

COMPARING NURSING HOMES, ASSISTED LIVING RESIDENCES, AND RESIDENTIAL CARE HOMES IN VERMONT

A CONSUMER GUIDE TO VT LONG-TERM CARE FACILITIES

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AGENCY OF HUMAN SERVICES
DEPT. OF DISABILITIES, AGING & INDEPENDENT LIVING

INTRODUCTION

As of January 1, 2020, there are 167 long-term care homes in Vermont. This number includes Nursing Homes (NHs), Assisted Living Residences (ALRs) and Residential Care Homes (RCHs). Together, these homes contain 6,417 licensed beds.

For consumers, it can be hard to determine which kind of long-term care facility might be most appropriate for a given person. The purpose of this guide is to help consumers by:

- Highlighting some of the key legal differences between NHs, ALRs, and RCHs in Vermont (**Part I**); and
- Providing links to resources meant to help consumers evaluate long-term care facility options (**Part II**).

To be clear, there are many legal differences between NHs, ALRs and RCHs. This guide highlights only differences under VT state laws in terms of:

- How the facility-type is defined;
- Restrictions on who can be a resident;
- Restrictions on the level of care the facility can provide;
- Facility staffing requirements;
- Whether & when facility residents may be involuntary discharged; and
- Whether & when the State may grant a “variance” from these rules.

This guide is a joint publication of the Office of the Vermont Attorney General’s [Elder Protection Initiative](#) and Vermont’s [Department of Disabilities, Aging and Independent Living](#). It is current as of January 1, 2020.

KEEP IN MIND...

As you review this guide, please keep in mind:

- Not all NHs are the same. Not all ALRs are the same. And not all RCHs are the same. Consumers should visit any home they’re seriously considering & ask staff at the home whether that particular home can provide the specific kinds of care the potential resident needs and may come to need.
- VT’s Department of Disabilities, Aging and Independent Living (“DAIL”) licenses and oversees long-term care homes in Vermont. When DAIL inspects a facility—either as a matter of routine or in response to a complaint—it publishes its inspection results [here](#). Results are searchable by facility type and facility name.
- To report concerns about a VT long-term care facility, please contact the relevant state agencies below:

<p>DAIL Division of Licensing & Protection 1-888-700-5330</p>	<p>To report long-term care rule violations, including residents harmed by facility practices.</p>
<p>VT Long-Term Care Ombudsman 1-800-889-2047</p>	<p>For assistance resolving complaints made by, or for, individuals receiving long-term care services.</p>
<p>Adult Protective Services 1-800-564-1612</p>	<p>To report abuse, neglect or exploitation of an individual residing in a long-term care facility. Also contact the police.</p>
<p>AGO Consumer Assistance Program 1-800-649-2424</p>	<p>To report misleading business practices by the facility.</p>

Part I: Comparing Nursing Homes, Assisted Living Residences and Residential Care Homes

1. HOW THE FACILITY-TYPE IS DEFINED

Nursing Home (“NH”)

A NH is defined as an institution (or part of an institution) that is primarily engaged in providing to its residents any of the following:

- Skilled nursing care and related services for residents who require medical or nursing care;
- Rehabilitation services for the rehabilitation of persons who are injured, have a disability, or are sick;
- On a 24-hour basis, health-related care and services to individuals who, because of their mental or physical condition, require care, and services which can be made available to them only through institutional care.

Relevant law: 33 V.S.A. § 7102(7).

Assisted Living Residence (“ALR”)

An ALR is defined as facility or program that combines housing, health, and supportive services for the support of resident independence and aging in place. “Aging in place” means “remaining in a residence despite physical or mental decline that might occur with aging or with disability.” Thus, ALR units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Ultimately, “Assisted living shall promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.”

Relevant laws: 33 V.S.A. § 7102(1); ALR Rule 3.1.

Residential Care Home (“RCH”)

An RCH is defined as “a place, however named, ... which provides... room, board, and personal care to three or more residents unrelated to the home operator.” 33 VSA 7102(10). There are two categories of RCHs: Level III and Level IV.

Level III RCHs “provide[] personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care.” 33 VSA 7102(10).

