

1. TITLE OF RULE FILING:

**Residential Care Home and Assisted Living Residence
Licensing Regulations**

2. ADOPTING AGENCY:

Agency of Human Services (AHS), Department of
Disabilities, Aging, and Independent Living (DAIL)

3. PRIMARY CONTACT PERSON:

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

Name: Pamela Cota

Agency: AHS/DAIL

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

Telephone: 802-241-0480 Fax:

E-Mail: pamela.cota@vermont.gov

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

<https://dail.vermont.gov>

4. SECONDARY CONTACT PERSON:

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

Name: Stuart Schurr

Agency: AHS/DAIL

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

Telephone: 802-241-0353 Fax:

E-Mail: stuart.schurr@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

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

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

33 V.S.A. § 7112

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

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

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

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

33 V.S.A. § 7117(a)

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

33 V.S.A. § 7117(a) authorizes the Secretary of Human Services to adopt reasonable rules for the operation of facilities licensed under this chapter, which include residential care homes and assisted living residences.

8. CONCISE SUMMARY (150 WORDS OR LESS):

The Residential Care Home (RCH) and Assisted Living Residence (ALR) Regulations, last adopted in 2000 and 2003, respectively, were developed for residents who needed lower levels of assistance, who were simply unable to live independently. Since then, Vermonters, and people in general, have tended to stay in their homes longer and enter into residential care or assisted living with higher and more complex care needs. Ownership structures have also changed. In addition to a general shift in use of group care settings, the Choices for Care (CFC) and Enhanced Residential Care (ERC) programs have placed hundreds of nursing home level of care residents into these homes. The regulations did not provide the protections needed for a population that has increased and complex care needs, and they were not providing the guidance to the managers of these homes in how to provide safe care to residents, including those who need nursing home level of care.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The current rules are outdated and lack adequate protections for those with more complex care needs. Proposed changes to the rule include: adding requirements to ensure adequate protections and adequate care and services for residents; adding enforcement tools; adding a requirement for a pre-admission evaluation process; and clarifying existing, and inserting new, nursing home level of care requirements.

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

The proposed language adheres to the requirements set forth in 33 V.S.A. § 7117. The decision to include such language would make sense to a reasonable person.

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

Agency of Human Services; Department of Disabilities, Aging, and Independent Living; Operators of licensed Residential Care Homes and Assisted Living Residences; residents (both current and prospective) of licensed RCHs and ALRs; resident representatives of current and prospective residents; Office of the Long Term Care Ombudsman.

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

The rules are in line with safe standards of practice, so there is no anticipated economic impact if homes are currently operating to provide a high quality of care.

13. A HEARING WILL BE SCHEDULED.

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

14. HEARING INFORMATION

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

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

Date: 1/8/2024

Time: 01:00 PM

Street Address: virtual

Zip Code:

URL for Virtual:

<https://www.zoomgov.com/j/1602893330?pwd=R3hjQm9jZkpUOGQyVENqZUZvYW8rQT09>

Date: 1/9/2024

Time: 10:00 AM

Street Address: virtual

Zip Code:

URL for Virtual:

<https://www.zoomgov.com/j/1602893330?pwd=R3hjQm9jZkpUOGQyVENqZUZvYW8rQT09>

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 1/17/2024

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

Residential Care Home
Assisted Living Residence
discharge
aging in place
residents' rights

Adopting Page

Instructions:

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

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

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

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

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

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

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

00-52, Residential Care Home Licensing, October 3,
2000

03-05, Assisted Living Residence Licensing
Regulations, March 15, 2003

Economic Impact Analysis

Instructions:

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

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

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

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3. CATEGORY OF AFFECTED PARTIES:

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

No economic impact on residents of these licensed facilities or on those advocating on their behalf is anticipated. In fact, the adoption of this rule is expected to have no economic impact on most of the operators of these licensed facilities. One exception,

however, is that residential care homes that choose to care for residents at nursing home level of care and have been operating with minimal staff or minimal professional nursing may incur additional costs associated with adjusting practices to ensure the quality of care is in line with the professional standards of practice required by the rule.

