coordinate/work together?
13. What were the key challenges and conflicts that emerged in implementing the receivership plan?
14. Do you feel the current Legislative Model for Receivership is adequate or needs to change? What would you change about it?
15. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility?
16. What important lessons did you learn that we may not be asking about?
17. What are financial needs for supporting receivership?
 - a. Financial risks for facility
 - b. Costs of receivership
18. How might funds be raised to address those financial needs?
19. What are pros/cons of getting an individual vs a company to serve as receiver?
20. What do you think about adding statutory/regulatory language to allow for the state to charge licensing fees for all Residential Care Homes/TCRs and ALRs?
21. How would you want to structure the licensing fees?
 - a. All the same for all facilities?
 - b. A range of fees dependent upon the size of the facility or some other factors?
 - c. Would you want the fee to be an annual fee?
22. What do you think about new statutory/regulatory language to allow the state to charge a state version of the civil monetary penalties that are charged for Nursing Homes/facilities that violate federal requirements?
23. If fees and penalties were established do you think DAIL and DVHA should keep the money in a fund that could be used for any or all of the following purposes:
 - a. Training for Residential Care Home managers and staff
 - b. Supporting the costs of paying for APS and Survey and Certification Staff
 - c. Supporting programs to improve quality of care and quality of life at Residential Care Homes/TCRs and ALRs
 - d. Setting it aside for any future receiverships
 - e. Other purposes?
24. What do you think about tying licensing and/or penalty to reimbursement levels? Specifically if a home is larger and has both ERC and ACCS Funding would the penalty be larger than a smaller home that does not accept ERC?
25. When you think about future ways to pay for receiverships have you considered using Medicaid funding? Given the different ways Residential Care Services are funded do you think that paying for a receiver could come out of some Medicaid funding?
 - a. Choices for Care program has the Enhanced Residential Care (ERC) service which is paid through Medicaid waiver funding
 - b. Medicaid State Plan covers Assistive Community Care Services (ACCS) a service which is paid through Medicaid funding.

DAIL Structured Interview: Adult Services Division

Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. What were the steps you went through to decide that a receivership was needed?
 - a. Who was involved in the decision-making process?
 - b. Ultimately, what led to the decision?
 - c. Once decided, what were your next steps?
2. In what ways did DAIL support the receiver?
 - a. How did the state assist the receiver in staffing the facility during receivership?
 - b. What challenges did receiver face in working with the facility owners and staff? How did DAIL provide support to meet those challenges?
3. How did DAIL decide which Community Partners to involve?
 - a. How did you reach out to those partners?
 - b. What ongoing communications strategies were used?
4. How well did the state staff across various departments coordinate/work together?
5. What led to the decision to move residents out of the facility?
6. What was the process to find placements for the residents?
 - a. Who was involved/who should have been involved?
 - b. What considerations had to be addressed? Location, size of facility, layout, potential regulatory changes, etc.
7. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility?
8. What are the skill sets needed by a receiver to come in and manage business that is failing?
9. Regarding the current Legislative Model for Receivership what in it is adequate and what, if anything needs to change?
10. Were you asked to perform duties that were unclear or you felt were not appropriate to your skill set?
11. Did you know who was in charge at all times?
12. What important lessons did you learn that we may not be asking about?

DAIL Structured Interview: DLP/APS

Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. What did you know about the conditions at the COTA's residential care home?
 - a. How many different complaints of Adult Abuse were filed before and after the receivership at Cota's? And by residents, caregivers, staff, others?
 - b. Were all of the complaints substantiated and was the abuse - verbal, physical, financial or a combination of different types of abuse?
 - c. Did you have any other information about conditions beyond the complaints?
2. How many different inspections/surveys were conducted at Cota's before the receivership process at Cota's?
3. What were the findings for the inspections/surveys that were conducted at Cota's before the receivership process was initiated?
 - a. What was the corrective action plan?
 - b. To what extent was it implemented, what was the time period for the plan?
 - c. What ultimately led to the decision to implement receivership?
4. What was your involvement after it was decided to move into the receivership process?
 - a. Did you work with the receiver to develop a plan?
 - b. How did the plan evolve/change over time?
 - c. Did you provide the receiver with support or assistance? If so, in what ways?
 - d. Were you asked to perform duties that were unclear or you felt were not appropriate to your skill set?
 - e. Did you know who was in charge at all times?
5. How frequently did APS and DLP go on site before and during receivership?
6. What were the steps you went through to decide that a receivership was needed?
 - a. Who was involved in the decision-making process?
 - b. Ultimately, what led to the decision?
 - c. Once decided, what were your next steps?
7. How did you select the receiver?
 - a. Funding availability/resources
 - b. In-state or out-of-state? (factors at play: experience in VT, expense?)
 - c. Skill set and qualifications needed to come in and manage business that is failing?
 - d. What were the resources to keep the facility operating during the receivership?
 - e. What were the Pros/cons of individual vs company to serve as receiver?
8. How did you work with the receiver to come up with a plan for instituting and implementing the receivership?
 - a. How did the plan evolve/change over time?
 - b. What were the key challenges and conflicts that emerged in implementing the receivership plan?
 - c. How were the challenges and conflicts resolved?
9. In what ways did DAİL support the receiver?
 - a. How did the state assist the receiver in staffing the facility during receivership?
 - b. What challenges did receiver face in working with the facility owners and staff? How did DAİL provide support to meet those challenges?
10. What led to the decision to move residents out of the facility?