Level IV RCHs provide “personal care” or “general supervision of the physical or mental well-being of residents, including medication management,” but, unlike Level III RCHs, they do not provide other nursing overview or care. 33 VSA 7102(10).

Relevant laws: 33 VSA § 7102(10); RCH Rules 1.1 and 2.2(q) & (r).

[End of Section 1. Continue to next page.]

2. RESTRICTIONS ON WHO MAY BECOME A RESIDENT

Nursing Home (“NH”)

Under VT state law, there are no specific restrictions on who may become a resident of a NH.

Assisted Living Residence (“ALR”)

An ALR may accept any individual 18 years old or older, including those whose needs meet the definition of nursing home level of care if those needs can be met by the ALR, except that an ALR may not admit:

- Any individual who has a serious, acute illness requiring the medical, surgical or nursing care provided by a general or special hospital;
- Any individual who has the following equipment, treatment or care needs: ventilator, respirator, stage III or IV decubitus ulcer, nasopharangeal, oral or trachial suctioning or two-person assistance to transfer from bed or chair or to ambulate.

Note: An ALR resident who develops a terminal illness or develops a need for the equipment, treatment or care listed above as barring eligibility for admission, may remain in the ALR as long as the ALR can safely meet the resident's needs and/or the resident's care needs are met by an appropriate licensed provider.

Relevant law: ALR Rule 6.1

Residential Care Home (“RCH”)

An RCH shall not accept as a resident:

- Any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide;
- A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital; or
- A person under eighteen (18) years of age, unless by permission of the licensing agency.

Relevant law: RCH Rule 5.1.

[End of Section 2. Continue to next page.]

3. RESTRICTIONS ON THE KINDS OF CARE FACILITY CAN PROVIDE

Nursing Home (“NH”)

Under VT state law, there are no specific restrictions on the level of care an NH may provide.

Assisted Living Residence (“ALR”)

Under VT state law, there are no specific restrictions on the level of care an ALR may provide. Thus:

- An ALR may retain residents whose needs meet the definition of nursing home level of care if it is capable of meeting those needs; and
- While an ALR may not admit an individual who (1) has a serious, acute illness requiring the medical, surgical or nursing care provided by a general or special hospital or (2) needs certain equipment, treatment or care (i.e., a ventilator, respirator, stage III or IV decubitus ulcer, nasopharangeal, oral or trachial suctioning or two-person assistance to transfer from bed or chair or to ambulate), an ALR may retain a current resident who develops a terminal illness or who develops the need for this equipment, treatment or care, as long as the ALR can safely meet the resident’s care needs and/or the resident’s care needs are met by an appropriate licensed provider.

Relevant law: ALR Rule 6.1.

Residential Care Home (“RCH”)

An RCH is not permitted to retain as a resident:

- Any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide; or

- A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital.

Further, RCH residents who require more than nursing overview or medication management shall not be retained in an RCH unless the following criteria are all satisfied:

- The nursing services required are either:
 - Provided fewer than three times per week; or
 - Provided for up to seven days a week for no more than 60 days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or
 - Provided by a Medicare-certified Hospice program;
- The RCH has a registered nurse on staff, or a written agreement with a registered nurse or home health agency, to provide the necessary nursing services and to delegate related appropriate nursing care to qualified staff;
- The RCH is able to meet the resident's needs without detracting from services to other residents;
- The RCH has a written policy, explained to prospective residents before or at the time of admission, which explains what nursing care the home provides or arranges for, how it is paid for and under what circumstances the resident will be required to move to another level of care; and
- Residents receiving such care are fully informed of their options and agree to such care in the RCH.

The following services are not permitted in a residential care home: intravenous therapy; ventilators or respirators; daily catheter irrigation; feeding tubes; care of stage III or IV decubitus; suctioning; sterile dressings.

Relevant law: RCH Rule 5.1; 5.9.

[END OF SECTION 3. CONTINUE TO NEXT PAGE.]

4. MINIMUM STAFFING LEVELS

Nursing Home (“NH”)

On a twenty-four (24)-hour basis, a NH must have “sufficient” nursing staff, including licensed nurses and other nursing personnel, to “provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency.”