4. IMPACT ON SCHOOLS:

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

Not applicable.

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

Not applicable.

6. IMPACT ON SMALL BUSINESSES:

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

The adoption of this rule is expected to have no economic impact on small businesses, including most of the operators of these licensed facilities. One exception, however, is that residential care homes that choose to care for residents at nursing home level of care and have been operating with minimal staff or minimal professional nursing may incur additional costs associated with adjusting practices to ensure the quality of care is in line with the professional standards of practice required by the rule.

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

Not applicable.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING

SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Not applicable.

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

In assessing the potential economic impact on stakeholders, DAIL considered the scope and complexity of the additional requirements in the proposed rule and concluded that such impact, if any, would be negligible.

Environmental Impact Analysis

Instructions:

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

Examples of Environmental Impacts include but are not limited to:

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

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Potential for additional cooling needs to maintain temperature of 81 degrees or below.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No anticipated impact.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
No anticipated impact.
6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
No anticipated impact.
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No anticipated impact.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No anticipated impact.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
Not applicable.

Public Input Maximization Plan

Instructions:

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

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

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

In 2018, DAIL/DLP identified the need to do a comprehensive review and update of its Residential Care Home Regulations. In 2019, DAIL contracted with Flint Springs Associates to assist in this process. To ensure robust feedback from interested parties, the contractor performed the following tasks:

Residential Care Homes: In order to capture input from as many of Vermont's 110 RCHs, Flint Springs Associates offered providers a chance to attend any one of five group interview sessions offered across the state. The five sessions, held in July 2019, were located in White River Junction, St. Johnsbury, Shelburne, Wallingford, and Waterbury. A total of 87 managers, owners and staff attended, representing 69 RCHs.

Public Input

Assisted Living Residences: The small number of Assisted Living Residences in Vermont allowed the contractor to hold individual telephone interviews with managers and staff from each of the thirteen ALRs.

Individual Stakeholders: The contractor interviewed the following:

- Sean Londergan, Ombudsman, VT Legal Aid
- Regional Ombudsmen, VT Legal Aid - In-Person group interview
- Ruby Baker, CEO, Community of Vermont Elders (COVE)
- Laura Pelosi, Vermont Health Care Association (VHCA)
- Carolyn Jarrett, Senior Citizens Law Project, VT Legal Aid
- Glenn Jarrett and Janet Nunziata, Co-chairs of the Governor's Commission on Alzheimer's Disease and Related Disorders
- Jamie Renner, Assistant Attorney General, Office of Consumer Protection
- Linda Purdy, Assistant Attorney General overseeing Medicaid and residential abuse
- Nancy Breiden - Director of Disability Law Project, VT Legal Aid
- Jennifer Doyle - RCH Owner
- Megan Tierney-Ward, Angela Smith Dieng, and Angela McMann, DAIL Adult Services Division Staff - In-Person group interview
- Joe Benard - VT Division of Fire Safety - In-Person interview

Different structured interview questions were developed for gathering input from the different sets of informants.

DAIL will send information regarding the proposed rule and public comment period to the following: Department of Mental Health; Division of Fire Safety; Attorney General's Office; Office of the Long-Term Care Ombudsman; Licensed Residential Care Homes; Licensed

Public Input

Assisted Living Residences; The Governor's Commission on Alzheimer's Disease and Related Disorders; and Vermont Health Care Association

The proposed rule will be posted on the DAIL website, and two (2) public hearings will be held virtually. In addition, DAIL will invite the public to submit written comments on the rule during the public comment period.

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

A draft of the proposed rule was sent out in May 2023 to stakeholders, who were given the opportunity to comment. Comments were thoroughly reviewed, and, in response, edits were made to the proposed rules.

Stakeholders included:

Department of Disabilities, Aging, and Independent Living - Adult Services Division;

Department of Mental Health;

Division of Fire Safety;

Attorney General's Office;

Office of the Long Term Care Ombudsman;

Licensed Residential Care Homes;

Licensed Assisted Living Residences;

Governor's Commission on Alzheimer's Disease and Related Disorders; and

Vermont Health Care Association.