11. What was the process to find placements for the residents?
 - a. Who was involved/who should have been involved?
 - b. What considerations had to be addressed? Location, size of facility, layout, potential regulatory changes, etc.
12. Re: Community Partners?
 - a. How did DAIL decide which Community Partners to involve?
 - b. Were you involved in choosing them
 - c. If so, how did you identify community partners?
 - d. How did you reach out to those partners?
 - e. What ongoing communications strategies were used?
13. How well did the state staff across various departments coordinate/work together?
14. Do you feel the current Legislative Model for Receivership is adequate or needs to change? What would you change about it?
15. What were the key challenges and conflicts that emerged in implementing the receivership plan?
16. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility?
17. What important lessons did you learn that we may not be asking about?

DAIL Structured Interview: DAIL/DVHA Legal and Finance

Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. What are financial needs for supporting receivership?
 - a. Financial risks for facility
 - b. Costs of receivership
2. How might funds be raised to address those financial needs?
3. What are pros/cons of getting an individual vs a company to serve as receiver?
4. What do you think about adding statutory/regulatory language to allow for the state to charge licensing fees for all Residential Care Homes/TCRs and ALRs?
5. How would you want to structure the licensing fees?
6. All the same for all facilities?
7. A range of fees dependent upon the size of the facility or some other factors?
8. Would you want the fee to be an annual fee?
9. What do you think about new statutory/regulatory language to allow the state to charge a state version of the civil monetary penalties that are charged for Nursing Homes/facilities that violate federal requirements?
10. If fees and penalties were established do you think DAIL and DVHA should keep the money in a fund that could be used for any or all of the following purposes:
 11. Training for Residential Care Home managers and staff
 12. Supporting the costs of paying for APS and Survey and Certification Staff
 13. Supporting programs to improve quality of care and quality of life at Residential Care Homes/TCRs and ALRs
 14. Setting it aside for any future receiverships
 15. Other purposes?
16. What do you think about tying licensing and/or penalty to reimbursement levels? Specifically if a home is larger and has both ERC and ACCS Funding would the penalty be larger than a smaller home that does not accept ERC?
17. When you think about future ways to pay for receiverships have you considered using Medicaid funding? Given the different ways Residential Care Services are funded do you think that paying for a receiver could come out of some Medicaid funding?
18. Choices for Care program has the Enhanced Residential Care (ERC) service which is paid through Medicaid waiver funding
19. Medicaid State Plan covers Assistive Community Care Services (ACCS) a service which is paid through Medicaid funding.
20. Do you feel the current Legislative Model for Receivership is adequate or needs to change? What would you change about it?
21. What important lessons did you learn that we may not be asking about?
22. How did the court process proceed and who was involved in the process at Court?
23. How did you select the receiver?
24. Funding availability/resources
25. In-state or out-of-state? (factors at play: experience in VT, expense?)
26. Skill set and qualifications needed?
27. What were the resources to keep the facility operating during the receivership?
28. What were the Pros/cons of individual vs company to serve as receiver?

29. How did you work with the receiver to come up with a plan for instituting and implementing the receivership?
30. How did the plan evolve/change over time?
31. What were the key challenges and conflicts that emerged in implementing the receivership plan?
32. How were the challenges and conflicts resolved?
33. In what ways did DAIL support the receiver?
34. How did the state assist the receiver in staffing the facility during receivership?
35. What challenges did receiver face in working with the facility owners and staff? How did DAIL provide support to meet those challenges?

Community Partners & Other State Partners *Introduction* - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. Before the receivership process happened at Cota’s what did you know about the conditions of the facility?
 - a. To what extent were you aware of the complaints that were lodged with DAIL (DLP) and the response to the complaints?
 - b. For how long did you know about conditions?
 - c. How did you hear about conditions?
2. In what ways, if any, did you or your organization/agency respond to conditions noted in the complaints?
3. When did you first know about the receivership process that was happening with Cota’s?
4. How did DAIL involve/communicate with you?
5. How well did you and other community agency staff coordinate with DAIL and with each other together during the receivership process?
 - a. To what extent were there clear communications?
 - b. What was the quality of follow-up?
6. What was your role/involvement when residents were moved to new facilities?
 - a. Were there clear expectations/roles?
 - b. What was your role?
 - c. Did it make sense?
 - d. Were you asked to perform duties that were unclear or you felt were not appropriate to your skill set?
 - e. Did you know who was in charge at all times?
7. To what extent did you feel your ideas influenced the process being implemented? If not how can the processes for including input from community and other state agency partners be improved?
8. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility.?
 - c. Coordination between state agencies and community partners be improved.
9. Do you feel the current Legislative Model for Receivership is adequate or needs to change? What would you change about it?
10. What important lessons did you learn that we may not be asking about?