In furtherance of this requirement, a NH must:

- Designate a licensed nurse to serve as a charge nurse on each tour of duty;
- Use the services of a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week; and
- Designate a registered nurse to serve as the director of nursing on a full-time basis.

In terms of staffing levels, a NH “shall maintain staffing levels adequate to meet resident needs.” At a minimum, an NH must provide:

- No fewer than three (3) hours of direct care per resident per day, on a weekly average, including nursing care, personal care and restorative nursing care, but not including administration or supervision of staff; and
- Of these three hours of direct care, no fewer than two (2) hours per resident per day must be assigned to provide standard LNA care (such as personal care, assistance with ambulation, feeding, etc.) performed by LNAs or equivalent staff and not including meal preparation, physical therapy or the activities program.

A NH ensure that the medical care of each resident is supervised by a physician.

A NH must also employ a qualified dietitian either full-time, part-time, or on a consultant basis, and sufficient support personnel competent to carry out the functions of the dietary service.

Note: NH dementia units have unique staffing requirements. Please also note that federal laws govern nursing homes, as well.

Relevant laws: NH Rule 7.13-7.15.

Assisted Living Residence (“ALR”)

At an ALR, “[t]here shall be sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.”

At minimum, there shall be at least one (1) staff member on duty and in charge at all times. In homes with more than fifteen (15) residents, there shall be at least one (1) responsible staff member on duty and awake at all times.

Note: ALR residents who have an “identified acute or chronic medical problem or who is deemed to need nursing overview or supervision” are required to be under the continuing general supervision of a physician of their choosing.

Relevant laws: ALR Rules 1.1, 2.3, and 2.4; RCH Rules 5.8, 5.11.a & f.

Residential Care Home (“RCH”)

At an RCH, “[t]here shall be sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.”

At minimum, there shall be at least one (1) staff member on duty and in charge at all times. In homes with more than fifteen (15) residents, there shall be at least one (1) responsible staff member on duty and awake at all times.

Note: all RCH residents are required to be under the continuing general supervision of a physician of their choosing.

Relevant laws: RCH Rules 5.8, 5.11.a & f.

[END OF SECTION 4. CONTINUE ON NEXT PAGE.]

5. INVOLUNTARY DISCHARGE

Nursing Home (“NH”)

A NH “must permit each resident to remain in the room or in the facility, and not transfer or discharge the resident from the facility, unless”:

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- The health or safety of individuals in the facility is endangered;
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident allowable charges under Medicaid;
- The facility ceases to operate; or
- The transfer or discharge is ordered by a court.

Relevant law: NH Rule 3.14.

Assisted Living Residence (“ALR”)

At an ALR, “The expectation is that individuals will be permitted to age in place... and not be required to leave an ALR involuntarily.” An involuntary discharge of a resident may occur only when:

- The resident presents a serious threat to self that cannot be resolved through care planning and the resident is incapable of engaging in a negotiated risk agreement;
- The resident presents a serious threat to residents or staff that cannot be managed through interventions, care planning or negotiated risk agreements in the assisted living residence;

- A court has ordered the discharge or eviction;
- The resident failed to pay rental, service or care charges in accordance with the admission agreement;
- The resident refuses to abide by the terms of the admission agreement; or
- The ALR can no longer meet the resident's level of care needs in accordance with ALR Rule 6.3 (“Aging in Place”).

Relevant law: ALR Rule 6.5

Residential Care Home (“RCH”)

At an RCH, an involuntary discharge or transfer may occur only when:

- The resident's care needs exceed those which the home is licensed or approved through a variance to provide; or
- The home is unable to meet the resident's assessed needs; or
- The resident presents a threat to the resident's self or the welfare of other residents or staff; or
- The discharge or transfer is ordered by a court; or
- The resident has failed to pay monthly charges for room, board and care in accordance with the admission agreement.

Relevant law: RCH Rule 5.3.

[END OF SECTION 5. CONTINUE TO NEXT PAGE.]