DAIL Receivership Study -Receiver and Assistant Receiver - Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. Why do you think DAIL approached you to take on the receivership?
 - a. What previous experience, if any did you have with receiverships?
 - b. What other experience did you have that enabled you to serve as a receiver?
2. How did you work with the DAIL to come up with a plan for implementing the receivership?
How did the plan evolve/change over time?
3. In what ways did DAIL provide you with support and assistance during the receivership?
 - a. How did DAIL assist you in staffing the facility during receivership?
4. How frequently did DAIL (DLP/APS, DLP/S&C, and ASD) go on site during receivership?
 - a. Why were visits made?
 - b. To what extent were on-site visits helpful and supportive?
 - c. What else, if anything, could DAIL have done to be helpful during receivership?
5. Were you asked to perform duties that were unclear or you felt were not appropriate to your skill set?
6. Did you know who was in charge at all times?
7. Please talk about the challenges and conflicts that emerged in implementing the receivership plan?
 - a. Working with the facility owners and staff?
 - b. With residents/families?
 - c. Partners?
 - d. DAIL?
 - e. Other?
8. What led to the decision to move residents out of the facility?
9. Please describe the process for finding placements for the residents?
 - a. Who was involved/who should have been involved?
 - b. What considerations had to be addressed? Location, size of facility, layout, potential regulatory changes, etc.
 - c. How did this work for your facility?
 - d. Was this a permanent placement?
10. What skill sets do you think are needed by a receiver to come in and manage business that is failing?
11. What are your suggestions for improving the process so that:
 - a. Receivership can be prevented
 - b. Or, if needed, the receivership is successfully implemented in a way that maintains continuity in staffing and allows residents to remain in their current housing versus having to be moved to another facility?
12. Do you feel the current Legislative Model for Receivership is adequate or needs to change? What would you change about it?
13. What important lessons did you learn that we may not be asking about?

Resident/Family Questions - Introduction - Provide a brief description of the Receivership Study, its purpose, and intended use of the information gathered through the interview. The interviewers will record the names and roles of each person interviewed – although the final report will only include roles not names.

1. Before the receivership process happened at Cota's what did you know.?
 - a. Were you aware of the complaints that were lodged with DAIL (DLP) and the response to the complaints?
 - b. For how long did you know about conditions?
 - c. How did you hear about conditions?
2. When did you first know about the receivership process that was happening with Cota's?
3. How were you involved/what were you told about the receivership?
4. How well did the coordination process between people helping you take place?
 - a. To what extent were there clear communications?
 - b. What was the quality of follow-up?
5. How did the move to the new home go for you?
6. To what extent did you feel your ideas and concerns were heard and attended to?
 - a. What if anything could have been improved in terms of how you were responded to?
7. What important lessons do you think the state should learn from this?

Appendix B: Summary of Research on other State Models for Managing Receiverships

Key Findings

The following summarizes key findings by state, followed by recommendations for receivership best practices. While the findings are organized by the sections above, states that included innovative or more expansive requirements or approaches are noted for consideration.

Maine

Maine's Revised Statutes, 22 Me.Rev.Stat. Ann., §§ 7931 to 7938, did not reveal any substantial variations of interest to Vermont. In fact, the Maine receivership statutes mirror Vermont's receivership statutory language to a considerable degree. Maine mirrors Vermont almost in exact language in the following areas:

- Who may bring action
- Procedure for hearing
- Compensation
- Powers and duties

Massachusetts

The Commonwealth's statutes, Mass. Gen. Laws Ann., Ch 111 Ann., §§ 72M to 72T, find several variations and opportunities for consideration.

- **Receivership eligibility and qualifications:** Allows for the appointment of any person appearing on a list established for the purpose by the Commissioner or Secretary of Elder Affairs after consultation with representatives of the nursing home industry. All other qualifications are very similar to Vermont in terms of length of experience in the industry.
- **Receivership transition:** once a receiver is in place, MA protects against any interference with the functioning of the facility by imposing an automatic stay for a 60-day period for the following:
 - o Cancellation of insurance policies executed by the licensee
 - o Termination of utility services
 - o Attachments or set-offs of resident trust funds and working capital accounts
 - o Repossession of equipment used in the facility
- **Termination of receivership:** MA includes an additional precaution to the former licensee. They may require the posting of a bond in an amount fixed by the court as security for maintaining compliance with the operation of the facility according to current laws and regulations.
- **Duration of receivership:** if after 12 months the receivership has not turned the facility around, the court may, after hearing, close the facility after orderly and safe transfer of residents or the facility shall be sold to a new owner approved for licensure. Receiverships may be extended for the safety and welfare of residents.

Massachusetts also employs use of the Civil Monetary Penalty (CMP) Use Plan. The CMP plan was designed by CMS to allow states to direct the use of collected CMP funds to a diverse list of actions to improve and protect the quality of life and care of individuals residing in nursing facilities. Federal regulations at 42 CFR 488.433 authorize the use of CMP funds to support activities that benefit residents, including assistance to support and protect residents of a facility that closes, and the appointment of temporary management firms.

Minnesota

Minn. Stat. Ann. §§ 144A.14 to 144A.15 offers several sections and variations for consideration.

- **Appointment of receiver:** the court appoints the Commissioner of Health as the receiver, who in turn may enter into an agreement with a managing agent to work on the Commissioner's behalf in operating the facility during the receivership. The court establishes a fair monthly rental for the facility that is to be paid by the receiver to the appropriate controlling person each month but the rent paid is reduced by the costs of the receivership above and beyond the nursing facility rate. No payment to a controlling person by the state may include an allowance for profit.
- **Receivership eligibility and qualifications:** Like Massachusetts, MN requires the establishment and maintenance of a list of qualified nursing home administrators or other qualified persons or organizations.
- **Powers and duties:** Within 18 months of appointment MN requires the receiver to determine whether to close the facility or make other provisions to keep it open. The Commissioner of Health assists the managing agent, if hired, in carrying out its duties.
- **Termination of receivership:** Receiverships are in place for 18 months and are terminated after this date if the Commissioner deems that the nursing facility license should be renewed, a new license is to be granted, or the residents have been safely relocated to another facility.
- **Financing receivership:** During the receivership an enhanced Medicaid rate is set by the Department of Human Services (DHS) to pay for the extra costs that the receiver incurs to get the facility back into compliance, to pay staff, reinstate insurances, and other costs to operate the facility.

Ohio

OH Chapter 2735, §§ 2735.01 outlines receivership expectations, which generalizes the role of receivers across many areas and does not specifically focus on the role of a receiver in relation to nursing facilities or other facility/residential settings. Upon review, Ohio offered little to advance Vermont's desire to innovate, improve, and enhance existing statutes and approaches to receivership. The following is highlighted:

- **Appointment of receiver:** appointment of receiver may be presented by the Supreme Court or a Judge. Further, a receiver must be sworn to perform duties approved by the court, judge, or clerk, and execute a bond.

Rhode Island

RI Chapter 23-17.11, §§ 23-17.11-1 offers some consideration to the important of financial solvency, retaliation, liens, and a unique whistleblower provision that was not found in review of any other state statutes and provision.

- **Financial solvency:** RI's statute addresses specific expectations and definitions of financial solvency, a topic that has gained increasing prominence as a reason why receiverships are being requested. While Vermont may address this generally, RI outlines numerous definitions and criteria including sufficient liquid resources, current to agreed-upon payment terms for all financial obligations, free from liens, among many others.
- **Use of experts:** RI allows for the state to engage experts or consultants (such as accountants, nursing home administrators) in the course of a receivership. Any report prepared by such consultant is expected to be made available to the facility and the public and are paid for by the facility.
- **Preclusion of retaliation:** RI has specific language prohibiting retaliation against any officer, resident, family member, etc. as a result of communication related to the receivership or case and in the event of suspected violation, allows for civil action within 3 years of the date of retaliation or discrimination.
- **Liens:** RI allows for the state to impose a lien for reasonable costs incurred.
- **Whistleblower provisions:** RI includes a prohibition against discrimination as a result of their (including staff, residents, families, etc.) collaboration in the resultant receivership.

Washington

Wash. Rev. Code Ann. §§ 18.51.400 to 18.520 establishes some departures and refinements that may be of interest to Vermont.

- **Receivership eligibility and qualifications:** Like MA, Washington allows for the appointment of individual appearing on a list, and requires the state to maintain a list of qualified persons to act as receivers. Preference is given to individuals expressing an interest in permanently operating the facility.
- **Financing receivership:** WA allows the state department to revise the Medicaid reimbursement rate to cover the receiver's compensation and other reasonable costs. This may include start-up costs and costs of repairs, replacements, and additional staff needed for the safety and welfare of residents. WA also has a very generous financial assistance clause, allowing the department to provide emergency or transition financial assistance to the receiver not to exceed thirty-thousand dollars (\$30,000), with the expectation for accounting for all expenditures by the receiver.
- **State medical assistance:** WA has a unique clause allowing the receiver to become the Medicaid contractor for the duration of the receivership if the nursing home is a Medicaid provider. This extends all Medicaid reporting requirements and responsibilities to fall on the receiver.
- **Powers and duties:** WA includes language related to inclusion of stakeholders in the process:

- Meeting regularly with and informing staff, residents, and residents' families or significant other of the
 - Plans for correcting deficiencies
 - Plans for closure and relocation
 - Plans for continued operation of the facility and training of staff.
- **Termination of receivership:** temporary management is terminated after 3 months unless just cause is shown such as returning the facility to its prior licensee or there is a threat to the safety and well-being of residents.