6. Whether & when VT may grant a facility a “variance” from long-term care facility rules

Nursing Home (“NH”)

DAIL may grant a nursing home a variance from the above and other state NH rules if it determines that:

- Strict compliance would impose substantial hardship on the NH; and
- The NH will otherwise meet the goal of the rule; and
- A variance will not result in less protections of the health, safety and welfare of the residents.
- Note: A variance will not be granted from a rule pertaining to residents' rights.

Relevant law: NH Rule 1.5.

Assisted Living Residence (“ALR”)

DAIL may grant an assisted living residence a variance from the above and other state ALR rules if it determines that:

- Strict compliance would impose a substantial hardship on the licensee or the resident; and
- The facility will otherwise meet the goal of the statutory provision or rule; and
- A variance will not result in less protection of the health, safety and welfare of the residents.
- Note: A variance shall not be granted from a statute or regulation pertaining to residents' rights.

Relevant laws: ALR Rule 4; RCH Rule 3.1.

Residential Care Home (“RCH”)

DAIL may grant a residential care home variance from the above and other state RCH rules if it determines that:

- Strict compliance would impose a substantial hardship on the licensee or the resident; and

- The facility will otherwise meet the goal of the statutory provision or rule; and
- A variance will not result in less protection of the health, safety and welfare of the residents.
- Note: A variance shall not be granted from a statute or regulation pertaining to residents' rights.

RCH rules explicitly allow DAIL to grant “level of care” variances that permits RCHs to admit or retain individuals whose care needs would otherwise exceed an RCH’s license. In addition to meeting the variance criteria outlined above, a facility’s request for a “level of care” variance must include:

- A current assessment, with a description of the resident's care needs and how the home will meet those needs;
- A written statement from the resident or the resident's legal representative stating the resident's fully informed choice to remain in the home; and that they have been informed the resident will have to leave if the variance is terminated; and
- A written statement from the resident's physician giving the resident's prognosis and recommending retention at or admission to the home.

Note: While DAIL often grants “level of care” variances, neither DAIL nor long-term care facilities can guarantee that an individual entering an RCH will be able to “age in place” at the facility, as neither DAIL nor the facility can guarantee that a variance will someday be granted if the individuals’ care needs come to exceed the RCH’s license. DAIL grants variances on a case-by-case basis using the legal criteria outlined above.

Relevant laws: RCH Rules 3.1 & 3.5.

*[End of Section 6. To review **Additional Resources**, go to next page.]*

PART II: ADDITIONAL RESOURCES

- **Consumer Guide for Choosing a Nursing Home**
 - Lays out subjects to consider in choosing a nursing home.
 - Available online at <https://dlp.vermont.gov/survey-cert/guide-choosing-nursing-home>

- **Facility Evaluation Checklist**
 - A checklist to evaluate and compare facilities you visit. Some questions are specific to nursing homes, but many are applicable to assisted living residences and residential care homes, as well.
 - Available online at <https://dlp.vermont.gov/survey-cert/facility-evaluation-checklist>

- **Medicare Nursing Home Compare**
 - Provides detailed information and ratings on every Medicare and Medicaid-certified nursing home in Vermont.
 - Includes general information and information regarding health inspections, fire safety inspections, staffing, quality of resident care and penalties.
 - Rates nursing homes on health inspections, staffing and quality measures.
 - Available online at <https://www.medicare.gov/nursinghomecompare/search.html?>

- **VT Inspection & Complaint Investigation Results**
 - DAIL publishes “survey statements” reflecting their findings from both (1) routine inspections and (2) complaint investigations of nursing homes, assisted living residences and residential care homes.
 - To search for “survey statements” regarding a facility of interest, (1) visit the following DAIL website and (2) enter the facility name in the “Search” box in the website’s upper-right corner:
<https://dlp.vermont.gov/survey-cert/survey-statements>

- **Vermont state laws & regulations**

- To review all state laws and regulations pertaining to nursing homes, assisted living residences, and residential care homes, click on the links below.

	NHs	ALRs	RCHs
Statutes	General Laws	General Laws	General Laws
Regulations	Regulations (“NH Rules”)	Regulations (“ALR Rules”)	Regulations (“RCH Rules”)
Residents’ Rights (from Statutes & Regulations)	Residents’ Bill of Rights	Residents’ Rights	Residents’ Rights