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Wisconsin

Wis.Stat.Ann § 50.05 outlines the following opportunities for consideration:

- **Role of monitor:** unlike other states, WI allows for the provision of a Monitor, who observes the operations of a facility and assists the facility by advising it on how to comply with the state regulations and submits a written report on its observations.
- **Duration of receivership:** receivers may be appointed up to 120 days and may be extended by the court in 30-day increments.
- **Powers and duties:** WI is the only state researched that addresses compensation of employees and the authority to grant salary increases and fringe benefits.
- **Financing receivership:** WI authorizes a contingency fund which is in effect for the department, created under S.20.435(6) (dm) to draw against to pay the expenses associated with the use of a monitor.

Appendix C: Civil Monetary Penalty Federal Requirements

In response to question #4, this report has made a recommendation (page 14) to “implement a Vermont state model of civil monetary penalties, in which penalties reflect the size and budget of RCHs and take into consideration fines currently collected from RCHs.” The State CMP process likely would not be the same as the Federal CMP process, however, this appendix can serve as a guide to the state in developing a state model of penalties and fines and be modified as need to fit RCHs vs. Skilled Nursing Facilities. Also, funds from a State CMP process should be kept in a dedicated fund.

42 CFR 488.438 - Civil money penalties: Amount of penalty.

§ 488.438 Civil money penalties: Amount of penalty.

(a) Amount of penalty.

(1) The penalties are within the following ranges, set at \$50 increments:

(i) Upper range - \$3,050-\$10,000. Penalties in the range of \$3,050-\$10,000 per day are imposed for deficiencies constituting immediate jeopardy, and as specified in paragraph (d)(2) of this section.

(ii) Lower range - \$50-\$3,000. Penalties in the range of \$50-\$3,000 per day are imposed for deficiencies that do not constitute immediate jeopardy, but either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm.

(2) Per instance penalty. When penalties are imposed for an instance of noncompliance, the penalties will be in the range of \$1,000-\$10,000 per instance.

(b) Basis for penalty amount. The amount of penalty is based on CMS's or the State's assessment of factors listed in paragraph (f) of this section.

(c) Decreased penalty amounts.

(1) Except as specified in paragraph (d)(2) of this section, if immediate jeopardy is removed, but the noncompliance continues, CMS or the State will shift the penalty amount imposed per day to the lower range.

(2) When CMS determines that a SNF, dually-participating SNF/NF, or NF-only facility subject to a civil money penalty imposed by CMS self-reports and promptly corrects the noncompliance for which the civil money penalty was imposed, CMS will reduce the amount of the penalty by 50 percent, provided that all of the following apply -

(i) The facility self-reported the noncompliance to CMS or the State before it was identified by CMS or the State and before it was reported to CMS or the State by means of a complaint lodged by a person other than an official representative of the nursing home;

(ii) Correction of the self-reported noncompliance occurred on whichever of the following occurs first:

(A) 15 calendar days from the date of the circumstance or incident that later resulted in a finding of noncompliance; or

(B) 10 calendar days from the date the civil money penalty was imposed;

(iii) The facility waives its right to a hearing under § 488.436;

(iv) The noncompliance that was self-reported and corrected did not constitute a pattern of harm, widespread harm, immediate jeopardy, or result in the death of a resident;

(v) The civil money penalty was not imposed for a repeated deficiency, as defined in paragraph (d)(3) of this section, that was the basis of a civil money penalty that previously received a reduction under this section; and

(vi) The facility has met mandatory reporting requirements for the incident or circumstance upon which the civil money penalty is based, as required by Federal and State law.

(3) Under no circumstances will a facility receive both the 50 percent civil money penalty reduction for self-reporting and correcting under this section and the 35 percent civil money penalty reduction for waiving its right to a hearing under § 488.436.

(d) Increased penalty amounts.

(1) Before a hearing requested in accordance with § 488.431(d) or § 488.432(a), CMS or the State may propose to increase the per day penalty amount for facility noncompliance which, after imposition of a lower level penalty amount, becomes sufficiently serious to pose immediate jeopardy.

(2) CMS does and the State must increase the per day penalty amount for any repeated deficiencies for which a lower level penalty amount was previously imposed, regardless of whether the increased penalty amount would exceed the range otherwise reserved for non-immediate jeopardy deficiencies.

(3) Repeated deficiencies are deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey.

(e) Review of the penalty. When an administrative law judge or State hearing officer (or higher administrative review authority) finds that the basis for imposing a civil money penalty exists, as specified in § 488.430, the administrative law judge or State hearing officer (or higher administrative review authority) may not -

(1) Set a penalty of zero or reduce a penalty to zero;

(2) Review the exercise of discretion by CMS or the State to impose a civil money penalty; and

(3) Consider any factors in reviewing the amount of the penalty other than those specified in paragraph (f) of this section.

(f) Factors affecting the amount of penalty. In determining the amount of penalty, CMS does or the State must take into account the following factors:

(1) The facility's history of noncompliance, including repeated deficiencies.

(2) The facility's financial condition.

(3) The factors specified in § 488.404.

(4) The facility's degree of culpability. Culpability for purposes of this paragraph includes, but is not limited to, neglect, indifference, or disregard for resident care, comfort or safety. The absence of culpability is not a mitigating circumstance in reducing the amount of the penalty.

[59 FR 56243, Nov. 10, 1994, as amended at 64 FR 13360, Mar. 18, 1999; 68 FR 46072, Aug. 4, 2003; 76 FR 15127, Mar. 18, 2011]

Appendix D: 33 V.S.A. §7201 et seq., Including Proposed Legislative Language

Recommended changes to language in the statute (below) are underlined and highlighted in yellow.

Subchapter 3: Receivership Proceedings

§ 7201. Policy

The purpose of this subchapter is to provide for the receivership of a long-term care facility in order to ensure safe surroundings, adequate care, and humane treatment; to safeguard the health of, safety of, and continuity of care to residents; and to protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities. (Added 2009, No. 36, § 2.)

§ 7202. Application for receiver

(a) The Commissioner of Disabilities, Aging, and Independent Living or the Attorney General may file a complaint in the Superior Court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver when:

- (1) a licensee intends to close and has not secured suitable placements for its residents at least 30 days prior to closure;
- (2) a situation, a physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents exists in a facility, including imminent or actual abandonment of a facility;
- (3) a facility is in substantial or habitual violation of the standards of health, safety, or resident care established under State or federal regulations to the detriment of the welfare of the residents or clients;
- (4) the facility is insolvent; or
- (5) the licensing agency has suspended, revoked, or modified the existing license of the facility.

(b)(1) A resident or resident's representative may petition the licensing agency or the Attorney General to seek a receivership under this section. If the licensing agency or Attorney General denies the petition or fails to file a complaint within five days, the party bringing the petition may file a complaint in the Superior Court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver on the same grounds listed in subsection (a) of this section. Prior to a hearing for the appointment of a receiver, the Commissioner of Disabilities, Aging, and Independent Living shall file an affidavit describing the results of any investigation conducted, including a statement of findings with respect to the resident's petition and the reasons for not filing an action under this section. The Commissioner shall include the two most recent reports of deficiencies in the facility, if any.

(2) If the Court finds the grounds listed in subsection (a) of this section are not met, the Court may dismiss the complaint without a hearing as provided for in the Vermont Rules of Civil Procedure.

(c)(1) The licensing agency shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver shall be a necessary party after the temporary receiver is appointed and shall remain a party until a receiver is appointed under section 7204 of this chapter. A receiver appointed under section 7204 of this chapter shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

(2) The entity filing the complaint shall notify the State Long-Term Care Ombudsman and the mortgage holder upon filing of the complaint. (Added 2009, No. 36, § 2.)

The Department of Disabilities, Aging and Independent Living, the Assistant Attorney General and the Superior Courts shall work together to establish additional procedures for receiverships in Vermont so that all parties are clear about the operational responsibilities of receiverships. An administrative rule will be promulgated that will clearly outline the responsibilities of all parties.

§ 7203. Appointment of temporary receiver

(a) A motion to appoint a temporary receiver may be filed with the complaint or at any time prior to the hearing on the merits provided for in section 7204 of this chapter. The motion shall be accompanied by an affidavit alleging facts necessary to show the grounds for the receivership and the necessity for appointing a temporary receiver prior to the hearing on the merits. A motion for prejudgment attachment under Rule of Civil Procedure 4.1(b)(3) may also be filed with the complaint or at any time prior to the hearing on the merits.

(b) The Court may appoint a temporary receiver ex parte when the Court finds that there is a reasonable likelihood that:

(1)(A) a licensee intends to close the facility and has not secured suitable placements for its residents prior to closure; or

(B) a situation, a physical condition, or a practice, method, or operation presents imminent danger of death or serious physical or mental harm to residents; and

(2) the situation must be remedied immediately to ensure the health, safety, and welfare of the residents of the facility.

(c) If the order for temporary receivership is granted, the complaint and order shall be served on the owner, licensee, or administrator and shall be posted in a conspicuous place in the facility no later than 24 hours after issuance. (Added 2009, No. 36, § 2.)

§ 7204. Appointment of receiver; notice

(a)(1) Unless the complaint is dismissed as provided for in section 7202 of this chapter or parties agree to a later date, the Court shall hold a hearing on the merits to appoint a receiver within 10 days of filing the complaint. The Court shall hold a hearing on the merits even when the Court has appointed a temporary receiver as provided for in section 7203 of this chapter.

(2) Notice of the hearing shall be served on the owner, the licensee, the mortgage holder, the State Long-Term Care Ombudsman, and the licensing agency not less than five days before the hearing. If the owner or the licensee cannot be served, the Court shall specify an alternative form of notice.

(b) The licensee shall post notice of the hearing, in a form approved by the Court, in a conspicuous place in the facility for not less than five days before the date of the hearing. (Added 2009, No. 36, § 2.)

§ 7205. Appointment of receiver; recommendations by licensing agency

Not less than two days prior to the hearing on the merits, the Commissioner shall file with the Court a list of recommended persons **or entity/entities** to consider for appointment as the receiver, which may include licensed nursing home administrators or other qualified persons with experience in the delivery of health care services and the operation of a long-term care facility. The list shall include a minimum of three recommended persons **or entity/entities** and shall include the names and the qualifications of the persons **or entity/entities**. (Added 2009, No. 36, § 2.)

§ 7206. Appointment of receiver; hearing and order

(a) After the hearing on the merits, the Court may appoint a receiver from the list provided by the licensing agency if it finds that one of the grounds in section 7202 of this chapter is satisfied, and that the person **or entity/entities** is qualified to perform the duties of a receiver as provided for in section 7205 of this chapter.

(b) The Court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety as the Court may require. Any expenditure, including the compensation of the receiver, shall be paid from the revenues of the facility **first and with other funds as available only after exhausting revenues of the facility**.

(c) The Court may order limitations and conditions on the authority of the receiver provided for in section 7207 of this chapter. The order shall divest the owner and licensee of possession and control of the facility during the period of receivership under the conditions specified by the Court.

(d) An order issued pursuant to this section shall confirm on the receiver all rights and powers described in section 7207 of this chapter and shall provide the receiver with the authority to conduct any act authorized under this section, including managing the accounts, banking transactions, and payment of debts.

(e) An order appointing a receiver under this chapter has the effect of a license for the duration of the receivership and of suspending the license of the licensee. The receiver shall be responsible to the Court for the conduct of the facility during the receivership, and a violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the licensing agency to the Court. The order shall not remove the obligation of the receiver to comply with all relevant federal and State rules applicable to the facility.

(f) The Court shall order regular accountings by the receiver at least semiannually. (Added 2009, No. 36, § 2.)

§ 7207. Powers and duties of receiver

(a) A receiver shall not take any actions or assume any responsibilities inconsistent with the purposes of this subchapter or the duties specifically provided for in this section.

(b) Unless otherwise ordered by the Court and subject to the limitations provided for in sections 7208 through 7211 of this chapter, the receiver appointed under this subchapter shall:

(1) notify residents of the receivership and shall provide written notice by first-class mail to the last known address of the next of kin after the facility is placed in receivership;

(2) operate the facility;

(3) remedy the conditions that constituted grounds for the receivership;

(4) remedy violations of federal and State regulations governing the operation of the facility;

(5) protect the health, safety, and welfare of the residents, including the correction or elimination of any deficiency of the facility that endangers the safety or health of the residents;

(6) preserve the assets and property of the residents, the owner, and the licensee;

(7) hire, direct, manage, and discharge any employees, including the administrator or manager of the facility;

(8)(A) apply the revenues of the facility to current operating expenses;

(B) receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter; and

(C) to the extent possible, apply the revenues of the facility to debts incurred by the licensee prior to the appointment of the receiver;

(9) continue the business of the facility and the care of residents;

(10) file monthly reports containing information as required by the licensing agency to the owner and the licensing agency; and

(11) exercise such additional powers and perform such additional duties as ordered by the Court.
(Added 2009, No. 36, § 2.)

§ 7208. Limitations; corrections of conditions

(a)(1) Except as provided for in subsection (b) of this section, if the total cost of correcting conditions that constituted grounds for the receivership and violations of federal and State regulations governing the operation of the facility or of other health and safety issues exceeds \$5,000.00, the receiver shall

notify the mortgage holder, licensee, and owner of the conditions needing correcting and the estimated amount needed to correct the condition.

(2) The mortgage holder, owner, or licensee shall have five days from the date of mailing of the notice to apply to the Court to determine the reasonableness of the expenditure by the receiver.

(3) If the mortgage holder, owner, or licensee files a motion objecting to the corrections, the receiver shall not correct the conditions until ordered by the Court.

(b) If the condition constitutes a situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents and the estimate and the total cost of the correction exceeds \$10,000.00, the receiver shall notify the mortgage holder, owner, and licensee who may object to the Court as provided for in subsection (a) of this section. The receiver may proceed with the corrections pending a hearing and order of the Court. (Added 2009, No. 36, § 2.)

§ 7209. Limitations; payment of debts

The receiver shall petition the Court when debts incurred prior to appointment of the receiver appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility; or where payment of the debts will interfere with the purposes of the receivership. The Court shall determine the order of priority of debts with first priority given to expenditures for direct care of current residents. (Added 2009, No. 36, § 2.)

§ 7210. Limitations; authority to borrow

(a) In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the residents or to pay the debts accruing to the facility, the receiver may petition the Court for permission to borrow for these purposes.

(b) Notice of the receiver's petition to the Court for permission to borrow must be given to the owner, the licensee, the mortgage holder, and the licensing agency.

(c) The Court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the Court determines that the facility should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy, or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time when they are awaiting transfer. (Added 2009, No. 36, § 2.)

§ 7211. Limitations; closure of the facility

(a) The receiver may not close the facility without leave of the Court.

(b) The Court shall consider the protection of residents and shall prevent the closure of facilities that, under proper management, are likely to be financially viable. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

(c) In ruling on a motion to close the facility, the Court shall consider:

- (1) the rights and best interests of the residents;
- (2) the availability of suitable alternative placements;
- (3) the rights, interest, and obligations of the owner and licensee;
- (4) the licensure status of the facility; and
- (5) the need for the facility in the geographic area.

(d) When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate trauma caused by the transfer to another facility. (Added 2009, No. 36, § 2.)

§ 7212. Writ of possession

After notice and a hearing, the Court may issue a writ of possession as provided for in 12 V.S.A. § 4854 on behalf of the receiver for specific real or personal property related or pertaining to the facility. (Added 2009, No. 36, § 2.)

§ 7213. Attachment; trustee process

Revenues held by or owing to the receiver in connection with the operation of the facility are exempt from attachment as provided for in 12 V.S.A. chapter 123 and trustee process as provided for in 12 V.S.A. chapter 121, including process served prior to the institution of receivership proceedings. (Added 2009, No. 36, § 2.)

§ 7214. Avoidance of contracts

(a) The Court may grant a motion filed by the receiver to avoid a lease, mortgage, secured transaction, or other contract entered into by the owner or licensee of the facility if the Court finds that the agreement:

- (1) was entered into for a fraudulent purpose or to hinder or delay creditors;
- (2) including a rental amount, price, or rate of interest, was unreasonable or excessive at the time the agreement was entered into; or
- (3) is unrelated to the operation of the facility.

(b)(1) The receiver shall send notice of the motion to any known owners and mortgage holder of the property, the licensing agency, and the State Long-Term Care Ombudsman at the time of filing.

(2) The Court shall hold a hearing on the receiver's motion to avoid a contract within 15 days.

(c) If the receiver is in possession of real estate or goods subject to a contract or security interest that the receiver is permitted to avoid under this section and if the real estate or goods are necessary for the continued operation of the facility, the Court may set a reasonable rental amount, price, rate of interest, or replacement contract term to be paid by the receiver during the term of the receivership.

(d) Payment by the receiver of the amount determined by the Court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received notice.

(e) Notwithstanding this section, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the Court, serve to defeat the purpose of the receivership. (Added 2009, No. 36, § 2.)

§ 7215. Obligations of the owner or licensee

(a) A licensee, owner, manager, employee, or such person's agent shall cooperate with the receiver in any proceeding under this chapter, including replying promptly to any inquiry from the receiver or the licensing agency requesting a reply, and making available to the receiver any books, accounts, documents, or other records or information or property pertaining to operation of the facility in his or her possession, custody, or control. A person shall not obstruct or interfere with the receiver in the conduct of any receivership.

(b) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership or revocation or suspension of licensure.

(c)(1) After notice of the receiver's appointment, a person who fails to cooperate with the receiver or any person who obstructs or interferes with the receiver in the conduct of the receivership shall be assessed a civil penalty of not more than \$10,000.00.

(2) A person who violates this subsection may be subject to the revocation or suspension of a nursing home administrator's license or a license to operate a facility. (Added 2009, No. 36, § 2.)

§ 7216. Review and termination

(a) The Court shall review the necessity of the receivership at least semiannually.

(b) Either party or the Commissioner of Disabilities, Aging, and Independent Living may petition the Court to terminate the receivership. The petition shall include a certification from the Commissioner or designee that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated.

(c) The petitioner shall send notice of the petition to terminate the receivership to the mortgage holder, the licensing agency, and the State Long-Term Care Ombudsman at the time of filing.

(d) A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the Court.

(e) At the time of termination of the receivership, the Court shall lift the suspension or revoke the license of the licensee. (Added 2009, No. 36, § 2.)

§ 7217. Duties of licensing agency

The licensing agency shall have the duty to provide information to residents of long-term care facilities for which a receiver has been appointed by the Court. Information allowed by state and federal law will be provided to the receiver by the state, and the receiver shall share this information with the Long Term Care Ombudsman and other community providers. When applicable, the licensing agency shall assist in the process of transferring residents to another long-term care facility, including providing information from RCH/LTC providers as it is available, about facilities with available openings. (Added 2009, No. 36, § 2.)